

MAINE STATE LEGISLATURE

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(NEW TITLE)
NEW DRAFT OF: H. P. 1420, L. D. 1788
FIRST SPECIAL SESSION

ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1822

H. P. 1446 House of Representatives, January 28, 1970
Reported by Mr. Scott of Wilton from Committee on Business Legislation.
Printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
AND SEVENTY

AN ACT Creating the Maine Postassessment Insurance Guaranty Association.

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

R. S., T. 24-A, c. 57, sub-c. III, additional. Chapter 57 of Title 24-A of the Revised Statutes, is amended by adding a new subchapter III to read as follows:

SUBCHAPTER III

MAINE INSURANCE GUARANTY ASSOCIATION

§ 4431. Short title

This subchapter shall be known and may be cited as the **Maine Insurance Guaranty Association Act**.

§ 4432. Purpose

The purpose of this subchapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers.

§ 4433. Scope

1. Application. This subchapter shall apply only as to the following kinds of insurance:

- A. Property insurance, as defined in section 705;
 - B. Surety insurance, as defined in section 706;
 - C. Casualty insurance, as defined in section 707; and
 - D. Marine and transportation insurance, as defined in section 708.
2. Exceptions. Except, that this subchapter shall not apply as to:
- A. Contracts of reinsurance;
 - B. Mortgage guaranty insurance; and
 - C. Credit insurance, as defined in section 707, subsection 1, paragraph I.

§ 4434. Construction

This subchapter shall be liberally construed to effect the purpose stated under section 4432, which shall constitute an aid and guide to interpretation.

§ 4435. Definitions

As used in this subchapter, unless context otherwise requires:

- 1. Account. "Account" means any one of the 3 accounts created by section 4436.
- 2. Association. "Association" means the Maine Insurance Guaranty Association created under section 4436.
- 3. Board of directors. "Board of directors" means the board of directors of the association.
- 4. Covered claim. "Covered claim" means an unpaid claim, including one for unearned premiums, arising under and within the coverage and applicable limits of, a policy of a kind of insurance referred to in section 4433 to which this subchapter applies issued by an insurer which becomes an insolvent insurer after the effective date of this subchapter, and where
 - A. The claimant or insured is a resident of this State at the time of the insured event; or
 - B. The property from which the claim arises is permanently located in this State.

"Covered claim" shall not include any amount due any insurer, reinsurer, insurance pool or underwriting association, as subrogation recoveries or otherwise.

- 5. Insolvent insurer. "Insolvent insurer" means an insurer
 - A. Authorized to transact insurance in this State either at the time the policy was issued or when the insured event occurred, and
 - B. Determined to be insolvent by a court of competent jurisdiction.

6. Member insurer. "Member insurer" means any authorized insurer which writes any kind of insurance to which this subchapter applies.

7. Net direct written premiums. "Net direct written premiums" means direct gross premiums written on insurance policies to which this subchapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

§ 4436. Creation of the association

There is created a nonprofit unincorporated legal entity to be known as the Maine Insurance Guaranty Association. All insurers defined as member insurers in section 4435 shall be and remain members of the association as a condition of their authority to transact insurance in this State. The association shall perform its functions under a plan of operation established and approved under section 4439 and shall exercise its powers through a board of directors established under section 4437. For purposes of administration and assessment, the association shall be divided into 3 separate accounts:

1. The workmen's compensation insurance account;
2. The automobile insurance account; except those insurers writing only automobile physical damage insurance, which shall be included in the all other insurance account; and
3. The account for all other insurance to which this subchapter applies.

§ 4437. Board of directors

The board of directors of the association shall consist of not less than 7 persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within 60 days after the effective date of this subchapter, the commissioner may appoint the initial members of the board of directors.

In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

§ 4438. Powers and duties of the association

1. Powers and duties. The association shall:

A. Be obligated to the extent of covered claims existing prior to the determination of the insurer's insolvency, or arising after such determination but prior to the first to occur of the following events:

- (1) Expiration of 30 days after the date of such determination of insolvency;

- (2) Expiration of the policy; or
- (3) Replacement or cancellation of the policy at the instance of the insured.

Except as to covered claims arising under workmen's compensation policies, the obligation of the association shall not extend to any portion of a covered claim which exceeds the lesser of the obligation of the insurer, now insolvent, under the policy from which the claim arises, or \$50,000. The association shall pay in full covered claims arising under workmen's compensation policies.

B. Be deemed the insurer to the extent of its obligation on covered claims, and to such extent the association shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent.

C. Allocate claims paid and expenses incurred among the 3 accounts separately; and assess member insurers separately for each account in amounts necessary to pay:

- (1) The obligations of the association under paragraph A, subsequent to an insolvency;
- (2) The expenses of handling covered claims subsequent to an insolvency;
- (3) The cost of examinations under section 4445; and
- (4) Other expenses authorized by this subchapter.

D. Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested.

E. Notify such persons as the commissioner directs under section 4441, subsection 2, paragraph A.

F. Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but designation of a member insurer as a servicing facility may be declined by such insurer.

G. Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association.

H. Pay the other expenses of the association authorized by this subchapter.

2. Permission. The association may:

- A. Employ or retain such persons as are necessary to handle claims and perform other duties of the association.
- B. Borrow funds necessary to effect the purposes of this subchapter in accord with the plan of operation.
- C. Sue or be sued.
- D. Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subchapter.
- E. Perform such other acts as are necessary or proper to effectuate the purpose of this subchapter.
- F. Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.

§ 4439. Plan of operation

1. Submission.

A. The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

B. If the association fails to submit a suitable plan of operation within 90 days following the effective date of this subchapter or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate this subchapter. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

2. Complying. All member insurers shall comply with the plan of operation.

3. Plan. The plan of operation shall:

A. Establish the procedures whereby all the powers and duties of the association under section 4438 will be performed.

B. Establish procedures for handling assets of the association.

C. Establish the amount and method of reimbursing members of the board of directors under section 4437.

D. Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of

claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

E. Establish regular places and times for meetings of the board of directors.

F. Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

G. Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within 30 days after the action or decision.

H. Establish the procedures whereby selections for the board of directors will be submitted to the commissioner.

I. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

4. Provisions. The plan of operation may provide that any or all powers and duties of the association, except those under section 4438, subsection 1, paragraph C, and section 4438, subsection 2, paragraph B, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of the association, or its equivalent, in 2 or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this subchapter.

§ 4440. Assessment of member insurers

1. Proportion. The assessments of each member insurer provided for under section 4438, shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account.

2. Notification. Each member insurer shall be notified of the assessment not later than 30 days before it is due.

3. Limitation. No member insurer shall be assessed in any calendar year on any account an amount greater than 1% of that member insurer's net direct written premiums for the next preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

4. Exemptions. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance.

5. Set off. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made.

6. Delinquency. Delinquent assessments, except as provided in subsection 4 shall bear interest at the rate of 8% per annum, computed from the due date of the assessment.

§ 4441. Duties and powers of the commissioner

1. Duties and powers. The commissioner shall:

A. Notify the association of the existence of an insolvent insurer not later than 3 days after he receives notice of the determination of the insolvency.

B. Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

2. Permission. The commissioner may:

A. Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this subchapter. Such notifications shall be by mail at their last known addresses, where available, but if required information for notification by mail is not available, notice by publication in a newspaper of general circulation in this State shall be sufficient.

B. Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this State of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation.

C. Revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

§ 4442. Effect of paid claims

Any person recovering on a covered claim under this subchapter shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this subchapter shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except such causes of action as the insolvent insurer would have had if such sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payment of claims by the association

shall not operate to reduce the liability of insureds to the receiver, liquidator or statutory successor for unpaid assessments.

The receiver, liquidator or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claims priority equal to that which the claimant would have been entitled in the absence of this subchapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association, which shall preserve the rights of the association against the assets of the insolvent insurer.

§ 4443. Nonduplication of recovery

Any person having a claim against an insurer under any provision in an insurance policy, other than that of an insolvent insurer, which is also a covered claim, shall be required to exhaust first his right under such policy. Any amount otherwise payable on a covered claim under this subchapter shall be reduced by the amount of any recovery under such insurance policy.

Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured; except, that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. Any recovery under this subchapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

§ 4444. Prevention of insolvencies

To aid in the detection and prevention of insurer insolvencies:

1. Notification. The board of directors, upon majority vote, shall notify the commissioner of any information indicating that any member insurer may be insolvent or in a financial condition hazardous to policyholders or the public.

2. Examination. The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to policyholders or the public. Within 30 days of the receipt of such request, the commissioner shall begin such examination. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report, or any portion thereof, be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection 3. The commissioner shall notify the board of directors when

the examination is completed. The request for an examination shall be kept on file by the commissioner but shall not be open to public inspection prior to the release of the examination report, or part thereof to the public, in accordance with section 227.

3. Report. The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to policyholders or the public.

4. Recommendations. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents or be open to public inspection.

5. Prevention. The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

6. Causes. The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the commissioner.

§ 4445. Examination of the association

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30th of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

§ 4446. Tax exemption

The association shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions except taxes levied on real or personal property.

§ 4447. Recognition of assessment in rates

The rates and premiums charged for insurance policies to which this subchapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association, and such rates shall not be deemed excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

§ 4448. Immunity

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this subchapter.

§ 4449. Stay of proceedings; reopening of default judgments

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this State shall be stayed for 60 days from the date the insolvency is determined, to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

§ 4450. Termination of association

The commissioner shall by order terminate the operation of the association as to any kind of insurance with respect to which he has found, after notice and hearing, that there is in effect a statutory plan of the United States government to avoid excessive delay or financial loss to claimants or policyholders because of insurer insolvency and which provides for protection and benefits to residents of this State not materially less favorable than provided under this subchapter. Such order for termination shall continue the operation of this subchapter with respect to prior insurer insolvencies not covered by such plan. The order shall also provide for a proportionate distribution of the assets of the association to insurers which will cease to be members of the association on the effective date of the order.