

**CHAPTER 25**  
**RATES AND RATING ORGANIZATIONS**

**SUBCHAPTER 1**

**GENERAL PROVISIONS**

**§2301. Purpose of chapter; interpretation**

The purpose of this chapter is to promote the public welfare by regulating insurance rates, in accordance with the intent of Congress as expressed in Public Law 15 -- 79th Congress, to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate limited cooperative action among insurers in rate-making related activities and in other matters within the scope of this chapter. Nothing in this chapter is intended to prohibit or discourage reasonable competition, or to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in rating systems, rating plans or practices. This chapter shall be liberally interpreted to carry into effect this section. Unless otherwise specified, all hearings held under this chapter shall be in accordance with the procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. [PL 1989, c. 797, §1 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

**SECTION HISTORY**

PL 1969, c. 132, §1 (NEW). PL 1977, c. 694, §415 (AMD). PL 1989, c. 797, §§1,37,38 (AMD).

**§2302. Scope of chapter**

1. This chapter applies to:

A. Casualty insurance and all forms of motor vehicle insurance on risks or operations in this State; [PL 1969, c. 132, §1 (NEW).]

B. Surety insurance; [PL 1969, c. 132, §1 (NEW).]

C. Property, marine and inland marine insurance on risks located in this State. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the superintendent, or as established by general custom of the business, as inland marine insurance; and [PL 1989, c. 351, §1 (AMD).]

D. Title insurance. [PL 1989, c. 351, §2 (NEW).]  
[PL 1989, c. 351, §§1, 2 (AMD).]

2. This chapter shall not apply to:

A. Reinsurance, except joint reinsurance as provided in section 2322-A; [PL 2007, c. 466, Pt. D, §6 (AMD).]

B. Health insurance; [PL 1969, c. 132, §1 (NEW).]

C. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies; [PL 1969, c. 132, §1 (NEW).]

D. Insurance of hulls of aircraft, including their accessories and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft; [PL 1987, c. 769, Pt. A, §91 (AMD).]

E. Life insurance; or [PL 1989, c. 351, §3 (AMD).]

F. [PL 1989, c. 351, §4 (RP).]

G. Insurance written on an assessment plan by domestic mutual insurers. [PL 1969, c. 132, §1 (NEW).]

[PL 2007, c. 466, Pt. D, §6 (AMD).]

3. Workers' compensation is primarily subject to chapter 25, subchapter II-B, but any other parts of this subchapter not inconsistent with that subchapter also apply.

[PL 1991, c. 885, Pt. B, §1 (AMD); PL 1991, c. 885, Pt. B, §13 (AFF).]

4. Nothing in this chapter shall abridge or restrict the freedom of contract between insurers and agents or brokers with respect to commissions or between insurers and their employees with respect to compensation.

[PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1985, c. 372, §B2 (AMD). PL 1987, c. 559, §A1 (AMD). PL 1987, c. 769, §A91 (AMD). PL 1989, c. 351, §§1-4 (AMD). PL 1991, c. 885, §B1 (AMD). PL 1991, c. 885, §B13 (AFF). PL 2007, c. 466, Pt. D, §6 (AMD).

#### §2302-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

1. "Commercial lines" means any line of insurance that is not a personal line.

[PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

2. "Developed losses" means losses, including loss adjustment expenses, adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss and loss adjustment expense payments.

[PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

3. "Expense" means that portion of a rate attributable to acquisition, field supervision and collection expenses; general expenses; and taxes, licenses and fees.

[PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

4. "Loss trending" means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

[PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

5. "Personal lines" means homeowners, tenants, private passenger nonfleet automobiles, mobile homes and other property and casualty insurance for personal, family or household needs.

[PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

6. "Prospective loss costs" means that portion of a rate that does not include provisions for expenses, other than loss adjustment expenses, or profit, and is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

[PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

7. "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variation based on loss or expense considerations, and not including minimum premium.

[PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

8. "Supplementary rating information" means any manual or plan of rates, classification rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical plan and any other similar information needed to determine the applicable rate in effect or to be in effect. [PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

9. "Supporting information" means:

A. The experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer; [PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

B. The interpretation of any other data relied upon by the filer; and [PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

C. Descriptions of methods used in making rates, and any other information required by the superintendent to be filed. [PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]  
[PL 1989, c. 797, §2 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1989, c. 797, §§2,37,38 (NEW).

#### §2303. Making of rates

1. Rates shall be made in accordance with the following provisions.

A. Manual, minimum, class rates, rating schedules or rating plans shall be made and adopted, except in the case of specific inland marine rates on risks specially rated. [PL 1969, c. 132, §1 (NEW).]

B. Rates shall not be excessive, inadequate or unfairly discriminatory. [PL 1969, c. 132, §1 (NEW).]

C. Due consideration must be given:

(1) To past and prospective loss experience within and outside this State;

(2) To the conflagration and catastrophe hazards;

(3) To a reasonable margin for underwriting profit and contingencies;

(4) To dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;

(5) To past and prospective expenses both countrywide and those specially applicable to this State;

(6) To all other relevant factors within and outside this State;

(7) In the case of fire insurance rates, to the experience of the fire insurance business during a period of not less than the most recent 5-year period for which such experience is available; and

(8) In the case of title insurance rates, to the reasonableness of commission levels and other acquisition costs both countrywide and those specifically applicable to this State. [PL 1991, c. 885, Pt. B, §2 (AMD); PL 1991, c. 885, Pt. B, §13 (AFF).]

D. [PL 1989, c. 797, §3 (RP); PL 1989, c. 797, §§37, 38 (AFF).]

E. [PL 1989, c. 797, §3 (RP); PL 1989, c. 797, §§37, 38 (AFF).]

F. [PL 1985, c. 372, Pt. B, §4 (RP).]

G. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating

plans that establish standards for measuring variations in hazards or expense provisions, or both. These standards may measure any differences among risks that may have a probable effect upon losses or expenses. No risk classification may be based upon race, religion, ancestry or national origin of the insured. [PL 2021, c. 553, §16 (AMD).]

H. The expense provisions included in the rates to be used by an insurer must reflect the operating methods of the insurer and its anticipated expenses. [PL 1989, c. 797, §4 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

I. Rates may contain a provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit allowance, consideration must be given to investment income. [PL 1989, c. 797, §4 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

[PL 2021, c. 553, §16 (AMD).]

2. Nothing in this section shall be taken to prohibit as unreasonable or unfairly discriminatory the establishment of classifications or modifications of classifications or risks based upon size, expense, management, individual experience, purpose of insurance, location or dispersion of hazard, or any other reasonable considerations, provided such classifications and modifications apply to all risks under the same or substantially similar circumstances or conditions.

[PL 1969, c. 132, §1 (NEW).]

3.

[PL 1989, c. 797, §5 (RP); PL 1989, c. 797, §§37, 38 (AFF).]

3-A.

[PL 2007, c. 188, Pt. A, §1 (RP).]

4. Rates made in accordance with this section may be used subject to this chapter.

[PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1983, c. 17 (AMD). PL 1983, c. 551, §1 (AMD). PL 1985, c. 372, §§B3,4 (AMD). PL 1987, c. 559, §A2 (AMD). PL 1989, c. 351, §5 (AMD). PL 1989, c. 797, §§3-6 (AMD). PL 1989, c. 797, §§37,38 (AFF). PL 1991, c. 885, §B2 (AMD). PL 1991, c. 885, §B13 (AFF). PL 2007, c. 188, Pt. A, §1 (AMD). PL 2021, c. 553, §16 (AMD).

#### §2303-A. Surcharge

An insurer may not surcharge a motor vehicle insurance policy based on a motor vehicle operator's license suspension when that suspension is pursuant to Title 29-A, section 2472, subsection 3, paragraph B, except in accordance with this section. If the person had an alcohol level of at least 0.05 grams or more of alcohol but less than 0.08 grams of alcohol per 100 milliliters of blood or 210 liters of breath, the surcharge is limited to 20%. If the person had an alcohol level of at least 0.02 grams of alcohol but less than 0.05 grams of alcohol per 100 milliliters of blood or 210 liters of breath, the surcharge is limited to 10%. If the policy covers multiple vehicles, the surcharge may be applied only to that portion of the rate attributable to a single vehicle. [PL 2009, c. 447, §22 (AMD).]

#### SECTION HISTORY

PL 1989, c. 366, §1 (NEW). PL 1995, c. 65, §A67 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 2009, c. 447, §22 (AMD).

#### §2303-B. Clean fuel vehicle incentive

An insurer may credit or refund any portion of the premium charges for an insurance policy for a clean fuel vehicle in order to encourage its policyholders to use clean fuel vehicles if insurance premiums on other vehicles are not increased to fund these credits or refunds. [PL 1997, c. 500, §7 (NEW).]

For purposes of this section, "clean fuel vehicle" means a vehicle that may be propelled by a clean fuel or a fuel-cell electric vehicle that uses any fuel. For purposes of this paragraph, "clean fuel" means all products or energy sources used to propel motor vehicles, as defined in Title 29-A, section 101, other than conventional gasoline, diesel or reformulated gasoline, that, when compared to conventional gasoline, diesel or reformulated gasoline, result in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination of these. "Clean fuel" includes, but is not limited to, compressed natural gas; liquefied natural gas; liquefied petroleum gas; hydrogen; hythane, which is a combination of compressed natural gas and hydrogen; dynamic flywheels; solar energy; alcohol fuels containing not less than 85% alcohol by volume; and electricity. [PL 2019, c. 160, §9 (AMD).]

#### SECTION HISTORY

PL 1997, c. 500, §7 (NEW). PL 2019, c. 160, §9 (AMD).

#### §2304. Rate filings

**(REPEALED)**

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 113 (AMD). PL 1973, c. 585, §12 (AMD). PL 1989, c. 192, §1 (AMD). PL 1989, c. 797, §§7,37,38 (RP). PL 1989, c. 843, §1 (AMD). PL 1991, c. 377, §9 (AMD).

#### §2304-A. Rate filings

1. Every insurer shall file with the superintendent, except as to inland marine risks, which by general custom of the business are not written according to manual rates or rating plans, every manual rate, minimum premium, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing that it proposes to use. The filing must state the effective date of the filing and indicate the character and extent of the coverage contemplated. The filing must be made not less than 30 days in advance of the stated effective date unless that 30-day requirement is waived by the superintendent. The superintendent shall act on a filing no later than 30 days from receipt unless an extension is requested by the filer. A filing required under this section must be made electronically in a format required by the superintendent unless exempted by rule adopted by the superintendent. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

A. [PL 1991, c. 377, §10 (RP).]

B. [PL 1991, c. 377, §10 (RP).]

C. [PL 1991, c. 377, §10 (RP).]

D. [PL 1991, c. 377, §10 (RP).]

E. [PL 1991, c. 377, §10 (RP).]

F. [PL 1991, c. 377, §10 (RP).]

G. [PL 1991, c. 377, §10 (RP).]

H. [PL 1991, c. 377, §10 (RP).]

[PL 2009, c. 14, §1 (AMD).]

2. Every insurer must file or incorporate by reference material that has been approved by the superintendent at the time rates are filed, including all supplementary rating, and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include or reference:

- A. The experience or judgment of the insurer or information filed by an advisory organization on behalf of the insurer as permitted by sections 2321-D and 2321-E; [PL 1991, c. 377, §10 (RPR).]
  - B. The insurer's interpretation of any statistical data upon which it relies; [PL 1991, c. 377, §10 (RPR).]
  - C. The experience of other insurers or advisory organizations; or [PL 1991, c. 377, §10 (RPR).]
  - D. Any other relevant factors. [PL 1991, c. 377, §10 (RPR).]
- [PL 1991, c. 377, §10 (RPR).]

3. An advisory organization filing of prospective loss costs and supplementary rating information must be filed for approval at least 60 days before it becomes effective. This period may be extended by the superintendent for an additional period not to exceed 60 days if written notice is given to the advisory organization that additional time is needed for the consideration of the filing. Upon written application by the advisory organization, the superintendent may authorize a filing that has been reviewed to become effective before the expiration of the waiting period or any extension of the waiting period. A filing is deemed to meet the requirements of this chapter unless disapproved by the superintendent within the waiting period or any extension of the waiting period.

If the superintendent has requested the advisory organization to furnish the information upon which it supports that filing, the waiting period commences as of the date that information is furnished.  
[PL 1991, c. 377, §10 (RPR).]

4. When a filing is not accompanied by the information upon which the insurer supports that filing, the superintendent may require the insurer to furnish the information upon which it supports the filing.

Any filing may be supported by the experience, or judgment if experience is not available, of the insurer or advisory organization making the filing, the experience of other insurers or advisory organizations or any other factors that the insurer or advisory organization determines relevant. A filing and any other supporting information are open to public inspection after the filing becomes effective.  
[PL 1991, c. 377, §10 (RPR).]

5. Specific inland marine rates on risks specially rated, made by an advisory organization, must be filed with the superintendent, become effective when filed, and are deemed approved and in compliance with the requirements of this chapter until the superintendent rejects the filing.  
[PL 1991, c. 377, §10 (RPR).]

6. Filings of rates to be utilized in connection with one or more mass marketing plans as defined in section 2932 must clearly identify their applicability to those plans.  
[PL 1991, c. 377, §10 (RPR).]

7. Except as provided in section 2304-C, a rate filing and its supporting data are confidential until the filing is approved.  
[PL 2005, c. 121, Pt. C, §1 (AMD).]

8. Nothing in this chapter requires an advisory organization or its members or subscribers immediately to refile final rates or premium charges previously approved or lawfully in effect. Members or subscribers of an advisory organization are authorized to continue to use rates or premium charges approved or lawfully in effect before the effective date of this chapter.  
[PL 1991, c. 377, §10 (RPR).]

#### SECTION HISTORY

PL 1989, c. 797, §§8,37,38 (NEW). PL 1989, c. 843, §2 (NEW). PL 1991, c. 377, §10 (RPR). PL 2003, c. 671, §A1 (AMD). PL 2005, c. 121, §C1 (AMD). PL 2007, c. 188, Pt. B, §1 (AMD). PL 2009, c. 14, §1 (AMD).

#### §2304-B. Reference filings

1. An insurer may satisfy its obligations to make rate filings by becoming a participating insurer of a licensed advisory organization that makes reference filings of advisory prospective loss costs and by authorizing the superintendent to accept reference filings on its behalf. The insurer's rates are the prospective loss costs filed by the advisory organization that have been approved in accordance with section 2321-E combined with the modifications and expense and profit factors filed by the insurer. [PL 1989, c. 797, §8 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

2. An insurer may request that its expense and profit factors and its loss cost modifications remain on file with the superintendent. Upon approval of an advisory organization loss cost reference filing, the insurer's rates are the combination of the approved prospective loss costs and the insurer's expense and profit factors and its loss cost modification filed with the superintendent. [PL 1989, c. 797, §8 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

3. If an insurer has authorized an advisory organization to file prospective loss cost information on its behalf, the insurer must make a filing with the superintendent pursuant to section 2304-A if it intends to delay, modify or in any way not adopt an approved loss cost filing. [PL 1989, c. 797, §8 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

4. An insurer's expense and profit factors and loss cost modifications must remain in effect until the insurer withdraws or refiles new factors pursuant to section 2304-A. The superintendent may request that an insurer provide supporting information for the filed expense and profit factors and loss cost modifications at any time. [PL 1989, c. 797, §8 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1989, c. 797, §§8,37,38 (NEW).

#### §2304-C. Physicians and surgeons liability insurance rates

Physicians and surgeons liability insurance rate filings are first subject to this section, but any other provisions of this chapter not inconsistent with this section also apply. Notwithstanding this section, filings made by advisory organizations are subject to this section only to the extent permitted by law, and laws prohibiting activities or the filing of certain information by advisory organizations supersede the provisions of this section. [PL 1991, c. 377, §11 (NEW).]

**1. Contents of filing.** Every filing subject to this section must include the data, statistics, schedules or information necessary for the superintendent to determine whether the filing complies with this chapter. The superintendent may waive any noncompliance with this subsection if the superintendent determines that the noncompliance is immaterial. The required information includes, but is not limited to:

A. Rates:

- (1) Current rates by rating class at basic limits and larger optional limits of coverage; and
- (2) Proposed rates by rating class at basic limits and larger optional limits of coverage; [PL 1991, c. 377, §11 (NEW).]

B. Historical experience:

- (1) Maine total limits premium, paid claims, paid allocated loss adjustment expenses, incurred claims, incurred allocated loss adjustment expenses, and incurred loss ratio for not less than the 5 most recent years available;
- (2) Maine basic limits written or earned premium or exposure, paid claims, paid allocated loss adjustment expenses, incurred claims, incurred allocated loss adjustment expenses, and incurred loss ratio or pure premium for not less than the 5 most recent years available; and

(3) Any other experience used to support the proposed changes; [PL 1991, c. 377, §11 (NEW).]

C. Adjustment factors:

(1) Premiums or exposure at basic limit adjusted to current rate level or exposure, and a description of the method used to adjust historical earned premium or exposure to current level;

(2) Loss development exhibits showing the change in paid and incurred losses and allocated loss adjustment expenses from period to period, evaluated at least annually, and an explanation of the loss development method used to project the ultimate value of claims and allocated loss adjustment expenses;

(3) Trend factor calculations and application, including the following:

(a) An explanation of the trending procedure and assumptions;

(b) Trend based on experience in this State as well as other actuarially sound sources of trend information; and

(c) Frequency and severity trend factor calculations, shown separately; and

(4) Credibility weighting of alternative sources of data, including a description of the methodology used and the appropriateness of the method to its use in the filing; [PL 1991, c. 377, §11 (NEW).]

D. Classification exposure, premium and loss experience in the State for not less than the 5 most recent years available, and other experience determined to be credible in selecting the proposed classification relativities. Classification experience must be provided in any filing in which the filer has proposed changes to the classification relativities, but not less frequently than every 3 years; [PL 1991, c. 377, §11 (NEW).]

E. Expense provisions used in developing the proposed rates, an explanation of the procedure used to develop these provisions, and the actual historical expenses for each of the 3 most recent years available in the following categories: commissions; other acquisition expenses; general expenses; taxes, licenses and fees; unallocated loss adjustment expenses; and other expenses; [PL 1991, c. 377, §11 (NEW).]

F. An evaluation of any law changes that will become effective during the period in which rates will be in effect or any law changes in effect but not evaluated in a prior filing and not reflected in the reported experience; [PL 1991, c. 377, §11 (NEW).]

G. An estimate of the investment income that will be earned on loss and loss adjustment expense reserves and unearned premium reserves during the period the rates are to be in effect and claims remain unpaid, and evidence that the filing gives full consideration to that estimated income. The filing must include the expected expense and claim payout pattern and an explanation of the derivation of the payout pattern; and [PL 1991, c. 377, §11 (NEW).]

H. Information regarding cost or expense control programs, procedures or practices implemented by the filer to improve efficiency of the company or to control or limit premium charges to insureds. [PL 1991, c. 377, §11 (NEW).]

[PL 1991, c. 377, §11 (NEW).]

**2. Additional information.** The superintendent may require, at any time, any additional information the superintendent determines necessary.

[PL 1991, c. 377, §11 (NEW).]

**3. Assertion of confidential status.** Any insurer, rating organization or advisory organization that asserts that any portion of a filing is entitled to confidential status for purposes of subsection 5, shall identify that portion of the filing at the time of filing and shall state the basis for the assertion.



[PL 1991, c. 377, §11 (NEW).]

**4. Notice of filing.** The superintendent shall maintain a list of all persons who request notice of physicians and surgeons liability insurance rate filings. Within 10 days of receipt of such a rate filing, the superintendent shall notify each person on that list.

[PL 1991, c. 377, §11 (NEW).]

**5. Interested persons.** Immediately after receiving a filing under this section, the superintendent shall grant access to the entire filing, including confidential information, to any interested person who pays premiums for physicians and surgeons liability coverage to the company that made the filing, and to any person or organization representing a group of such persons. Any person who has access to confidential information under this section shall maintain the confidentiality of that information by means of a confidentiality agreement or pursuant to a protective order of the superintendent.

[PL 1991, c. 377, §11 (NEW).]

**6. Public hearing.** The superintendent may hold a public hearing on any filing, as provided in sections 229 to 235. At the request of any person described in subsection 5, the superintendent shall, as required by section 229, hold a public hearing on the filing.

[PL 1991, c. 377, §11 (NEW).]

**7. Procedures; rules.** The superintendent may adopt rules under Title 5, chapter 375, establishing procedures for the administration of this section.

[PL 1991, c. 377, §11 (NEW).]

#### SECTION HISTORY

PL 1991, c. 377, §11 (NEW).

#### §2305. Exemption from filing

Under such rules and regulations as may be adopted, the superintendent may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and advisory organizations affected thereby. The superintendent may make such examination as determined advisable to ascertain whether any rates affected by such order meet the standards set forth in section 2303, subsection 1, paragraph B. [PL 1989, c. 797, §9 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§9,37,38 (AMD).

#### §2306. Disapproval of filing

**1.** If at any time the superintendent has reason to believe that a filing does not meet the requirements of this chapter, or violates any of the provisions of chapter 23, the superintendent shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at such hearing, to every insurer and advisory organization which made such filing, issue an order specifying in what respects the superintendent finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of the order shall be sent to every such insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

[PL 1989, c. 797, §10 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

**2.** No such order shall be issued by the superintendent with respect to the rate of an insurer, if such rate is one used by any other insurer, unless such order applies equally to all insurers using such rate. Such order may be issued to an insurer without being applicable to all other insurers using the same

rate, if the basis for such order is that the insurer affected thereby could not otherwise, with safety to the public and to its policyholders, be permitted to continue to transact business.

[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 402, §5 (AMD). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§10,37,38 (AMD).

#### **§2307. Limitation of disapproval power**

A manual of classifications, rule or rating plan or any modification of any of the foregoing that establishes standards for measuring variations in hazards or expense provisions, or both, and that has been filed pursuant to section 2304-A may not be disapproved if the rates produced meet the requirements of this chapter and chapter 23. [RR 2021, c. 2, Pt. A, §71 (COR).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §35 (AMD). PL 1969, c. 402, §6 (AMD). PL 1977, c. 78, §158 (RPR). RR 2021, c. 2, Pt. A, §71 (COR).

#### **§2308. Excess rates**

1. A rate in excess of that provided by a filing otherwise applicable may be used on any specific risk, providing that the following requirements are satisfied.

A. The insurer files a written application with the superintendent signed by the insured or applicant stating the reasons for the request. [PL 1989, c. 797, §11 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

B. The superintendent assents to the use of an excess rate for the specific risk. [PL 1987, c. 337 (NEW).]

[PL 1989, c. 797, §11 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

2. To promote the availability of coverage in lines of insurance when coverage is difficult to obtain or unavailable, a form more restrictive than that provided by filings otherwise applicable may be used on any specific risk, provided that the following requirements are satisfied.

A. The restrictive form and applicable rates are filed with the bureau. [PL 1987, c. 337 (NEW).]

B. A disclosure statement detailing the nature of the restriction or restrictions contained in the form and the manner in which the provisions of the restrictive form differ from an otherwise applicable filing is provided to and acknowledged by the applicant for insurance. [PL 1987, c. 337 (NEW).]

C. A copy of the disclosure statement and the written application for insurance submitted by the applicant are submitted to the bureau. [PL 1987, c. 337 (NEW).]

D. The superintendent does not disapprove the use of the restrictive form in the specific case. [PL 1987, c. 337 (NEW).]

[PL 1995, c. 329, §32 (AMD).]

3. At any subsequent policy renewal in which additional or different restrictive policy forms or excess rates are employed, the provisions of this section must again be satisfied.

[PL 1995, c. 329, §33 (NEW).]

4. Notification to the superintendent of cancellation or nonrenewal of a policy containing restrictive forms or employing excess rates is required within 30 days following cancellation or nonrenewal of the policy.

[PL 1995, c. 329, §33 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1987, c. 337 (RPR). PL 1989, c. 797, §§11,37,38 (AMD). PL 1995, c. 329, §§32,33 (AMD).

**§2309. Rating organizations -- filings for members and subscribers authorized**

**(REPEALED)**

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §36 (AMD). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§12,37,38 (AMD). PL 1991, c. 885, §B3 (RP). PL 1991, c. 885, §B13 (AFF).

**§2310. Workers' compensation rating organizations -- licensing**

**(REPEALED)**

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1975, c. 767, §20 (AMD). PL 1977, c. 694, §§416,417 (AMD). PL 1989, c. 797, §§13,37,38 (AMD). PL 1991, c. 885, §B4 (RP). PL 1991, c. 885, §B13 (AFF).

**§2311. Subscribers to workers' compensation rating organizations**

**(REPEALED)**

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§14,37,38 (AMD). PL 1991, c. 885, §B5 (RP). PL 1991, c. 885, §B13 (AFF).

**§2312. Notice of changes**

**(REPEALED)**

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§15,37,38 (AMD). PL 1991, c. 885, §B6 (RP). PL 1991, c. 885, §B13 (AFF).

**§2313. Rules not to affect dividends**

**(REPEALED)**

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1989, c. 797, §§16,37,38 (AMD). PL 1991, c. 885, §B7 (RP). PL 1991, c. 885, §B13 (AFF).

**§2314. Technical services**

**(REPEALED)**

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1989, c. 797, §§16,37,38 (AMD). PL 1991, c. 885, §B7 (RP). PL 1991, c. 885, §B13 (AFF).

**§2315. Stamping bureau**

**(REPEALED)**

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §17 (AMD). PL 1989, c. 797, §§37, 38 (AFF). PL 2011, c. 320, Pt. A, §7 (RP).

**§2316. Adherence to filings**

No insurer shall make or issue a contract or policy, except in accordance with the filings which are in effect for the insurer as provided in this chapter or in accordance with sections 2305 (exemption from filing) or 2308 (excess rates). This section shall not apply to contracts or policies for inland marine risks as to which filings are not required. [PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### §2317. Deviations

**(REPEALED)**

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1983, c. 551, §2 (AMD). PL 1989, c. 797, §§18,37,38 (RP).

#### §2318. Appeal from rating organization

**(REPEALED)**

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1975, c. 767, §21 (AMD). PL 1989, c. 797, §§19,37,38 (RP).

#### §2319. Appeal by insureds as to filings

**1. Application to the superintendent.** Any insured aggrieved with respect to any filing, rate, expense or premium level that is in effect may make a written application to the superintendent for a hearing. The application must specify the grounds to be relied upon by the applicant in asserting that the filing, rate, expense or premium level is unjust or unreasonable.

A. [PL 1991, c. 885, Pt. B, §8 (RP); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. [PL 1991, c. 885, Pt. B, §8 (RP); PL 1991, c. 885, Pt. B, §13 (AFF).]  
[PL 1991, c. 885, Pt. B, §8 (RPR); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Responsive filing and hearing.** If the superintendent finds that the application is made in good faith, that the applicant would be so aggrieved if the applicant's grounds were established and that such grounds otherwise justify holding a hearing, the superintendent shall, by written order, require that the insurer, advisory organization or rating organization prepare within 30 days a responsive filing containing information necessary, in the judgment of the superintendent, to review the application. A public hearing may be conducted and, if conducted, must be at least 30 days from the date the responsive filing is determined complete by the superintendent.

A. [PL 1991, c. 885, Pt. B, §8 (RP); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. [PL 1991, c. 885, Pt. B, §8 (RP); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. [PL 1991, c. 885, Pt. B, §8 (RP); PL 1991, c. 885, Pt. B, §13 (AFF).]  
[PL 1991, c. 885, Pt. B, §8 (RPR); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3.** If, after such a hearing, the superintendent finds that the filing, rate, expense or premium level does not meet the requirements of this chapter, the superintendent shall issue a final order specifying in what respects the superintendent finds that the filing fails to meet the requirements of this chapter, or is unjust and unreasonable, and stating when, within a reasonable period thereafter, the filing, rate, expense or premium level shall be changed, replaced or determined no longer effective. Copies of the order shall be sent to the applicant and to every insurer and rating or advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

[PL 1989, c. 467, §1 (AMD); PL 1989, c. 797, §20 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 467, §1 (AMD). PL 1989, c. 797, §§20,37,38 (AMD). PL 1991, c. 885, §B8 (AMD). PL 1991, c. 885, §B13 (AFF).

#### **§2320. Information furnished insureds; hearings and appeals of insureds**

1. Every rating organization, advisory organization and insurer shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate, a prospective loss cost or supplementary rating information made by it, or to the authorized representative of such insured, all pertinent information as to such rate. [PL 1989, c. 797, §21 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

2. Every rating organization, advisory organization and insurer shall provide within this State reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or through an authorized representative, on written request to review the manner in which such rating system has been applied in connection with the insurance afforded that person. If the rating organization, advisory organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if that application had been rejected. Any party affected by the action of such rating organization, advisory organization or such insurer on such request may, within 30 days after written notice of such action, appeal to the superintendent, who, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization, advisory organization or insurer, may affirm or reverse such action. [PL 1989, c. 797, §21 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

3. Upon a request by a person aggrieved by the application of the rating system or an insurer, or either of their authorized representatives, the person aggrieved has the right to a hearing held by the superintendent without the matter first being heard by the rating organization or insurer pursuant to subsection 2. Such hearing must be held within 60 days following receipt by the superintendent of a written request for a hearing. At least 30 days' written notice of the date, time and place of the hearing, together with a reasonably accurate description of the subject matter of the hearing, must be provided by the superintendent to the person aggrieved, the insurer and the rating organization. Upon request by any party, the hearing may be continued to allow a reasonable period for conducting investigation of the matter, discovery and preparation of factual and legal materials for the hearing. Each party to a hearing is entitled to only one continuance. Prior to continuation of a hearing, the superintendent shall, upon not less than 5 days' notice to all parties, conduct an informal prehearing conference at which the parties shall identify the issues to be addressed at the hearing, establish a schedule for all investigation, discovery and hearing preparation reasonably necessary based upon the nature and scope of the hearing and establish a date certain for the hearing.

[PL 1995, c. 317, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§21,37,38 (AMD). PL 1995, c. 317, §1 (AMD).

#### **§2320-A. Competition and availability of insurance**

**(REPEALED)**

#### SECTION HISTORY

PL 1989, c. 356, §1 (NEW). PL 1989, c. 878, §A67 (AMD). PL 1991, c. 885, §B9 (RP). PL 1991, c. 885, §B13 (AFF).

#### **§2321. Advisory organizations**

**(REPEALED)****SECTION HISTORY**

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §§37,38 (AMD). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§22,37,38 (RP).

**§2321-A. Licensing advisory organizations**

1. No advisory organization may provide any service relating to the rates of any insurance subject to this chapter, and no insurer may utilize the services of that organization for those purposes unless the organization has obtained a license under subsection 3, paragraph C.

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

2. No advisory organization may refuse to supply any services for which it is licensed in this State to any insurer authorized to do business in this State and offering to pay the fair and usual compensation for the services.

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

3. The licensing of advisory organizations is governed by the following.

A. An advisory organization's application for a license must include:

(1) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, and a copy of its bylaws, plan of operation and any other rules or regulations governing the conduct of its business;

(2) A list of its members and subscribers;

(3) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the superintendent may be served;

(4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;

(5) A biography of the ownership and management of the organization; and

(6) Any other relevant information and documents that the superintendent may require. [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

B. Every organization which has applied for a license must notify the superintendent of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section must be filed at least 30 days before it becomes effective. [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

C. If the superintendent finds that the applicant and the natural persons through whom it acts are competent, trustworthy and technically qualified to provide the services proposed, and that all requirements of the law are met, the superintendent shall issue a license specifying the authorized activity of the applicant. The superintendent may not issue a license if the proposed activity would tend to create a monopoly or to lessen substantially the competition in any market. [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

D. The superintendent may at any time, after hearing, revoke or suspend the license of an advisory organization that does not comply with the requirements and standards of this section. [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

**SECTION HISTORY**

PL 1989, c. 797, §§23,37,38 (NEW).

**§2321-B. Insurers and advisory organizations; prohibited activity**

1. No insurer or advisory organization may:

A. Attempt to monopolize, or combine or conspire with any other person to monopolize an insurance market; or [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

B. Engage in a boycott, on a concerted basis, of an insurance market. [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

2. No insurer may agree with any other insurer or with an advisory organization to mandate adherence to or to mandate use of any rate, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection or similar material, except as needed to develop statistical plans permitted by section 2323.

A. The fact that 2 or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists. [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

B. Two or more insurers having a common ownership or operating in this State under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this chapter as if they constituted a single insurer. [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

3. No insurer or advisory organization may make any arrangement with any other insurer, advisory organization, or other person that has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1989, c. 797, §§23,37,38 (NEW).

#### §2321-C. Advisory organizations; prohibited activity

In addition to the other prohibitions described in section 2321-B, except as specifically permitted under section 2321-D, no advisory organization may compile or distribute recommendations relating to rates that include profit or expenses other than loss adjustment expenses. [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1989, c. 797, §§23,37,38 (NEW).

#### §2321-D. Advisory organizations; permitted activity

An advisory organization, in addition to other activities not prohibited, is authorized on behalf of its members and subscribers to: [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

1. Develop statistical plans including territorial and class definitions;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

2. Collect statistical data from members, subscribers or any other source;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

3. Prepare and distribute prospective loss costs;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

4. Prepare and distribute factors, calculations or formulas pertaining to classification, territory, increased limits and other variables;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

5. Prepare and distribute manuals of rating rules and rating schedules that do not include final rates, expense provisions, profit provisions or minimum premiums;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

6. Distribute information that is required or directed to be filed with the superintendent;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

7. Conduct research and on-site inspections in order to prepare classifications of public fire defenses;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

8. Consult with public officials regarding public fire protection as it would affect members, subscribers and others;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

9. Conduct research and collect statistics in order to discover, identify and classify information relating to causes or prevention of losses;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

10. Prepare policy forms and endorsements and consult with members, subscribers and others relative to their use and application;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

11. Conduct research and on-site inspections for the purpose of providing risk information relating to individual structures;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

12. Collect, compile and distribute past and current prices of individual insurers, and publish such information;

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

13. File final rates, at the direction of the superintendent, for residual market mechanisms; and

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

14. Furnish any other services, as approved or directed by the superintendent, related to those enumerated in this section.

[PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1989, c. 797, §§23,37,38 (NEW).

#### **§2321-E. Filing of prospective loss costs and supplemental information**

Advisory organizations may develop and file with the superintendent for approval prospective loss costs and supplementary rating information. Such filings shall contain the statistical data and supporting information for calculations or assumptions underlying the prospective loss costs. Advisory organization filings are subject to the provisions of sections 2303, 2304-A and 2304-B. [PL 1989, c. 797, §23 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1989, c. 797, §§23,37,38 (NEW).

#### **§2322. Joint underwriters; joint reinsurers**

**(REPEALED)**

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§24,37,38 (RP).



**§2322-A. Joint underwriting, joint reinsurance pool and residual market activities**

1. Notwithstanding section 2321-B, subsection 2 and consistent with sections 2325, 2325-A, 2325-B and 2366, insurers, rating organizations and advisory organizations participating in joint underwriting, joint reinsurance pools or residual market mechanisms may, in connection with such activity, act in cooperation with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics or other information, or conducting research. Joint underwriting, joint reinsurance pools and residual market mechanisms are not considered to be advisory organizations.

[PL 2003, c. 671, Pt. B, §1 (AMD).]

2. Insurers, joint underwriters, joint reinsurance pools and residual market activities are regulated as follows.

A. Except to the extent modified by this section, insurers, joint underwriting, joint insurance pool and residual market mechanism activities are subject to the other provisions of chapters 23 and 25. [PL 1989, c. 797, §25 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

B. If, after hearing, the superintendent finds that any activity or practice of an insurer participating in joint underwriting or a pool is unfair, is unreasonable, will tend to lessen competition in any market or is otherwise inconsistent with the provisions or purposes of this chapter, the superintendent may issue a written order and require the discontinuance of such activity or practice.

[PL 1989, c. 797, §25 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

[PL 1989, c. 797, §25 (NEW); PL 1989, c. 797, §§37, 38 (AFF).]

**SECTION HISTORY**

PL 1989, c. 797, §§25,37,38 (NEW). PL 2003, c. 671, §B1 (AMD).

**§2323. Recording and reporting of loss and expense experience**

1. The superintendent, acting pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, may promulgate reasonable rules and statistical plans, reasonably adopted to each of the rating systems on file, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers be made available at least annually in such form and detail as may be necessary to aid the superintendent in determining whether rating systems comply with the standards set forth in section 2303. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this State and are not susceptible of determination by a prorating of countrywide expense experience. The superintendent may also adopt reasonable rules for companies to use in recording and reporting to the superintendent their rates and other information determined to be necessary or appropriate for the administration of this chapter and the effectuation of its purposes.

[PL 1989, c. 797, §26 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

2. In promulgating such rules and plans, the superintendent shall give due consideration to the rating systems on file with him, and in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it.

[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

3. The superintendent may designate one or more rating organizations, advisory organizations or other agencies to assist in gathering such experience and making compilations thereof, and such compilations shall be a public document.

[PL 1989, c. 797, §27 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

4. Each insurer shall report its loss or expense experience to the lawful rating organization, advisory organization or agency of which it is a member or subscriber, but is not required to report its loss or expense experience to any rating organization, advisory organization or agency of which it is not a member or subscriber. Any insurer not reporting such experience to a rating organization, advisory organization or other agency may be required to report such experience to the superintendent. Any report of such experience of any insurer filed with the superintendent is confidential and may not be revealed by the superintendent to any other insurer or other person, but the superintendent may make compilations including such experience.

[PL 2011, c. 320, Pt. A, §8 (AMD).]

**5. Group self-insurer.** As used in this section, "insurer" shall include:

A. Insurer as defined in section 4; and [PL 1979, c. 658, §2 (NEW).]

B. Group self-insurer as defined in Title 39-A, section 403. [PL 1991, c. 885, Pt. E, §28 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

[PL 1991, c. 885, Pt. E, §28 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1977, c. 694, §418 (AMD). PL 1979, c. 658, §2 (AMD). PL 1989, c. 797, §§26,27,37, 38 (AMD). PL 1991, c. 885, §E28 (AMD). PL 1991, c. 885, §E47 (AFF). PL 2011, c. 320, Pt. A, §8 (AMD).

#### §2324. Interchange of rating plan data; consultation; cooperative action in rate-making

1. Acting in accordance with the procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, the superintendent may promulgate reasonable rules and plans for the interchange of data necessary for the application of rating plans.

[PL 1977, c. 694, §419 (RPR).]

2. In order to further uniform administration of rate regulatory laws, the superintendent and every insurer, advisory organization and rating organization may to the extent consistent with this chapter exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

[PL 1989, c. 797, §28 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

3. Cooperation among rating organizations, advisory organizations and insurers in activities related to rate making or in other matters within the scope of this chapter is authorized, but the filings resulting from such cooperation are subject to all provisions of this chapter which are applicable to filings generally. The superintendent may review such cooperative activities and practices and if, after a hearing, the superintendent finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with this chapter, the superintendent may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with this chapter, and requiring the discontinuance of such activity or practice.

[PL 1989, c. 797, §28 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1977, c. 694, §419 (AMD). PL 1989, c. 797, §§28,37,38 (AMD).

#### §2325. Assigned risks

1. Agreements may be made among casualty insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among

themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the superintendent.

[PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

2. Every insurer undertaking to transact in this State the business of automobile and motor vehicle bodily injury, property damage liability, physical damage and medical payments insurance and every advisory organization that files rates for that insurance shall cooperate in the preparation and submission of a plan for the equitable apportionment among insurers of applicants for insurance who are in good faith entitled to, but who are unable to procure through ordinary methods, such insurance. Administration of the plan is the responsibility of the plan member insurers subject to regulatory oversight by the bureau. The plan must provide:

A. Reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or otherwise and their assignment to insurers; [PL 1989, c. 797, §29 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

B. Rates and rate modifications applicable to such risks, which may not be excessive, inadequate or unfairly discriminatory; [PL 1991, c. 667, §1 (AMD).]

C. The limits of liability that the insurer is required to assume, except that the maximum amount of physical damage coverage for commercial type vehicles must be determined by the superintendent based on the current cost of new vehicles but not to exceed a maximum amount of \$100,000; and [PL 1991, c. 667, §1 (AMD).]

D. A method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the superintendent. [PL 1989, c. 797, §29 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

[PL 1991, c. 667, §1 (AMD).]

3. The plan referred to in subsection 2 must be filed in writing with the superintendent. The superintendent shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in subsection 2, paragraphs A, B, C and D. The plan, unless sooner approved in writing, must be on file for a waiting period of 30 days before it becomes effective. The plan is deemed approved unless disapproved by the superintendent within the waiting period.

Subsequent to the waiting period, the superintendent may disapprove the plan on the grounds that it does not meet the requirements set forth in subsection 2, paragraphs A, B, C and D, but only after a hearing held upon not less than 10 days' written notice to every insurer and advisory organization affected, specifying the matters to be considered at the hearing, and only by an order specifying in what respect the superintendent finds that the plan fails to meet the requirements, and stating when within a reasonable period thereafter the plan is deemed no longer effective. That order does not affect any assignment made or policy issued or made prior to the expiration of the period set forth in the order. Amendments to the plan must be prepared, filed and reviewed in the same manner as provided in this subsection with respect to the original plan.

The superintendent may, as necessary and in accordance with the Maine Administrative Procedure Act, initiate rulemaking with respect to the plan.

[PL 1991, c. 667, §2 (AMD).]

4. When the plan referred to in subsection 2 or amendments thereto have been approved or promulgated, no insurer shall thereafter issue a policy of automobile and motor vehicle bodily injury, property damage liability, physical damage and medical payments insurance or undertake to transact such business in this State, unless such insurer shall participate in such an approved or promulgated plan.

[PL 1969, c. 132, §1 (NEW).]

5. If, after hearing, the superintendent finds that any activity or practice of any insurer or advisory organization in connection with the operation of the plan referred to in subsection 2 is unfair or unreasonable or otherwise inconsistent with this section, the superintendent may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with this section and requiring the discontinuance of such activity or practice.

[PL 1989, c. 797, §30 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

6. The maximum limits of liability insurance offered by the Maine Automobile Insurance Plan for a personal automobile policy may not be less than \$250,000 per person for bodily injury liability, \$500,000 per occurrence for bodily injury liability and \$100,000 for property damage liability. A combined single limit of \$500,000 may be offered as an alternative to the mandatory split limits for bodily injury liability and property damage liability.

[PL 1991, c. 667, §3 (NEW).]

7. When a notice of cancellation for nonpayment of premium is issued by the Maine Automobile Insurance Plan or by an insurer to which the insured has been assigned by the plan, any premium paid by the insured but unearned within the policy term must be returned to the insured within 10 working days from the effective date of cancellation.

[PL 1991, c. 667, §3 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1979, c. 423 (AMD). PL 1989, c. 797, §§29,30,37, 38 (AMD). PL 1991, c. 667, §§1-3 (AMD).

#### §2325-A. Market assistance plans

1. **Establishment.** Whenever a particular type of insurance is unavailable or unaffordable, the superintendent may establish a market assistance plan.

[PL 1987, c. 627 (NEW).]

2. **Definition.** For purposes of this section a "market assistance plan" is a voluntary agreement between the Bureau of Insurance and insurers that the insurers will write insurance at an agreed upon rate for those persons or groups that are unable to obtain coverage.

[PL 1987, c. 627 (NEW).]

3. **Notification.** Whenever the superintendent determines that a market assistance plan is needed, the superintendent shall notify all insurers authorized to write the type of insurance covered by the plan that a market assistance plan is being established and their participation in the plan is requested.

[PL 1987, c. 627 (NEW).]

4. **Participation.** Each insurer receiving a notice referred to in subsection 3, shall respond within 30 days to the notice. Their response shall indicate the extent to which they are willing to participate and any reasons why they do not wish to participate or only wish to participate on a limited basis.

[PL 1987, c. 627 (NEW).]

5. **Report.** The superintendent shall report to the joint standing committee of the Legislature having jurisdiction over insurance by January 30th of each year whether there is, or may be, within the year a lack of availability in any line of insurance.

[PL 1987, c. 627 (NEW).]

#### SECTION HISTORY

PL 1987, c. 627 (NEW).

#### §2325-B. Mandatory property and casualty insurance market assistance program

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Basic property and casualty insurance" means policies that insure against loss or damage to real property that is used for residential purposes, is owner-occupied and consists of not more than 4 apartments, and that may also insure against loss or damage to tangible personal property and the legal liability of a natural person or persons for loss of, damage to or injury to persons or property. "Basic property and casualty insurance" may include standard homeowners package property and liability insurance, functional replacement homeowners package insurance, dwelling fire policies and extended coverage policies. "Basic property and casualty insurance" does not include automobile insurance, workers' compensation insurance or insurance primarily covering risks arising from the conduct of a commercial or industrial enterprise. [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. "Governing committee" means the committee established to operate the program pursuant to subsection 5. [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. "Member insurer" means an authorized insurer who is required to be a member of the program in accordance with subsection 3. [PL 2003, c. 671, Pt. B, §2 (NEW).]

D. "Modified policy form" means any new or amended policy form developed by member insurers for risks written through the program. [PL 2003, c. 671, Pt. B, §2 (NEW).]

E. "Modified rate" means any new or amended rate or rating rule developed by member insurers for risks written through the program. [PL 2003, c. 671, Pt. B, §2 (NEW).]

F. "Modified policy form and rate filing" and "modified filing" mean any modified policy form and modified rate filed with the superintendent under subsection 9. [PL 2003, c. 671, Pt. B, §2 (NEW).]

G. "Net direct premiums" means gross direct written premiums on basic property and casualty insurance in this State less return premiums upon cancelled contracts, irrespective of reinsurance assumed or ceded. [PL 2003, c. 671, Pt. B, §2 (NEW).]

H. "Program" means the mandatory property and casualty insurance market assistance program described in this section. [PL 2003, c. 671, Pt. B, §2 (NEW).]

I. "Underserved areas or risk types," "underserved areas" and "underserved risk types" mean specific geographic areas or property risk types in this State that the superintendent designates by rule as not having reasonable access to basic property and casualty insurance. [PL 2003, c. 671, Pt. B, §2 (NEW).]

[PL 2003, c. 671, Pt. B, §2 (NEW).]

**2. Authority to establish program.** If the superintendent establishes a voluntary market assistance plan in accordance with section 2325-A to increase the availability of basic property and casualty insurance in this State and the superintendent determines after a public hearing that the number of insurers participating in the voluntary market assistance plan is insufficient or that a sufficient number of risks has not been written through the plan, then the superintendent may establish a mandatory property and casualty insurance market assistance program in accordance with this section. The superintendent shall adopt rules regarding the level of insufficient participation in the voluntary market assistance plan that is necessary for the establishment of a program under this section. The provisions in the rules governing a determination of insufficient participation in the voluntary market assistance plan must take into account the length of time the voluntary market assistance plan is operational.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

**3. Mandatory insurer participation.** All insurers, except eligible surplus lines insurers, authorized to write and engaged in writing in this State, on a direct basis, basic property and casualty insurance shall cooperate in organizing a program as required by subsection 4. Every such insurer must

be a member of the program and remain a member as long as the insurer has net direct premiums on basic property and casualty insurance in this State.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

**4. Required action by superintendent.** If the superintendent determines that a program under this section should be established in accordance with the requirements of subsection 2, the superintendent shall:

A. Order member insurers to cooperate in the organization of the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. Appoint the members of the governing committee in accordance with subsection 5; [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. Order the governing committee to develop a proposed plan of operation for the program in accordance with subsection 6, including a deadline for the submission of the plan; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

D. Initiate rulemaking in accordance with subsection 8. [PL 2003, c. 671, Pt. B, §2 (NEW).]  
[PL 2003, c. 671, Pt. B, §2 (NEW).]

**5. Governing committee.** The governing committee of the program consists of 8 members as follows:

A. Five members appointed by the superintendent who are full-time employees of member insurers; [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. Two members appointed by the superintendent who are licensed producers with property and casualty authority; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. The superintendent or the superintendent's designee, who serves as an ex-officio, nonvoting member. [PL 2003, c. 671, Pt. B, §2 (NEW).]

The terms of members of the governing committee and process for filling vacancies must be established in the plan of operation pursuant to subsection 6.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

**6. Plan of operation.** The program must be operated by the governing committee established under subsection 5 pursuant to a plan of operation approved by the superintendent. The governing committee shall develop a plan of operation and submit the plan to the superintendent for approval. If the superintendent disapproves the proposed plan of operation, the governing committee must, within 30 days, submit for review an appropriately revised plan of operation and, if the governing committee fails to submit such a plan or if the revised plan is also disapproved by the superintendent, the superintendent must develop a plan of operation consistent with this section. The governing committee may, on its own initiative or at the request of the superintendent, amend the plan of operation with the approval of the superintendent.

The plan of operation must:

A. Adopt a mechanism for the equitable apportionment of risks under the program, including the equitable distribution among member insurers of applications for basic property and casualty insurance to cover underserved areas or risk types from eligible applicants who are in good faith entitled to but who are unable to procure basic property and casualty insurance through ordinary methods in the voluntary admitted market; [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. Establish a methodology for the calculation and the payment of fees or commissions to producers with respect to eligible risks written through the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

- C. Require that member insurers write basic property and casualty insurance for eligible applicants to cover underserved areas or risk types in accordance with each member insurer's underwriting guidelines and rating rules applicable to risks written through the program to the extent not inconsistent with reasonable underwriting and rating rule limitations contained in rules adopted by the superintendent under subsection 8; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- D. Permit the use of rate filings and policy forms by member insurers, including:
- (1) The ability for member insurers to use existing forms and rates to write basic property and casualty insurance in the program;
  - (2) The authority for member insurers to file modified policy forms and modified rates in accordance with subsection 9, including permissible surcharges on those policies in accordance with limits established by the superintendent by rule; and
  - (3) The authority for the program to develop uniform policy forms and rates for use by member insurers subject to approval of the superintendent and the requirements of subsection 9; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- E. Establish a procedure for the possible future creation of a risk pooling arrangement or reinsurance program for the distribution of the losses and expenses of basic property and casualty insurance written through the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- F. Provide that a member insurer is entitled to receive credit for voluntarily writing basic property and casualty insurance in underserved areas or on underserved risk types and that the participation in the program of an insurer who does so must be reduced in accordance with the mechanism of apportionment and distribution established under paragraph A; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- G. Establish a grievance process for applicants for insurance, insureds and member insurers with the program and a right to appeal those grievances to the superintendent after an initial decision by the governing committee; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- H. Establish procedures for the inspection of properties by or on behalf of member insurers; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- I. Establish a uniform process to inform owners of property in underserved areas or of underserved risk types of the specific circumstances and property characteristics that affect the insurability of the property including recommendations for improving the insurability of the property; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- J. Require that in order for an applicant to purchase basic property and casualty insurance through the program, the applicant must produce proof of 2 declinations from authorized insurers other than eligible surplus lines insurers, to write insurance on the property. The plan of operation must allow one of the declinations to be in the form of a cancellation or nonrenewal notice unless coverage has been ordered to stay in effect pending the outcome of a hearing before the superintendent, in which case the cancellation or nonrenewal notice may only be used as a declination in the person's application to the program if the decision in the hearing is in favor of the insurer; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- K. Establish a finite list of reasons a policy issued through the program may be cancelled, which may include nonpayment of premium, fraud or material misrepresentation; [PL 2003, c. 671, Pt. B, §2 (NEW).]
- L. Stipulate that cancellation of policies issued through the program may not be effective less than 20 days after receipt by the insured of the notice of cancellation or, if the cancellation is for nonpayment of premium, may not be effective less than 10 days after receipt by the insured of the notice of cancellation and that a postal certificate of mailing to the named insured at the insured's

last known address is conclusive proof of receipt on the 5th calendar day after mailing; [PL 2003, c. 671, Pt. B, §2 (NEW).]

M. Establish eligibility criteria for policies issued through the program, except that any eligibility criteria may not be inconsistent with the purposes for establishing the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

N. Establish the limits of liability a member insurer is required to assume, except that for any policy issued through the program, the maximum amount of coverage for a dwelling on a residence premises does not exceed \$300,000, the maximum limit for any liability coverage does not exceed \$300,000 and any limits of liability for additional coverages, including coverage for loss or damage to other structures or tangible personal property or for loss of use, may not count toward the maximum coverage limits applicable to the dwelling or any liability coverage; [PL 2003, c. 671, Pt. B, §2 (NEW).]

O. Establish procedures for the efficient, economical, fair and nondiscriminatory administration of the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

P. Authorize the governing committee to assess member insurers for reasonable expenses incurred in administering the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

Q. Establish procedures to govern a member insurer's withdrawal from the program; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

R. Include any other procedures or operational matters considered necessary by the governing committee with the approval of the superintendent. [PL 2003, c. 671, Pt. B, §2 (NEW).]  
[PL 2003, c. 671, Pt. B, §2 (NEW).]

**7. Operation of program contingent upon approval.** The program may not become operational until rules have been adopted as required by this section and the superintendent has approved the plan of operation in accordance with subsection 6.  
[PL 2003, c. 671, Pt. B, §2 (NEW).]

**8. Rulemaking.** In accordance with subsection 4, the superintendent may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules under Title 5, chapter 375, subchapter 2-A. Rules adopted under this section may include:

A. The designation of underserved areas or risk types; [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. Reasonable limitations on underwriting guidelines applicable to all member insurers for the issuance of basic property and casualty insurance through the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. A writing level based on net direct premiums under which an insurer may seek to limit its participation or seek exemption from participation in the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

D. Maximum allowable caps on rating surcharges and limitations on rating rules for risks written through the program; [PL 2003, c. 671, Pt. B, §2 (NEW).]

E. The process by which the superintendent may suspend or terminate the program; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

F. Any other provisions necessary to implement the requirements of this section. [PL 2003, c. 671, Pt. B, §2 (NEW).]

[PL 2003, c. 671, Pt. B, §2 (NEW).]

**9. Modified policy form and rate filings.** A modified policy form and modified rate developed by a member insurer must be filed with the superintendent. A modified rate to be used in connection with an existing policy form that consists solely of a permissible surcharge not in excess of the



maximum allowable cap contained in rules adopted under subsection 8 may be used by a member insurer immediately upon filing that modified rate with the superintendent. For any other modified filings, a modified policy form and modified rate must be filed with the superintendent not less than 30 days in advance of the stated effective date. A modified rate filing subject to the 30-day advance filing requirement must include any supplementary rating information to be used in conjunction with a rate and, to the extent available, sufficient supporting information to support a rate. A modified rate may not be excessive, inadequate or unfairly discriminatory with respect to risks written through the program. A modified policy form may only be disapproved for the grounds specified in section 2413. All modified policy form and rate filings are confidential until approved in accordance with applicable law.

[PL 2011, c. 320, Pt. A, §9 (AMD).]

**10. Immunity from liability for inspections.** There is no liability on the part of, and a cause of action does not arise against, member insurers, the program or the governing committee or agents or employees of any of them or the superintendent or the superintendent's authorized representatives with respect to any inspections to be undertaken by this section or for any acts or omissions in connection with those inspections or for any statements made in a report or communication concerning the insurability of the property.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

**11. Superintendent's authority to suspend.** In the event of impairment or serious financial difficulty of a member insurer, the superintendent may suspend the application of the provisions of this section from applying to the financially distressed member insurer.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

**12. Expiration of program.** A program established by the superintendent pursuant to this section expires 2 years from the date the program becomes operational unless terminated earlier by the superintendent or unless, after a public hearing, the superintendent determines, based on clear and convincing evidence, that continued operation of the program is necessary to address the unavailability of basic property and casualty insurance for underserved areas or risk types. For purposes of this subsection, the program becomes operational on the effective date of the first policy issued through the program. If the superintendent finds that continued operation of the program is necessary, then any person insured under the program must reapply for coverage as new business under the program at the next renewal date occurring after the date of the superintendent's order to continue the program. Any policy written through the program that is in force when the program is terminated continues in force until its stated expiration date in accordance with the terms and conditions of the policy and the provisions in the plan of operation.

[PL 2003, c. 671, Pt. B, §2 (NEW).]

**13. Powers of superintendent.** In addition to any powers conferred upon the superintendent by this or any other law, the superintendent has authority to supervise the program and may:

A. Examine and investigate the operation of the program and member insurers through free access to all the books, records, files, papers and documents relating to their operation and may summon, qualify and examine as witnesses all persons having knowledge of such operations, including the governing committee and its officers, employees and agents; [PL 2003, c. 671, Pt. B, §2 (NEW).]

B. Require reports from the program, the governing committee and member insurers concerning risks insured through the program as the superintendent considers necessary; [PL 2003, c. 671, Pt. B, §2 (NEW).]

C. Approve or disapprove modified policy forms, modified endorsements, modified rates and modified rating and rule manuals for use by member insurers; and [PL 2003, c. 671, Pt. B, §2 (NEW).]

D. Suspend or terminate the program in accordance with subsection 12 and any process established by rule. [PL 2003, c. 671, Pt. B, §2 (NEW).]  
[PL 2003, c. 671, Pt. B, §2 (NEW).]

**14. Penalties for violations.** The superintendent may take any action permitted under section 12-A against a member insurer or any other person required to be licensed under this Title who violates this section or any other applicable law or rule.  
[PL 2003, c. 671, Pt. B, §2 (NEW).]

**15. Annual report.** On or before March 31st of each year, the governing committee shall submit a report detailing the program's operations for the previous calendar year to the superintendent and the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters. The annual report is a public record within the meaning of Title 1, chapter 13, subchapter 1.  
[PL 2003, c. 671, Pt. B, §2 (NEW).]

**16. Applicability of provisions.** Insurance provided through the program is subject to all other laws relating to that type of insurance, except policies issued through the program are not subject to section 3007 or to chapter 41, subchapter 5. In the event there is a conflict between any express provision in this section and any other applicable law, then the provisions of this section control. Notwithstanding sections 2162 and 2303, a member insurer may utilize underwriting guidelines, modified policy forms, modified rates and rating rules that differ from its voluntary business with respect to insurance issued through the program, as long as the program underwriting guidelines, modified policy forms, modified rates and rating rules comply with this section, the plan of operation and the rules adopted by the superintendent.  
[PL 2003, c. 671, Pt. B, §2 (NEW).]

#### SECTION HISTORY

PL 2003, c. 671, §B2 (NEW). PL 2011, c. 320, Pt. A, §9 (AMD).

#### §2326. False or misleading information

**1.** No person or organization shall wilfully withhold information from, or knowingly give false or misleading information to:

A. The superintendent; [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

B. Any statistical agency designated by the superintendent; or [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

C. Any rating or advisory organization, or any insurer which will affect the rates or premiums chargeable under this chapter. [PL 1989, c. 797, §31 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

[PL 1989, c. 797, §31 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

**2.** A violation of this section shall subject the one guilty of such violation to the penalties provided in section 2329.

[PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§31,37,38 (AMD).

#### §2327. Fleet rates

**1.** Two or more insurers, who, by virtue of their business associations in the United States, represent themselves to be or are customarily known as a "group" or similar insurance trade designation, may make the same filings or use the same rates for each such insurer, subject to the provisions of section 2303; and nothing contained in this chapter shall be construed to prohibit an agreement to make the same filings or use the same rates and concerted action in connection with such filings or rates by

such insurers. This section shall not apply to 2 or more insurers who are not under the same common executive or general management or control and who act in concert in underwriting groups or pools. [PL 1969, c. 132, §1 (NEW).]

2. This section does not prohibit or restrict any agreement or action otherwise lawful under section 2322-A. [RR 2021, c. 2, Pt. A, §72 (COR).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). RR 2021, c. 2, Pt. A, §72 (COR).

#### §2328. Examinations

The superintendent shall examine the affairs, transactions, accounts and records of each advisory organization licensed in this State as provided in section 2321-A, and of joint underwriters and joint reinsurers as defined in section 2322-A, as often as the superintendent considers advisable, but not less frequently than once every 5 years. The examination must be conducted in the same manner and is subject to the same applicable provisions as apply to examination of insurers in chapter 3. The reasonable costs of any such examination must be paid by the organization or association so examined. In lieu of any such examination, the superintendent may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of such state. [PL 2023, c. 405, Pt. A, §85 (AMD).]

If the examination of a rating organization is satisfied by acceptance of another state's report on that rating organization, the superintendent shall submit a report to the joint standing committee of the Legislature having jurisdiction over banking and insurance concerning the superintendent's analysis of that report, any deficiencies noted by the superintendent or in the other state's report and what action has been taken to correct those deficiencies. [PL 1989, c. 356, §2 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 356, §2 (AMD). PL 1991, c. 885, §B10 (AMD). PL 1991, c. 885, §B13 (AFF). PL 2023, c. 405, Pt. A, §85 (AMD).

#### §2329. Penalties

1.

[PL 1989, c. 797, §32 (RP); PL 1989, c. 797, §§37, 38 (AFF).]

2. The superintendent may, after notice and opportunity for hearing, deny, revoke, suspend or limit the permissible activities of any rating or advisory organization or insurer which fails to comply with an order of the superintendent within the time period provided by the order.

[PL 1989, c. 797, §33 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

3.

[PL 1977, c. 694, §421 (RP).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1977, c. 694, §§420,421 (AMD). PL 1989, c. 797, §§32,33,37, 38 (AMD).

#### §2330. Appeals from superintendent

Any insurer, advisory organization or rating organization aggrieved by any order or decision of the superintendent may appeal therefrom as provided in section 236. [PL 1989, c. 797, §34 (AMD); PL 1989, c. 797, §§37, 38 (AFF).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1989, c. 797, §§34,37,38 (AMD).

**SUBCHAPTER 2**

**WORKERS' COMPENSATION COMPETITIVE RATING ACT**

**(REPEALED)**

**§2331. Title**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2332. Purposes**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2333. Definitions**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2334. Scope of application**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2335. Competitive market**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2336. Rate standards**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2337. Rating criteria**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2338. Filing of rates and other rating information**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 141, §B23 (AMD). PL 1987, c. 559, §A3 (RP).

**§2339. Disapproval of rates**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2340. Monitoring competition and compliance**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2341. Uniform administration of classifications; reporting of rates and other information**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2342. Payment of dividends**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2343. Uniform experience and merit rating plans**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1985, c. 719, §1 (AMD). PL 1987, c. 559, §A3 (RP).

**§2344. Schedule rating**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2345. Complaints on rates or filings**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2346. Licensing advisory organizations**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2347. Insurers and advisory organizations; prohibited activity**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2348. Advisory organizations; permitted activity**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2349. Advisory organizations; filing requirements**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2350. Residual market mechanism**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1985, c. 719, §2 (AMD). PL 1987, c. 141, §B24 (AMD). PL 1987, c. 388, §§1,2 (AMD). PL 1987, c. 559, §A3 (RP).

**§2351. Safety groups**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2352. Examinations**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2353. Penalties**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2354. Judicial review**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2355. Rate change limitations**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2356. Costs**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1987, c. 559, §A3 (RP).

**§2357. Nonseverability**

**(REPEALED)**

SECTION HISTORY

PL 1985, c. 372, §B5 (NEW). PL 1985, c. 431, §1 (AMD). PL 1987, c. 559, §A3 (RP).

**SUBCHAPTER 2-A**

**WORKERS' COMPENSATION RATES**

**(REPEALED)**

**§2361. Title**

**(REPEALED)**

SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1987, c. 769, §A93 (AMD). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2362. Workers' compensation rates**

**(REPEALED)**

SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2362-A. Disclosure of premium information**

**(REPEALED)**

SECTION HISTORY

PL 1991, c. 615, §A3 (NEW). PL 1991, c. 615, §D27 (AFF). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2362-B. Workplace health and safety consultations**

**(REPEALED)**

SECTION HISTORY

PL 1991, c. 615, §A4 (NEW). PL 1991, c. 615, §D27 (AFF). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2363. Approval of insurance policies and rates**

**(REPEALED)**

SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1987, c. 769, §§A94,A95 (AMD). PL 1989, c. 423, §§1-3 (AMD). PL 1989, c. 467, §2 (AMD). PL 1989, c. 502, §B23 (AMD). PL 1989, c. 673, §1 (AMD). PL 1989, c. 875, §E43 (AMD). PL 1991, c. 528, §CC1 (AMD). PL 1991, c. 528, §RRR (AFF). PL 1991, c. 591, §CC1 (AMD). PL 1991, c. 615, §§A5-9 (AMD). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2364. Uniform classification system; experience and merit rating plans**

**(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1987, c. 769, §A96 (AMD). PL 1991, c. 615, §§A10,C1 (AMD). PL 1991, c. 615, §D27 (AFF). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2365. Optional deductibles****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2365-A. Medical expense deductibles****(REPEALED)**

## SECTION HISTORY

PL 1991, c. 615, §A11 (NEW). PL 1991, c. 615, §D27 (AFF). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2366. Workers' compensation insurance residual market mechanism****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1987, c. 769, §A97 (AMD). PL 1989, c. 780, §§1,2,9 (AMD). PL 1989, c. 854, §1 (AMD). PL 1991, c. 615, §§A12-17,C2 (AMD). PL 1991, c. 615, §D27 (AFF). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2367. Workers' compensation rates; annual surcharges and credits****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1987, c. 716, §§1,2 (AMD). PL 1989, c. 673, §§2,3 (AMD). PL 1989, c. 780, §§3-9 (AMD). PL 1989, c. 854, §§2,3 (AMD). PL 1991, c. 377, §§12,13 (AMD). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2368. Safety groups****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2369. Examinations****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2370. Report regarding report on unsafe work site****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2371. Statistical recording and reporting**



**(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1987, c. 769, §§A98,A99 (AMD). PL 1989, c. 434, §§1-6 (AMD). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2372. Periodic profitability reports****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1989, c. 434, §7 (AMD). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2373. Penalty for violations****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2374. Public Advocate****(REPEALED)**

## SECTION HISTORY

PL 1987, c. 559, §A4 (NEW). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**§2375. Workers' compensation insurance; registration of employee leasing companies****(REPEALED)**

## SECTION HISTORY

PL 1991, c. 468, §1 (NEW). PL 1991, c. 885, §B11 (RP). PL 1991, c. 885, §B13 (AFF).

**SUBCHAPTER 2-B****WORKERS' COMPENSATION RATING ACT****§2381. Title**

This subchapter may be known and cited as the "Workers' Compensation Rating Act." [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

## SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

**§2381-A. Purposes**

The purposes of this Act are: [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**1. Prohibition of certain behavior.** To prohibit price-fixing agreements and other anticompetitive behavior by insurers;

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Protection for policyholders and the public.** To protect policyholders and the public from the adverse effects of excessive, inadequate or unfairly discriminatory rates;

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Promotion of price competition.** To promote price competition among insurers so as to provide rates that are responsive to competitive market conditions; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Provision of regulatory procedures.** To provide regulatory procedures for the maintenance of appropriate data reporting systems; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**5. Improvement of insurance.** To improve availability, fairness and reliability of insurance; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**6. Authorization of action.** To authorize essential cooperative action among insurers in the rate-making process and to regulate such activity to prevent practices that tend to substantially lessen competition or create a monopoly; and [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**7. Encouragement of practices.** To encourage the most efficient and economical marketing practices. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

#### §2381-B. Scope of application

This Act applies to workers' compensation insurance and employers' liability insurance written in connection with workers' compensation insurance. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

#### §2381-C. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**1. Advisory organization.** "Advisory organization" means any entity that either has 2 or more member insurers or is controlled either directly or indirectly by 2 or more insurers and that assists insurers in activities related to workers' compensation rate making. Two or more insurers having a common ownership or operating in this State under common management or control constitute a single insurer for the purpose of this definition. "Advisory organization" does not include a joint underwriting association, any actuarial or legal consultant, any employee of an insurer or insurers under common control or management or their employees or manager. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Classification system or classification.** "Classification system" or "classification" means the plan, system or arrangement for recognizing differences in exposure to hazards among industries, occupations or operations of insurance policyholders. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Expenses.** "Expenses" means that portion of any rate attributable to acquisition and field supervision; collection expenses and general expenses; and taxes, licenses and fees. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Experience rating.** "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss

experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**5. Loss trending.** "Loss trending" means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**6. Market.** "Market" means the interaction between buyers and sellers of workers' compensation and employers liability insurance within this State pursuant to this Act.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**7. Pure premium rate.** "Pure premium rate" means that portion of the rate that represents the loss cost per unit of exposure including loss adjustment expense.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**8. Rate.** "Rate" means the cost of insurance per exposure base unit, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**9. Residual market.** "Residual market" means the instrument to provide coverage to employers not able to obtain coverage in the voluntary market.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**10. Statistical plan.** "Statistical plan" means the plan, system or arrangement used in collecting data.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**11. Superintendent.** "Superintendent" means the Superintendent of Insurance.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**12. Supplementary rate information.** "Supplementary rate information" means any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan and any other similar information needed to determine the applicable premium for an insured.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**13. Supporting information.** "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required by the superintendent to be filed.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**14. Voluntary market.** "Voluntary market" means the workers' compensation insurance market in which insurance companies voluntarily offer coverage to applicants who meet the insurers' underwriting standards or guidelines.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

## SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

### §2382. Rate standards

The following standards apply to the making and the use of rates under this Act. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**1. Rates.** Rates may not be excessive, inadequate, or unfairly discriminatory.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Excessive rates.** Voluntary and residual market rates are subject to the following.

A. Rates in the voluntary market are not excessive. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. Rates in the residual market are excessive if they are likely to produce a long-term profit that is unreasonably high for the insurance provided and for surplus requirements or if expenses are unreasonably high in relation to services rendered. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Inadequate rates.** A rate is not inadequate unless insufficient to sustain projected losses and expenses and the use of the rate has had a tendency to create a monopoly or, if continued, will tend to create a monopoly in the market or will cause serious financial harm to the insurer.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Unfair discrimination.** Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**5. Determination of compliance.** Determination of compliance with standards for rate factors, expenses and profits is as follows.

A. In determining whether rates comply with standards under this section, due consideration may be given to:

- (1) Past and prospective loss and expense experience within and outside of the State;
- (2) Catastrophe hazards and contingencies;
- (3) Loadings for leveling premium rates over time;
- (4) Dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers; and
- (5) Past and prospective expenses, both countrywide and those specifically applicable to the State. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. The expense provisions included in the rates to be used by an insurer must reflect the operating methods of the insurer, and, so far as credible, its own actual and anticipated expense experience. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. Rates may contain provision for contingencies and allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration must be given to all investment income attributable to premiums, the reserves associated with those premiums and the amount of capital and surplus allocable to the coverage of risks in the State. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

## SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

### §2382-A. Payment of dividends

Nothing in this Act prohibits or regulates the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, but in the

payment of such dividends there may be no unfair discrimination between policyholders. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers is not a rating plan or system. [PL 1991, c. 885, Pt. A, §12 (NEW); PL 1991, c. 885, Pt. A, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

#### **§2382-B. Uniform administration of classifications; reporting of rating and other information; membership in advisory organization**

**1. Uniform classification system; uniform experience rating plan.** Every workers' compensation insurer, including self-insurers, shall adhere to a uniform classification system and uniform experience rating plan filed with the superintendent by an advisory organization designated by the superintendent and subject to the superintendent's disapproval. An insurer may develop subclassifications of the uniform classification system upon which a rate may be made; provided, however, that such subclassifications must be filed with the superintendent 30 days prior to their use. The superintendent shall disapprove a subclassification if:

A. The insurer fails to demonstrate that the data produced can be reported consistently with the uniform statistical plan and classification system; or [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. The proposed subclassification:

(1) Is not reasonably related to the exposure to claim;

(2) Is not adequately defined;

(3) Has not been shown to distinguish among insureds based on the potential for or hazard of loss; or

(4) Is or will be unfairly discriminatory. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Designation of advisory organization.** The superintendent shall designate an advisory organization to assist the superintendent in gathering, compiling and reporting relevant statistical information. Every workers' compensation insurer shall record and report its workers' compensation experience to the designated advisory organization as set forth in the uniform statistical plan approved by the superintendent.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Filing of manual rules.** The designated advisory organization shall develop and file manual rules, subject to the approval of the superintendent, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform classification system. Every workers' compensation insurer shall adhere to the approved manual rules and experience rating plan in writing and reporting its business. An insurer may not agree with any other insurer or with an advisory organization to adhere to manual rules that are not reasonably related to the recording and reporting of data pursuant to the uniform classification system or the uniform statistical plan.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Advisory organization membership.** Each workers' compensation insurer shall be a member or subscriber of the workers' compensation advisory organization designated by the superintendent.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

## SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

**§2382-C. Filing of rates and other rating information; filing of forms**

**1. Prefiling required.** Every insurer shall file with the superintendent all rates and supplementary rate information to be used in the State, except as filed by an advisory organization as provided in section 2384-A. Such rates and supplementary rate information must be filed at least 30 days prior to the stated effective date. An insurer may adopt by reference, with or without deviation, the rates and supplementary rate information filed by another insurer. Upon application by the filer, the superintendent may authorize an earlier effective date.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Form and manner of filing.** Rates filed pursuant to this section must be filed in a form prescribed by the superintendent. If a filing is not accompanied by the information the superintendent has required under this section, the superintendent shall notify the insurer as soon as possible and the filing is deemed as not made until the information is provided. A filing required under this section must be made electronically in a format required by the superintendent unless exempted by rule adopted by the superintendent. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2009, c. 14, §2 (AMD).]

**3. Public records.** All rates, supplementary rate information and any supporting information for risks filed under this Act are, as soon as filed, public records within the meaning of Title 1, chapter 13.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Additional period.** The period during which the filing may not become effective may be extended by the superintendent for an additional period not to exceed 60 days if the superintendent gives written notice to the insurer or advisory organization that made the filing that the superintendent needs additional time for consideration of the filing.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**5. Advisory organization.** Subject to the provisions of this Act, the designated workers' compensation and advisory organization shall file with the superintendent:

A. Workers' compensation pure premium rates and rating plans; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. Workers' compensation policy forms and endorsements to be used by its members; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. The uniform experience rating plans and rules; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

D. The uniform classification plan and rules; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

E. A uniform statistical plan and rules; and [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

F. Any other information that the superintendent requests. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**6. Approved forms.** Every insurance company issuing workers' compensation insurance policies covering the payment of compensation and benefits shall use only policy forms filed and approved pursuant to section 2412. Filings required by that section may be made on behalf of members and subscribers by an approved advisory organization.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

## SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF). PL 2009, c. 14, §2 (AMD).

### §2382-D. Uniform experience rating plan; merit rating plan

**1. Required contents.** The experience rating plan required under section 2382-C must contain:

A. Reasonable eligibility standards; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. Incentives for loss prevention; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. Sufficient premium differentials to encourage safety; and [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

D. Provisions for reasonable and equitable limitations on the ability of policyholders to avoid the impact of past adverse claims experience through change of ownership, control, management or operation. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Experience rating.** The uniform experience rating plan must be the exclusive means for providing premium adjustments based on the past claim experience of an insured employer. The experience rating plan must provide that the claims experience for the 3 most recent years for which data is available be considered on the following bases.

A. The claims and exposure for the most recent year for which data is available must be given 40% weight. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. The claims and exposure for the 2nd most recent year for which data is available must be given 35% weight. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. The claims and exposure for the 3rd most recent year for which data is available must be given 25% weight. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

If data is available for only 2 years of experience, the weighting must be 60% for the most recent year and 40% for the 2nd most recent year.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Merit rating.** If an insured is not eligible for the experience rating plan, a merit rating plan must be applied using the following guidelines.

A. A plan must provide for the following credits or debits to be applied to the otherwise applicable manual premium, based on the number of lost-time claims of the insured during the most recent 3-year period for which statistics are available:

(1) No claims or a loss ratio of less than 1.0, an 8% credit;

(2) One claim resulting in a loss ratio greater than 1.0, no credit or debit; and

(3) Two or more claims resulting in a loss ratio greater than 1.0, an 8% debit. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. The insurer shall notify the insured of the premium adjustment and the reason for the adjustment. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Prior lost-time work-related injury.** The experience rating or merit rating plan may not permit, in the calculation of experience modification factors, consideration of those lost-time claims attributable to work-related injuries that are aggravations of, or combine with, any prior lost-time work-

related injury to produce incapacity. The superintendent shall adopt rules to protect employers from the impact of these subsequent injury claims and to equitably compensate insurers that provide coverage to these employers.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**5. Retrospective rating.** Nothing in this section prevents an insurer or an advisory organization from filing rating plans that provide for retrospective premium adjustments based on the insured's experience during the policy period. Except as provided in section 2386, subsection 8, in the voluntary market and the residual market retrospective rating plans must be voluntary and may not be used without the prior consent of the insured.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**6. Dividend plan.** Nothing in this section prohibits an insurer from developing and operating a dividend plan based on the loss experience of the insured.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

#### §2382-E. Disapproval of rates

**1. Timing of disapproval.** A rate that is found not to be in compliance with applicable sections of this Act may be disapproved at any time.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Basis of disapproval.** The superintendent may disapprove a rate if the insurer fails to comply with the filing requirements under section 2382-C.

The superintendent shall disapprove a rate for the voluntary market if there is a finding that the rate is inadequate or unfairly discriminatory using the standards in section 2382.

The superintendent shall disapprove a rate for use in the residual market if there is a finding that the rate is excessive, inadequate or unfairly discriminatory, using the standards in section 2382.

The superintendent may disapprove, pursuant to this subsection, without hearing, rates that have not become effective. An insurer whose rates have been disapproved must be notified of the reason for disapproval and must be given a hearing upon a written request made within 30 days after the disapproval order.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Discontinuance of a rate; interim rates.** Discontinuance of a rate and interim rates are subject to the following.

A. If the superintendent finds that a rate is not in compliance with the standards of section 2382 or is in violation of section 2382-C, the superintendent shall order that its use be discontinued for any policy issued or renewed after the date of the order, and the order may prospectively provide for premium adjustment of any policy then in force. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. Whenever an insurer has no legally effective rates as a result of the superintendent's disapproval of rates or other act, the superintendent shall, on request of the insurer, specify interim rates for the insurer that are adequate to protect the interests of all parties and may order that a specified portion of the premiums be placed in a special reserve established by the insurer and approved by the superintendent. When new rates become legally effective, the superintendent shall order the specially reserved funds or any overcharge in the interim rates to be distributed appropriately, except that adjustments that are minimal may not be required. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]



## SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

**§2382-F. Report required**

In order to comply with Title 26, section 61, subsection 1-A, on or before March 1st of each year, every workers' compensation insurer shall file a report with the superintendent showing the amount of total actual paid workers' compensation losses and the total actual paid workers' compensation medical payments for the previous calendar year. [PL 1997, c. 126, §3 (NEW).]

## SECTION HISTORY

PL 1997, c. 126, §3 (NEW).

**§2383. Interchange of data**

**1. Exchange of information.** To further uniform administration of rate regulatory laws, the superintendent, insurers and the designated advisory organization may exchange information and experience data with insurance regulatory officials, insurers and advisory organizations in other states and may consult with them with respect to the rating plans permitted by this Act. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Cooperation.** Cooperation among advisory organizations or among advisory organizations and insurers in rating plans and other matters within the scope of this Act is authorized, but any filings resulting from such cooperation are subject to all provisions of this Act. The superintendent may review any such cooperative activities and practices and if, after hearing, any such activity or practice is found to violate the provisions of this Act, the superintendent may issue an order requiring the discontinuance of the activity or practice and may take any other action as permitted by law. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

## SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

**§2383-A. Monitoring competition**

**1. Monitoring.** The superintendent shall monitor the degree of competition in the workers' compensation insurance market. The superintendent shall utilize existing relevant information and analytical techniques and may cause or participate in the development of new relevant information, analytical techniques and other sources. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Consideration of factors.** The superintendent shall consider, in addition to any other relevant factors, the following:

A. The number of insurers actively engaged in providing coverage; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. Market shares and changes in market shares; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. Ease of entry and exit by insurers in and out of the workers' compensation insurance market; and [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

D. Tests relating to market structure, market performance and market conduct. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Degree of competition.** The superintendent shall consider approved self-insured employers when evaluating the degree of competition in the insurance market. The superintendent shall report by November 1, 1994 and annually thereafter on the status of the market to the Governor and to the joint

standing committee of the Legislature having jurisdiction over workers' compensation insurance rate regulation matters.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

### §2384. Workers' compensation advisory organizations

Sections 2321-A to 2321-D apply to workers' compensation insurers and advisory organizations to the extent not inconsistent with this Act. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

### §2384-A. Advisory organization filing requirements

**1. Filing.** Every advisory organization shall file with the superintendent every pure premium, manual of rating rules, rating schedule and change, amendment or modification of the foregoing proposed for use in the State at least 30 days prior to the proposed effective date.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Effective date.** The superintendent may extend the proposed effective date for an additional period not to exceed 60 days if the superintendent gives written notice to the advisory organization that made the filing that the superintendent needs additional time for consideration of the filing. The superintendent may require any additional information necessary to evaluate the filing.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Disapproval.** The superintendent may disapprove, without hearing, an advisory organization filing that has not become effective if the pure premiums are excessive, inadequate or unfairly discriminatory or if the rating rules or rating procedure would produce premiums that are excessive, inadequate or unfairly discriminatory. If the pure premium rates, rating rules or rating schedule has been disapproved, the advisory organization must be notified of the reason for disapproval and must be given a hearing upon a written request made within 30 days after the disapproval order.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

### §2384-B. Statistical recording and reporting

**1. Collection and reporting system.** The statistical advisory organization designated pursuant to section 2382-B, subsection 2 shall develop and file with the superintendent a plan that includes a comprehensive data collection and reporting system for insurers. The purpose of the system is to permit the superintendent, in a timely manner, to analyze insurance rates and claims practices of insurers.

[PL 2011, c. 83, §1 (AMD).]

**2. Data collected.** The data collection and reporting system must contain, at a minimum, the following:

A. Basic information on each claim, including:

(1) Name, address and identification information of the employee, employer and insurer or self-insurer;

(2) File identification number or numbers, insurance policy number and occupation and classification codes;

- (3) Date of hire, age of employee at injury and employee's prior workers' compensation claim history; and
  - (4) Attorney, if any, and date of involvement; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]
- B. Claims history information on each claim, including:
- (1) Date of injury or exposure to disease, date of first report, type of injury or exposure disclosure and affected body part;
  - (2) Preinjury wage history, date of initial payment and date of notice of controversy, if any, together with the reason for denial;
  - (3) Date of maximum medical improvement;
  - (4) Identification of cumulative or opened claims; and
  - (5) Duration of wage loss period or periods; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]
- C. Information concerning former Workers' Compensation Commission and Workers' Compensation Board proceedings, including:
- (1) For each informal conference, mediation and arbitration, the date, commissioner, hearing officer, mediator or arbitrator for the proceeding, involvement of attorney or other designated representative and the resolution; and
  - (2) For each hearing, the date, commissioner, hearing officer, involvement of attorney or other designated representative and the decision of the commissioner or the hearing officer. If a disputed claim results in multiple hearing dates, the decision must be reported for the last hearing date; and [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]
- D. Cost of payment information on each claim, identified as open or closed, including:
- (1) Aggregate payments to date to any physician, hospital or other medical provider. The superintendent may require information on payments to date to any physician, hospital, medical rehabilitation provider or other medical provider, together with a description of the services, the name of the provider, the amount of payment and the date of service;
  - (2) Payments made to date for weekly compensation, impairment benefits, death benefits, funeral expenses, employee legal expenses, employer legal expenses, lump sums, witness fees, penalties, employment rehabilitation services with a description of the services and name of the rehabilitation provider, and any other type of payments under former Title 39 or Title 39-A;
  - (3) With respect to open claims, an estimate of total outstanding liability and separately stated outstanding liability for medical care, indemnity, employment rehabilitation and any other type of payments; and
  - (4) Identification, both on payments and outstanding liabilities, of benefit offsets for Social Security, unemployment insurance, employer-provided pensions and any other source. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

For medical only claims, the superintendent may establish a claim threshold under which the detailed claim reporting requirements of this subsection do not apply.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Special data calls.** The superintendent may, with prior notice, require the insurer and self-insurer statistical advisory organizations to conduct special data calls to collect information usable to evaluate the costs or operations of the workers' compensation system. Any special data call imposed by the superintendent under this provision must give due consideration to the information collected and

maintained by insurers and self-insurers. Requests for information not being collected on the effective date of this subsection must be prospective.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Other data collection systems.** The statistical advisory organization may rely on data collected and reported by other data gathering organizations or agencies, such as the Workers' Compensation Board or the Department of Labor. If the statistical advisory organization is to incorporate data from other sources, it must satisfy itself that the data is sufficiently complete and accurate for the purposes for which it is to be used. The Workers' Compensation Board and the Department of Labor shall assist the statistical advisory organization in the development and maintenance of a comprehensive data base by recording and making available information within the custody and control of each, respectively, pursuant to the request of the statistical advisory organization.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**5. Noncompliance penalties.** The statistical advisory organization must include as part of its plan a means of monitoring member or subscriber compliance with the reporting requirements and must include a schedule of monetary penalties for failure to comply with reporting requirements.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**6. Reports.** The superintendent shall prescribe the frequency of and schedule for reports by the statistical advisory organization. Reports must be required on at least an annual basis.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**7. Rules.** The superintendent shall have the authority to adopt reasonable rules with respect to the recording and reporting of claim information, including the recording and reporting of expense or experience items that are not specifically applicable to the State but require an allocation of experience or expenses to the State.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**8. Confidentiality.** Any report of information relating to a particular claim is confidential and may not be revealed by the superintendent, except that the superintendent may make compilations including this experience. Any information provided to the superintendent regarding self-insurance is confidential to the extent protected by Title 39-A, section 403.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**9. Accuracy.** The statistical advisory organization shall take all reasonable steps to ensure the accuracy of the information provided to it and reported by it.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**10. Claims covered.** This section applies to all claims occurring on or after January 1, 1989 and prior to January 1, 1993 and to all death, permanent total and major permanent partial claims occurring between January 1, 1987 and December 31, 1988; and to a reasonable sample, as approved by the superintendent, of all other indemnity claims occurring between January 1, 1987 and December 31, 1988. The superintendent may suspend the reporting requirements of specific items for periods when information that is to be obtained from the Workers' Compensation Board is temporarily unavailable.

[PL 1995, c. 462, Pt. B, §5 (AMD).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF). PL 1993, c. 610, §1 (AMD). PL 1995, c. 462, §B5 (AMD). PL 2011, c. 83, §1 (AMD).

#### §2384-C. Data collection

**1. Collection and reporting system.** The superintendent shall adopt rules implementing a data collection system for the purpose of evaluating the costs and operation of the workers' compensation benefit delivery process. The rules must establish reasonable sampling procedures to identify and track

a sufficient number of claims to provide reliable information in a cost-effective manner. The superintendent shall, by rule, establish a cost-effective procedure to designate organizations to collect and compile data for insurers, except that an insurer able to demonstrate its ability to collect, compile and report data on its own claims is permitted to act as its own statistical organization for the purposes of this section. In this section, "statistical organization" includes an insurer acting as its own statistical organization.

[PL 2011, c. 83, §2 (AMD).]

**2. Data collected.** The data collection and reporting system must contain, at a minimum, the following:

A. Basic information on each surveyed claim, including:

- (1) The name and identification information of the employee, employer and insurer or self-insurer; and
- (2) The file identification number or numbers, insurance policy number and classification claim history; [PL 1993, c. 610, §2 (NEW).]

B. Claim history information on each claim surveyed, including:

- (1) The date of injury or exposures to disease, type of injury or exposure disclosure and affected body part;
- (2) The preinjury wage history, date of initial payment and whether claim is controverted; and
- (3) Identification of claim status, whether open, closed or reopened; [PL 1993, c. 610, §2 (NEW).]

C. Information concerning Workers' Compensation Board proceedings, including:

- (1) For each mediation and arbitration, the date, hearing officer, mediator or arbitrator for the proceeding and the resolution; and
- (2) For each hearing, the date, hearing officer and the decision of the hearing officer. If a disputed claim results in multiple hearing dates, the decision must be reported for the last hearing date; and [PL 1993, c. 610, §2 (NEW).]

D. Payment information on each claim, identified as open or closed, including:

- (1) Aggregate payments to date to physicians, hospitals or other medical providers;
- (2) Payments made to date for weekly compensation, impairment benefits, death benefits and funeral expenses, employee legal expenses, employer legal expenses, lump sums and vocational rehabilitation services;
- (3) With respect to all claims, separately stated incurred liability for medical care, indemnity and vocational rehabilitation; and
- (4) Identification as to whether there are benefit offsets for social security, unemployment insurance, employer-provided pensions or any other sources. [PL 1993, c. 610, §2 (NEW).]

[PL 1993, c. 610, §2 (NEW).]

**3. Special data calls.** The superintendent may, with prior notice, require the insurer and self-insurer statistical organizations to conduct special data calls or studies to collect information to evaluate the costs or operations of the workers' compensation system and to evaluate medical injury or disease outcomes of compensable claims. In any special data call imposed by the superintendent under this subsection, consideration must be given to the information collected and maintained by insurers and self-insurers. Requests for information not being collected on the effective date of this subsection must be prospective.

[PL 1993, c. 610, §2 (NEW).]

**4. Other data collection systems.** The statistical organizations may rely on data collected and reported by other data-gathering organizations or agencies, such as the Workers' Compensation Board or the Department of Labor, and shall coordinate with any other statutorily created medical data collection systems. If a statistical organization is to incorporate data from other sources, it must satisfy itself that the data is sufficiently complete and accurate for the purpose for which it is to be used. The Workers' Compensation Board and the Department of Labor shall assist the statistical organizations in the development and maintenance of a comprehensive data base by recording and making available information within the custody and control of each, respectively, pursuant to the request of the statistical organization. The superintendent may suspend the reporting requirements of specific items for periods when information that is to be obtained from the Workers' Compensation Board is temporarily unavailable or information is found to be unreliable and the unreliability is not a result of the reporting practices of the carriers or self-insurers. The superintendent may accept an established data collection mechanism that is substantially in compliance with the data elements specified in this section and otherwise meets the requirements of this section.

[PL 1993, c. 610, §2 (NEW).]

**5. Noncompliance penalties.** A statistical organization must include as part of its plan a means of monitoring member or subscriber compliance with the reporting requirements and must include a schedule of monetary penalties for failure to comply with reporting requirements. The statistical agent and companies are responsible for the accuracy of the data maintained and reported to the superintendent in the data base.

[PL 1993, c. 610, §2 (NEW).]

**6. Reports.** The superintendent shall prescribe the frequency of and schedule for reports by the statistical organization. Reports must be required on at least an annual basis.

[PL 1993, c. 610, §2 (NEW).]

**7. Confidentiality.** Any report of information relating to a particular claim is confidential and may not be revealed by the superintendent, except that the superintendent may make compilations including this information. Any information provided to the superintendent regarding self-insurance is confidential to the extent protected by Title 39-A, section 403.

[PL 1993, c. 610, §2 (NEW).]

**8. Accuracy.** The statistical organization shall take all reasonable steps to ensure the accuracy of the information provided to it and reported by it.

[PL 1993, c. 610, §2 (NEW).]

**9. Retention of records.** Each insurer or self-insurer shall retain its workers' compensation medical claim records for a period not less than 3 years from the date of injury or reported illness. Records may be retained through original source documents or electronic file storage.

[PL 1993, c. 610, §2 (NEW).]

**10. Application.** This section applies to all claims occurring on or after January 1, 1993.

[PL 1993, c. 610, §2 (NEW).]

#### SECTION HISTORY

PL 1993, c. 610, §2 (NEW). PL 2011, c. 83, §2 (AMD).

#### §2385. Optional deductibles

**1. Optional deductible.** Each insurer transacting or offering to transact workers' compensation insurance in the State shall offer optional deductibles to employers that may be used upon election by the insured.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Indemnity.** Deductibles must be available for indemnity benefits in amounts of \$1,000 and \$5,000 per claim and in other reasonable amounts as may be approved by the superintendent.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Reimbursement.** The deductible form must provide that the claim must be paid by the applicable insurer, which must then be reimbursed by the employer for any deductible amounts paid by the carrier. The employer is liable for reimbursement up to the limit of the deductible.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Deductible not required.** An insurer is not required to offer a deductible to an employer if, as a result of a credit investigation, the insurer determines that the employee is not sufficiently financially stable to be responsible for the payment of deductible amounts.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

#### §2385-A. Medical expense deductibles

Each insurer transacting or offering to transact workers' compensation insurance in the State shall offer deductibles for medical expenses as follows. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**1. Optional deductible of \$250.** To employers who are not experience-rated, insurers shall offer a deductible of \$250 per occurrence.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Optional deductible of \$250 or \$500.** To employers who are experience-rated, insurers shall offer a deductible of \$250 or \$500 per occurrence.

[PL 1995, c. 551, §1 (AMD).]

**3. Mandatory deductible of \$500.**

[PL 1995, c. 551, §2 (RP).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF). PL 1995, c. 551, §§1,2 (AMD).

#### §2385-B. Disclosure of premium information

All policies issued to employers for workers' compensation insurance must disclose clearly to the employer as separate figures the base rate and the employer's experience modification factor. [PL 2001, c. 176, §1 (AMD).]

Upon request from an employer, when a policy is issued to an employer for workers' compensation insurance, it must be accompanied by a statement disclosing the percentages of premium expended during the previous year by the insurer for claims paid, loss control and other administrative costs, medical provider expenses, insurer and employee attorney's fees and private investigation costs. [PL 2001, c. 176, §1 (AMD).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF). PL 2001, c. 176, §1 (AMD).

#### §2385-C. Workplace health and safety consultations

Workplace health and safety consultation services provided by workers' compensation insurance carriers to employers with an experience rating factor of one or more are subject to the following. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Workplace health and safety consultations" means a service provided to an employer to advise and assist the employer in the identification, evaluation and control of existing and potential accident and occupational health problems. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]  
[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Standards for workplace health and safety consultations.** The superintendent, in consultation with the Department of Labor, may adopt rules establishing the standards for approval of workplace health and safety consultations provided to employers by insurance carriers, including provision of adequate facilities, qualifications of persons providing the consultations, specialized techniques and professional services to be used and educational services to be offered to employers. [PL 1997, c. 592, §67 (AMD).]

**3. Required coverage and premium.** All insurance carriers writing workers' compensation coverage in the State shall offer workplace health and safety consultations to each employer as part of the workers' compensation insurance policy. [PL 1997, c. 592, §67 (AMD).]

**4. Optional purchase from another provider.** An employer may elect to purchase workplace health and safety consultation services from a provider other than the insurer. [PL 1997, c. 592, §67 (AMD).]

**5. Notification to employer; request for consultation services.** An insurance carrier writing workers' compensation insurance coverage shall notify each employer of the type of workplace health and safety consultation services available and the address or location where these services may be requested. The insurer shall respond within 30 days of receipt of a request for workplace health and safety consultation services. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**6. Reports to employers.** In any workplace health and safety consultation that includes an on-site visit, the insurer shall submit a report to the employer describing the purpose of the visit, a summary of the findings of the on-site visit and evaluation and the recommendations developed as a result of the evaluation. The insurer shall maintain for a period of 3 years a record of all requests for workplace health and safety consultations and a copy of the insurer's report to the employer. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**7. Safe workplace responsibility.** Workplace health and safety consultations provided by an insurer do not diminish or replace an employer's responsibility to provide a safe workplace. An insurance carrier or its agents or employees do not incur any liability for illness or injuries that result from any consultation or recommendation. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF). PL 1997, c. 592, §67 (AMD).

#### §2385-D. Safety groups

A safety group is an insured plan that provides for an alternative source of insurance for members of an organization or association. An insurer may issue a workers' compensation and employers' liability policy or policies insuring a safety group if the following requirements are met. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**1. Filings.** The organization or association shall file with the superintendent:



A. A copy of its articles of incorporation and bylaws or its agreement of association and rules governing the conduct of its business, all certified by the custodian of the originals; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. An agreement that only a member of the organization or association is eligible for insurance as a member of the group and that it will notify its insurers within 10 days if any member fails to remain a member in good standing in accordance with the standards and rules of the organization or association; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. A description of the operation and makeup of a safety committee which, by means of education and otherwise, will seek to reduce the incidence and severity of accidents or claims; and [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

D. An agreement, if the policy is a group policy, duly executed, guaranteeing that, if the insurer notifies the safety group of the nonpayment of a premium by an insured member within 60 days after the premium was due, the safety group will pay to the insurer the amount of any past due premium that does not exceed the amount of the dividends that are due the safety group or its members from the insurer. The safety group shall promptly notify the insurer of the known insolvency of any member of the group and shall request, upon learning of the insolvency, the removal of the member from the group. A copy of the resolution of the governing superintendent of the group authorizing the execution of the guarantee agreement must be filed with the superintendent and with the insurer issuing the group policy. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Advance premium discounts.** Any advance premium discount for any new or existing safety group must be filed with the superintendent not later than 5 days after the effective date.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Management.** The safety group shall designate a person to act as the manager or authorized representative of the group. The manager or representative may be remunerated by the members for expenses, including all ordinary operating expenses of the group, but the amount charged to members may not exceed 10% of earned premiums.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Dividends.** Dividends or returned premiums paid or credited to a safety group must be paid or credited to the individual members of the group, except that the indebtedness for any unpaid premium must be first deducted from any dividend or premium returned.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**5. Other requirements.** Any safety group formed or operating under this section is subject to the requirements of sections 2931 to 2940, except that the safety group or the insurer may establish reasonable underwriting standards regarding eligibility for acceptance and continued membership of the safety group. These underwriting standards must be filed with the superintendent and may be disapproved by the superintendent if they unreasonably limit membership in the safety group.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

## SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

### §2385-E. Workers' compensation insurance; registration of employee leasing companies

A corporation, partnership, sole proprietorship or other business entity that provides staff, personnel or employees to be employed in the State to other businesses pursuant to a lease arrangement or agreement must, before becoming eligible to be issued a policy of workers' compensation insurance, register with the superintendent pursuant to Title 32, chapter 125. Employee leasing companies are

subject to rules applicable to workers' compensation insurance as adopted by the superintendent and to penalties as defined in Title 32, section 14058. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

#### **§2385-F. Coverage denial**

Workers' compensation coverage may not be issued to an employer or continued if it has been issued until the employer pays any undisputed premiums or assessments to a previous workers' compensation insurer, including a domestic mutual insurer established pursuant to section 3703, a group self-insurer approved pursuant to Title 39-A, section 403, subsection 4, or the workers' compensation residual market mechanism. If a premium or assessment is subject to a good faith dispute at the time of termination of a policy or if such a dispute becomes known as a result of a post-termination audit review or other reason after replacement coverage has been issued and if the premium or assessment remains unpaid upon resolution of the dispute by the bureau, this replacement coverage must be cancelled. [PL 1999, c. 121, §1 (AMD).]

#### SECTION HISTORY

PL 1995, c. 398, §1 (NEW). PL 1999, c. 121, §1 (AMD).

#### **§2386. Workers' compensation insurance residual market mechanism**

**1. Participation.** All insurers authorized to write workers' compensation and employers' liability insurance in this State shall participate in the workers' compensation insurance residual market mechanism, which is composed of an Accident Prevention Account and a Safety Pool. The residual market mechanism is not a state fund and the State has no proprietary interest in it or in any contributions made to it. This mechanism is exempt from any budgetary control or supervision by state agencies, except to the extent an insurance company is supervised or controlled by state agencies. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

##### **2. Rules.**

[PL 1995, c. 289, §7 (RP).]

**3. Accident Prevention Account; eligibility.** Eligibility for insurance from the Accident Prevention Account is as follows.

A. The Accident Prevention Account is an insurance plan that provides for the equitable apportionment among insurers of insurance that may be afforded applicants who are entitled to, but unable to, procure that insurance through ordinary methods because of their demonstrated accident frequency problem, measurably adverse loss ratio over a period of years or demonstrated attitude of noncompliance with safety requirements. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. An employer is eligible for insurance from the Accident Prevention Account if:

(1) The employer has at least 2 lost-time claims over \$10,000 and a loss ratio greater than 1.0 over the last 3 years for which data is available; and

(2) The employer has attempted to obtain insurance in the voluntary market and has been refused by at least 2 insurers that write that insurance in the State. For the purpose of this section, an employer is considered to have been refused if offered insurance only under a retrospective rating plan or plans. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Safety Pool; eligibility.** Eligibility under the Safety Pool is as follows.

A. The Safety Pool is an insurance plan that provides for an alternative source of insurance for employers with good safety records. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. An employer is eligible for the Safety Pool if that employer:

- (1) Has had no more than one lost-time claim in the last 3 years for which data is available, regardless of the resulting loss ratio;
- (2) Has a loss ratio that does not exceed 1.0 or has had no more than one lost-time claim over \$10,000 over the last 3 years for which data is available; or
- (3) Has been in business for less than 3 years, provided that the eligibility terminates if the employer's loss ratio exceeds 1.0 and the employer has at least 2 lost-time claims over \$10,000 each at the end of any year. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. A member of the Safety Pool who fails to meet eligibility requirements under paragraph B must be ordered to leave the Safety Pool after notice under former Title 39, section 23, subsection 1. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]  
[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**5. Plan of operation.** The superintendent shall adopt rules pursuant to Title 5, chapter 375, subchapter II, establishing a plan of operation for the residual market mechanism.

A. The plan must include an experience rating system and merit rating plan providing that the premium of each employer in the account is modified either prospectively or retrospectively. An experience modification may only be applied to the manual rate of the plan. The sensitivity of a rating system may vary by size of the risk involved. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. The plan must include a procedure to handle appeals filed pursuant to former Title 39, section 106, subsection 2, paragraph B. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. The plan must provide for premium surcharges for employers in the Accident Prevention Account based on their specific loss experience within a specified period or other factors that are reasonably related to their risk of loss.

(1) No premium surcharge may be applied to a risk whose threshold loss ratio is less than 1.0. The threshold loss ratio is based on the ratio of "L" to "P" where:

(a) "L" is the actual incurred losses of a risk during the previous 3-year experience period as reported, except that the largest single loss during the 3-year period is limited to the amount of premium charged for the year in which the loss occurred; and

(b) "P" is the premium charged to a risk during that 3-year period.

(2) Premium surcharges apply to a premium that is experience or merit rating modified.

(3) Premium surcharges are based on an insured's adverse deviation from expected incurred losses in the State. The surcharge is based on the ratio of "A" to "B" where:

(a) "A" is the actual incurred losses of a risk during the previous 3-year experience period as reported; and

(b) "B" is the expected incurred losses of a risk during that period as calculated under the uniform experience or merit rating plan multiplied by the risk's current experience or merit rating modification factor.

(4) The premium surcharge is as follows:

Ratio of "A" to "B"	Surcharge
Less than 1.20	None
1.20 or greater, but less than 1.30	5%
1.30 or greater, but less than 1.40	10%
1.40 or greater, but less than 1.50	15%
1.50 or greater	20%

D. Commissions under a plan must be established at a level that is neither an incentive nor a disincentive to place an employer in the residual market. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

E. In addition to factors in paragraphs A to C, any servicing contract must be approved on the basis of acceptable price and performance. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

F. If after notice and hearing the superintendent determines that insurers are unwilling to provide services that are reasonably necessary for the operation of the plan, the superintendent may award service contracts within various areas of the State on the basis of acceptable price and performance. If the superintendent chooses to award such contracts, the specifications must give special consideration to loss control, safety engineering and any other factor that affects safety. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

G. Beginning July 1, 1993, the plan must provide for a board of governors, which shall control the affairs and business of the residual market mechanism. The board of governors must be composed of 9 members, 5 of whom represent the business community of the State and 4 of whom represent insurers that are members of the residual market mechanism. The superintendent shall adopt rules to carry out the purposes of this paragraph.

(1) The representatives of insurers on the board of governors are elected by the membership at the annual meeting of the residual market mechanism for staggered terms of 3 years, with the first appointments of one member for one year, one member for 2 years and 2 members for 3 years. An insurer or a group of insurers under common ownership, management or control may not be represented by more than one person on the board of governors. [PL 1995, c. 289, §8 (AMD).]

[PL 1995, c. 289, §8 (AMD).]

**5-A. Immunity.** A member of the board of governors of the workers' compensation residual market pool created by Maine Insurance Rule Chapter 440 is immune from liability except for willful misconduct by the board member in the performance of the duties of a board member.

[PL 1993, c. 364, §2 (NEW).]

**6. Rates.** Rate filings for rates in the Accident Prevention Account and the Safety Pool must be made together and are subject to former section 2363.

A. A rate filing for the residual market must include experience and merit rating plans. The experience rating plan is the uniform experience rating plan. The merit plan must provide the maximum credits possible to Safety Pool members on the basis of individual loss experience, including frequency and severity, consistent with this chapter and sound actuarial principles. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. The superintendent shall review the rates, rating plans and rules, including rates for individual classifications and subclassifications, in the Accident Prevention Account and the Safety Pool at least once every 2 years and may review rates more frequently if necessary. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. In a residual market rate proceeding, the superintendent may order payment of dividends to insureds in the Safety Pool to the extent that the pool's experience supports them. The superintendent may adopt rules establishing a dividend plan for the Safety Pool to provide an incentive for implementation of safety programs by insureds in the pool. The superintendent may employ outside consultants to assist in the development of these rules, the costs of which must be paid by the Safety Education and Training Fund established under Title 26, section 61 to the extent that funds are available. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**7. Mandatory deductible.** A deductible applies to all workers' compensation insurance policies issued to employers in the Accident Prevention Account that meet the following qualifications:

A. A net annual premium of \$20,000 or more subject to adjustment pursuant to this section in the State; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. A premium not subject to retrospective rating; and [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

C. The employer's threshold loss ratio, as determined under subsection 4, paragraph B, subparagraph (1), is 1.0 or greater. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

The deductible is \$1,000 per claim but applies only to wage loss benefits paid on injuries occurring during the policy year. The sum of all deductibles in one policy year may not exceed the lesser of 15% of net annual premium or \$25,000. Each loss to which a deductible applies must be paid in full by the insurer. After the policy year has expired, the employer shall reimburse the insurer the amount of the deductibles. This reimbursement must be considered as premium for purposes of cancellation or nonrenewal.

For purposes of calculations required under this section, losses must be evaluated 60 days from the close of the policy year.

Annually, on July 1st, the superintendent shall, by rule, adjust the \$20,000 premium level established in this subsection to reflect any change in rates for the Accident Prevention Account and any change in wage levels in the preceding calendar year. Changes in wage levels are determined by reference to changes in the state average weekly wage, as computed by the Department of Labor. Any adjustment is rounded off to the nearest \$1,000 increment.

This subsection takes effect on the effective date of the first approved rate filing after the effective date of this Act.

[PL 1995, c. 560, Pt. G, §8 (AMD).]

**8. Mandatory retrospective rating.** The superintendent may impose retrospective rating plans under the following circumstances:

A. The superintendent shall by rule establish standards governing the application of retrospective rating plans under which the superintendent may order, after hearing, a retrospective rating plan for an employer in the Accident Prevention Account who has sufficient size in terms of premium and number of employees to warrant such rating and:

(1) For the 3 most recent years for which data is available, an experience modification factor and a loss ratio that may indicate a serious problem of workplace safety; or

(2) A demonstrated record of repeated serious violations of workplace health and safety regulations adopted under the Maine Revised Statutes, Title 26, chapter 6, or 29 United States Code, Chapter 15, whichever is applicable. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

B. The maximum premium, including any applicable surcharge under this section, may not exceed 150% of standard premium. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**9. Credits for qualifying safety programs.** The superintendent shall adopt rules to establish dividend plans and premium credits between 5% and 15% of net annual premiums for policyholders that establish or maintain qualifying safety programs. The rules must identify the classifications by which policyholders are eligible for the credits and establish criteria for qualifying safety programs and procedures to be followed by servicing carriers in approving and auditing compliance with the safety programs. The superintendent may employ outside consultants to assist in the development of rules under this subsection, the costs of which must be paid by the Safety Education and Training Fund established under Title 26, section 61 to the extent that funds are available.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**10. Contracts; consultants.**

[PL 1995, c. 289, §9 (RP).]

**11. Report.**

[PL 1995, c. 289, §9 (RP).]

**12. Rules.**

[PL 1995, c. 289, §9 (RP).]

**13. Producer fees.** The servicing carrier in the residual market shall pay a fee to the producer designated by the employer on renewed policies upon payment of premium due. The fee must be 4% of the first \$5,000 of renewal premium and 2.5% of renewal premium in excess of \$5,000. The fee must be based on the state standard premium.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**14. Termination of residual market mechanism.** Workers' compensation and employers liability insurance coverage may not be issued through the workers' compensation insurance residual market mechanism on or after January 1, 1993.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**15. Loan.**

[PL 1995, c. 289, §9 (RP).]

**SECTION HISTORY**

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF). PL 1993, c. 364, §§1,2 (AMD). PL 1995, c. 289, §§7-9 (AMD). PL 1995, c. 560, §G8 (AMD). PL 1995, c. 560, Pt. G, §8 (AMD).

**§2386-A. Workers' compensation rates; annual surcharges and credits**

**(REPEALED)**

**SECTION HISTORY**

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF). RR 1993, c. 1, §59 (COR). PL 1993, c. 620, §1 (AMD). PL 1995, c. 289, §10 (RP).

**§2387. Penalty for violations**

**1. Civil penalties.** A person or organization in violation of this chapter must be assessed by the superintendent a civil penalty not more than \$1,000 for each violation, except that where a violation is willful, a civil penalty of not more than \$10,000 must be assessed for each violation. These penalties may be in addition to any other penalty provided by law.

[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Separate violation.** For purposes of this section, an insurer using a rate for which that insurer has failed to file the rate, supplementary rate information or supporting information as required by this subchapter, has committed a separate violation for each day that failure continues.  
[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. License.** The license of an advisory organization, rating organization or insurer that fails to comply with an order of the superintendent may be suspended or revoked by the District Court.  
[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF).

#### §2387-A. Public Advocate

**1. Participation and duties.** The Public Advocate shall represent the interests of insureds and policyholders in matters under this subchapter within the jurisdiction of the superintendent, including, but not limited to:

- A. Rate filings under this chapter; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]
- B. Rulemaking; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]
- C. Petitions by insurers to terminate license authority, or withdrawal plans submitted pursuant to section 415-A; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]
- D. Proceedings by the superintendent concerning the reasonableness and adequacy of the service provided by any insurer; [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]
- E. Proceedings by the superintendent concerning the reasonableness and adequacy of the rates charged by any insurer; and [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]
- F. Proceedings instituted by the superintendent concerning an insurer's license authority. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

The Public Advocate has the same right to request data as any other party before the superintendent and may petition the superintendent, for good cause shown, to be allowed such other information as may be necessary to carry out the purposes of this section.  
[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**2. Petition.** The Public Advocate has the right to request that the superintendent investigate the reasonableness of the service provided by, or the rates charged by, insurers.  
[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**3. Expert witnesses.** The Public Advocate may employ witnesses and pay appropriate compensation and expenses to employ such witnesses. The funds for expert witnesses are available as indicated in section 2386.  
[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**4. Appeal from superintendent's orders.** The Public Advocate has the same rights of appeal from the superintendent's orders or decisions to which the Public Advocate has been a party as other parties.  
[PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

**5. Application.** This section applies to any proceeding under former section 2367 or section 2386-A for policy years 1988 through 1992 and for any other proceeding initiated prior to January 1, 1993 or any continuation or appeal of a proceeding initiated prior to January 1, 1993. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

#### §2387-B. Savings provision

Any experience rating, classification, statistical or other rating plan on file and approved or legally in effect and not required to be revised by this Act or by a decision of the superintendent remains approved for use in the State. These plans need not be refiled on the effective date of this Act. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

Any rates or forms approved for an insurer on file and approved or legally in effect and not required to be revised by this Act or by a decision of the superintendent remain approved for use in the State. These rates and forms need not be refiled on the effective date of this Act. [PL 1991, c. 885, Pt. B, §12 (NEW); PL 1991, c. 885, Pt. B, §13 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §B12 (NEW). PL 1991, c. 885, §B13 (AFF).

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