

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1788

H. P. 1420

In House of Representatives, January 6, 1970

The Committee on Business Legislation suggested.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Rideout of Manchester.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
AND SEVENTY

AN ACT Creating the Maine Insurers Insolvency Pool Act.

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

R. S., T. 24-A, c. 58, additional. Title 24-A of the Revised Statutes, as enacted by section 1 of chapter 132 of the public laws of 1969, is amended by adding a new chapter 58, to read as follows :

CHAPTER 58

MAINE INSURERS INSOLVENCY POOL ACT

§ 4451. Title

This Act shall be known and may be cited as the Maine Insurers Insolvency Pool Act.

§ 4452. Purpose

The purpose of this Act is to provide a remedy for covered claims under property and casualty insurance policies when the insurer has become insolvent subsequent to the effective date of this Act and is unable to perform its contractual obligations. To this end, there is created the Maine Insurers Insolvency Pool which shall consist of 3 accounts: workmen's compensation account; automobile account; and all other covered insurance accounts. The pool shall be responsible for the investigation, adjustment, compromise; settlement and payment of covered claims; for the investigation, handling and denial of noncovered claims; and for the management and investment of funds administered by the pool. The members of the pool shall be responsible for the payment of assessments levied pursuant to section

4458; for adherence to the rules of the plan approved pursuant to section 4457; and other obligations imposed by this Act.

§ 4453. Definitions

1. Affiliate. "Affiliate" or "affiliates" means any enterprise related directly or indirectly to the insurance activities of the insurer.

2. Commissioner. "Commissioner" means the Insurance Commissioner.

3. Covered claims.

A. "Covered claims" means a claim which:

(1) Arises out of a property or casualty insurance policy issued by an insurer which was authorized to do an insurance business in this State either at the time the policy was issued or when the insured event occurred; and

(2) Is within any of the classes of claims under paragraph B.

B. A claim shall not be paid unless it arises out of an insurable event under a property or casualty insurance policy and it is:

(1) The claim of a policy holder or insured, who at the time of the insured event was a resident of this State; or

(2) The claim of a person having an insurable interest in or related to property which was permanently situated in this State; or

(3) A claim under a liability or workmen's compensation insurance policy when either the insured or 3rd party claimant was a resident of this State at the time of the insured event.

C. A covered claim shall not include that portion of any first party claim which is in excess of the applicable limits provided in the policy or \$50,000, whichever is less.

D. A covered claim shall not include that portion of any 3rd party claim, other than a workmen's compensation claim, which is in excess of the applicable limits provided in the policy or \$50,000, whichever is less.

E. A covered claim shall not include any obligation to insurers, insurance pools, underwriting associations or any person which has a net worth greater than \$1,000,000, at the time of the insured event.

4. Insolvency pool. "Insolvency pool" or "pool" means the Insurers Insolvency Pool established pursuant to section 4457.

5. Insolvent insurer. "Insolvent insurer" means an insurer which was licensed to issue property or casualty insurance policies in this State until determined insolvent by a court of competent jurisdiction of the insurer's domiciliary state, and which adjudication was subsequent to the effective date of this Act.

6. Insurer. "Insurer" or "company" means any corporation or organization licensed to engage in the writing of property or casualty insurance

policies in this State, including the exchanging of reciprocal or inter-insurance contracts between individuals, partnerships and corporations.

7. Net direct written premiums. "Net direct written premiums" means direct gross premiums written on property or casualty insurance policies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Premiums written by any authorized insurer on policies issued to self-insurers, whether or not designated as reinsurance contracts, shall be deemed net direct written premiums.

8. Property and casualty insurance policies. "Property and casualty insurance policies" or "policy" means any contract, including endorsements thereto and without regard to the nature or form of the contract or endorsement, which provide coverages as enumerated in sections 3001 to 3041 and sections 2901 to 2905, except:

A. Life insurance and annuities, being that class of insurance referred to in sections 2501 to 2540 and sections 2601 to 2627.

B. Accident and health insurance except where written as part of an automobile insurance contract, being that class of insurance referred to in sections 2701 to 2740, sections 2801 to 2831 and sections 2851 to 2864.

C. Title insurance, being that class of insurance referred to in section 3201.

D. Mortgage guaranty insurance.

E. Credit insurance, being that class of insurance referred to in sections 2851 to 2864.

§ 4454. Property and casualty insurers subject to Act

Every insurer authorized on or after the effective date of this Act to write property or casualty insurance policies in this State shall be a member of the insolvency pool and shall be liable for assessments pursuant to section 4458 and shall be responsible for the other obligations imposed pursuant to this Act.

§ 4455. Determination of insolvency; notice of insolvency

Upon the determination of a court of competent jurisdiction of the state of domicile of an insurer that such insurer is insolvent, the commissioner shall promptly give notice thereof, by first class mail, to: All persons known or reasonably expected to have or be interested in claims against the insurer, at such person's last known address; all insureds of the insolvent insurer, at such insured's last known address and all insurers subject to this Act. The commissioner may also require each agent of the insolvent insurer to give prompt written notice, by first class mail, at the insured's last known address, to each insured of the insolvent insurer for whom he was agent of record. If the insurer be domiciled in this State, notice shall also be given by publication in a newspaper of general circulation published in the county where the insurer had its principal office, not less than once per week, for 4 weeks, and by publication elsewhere in this State as the court may direct.

§ 4456. Obligations of the insolvency pool

In the event of the determination of insolvency of a licensed insurer after the effective date of this Act, the coverage afforded by property and casualty insurance policies issued by such insurer shall, with respect to covered claims, and for a period of 30 days from the date of such determination, or until policy expiration date if less than said 30 days, or until such policy has been replaced by the insured within said 30 days, become the obligation of the pool. The pool shall be deemed to be the insurer for such period with respect and to the extent of such claims with all the rights, duties and obligations of the insolvent insurer, and the pool is authorized to investigate, adjust, compromise and settle covered claims, or to investigate, handle and deny noncovered claims.

§ 4457. Creation of Insurers' Insolvency Pool by plan

There is created the Maine Insurers' Insolvency Pool, a not for profit legal entity with the right to sue and be sued. The pool shall adopt, and the commissioner shall approve, a reasonable plan, not inconsistent with this Act, fair to insurers and equitable to their policyholders, pursuant to which all admitted insurers become members of the pool. All members of the pool shall adhere to the rules of the plan.

If, for any reason, the pool fails to adopt a suitable plan within 6 months following the effective date of this Act, or if at any time thereafter the pool fails to adopt necessary amendments to the plan, the commissioner shall adopt and promulgate, after hearing, such reasonable rules as are necessary to effectuate this Act. Such rules shall continue in force until modified by the commissioner or superseded by a plan of operation adopted by the pool and approved by the commissioner.

In accordance with the plan, the pool may designate insurers to act on behalf of the pool to carry out the purposes of this Act, but a member may decline such designation. The commissioner may disapprove such designation. The plan may provide a procedure under which pending claims or judgments against the insolvent insurer, or its insureds, are assigned to the member companies designated to act for the pool. The assignee-insurer is authorized to appear and defend a claim in a court of competent jurisdiction or otherwise and to investigate, adjust, compromise and settle a covered claim or to investigate, handle and deny a noncovered claim, and do so on behalf of and in the name of the pool. If an assignee-insurer pays the covered claim it shall be reimbursed by the pool or be entitled to set off said payment against future assessments. The unreimbursed claim of such an insurer against the pool shall be an admitted asset of the insurer. Insureds entitled to protection of this Act shall cooperate with the pool and the assignee-insurer.

The pool shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out. The pool shall be subrogated to the rights of any insured or claimant, to the extent of a covered claim, to participate in the distribution of assets of the insolvent insurer to the extent that the pool has made payment. Any claimant or insured entitled to the benefits of this Act shall be deemed to have assigned to the pool, to the extent of any

payment received, his rights against the estate of the insolvent insurer. The pool shall receive the benefit of any reinsurance contracts or treaties entered into by the insolvent insurer which cover any of the liabilities incurred by the insolvent insurer with respect to covered claims. After determination of insolvency of any insurer, the pool shall be a party in interest in all proceedings involving policies insured or assumed by the pool with the same rights to receive notice and defend, appeal and review as the insolvent insurer would have had if solvent. All moneys recovered under this section or any other section shall be added to the assessments collected under section 4458.

§ 4458. Assessments

For the purposes of administration and assessment under this section, the pool shall be divided into 3 separate accounts: Workmen's compensation insurance account; automobile insurance account; and all other covered insurance accounts. Separate assessment shall be made for each account. No assessment shall be levied for any account as long as the assets held in such account are sufficient to cover all estimated payments for liquidation in process under the account.

To the extent necessary to secure the funds for the respective accounts of the pool for the payment of covered claims and also to pay the reasonable costs to administer the pool, the commissioner, upon certification of the pool, shall levy assessments in the proportion that each insurer's net direct written premiums in this State in the classes protected by the account bears to the total of said net direct written premiums received in this State by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the pool in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 1% of that insurer's net direct written premiums in this State for the kinds of insurance included within such account during the calendar year next preceding the date of such assessments. If sufficient funds from such assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers designated to act for the pool, the funds available shall be pro-rated and the unpaid portion shall be paid as soon thereafter as funds become available. Assessments shall be included as an appropriate factor in the making of rates.

The pool may exempt any insurer from an assessment if an assessment by the pool would result in such insurer's financial statement reflecting an amount of capital or surplus less than the sum of the minimum amount required by any jurisdiction in which the insurer is authorized to transact insurance.

Any necessary and proper expenses incurred by an insurer in the investigation, adjustment, compromise, settlement, denial or handling of claims

assigned to it shall, upon proper verification under the rules of the pool, entitle the insurer to reimbursement. Any insurer whose employee serves on the staff of the pool may set off from its assessment any necessary and proper expenses incurred by the insurer resulting from said service of its employee. An insurer which ceases to engage in the business of writing property or casualty insurance policies in this State shall have no right to a refund of any assessment previously remitted to the pool.

§ 4459. Procedure to determine covered claims

Except for voluntary settlements or compromises between a claimant and an assignee-insurer, on behalf of the pool, or a final judgment, other than a default judgment, against the insured or insurer in a court of competent jurisdiction rendered prior to the determination of insolvency of the insurer, the proof and allowance of a covered claim shall be governed by sections 4377 to 4380.

§ 4460. Paid claims as proper claims against insolvent estate

As respects insolvent insurers incorporated in this State, the receiver, liquidator or statutory successor shall allow as a proper claim on the assets of the insolvent company amounts paid under this Act by or on behalf of the pool on or with respect to covered claims, and any statute of this State relating to the rights and duties of such receiver, liquidator or statutory successor is deemed amended to so provide.

As a condition of an insurer doing business in this State, all property and casualty insurance policies issued or renewed on or after the effective date of this Act shall be deemed to provide that the insurer appoints the pool as its agent as respects investigation, adjustment, compromise and settlement of covered claims and to reimburse the pool for any payment made under the terms of this Act, and that such appointment and obligation shall be binding on any receiver, liquidator or statutory successor appointed to liquidate or wind up its affairs.

§ 4461. Other insurance

Any person including any individual, partnership, association or corporation having a claim against his insurer under any insolvency provision contained in his insurance policy, which claim arises out of the insolvency of a participating insurer, shall be required to exhaust first his rights under such policy and his rights to recover such claim under this Act shall be reduced accordingly. Any amount paid a claimant in excess of the amount authorized by this Act may be recovered by action brought by or on behalf of the pool.

§ 4462. Duties of commissioner

The commissioner shall sue for and recover, on behalf of the pool any assessment not paid when due. He may, after notice and hearing, revoke the certificate of authority to transact business in this State of an insurer, a member of the pool, which shall fail to pay an assessment when due as provided in this Act and after demand having been made, or otherwise fails to comply with the plan as approved pursuant to section 4457. Any action taken by the

commissioner shall be subject to judicial review as provided in sections 229 to 236.

§ 4463. Insolvency pool subject to examination

The pool shall be deemed a company or insurer within the scope of sections 221 to 226 relating to examinations.

§ 4464. Insolvency pool; limitation on taxability

The pool shall be exempt from all license fees, income, franchise, privilege, occupation or other taxes levied or assessed by the State, any municipality, county or other political subdivision of the State, except state, county, or municipal taxes upon the real or personal property of the pool, which is to be assessed and taxed in the same manner as real property and personal property of other nonexempt persons.

§ 4465. Insurers solvency board; organization and powers

There shall be in the Insurance Department an Insurers Solvency Board which shall consist of 7 members. The Insurance Commissioner shall be a member of the board and shall be its chairman and chief executive. The remaining 6 members, who shall not be considered employees of the Insurance Department, shall be appointed as follows:

The commissioner shall compile a list of the 3 stock insurers most likely to incur the largest assessment, per insurer, for each of the accounts under section 4458, and he shall also compile a list of the 3 nonstock insurers most likely to incur the largest assessment, per insurer, for each of the accounts under said section 4458. The commissioner shall solicit from the said 18 insurers the names of 18 individuals as nominees for membership to the Insurers Solvency Board. Persons who are nominated for the board shall reside in this State. The commissioner shall thereupon certify said nominations in writing to the Governor separately for stock and nonstock insurers and separately for each account.

From the nominations so received for each such account, the Governor shall appoint one stock member and one nonstock member.

Any member may be removed from office by the Governor when, in his judgment, the public interest may so require. In the event of such a removal, the Governor shall file with the Secretary of State a statement of the cause of the removal.

Each member so appointed shall serve for a term of 3 years and until his successor has been appointed and qualified, and in case of a vacancy for any reason in the office of any such member, the Governor shall appoint a member to fill the unexpired term of such vacant office from the nominations as heretofore described.

Reasonable expenses of the members of the Insurers Solvency Board, incurred in attending meetings, shall be paid out of the State Treasury on certification of the Insurance Commissioner upon the audit and warrant of the Treasurer of State. The Insurers Solvency Board shall hold its regular

meetings at such time and places as shall be fixed by the board. The board shall meet at any time, on call of the Insurance Commissioner. The commissioner shall call a meeting, upon not less than 2 days notice, upon the written request of any 2 members of the board. The board may by resolution provide for a shorter notice of a meeting by telegraph, telephone or otherwise. The board shall keep a record of all its proceedings and shall appoint a secretary and such other officers as it deems necessary, who need not be members of the board. For the purpose of considering questions before it, the board shall have access to all the books, records, reports and papers in the department, including all confidential communications, and the members of the board shall hold such communications as confidential.

The Insurers Solvency Board shall have power, by affirmative vote of 4 of its members, to examine, without previous advance notice, the assets, conditions and affairs of any insurer when the board believes that said insurer's further transaction of business may be hazardous to its policyholders or to its creditors, or to the public. Examinations by the Insurers Solvency Board shall be conducted by independent certified public accountants and the expenses thereof shall be borne by the Maine Insurers Insolvency Pool.

Said examination may extend to general agencies, management entities or affiliates of said companies with respect to matters affecting said companies. Said report of examination shall be furnished to the commissioner and held confidential until a hearing shall have been held or waived, pursuant to sections 435¹ to 4407. A refusal by a company, a general agency, a management entity or affiliate of a company to submit its books, papers, accounts, records or affairs to such examination shall be so reported to the commissioner and shall constitute grounds for suspension, rehabilitation, liquidation or conservation of the insurer within the purview of section 435¹ to 4407 or for the license revocation of the agency, as the case may be.

The board may also so examine the affairs of such an insurer after formal adjudication of insolvency to assist in the conservation of assets, and said board shall furnish its report to the commissioner and also to the Maine Insurers Insolvency Pool.

The Insurers Solvency Board shall have power by an affirmative vote of 4 of its members to make recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of companies or persons engaged in the business of writing property or casualty insurance policies in this State.

Reports and recommendations under this section shall not be considered public documents. There shall be no liability on the part of, and no cause of action shall arise against, member insurers, the pool or their agents or employees, the Governor, the commissioner or his authorized representatives, for any statements made by them in any reports or recommendations made hereunder.

§ 4466. Nonduplication of recovery

It is not the purpose of this Act to provide or permit duplicate recoveries of covered claims under this Act and an insolvency fund or its equivalent of

any other state. In the construction and application of this Act with respect to a covered claim which may be recoverable under this Act and under an insolvency fund or its equivalent in another state, the sole recovery with respect to a workmen's compensation claim, shall be under the insolvency fund or its equivalent of the state of residence of the claimant; with respect to a first party claim of an insured for damage to or destruction of property with a permanent location, shall be under the insolvency fund or its equivalent of the state where such property is permanently situated; with respect to any other covered claim, shall be under the insolvency fund or its equivalent of the state of residence of the insured.

§ 4467. Termination, distribution of fund

The commissioner shall by order terminate the operation of the Maine Insurers Insolvency Pool as to any kind of insurance afforded by property or casualty insurance policies with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which: Is a permanent plan which is adequately funded or for which adequate funding is provided; and extends, or will extend to the Maine policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to such policyholders and residents and the protection and benefits provided with respect to such kind of insurance under this Act.

The commissioner shall by the same such order authorize discontinuance of future payments by insurers to the Maine Insurers Insolvency Pool with respect to the same kinds of insurance; provided, that assessments and payments shall continue, as necessary, to liquidate covered claims of insurers adjudged insolvent prior to said order and the related expenses not covered by such other plan.

In the event the operation of any account of the Maine Insurers Insolvency Pool shall be so terminated as to all kinds of insurance otherwise within its scope, the pool as soon as possible thereafter shall distribute the balance of moneys and assets remaining in said account, after discharge of the functions of the pool with respect to prior insurer insolvencies not covered by such other plan, together with related expenses, to the insurers which are then writing in this state policies of the kinds of insurance covered by such account, and which had made payments into such account, pro-rata upon the basis of the aggregate of such payments made by the respective insurers to such account during the period of five years next preceding the date of such order. Upon completion of such distribution with respect to all of the accounts specified in section 4458, this Act shall be deemed to have expired.