

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 216

H.P. 181

House of Representatives, January 21, 2009

An Act To Amend the Law Governing Property Insurance on a Primary Residence

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative DAVIS of Sangerville.
Cosponsored by Representative PINKHAM of Lexington Township, Senator SMITH of Piscataquis and Representatives: BURNS of Whiting, CLARK of Millinocket, CROCKETT of Bethel, TILTON of Harrington.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §3002, sub-§1**, as amended by PL 1989, c. 316, §1, is
3 further amended to read:

4 1. ~~No~~ An insurer may not issue fire insurance policies on property in this State
5 other than those of the Maine standard fire insurance policy, which ~~shall~~ must contain the
6 following consideration and insuring clause, assignment clause and the general conditions
7 and stipulations set forth after these consideration, insuring and assignment clauses:

8 **Consideration and Insuring Clause**

9 In Consideration of the Provisions and Stipulations herein or added hereto and of the
10 premium above specified, this Company, for the term of from at 12:01 a.m.
11 (Standard Time) to at 12:01 a.m. (Standard Time) at location of property involved,
12 to an amount not exceeding the amount(s) above specified, does insure and legal
13 representatives, to the extent of the actual cash value of the property at the time of loss,
14 but not exceeding the amount which it would cost to repair or replace the property with
15 material of like kind and quality within a reasonable time after such loss, without
16 allowance for any increased cost of repair or reconstruction by reason of any ordinance or
17 law regulating construction or repair, and without compensation for loss resulting from
18 interruption of business or manufacture, nor in any event for more than the interest of the
19 insured or alternative insured value, against all DIRECT LOSS BY FIRE, LIGHTNING
20 AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS
21 INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED,
22 to the property described herein while located or contained as described in this policy, or
23 pro rata for five days at each proper place to which any of the property shall necessarily
24 be removed for preservation from the perils insured against in this policy, but not
25 elsewhere.

26 **Assignment Clause**

27 Assignment of this policy shall not be valid except with the written consent of this
28 Company.

29 This policy is made and accepted subject to the foregoing provisions and stipulations
30 and those hereinafter stated, which are hereby made a part of this policy, together with
31 such other provisions, stipulations and agreements as may be added hereto, as provided in
32 this policy.

33 **General Conditions and Stipulations**

34 Concealment, fraud. This entire policy shall be void if, whether before or after a loss,
35 the insured has willfully concealed or misrepresented any material fact or circumstance
36 concerning this insurance or the subject thereof, or the interest of the insured therein, or
37 in case of any fraud or false swearing by the insured relating thereto.

38 Uninsurable and excepted property. This policy shall not cover accounts, bills,
39 currency, deeds, evidences of debt, money or securities; nor, unless specifically, named
40 hereon in writing, bullion or manuscripts.

1 Perils not included. This Company shall not be liable for loss by fire or other perils
2 insured against in this policy caused, directly or indirectly by: (a) enemy attack by armed
3 forces, including action taken by military, naval or air forces in resisting an actual or an
4 immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e)
5 revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of
6 destruction at the time of and for the purpose of preventing the spread of fire, provided
7 that such fire did not originate from any of the perils excluded by this policy; (i) neglect
8 of the insured to use all reasonable means to save and preserve the property at and after a
9 loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this
10 Company be liable for loss by theft.

11 Other insurance. Other insurance may be prohibited or the amount of insurance may
12 be limited by endorsement attached hereto.

13 Conditions suspending or restricting insurance. Unless otherwise provided in writing
14 added hereto this Company shall not be liable for loss occurring (a) while the hazard is
15 increased by any means within the control or knowledge of the insured; or

16 (b) while a described building, whether intended for occupancy by owner or tenant, is
17 vacant or unoccupied beyond a period of sixty consecutive days; or

18
19 (c) as a result of explosion or riot, unless fire ensues, and in that event for loss by fire
20 only.

21 Other perils or subjects. Any other peril to be insured against or subject of insurance
22 to be covered in this policy shall be by endorsement in writing hereon or added hereto.

23 Added provisions. The extent of the application of insurance under this policy and of
24 the contribution to be made by this Company in case of loss, and any other provision or
25 agreement not inconsistent with the provisions of this policy, may be provided for in
26 writing added hereto, but no provision may be waived except such as by the terms of this
27 policy is subject to change.

28 Waiver provisions. No permission affecting this insurance shall exist, or waiver of
29 any provision be valid, unless granted herein or expressed in writing added hereto. No
30 provision, stipulation or forfeiture shall be held to be waived by any requirement or
31 proceeding on the part of this Company relating to appraisal or to any examination
32 provided for herein.

33 Cancellation of policy. This policy shall be cancelled at any time at the request of the
34 insured, in which case this Company shall, upon demand and surrender of this policy,
35 refund and the excess of paid premium above the customary short rates for the expired
36 time. This policy may be cancelled at any time by this Company by giving to the insured
37 a ten days' written notice of cancellation with or without tender of the excess of paid
38 premium above the pro rata premium for the expired time, which excess, if not tendered,
39 shall be refunded on demand. Notice of cancellation shall state that said excess premium
40 (if not tendered) will be refunded on demand.

41 Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in
42 part, to a designated mortgagee not named herein as the insured, such interest in this

1 policy may be cancelled by giving to such mortgagee a ten days' written notice of
2 cancellation.

3 If the insured fails to render proof of loss such mortgagee, upon notice, shall render
4 proof of loss in the form herein specified within sixty (60) days thereafter and shall be
5 subject to the provisions hereof relating to appraisal and time of payment and of bringing
6 suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it
7 shall, to the extent of payment of loss to the mortgagee, be subrogated to all the
8 mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may
9 pay off the mortgage debt and require an assignment thereof and of the mortgage. Other
10 provisions relating to the interests and obligations of such mortgagee may be added
11 hereto by agreement in writing.

12 Pro rata liability. This Company shall not be liable for a greater proportion of any
13 loss than the amount hereby insured shall bear to the whole insurance covering the
14 property against the peril involved, whether collectible or not.

15 Requirements in case loss occurs. The insured shall give immediate written notice to
16 this Company of any loss, protect the property from further damage, forthwith separate
17 the damaged and undamaged personal property, put it in the best possible order, furnish a
18 complete inventory of the destroyed, damaged and undamaged property, showing in
19 detail quantities, costs, actual cash value and amount of loss claimed; and within sixty
20 days after the loss, unless such time is extended in writing by this Company, the insured
21 shall render to this Company a proof of loss, signed and sworn to by the insured, stating
22 the knowledge and belief of the insured as to the following: The time and origin of the
23 loss, the interest of the insured and of all others in the property, the actual cash value of
24 each item thereof and the amount of loss thereto, all encumbrances thereon, all other
25 contracts of insurance, whether valid or not, covering any of said property, any changes
26 in the title, use, occupation, location, possession or exposures of said property since the
27 issuing of this policy, by whom and for what purpose any building herein described and
28 the several parts thereof were occupied at the time of loss and whether or not it then stood
29 on leased ground, and shall furnish a copy of all the descriptions and schedules in all
30 policies and, if required, verified plans and specifications of any building, fixtures or
31 machinery destroyed or damaged. The insured, as often as may be reasonably required,
32 shall exhibit to any person designated by this Company all that remains of any property
33 herein described, and submit to examinations under oath by any person named by this
34 Company, and subscribe the same; and, as often as may be reasonably required, shall
35 produce for examination all books of account, bills, invoices and other vouchers, or
36 certified copies thereof if originals be lost, at such reasonable time and place as may be
37 designated by this Company or its representative, and shall permit extracts and copies
38 thereof to be made.

39 Appraisal. In case the insured and this Company shall fail to agree as to the actual
40 cash value or the amount of loss, then, on the written demand of either, each shall select a
41 competent and disinterested appraiser and notify the other of the appraiser selected within
42 twenty days of such demand. The appraisers shall first select a competent and
43 disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on
44 request of the insured or this Company, such umpire shall be selected by a judge of a

1 court of record in the state in which the property covered is located. The appraisers shall
2 then appraise the loss, stating separately actual cash value and loss to each item; and,
3 failing to agree, shall submit their differences, only, to the umpire. An award in writing,
4 so itemized, of any two when filed with this Company shall determine the amount of
5 actual cash value and loss. Each appraiser shall be paid by the party selecting that
6 appraiser and the expenses of appraisal and umpire shall be paid by the parties equally.

7 Company's options. It shall be optional with this Company to take all, or any part, of
8 the property at the agreed or appraised value, and also to repair, rebuild or replace the
9 property destroyed or damaged with other of like kind and quality within a reasonable
10 time, on giving notice of its intention so to do within thirty days after the receipt of the
11 proof of loss herein required.

12 Abandonment. There can be no abandonment to this Company of any property.

13 When loss payable. The amount of loss for which this Company may be liable shall
14 be payable sixty days after proof of loss, as herein provided, is received by this Company
15 and ascertainment of the loss is made either by agreement between the insured and this
16 Company expressed in writing or by the filing with this Company of an award as herein
17 provided.

18 Suit. No suit or action on this policy for the recovery of any claim shall be
19 sustainable in any court of law or equity unless all the requirements of this policy shall
20 have been complied with, and unless commenced within two years next after inception of
21 the loss.

22 Subrogation. This Company may require from the insured an assignment of all right
23 of recovery against any party for loss to the extent that payment therefor is made by this
24 Company.

25 **Sec. 2. 24-A MRSA §3004-B** is enacted to read:

26 **§3004-B. Alternative insured value**

27 **1. Alternative insured value.** “Alternative insured value,” as used in section 3002,
28 means the amount at which a home that is the primary residence of the insured person
29 may be insured as an alternative to actual cash value. The alternative insured value may
30 not be more than the actual cash value of the home. In order to insure a home at the
31 alternative insured value the insurer and insured person shall execute a rider to the policy
32 that indicates the insured person’s choice of insuring at the alternative insured value. The
33 rider must be in a form approved by the superintendent. The superintendent shall adopt
34 rules to establish the approved form for an alternative insured value rider. Rules adopted
35 pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375,
36 subchapter 2-A.

37 **SUMMARY**

38 This bill allows a homeowner to insure the primary residence of the homeowner for
39 an alternative insured value, which is less than the actual cash value of the residence. It

- 1 requires the execution of a rider that meets the requirements of the Superintendent of
- 2 Insurance to indicate the homeowner's choice of insuring at the alternative insured value.
- 3 It requires the superintendent to adopt routine technical rules to establish the approved
- 4 form for the alternative insured value rider.