

**§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).

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