

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2365

H. P. 1860

House of Representatives, January 15, 1974

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. McTeague of Brunswick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FOUR

AN ACT to Abolish the Assigned Risk Plan and to Establish the Maine  
Motor Vehicle Reinsurance Facility.

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

**Sec. 1. R. S., T. 24-A, § 2325, repealed.** Section 2325 of Title 24-A of the Revised Statutes, as enacted by section 1 of chapter 132 of the public laws of 1969 and as amended by section 12 of chapter 585 of the public laws of 1973, is repealed.

**Sec. 2. R. S., T. 24-A, c. 66, 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 66, to read as follows:

CHAPTER 66

MAINE MOTOR VEHICLE REINSURANCE FACILITY

§ 4801. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Cede or cession. "Cede" or "cession" means the act of transferring the profit or loss of otherwise unacceptable business, to the extent permitted in the plan of operation, from the individual insurer to all insurers through the operation of the facility.

2. Company. "Company" means each member of the facility.

3. Eligible risk. "Eligible risk" means a person who is a resident of this State who owns a motor vehicle registered or principally garaged in this State or who has a valid driver's license in this State or who is required to file proof of financial responsibility pursuant to Title 29, chapter 9, subchapter I in order to register his motor vehicle or obtain a driver's license in this State; or a nonresident of this State who owns a motor vehicle registered or principally garaged in this State, or the State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies, provided that no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

4. Facility. "Facility" means the Maine Motor Vehicle Reinsurance Facility established pursuant to this chapter.

5. Motor vehicle. "Motor vehicle" means any motor vehicle as defined by Title 29, section 1, subsection 7.

6. Person. "Person" means every natural person, firm, partnership, association, corporation or government or agency thereof.

7. Plan of operation. "Plan of operation" means the plan of operation approved pursuant to this chapter.

8. Reinsurance. "Reinsurance" means that the profit or loss of otherwise unacceptable insurance risks are equitably shared by all companies.

#### § 4802. Maine Motor Vehicle Reinsurance Facility, creation; membership

There is created a nonprofit unincorporated legal entity to be known as the Maine Motor Vehicle Reinsurance Facility consisting of all insurers licensed to write and engaged in writing within this State motor vehicle insurance or any component thereof. Every such insurer, as a prerequisite to further engaging in writing such insurance in this State, shall be a member of the facility and shall be bound by the rules of operation thereof as provided for in this chapter and as promulgated by the board of governors. No company may withdraw from membership in the facility unless it ceases to write motor vehicle insurance in this State or ceases to be licensed to write such insurance.

#### § 4803. Obligations after termination of membership

Any company whose membership in the facility has been terminated by withdrawal shall, nevertheless, with respect to its business prior to midnight of the effective date of such termination continue to be governed by this chapter.

#### § 4804. Insolvency

Any unsatisfied net liability to the facility of any insolvent member shall be assumed by and apportioned among the remaining members in the facility in the same manner in which assessments or gain are apportioned by the

facility. The facility shall have all rights allowed by law in behalf of the remaining members against the estate or funds of such insolvent for sums due the facility in accordance with this chapter.

§ 4805. Merger, consolidation or cession

When a member has been merged or consolidated into another insurer, or has ceded its entire motor vehicle liability insurance business in the State to another insurer, such company or its successor in interest shall remain liable for all obligations hereunder and such company and its successor in interest and other insurers with which it has been merged or consolidated shall continue to participate in the facility according to the rules of operation.

§ 4806. General obligations of insurers

Except as otherwise provided in this chapter, all insurers as a prerequisite to the further engaging in this State in the writing of motor vehicle insurance or any component thereof shall accept and insure any otherwise acceptable applicant thereof who is an eligible risk if cession of the particular coverage and coverage limits applied for are permitted in the facility. All such insurers shall equitably share the results of such otherwise unacceptable business through the facility and shall be bound by the acts of their agents in accordance with this chapter. No insurer shall impose upon any of its agents, solely on account of ceded business under this plan or any other motor vehicle insurance plan received from such agents, any quota or matching requirements for any other insurance as a condition for further acceptance of ceded business under this or any other plan of insurance business from such agents.

§ 4807. General obligations of agents

Except as otherwise provided in this chapter, no licensed agent of an insurer authorized to solicit and accept premiums for motor vehicle insurance or any component thereof by the company he represents shall refuse on behalf of said company to accept any application from an eligible risk for such insurance and to immediately bind the coverage applied for and for a period of not less than 6 months if cession of the particular coverage and coverage limits applied for are permitted in the facility, provided the application is submitted during the agent's normal business hours, at his customary place of business and in accordance with the agent's customary practices and procedures.

§ 4808. The facility; functions; administration

1. The operation of the facility shall assure the availability of motor vehicle insurance to any eligible risk by means of reinsurance and the facility shall accept, for transfer to the account of all members, the profit or loss of the business ceded in accordance with this chapter, the plan of operation adopted pursuant thereto and any amendments to either.

2. The facility shall reinsure for each coverage available therein to the standard percentage of 100% or lesser equitable percentage established in the plan of operation as follows:

A. For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:

- (1) Bodily injury liability: \$20,000 each person, \$40,000 each accident;
- (2) Property damage liability: \$10,000 each accident;
- (3) Medical payments: \$1,000 each person; except that this coverage shall not be available for motorcycles;
- (4) Uninsured motorist: \$20,000 each person; \$40,000 each accident for bodily injury; \$10,000 each accident property damage.

B. Additional ceding privileges for motor vehicle insurance shall be provided by the board of governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

- (1) Bodily injury liability: \$100,000 each person, \$300,000 each accident;
- (2) Property damage liability: \$50,000 each accident;
- (3) Medical payments: \$2,000 each person;
- (4) Uninsured motorist: \$100,000 each person and each accident for bodily injury and \$10,000 for property damage.

3. The facility shall require each member to adjust losses for ceded business fairly and efficiently in the same manner as voluntary business losses are adjusted and to effect settlement where settlement is appropriate.

4. The facility shall be administered by a board of governors. The board of governors shall consist of 9 members having one vote each from the classification hereinafter enumerated, plus the superintendent who shall serve ex officio without vote. Each facility insurance company member serving on the board shall be represented by a senior officer of the company. Not more than one company in a group under the same ownership or management shall be represented on the board at the same time. Five members of the board shall be selected by the member insurers, which members shall be fairly representative of the industry. To insure representative member insurers, one each shall be selected from the following groups: the American Insurance Association or its successors, the American Mutual Insurance Alliance or its successors, the National Association of Independent Insurers or its successors, all other stock insurers not affiliated with the above groups, and all other non-stock insurers not affiliated with the above groups. The Superintendent of Insurance shall appoint 4 members of the board who shall be fire and casualty insurance agents licensed in this State and actively engaged in writing motor vehicle insurance in this State. The superintendent shall select one agent from among a list of 2 nominees submitted by the Independent Insurance Agents of Maine, Inc., and one agent from among a list of 2 nominees, both residents of Maine, submitted by the Independent Mutual Agents of New England, Inc. The initial term of office of said board members shall be 2 years. Following completion of initial terms, successors to the members of

the original board of governors shall be selected to serve 3 years. All members of the board of governors shall serve until their successors are selected and qualified and the superintendent may fill any vacancy on the board from any of the aforementioned classifications until such vacancies are filled in accordance with this chapter.

5. The superintendent and member companies shall provide for a board of governors within 30 days after June 1, 1974. If any member seat on the initial board of governors is not filled in accordance with this chapter within such time, then, in that event the superintendent shall appoint natural persons from any of the classifications specified in subsection 4 to serve the initial term on the board of governors. As soon as possible after its selection, the superintendent shall call for the initial meeting of the board. After the board of governors have been selected, it shall elect from its membership a chairman and shall meet thereafter as often as the chairman shall require or at the request of 3 members of the board of governors. The chairman shall retain the right to vote on all issues. Five members of the board of governors shall constitute a quorum. The same member may not serve as chairman for more than 2 consecutive years.

6. The board of governors shall have full power and administrative responsibility for the operation of the facility. Such administrative responsibility shall include, but not be limited to:

- A. Proper establishment and implementation of the facility;
- B. Employment of a manager who shall be responsible for the continuous operation of the facility and such other employees, officers and committees as it deems necessary;
- C. Provision for appropriate housing and equipment to assure the efficient operation of the facility;
- D. Promulgation of reasonable rules and regulations for the administration and operation of the facility and delegation to the manager of such authority as it deems necessary to insure the proper administration and operation thereof.

7. Except as may be delegated specifically to others in the plan of operation or reserved to the members, power and responsibility for the establishment and operation of the facility is vested in the board of governors, which power and responsibility includes, but is not limited to the following:

- A. To sue and be sued in the name of the facility. No judgment against the facility shall create any direct liability in the individual member companies of the facility;
- B. To receive and record reinsurance cessions from member companies;
- C. To assess members on the basis of participation ratios established in the plan of operation to cover anticipated or incurred costs of operation and administration of the facility at such intervals as are established in the plan of operation;

D. To contract for goods and services from others to assure the efficient operation of the facility ;

E. To hear and determine complaints of any company, agent or other interested party concerning the operation of the facility ;

F. To review the market for motor vehicle insurance throughout Maine to make certain that eligible risks can readily obtain such insurance and to provide in the plan of operation a reasonable means for achieving this objective. The facility is authorized to require all companies in a fair and equitable manner who are writers of motor vehicle insurance in this State to appoint and license any fire and casualty agent duly licensed to write insurance in Maine, in such places where a market need has been demonstrated, to be their agent to write motor vehicle insurance. The companies and agents may enter into such agency contract as may be agreeable to both parties. If a company ceases to be a member of the facility after appointing and licensing agents pursuant to this provision, then the facility shall promptly require another company or companies to appoint and license such agents in these places. Notwithstanding this paragraph, the superintendent may review the market for motor vehicle insurance or any component thereof. After notice to and consultation with the board of governors, if the superintendent finds that reasonable facilities are not being provided to make motor vehicle insurance or any component thereof available in a particular county, he may require the board to provide adequate facilities in such county. If the board fails to comply with the requirements of the superintendent, then the superintendent may exercise all the powers of the facility to provide such adequate facilities. Additionally, the superintendent may require the company or companies selected to service a particular county to pay or provide for reasonable compensation for the services of the agent appointed to represent said company or companies, and, if necessary, the superintendent may appoint such agent ;

G. To maintain all loss, expense and premium data relative to all risks reinsured in the facility, and to require each member to furnish such statistics relative to insurance reinsured by the facility at such times and in such form and detail as may be required ;

H. To establish fair and reasonable procedures for the sharing among the members of profit and loss on facility business and other costs, charges, expenses, liabilities, income, property and other assets of the facility and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method ;

I. To receive or distribute all sums required by the operation of the facility ;

J. To accept all risks submitted from the companies in accordance with this chapter ;

K. To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the facility will be handled fairly and efficiently.

L. To adopt and enforce all rules and to do anything else where the board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the facility and is not in conflict with the other provisions of this chapter.

8. Each member company shall authorize the facility to audit that part of the company's business which is written subject to the facility in a manner and time prescribed by the board of governors.

9. The board of governors shall fix a date for an annual meeting and shall annually meet on that date. Twenty days' notice of such meeting shall be given in writing to all members of the board of governors.

10. There shall be furnished to each member an annual report of the operation of the facility in such form and detail as may be determined by the board of governors.

11. Each member shall furnish statistics in connection with insurance subject to the facility as may be required by the facility. Such statistics shall be furnished at such time and in such form and detail as may be required but at least will include premiums charged, expenses and losses.

#### § 4809. Plan of operation

1. Within 60 days after the initial organizational meeting, the facility shall submit to the superintendent, for his approval, a proposed plan of operation, consistent with this chapter, which shall provide for economical, fair and non-discriminating administration and for the prompt and efficient provision of motor vehicle insurance to eligible risks. Should no plan be submitted within the aforesaid 60-day period, then the Superintendent of Insurance shall formulate and place into effect a plan consistent with this chapter.

2. The plan of operation, unless sooner approved in writing, shall be deemed to meet the requirements of the chapter if it is not disapproved by order of the superintendent within 30 days from the date of filing. Prior to the disapproval of all or any part of the proposed plan of operation, the superintendent shall notify the facility in what respect the plan of operation fails to meet the specific requirements of this chapter. The facility shall, within 30 days thereafter, submit for his approval a revised plan of operation which meets the specific requirements of this chapter. In the event the facility fails to submit a revised plan of operation which meets the specific requirements of this chapter within the aforesaid 30-day period, the Superintendent of Insurance shall enter an order accordingly and shall immediately thereafter formulate and place into effect a plan consistent with this chapter.

3. Any revision of the proposed plan of operation or any subsequent amendments to an approved plan of operation shall be subject to approval or disapproval by the superintendent in the manner herein provided in subsection 2 with respect to the initial plan of operation.

4. Any order of the superintendent with respect to the plan of operation or any revision or amendment thereof shall be subject to appeal as provided in section 236.



5. Upon approval of the superintendent of the plan so submitted or the promulgation of a plan deemed approved by the superintendent, all insurance companies licensed to write motor vehicle insurance in this State or any component thereof as a prerequisite to further engaging in writing such insurance shall formally subscribe to and participate in the plan so approved.

6. The plan of operation shall provide for, among other matters, the establishment of necessary facilities, the management of the facility, the preliminary assessment of all members for initial expenses necessary to commence operations, the assessment of members to defray losses and expenses, the distribution of gains, the standard amount, 100% or any equitable lesser amount, of coverage afforded on eligible risks which a member company may cede to the facility, and the procedure by which reinsurance shall be accepted by the facility and shall further provide that:

A. Members of the board of governors shall receive reimbursement from the facility for their actual and necessary expenses incurred on facility business, en route to perform facility business and while returning from facility business, plus a per diem allowance of \$25 a day which may be waived.

B. In order to obtain a transfer of business to the facility effective when the binder or policy or renewal thereof first becomes effective, the company must, within 30 days of the binding or policy effective date, notify the facility of the identification of the insured, the coverage and limits afforded, classification data and premium. The facility shall accept risks at other times on receipt of necessary information, but such acceptance shall not be retroactive. The facility shall accept renewal business after the member on underwriting review elects to again cede the business.

#### § 4810. Limit on cessions

Upon receipt by the company of a risk which it does not elect to retain, the company shall follow such procedures for ceding the risk as are established by the plan of operation; provided that no company can cede to the facility more than 50% of all its motor vehicle insurance business in Maine without specific approval of the board of governors.

#### § 4811. Termination of insurance

1. No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under this chapter, except for the following reasons;

A. Nonpayment of premium when due to the insurer or producing agent;

B. The named insured has become a nonresident of this State and would not otherwise be entitled to insurance on submission of new application under this chapter;

C. A member company has terminated an agency contract for reasons other than the quality of the agent's insureds or the agent has terminated the contract and such agent represented the company in taking the original application for insurance.

§ 4812. Exemption from requirements of this chapter of companies and their agents

By reason of the limit on cessions provided in this chapter, the board of governors may exempt a company and its agents from the requirements of this chapter, insofar as new business is concerned. The board may further exempt a company and its agents from the requirements of this chapter regarding the selling and servicing a particular category of business, if the company is not qualified to service the business.

§ 4813. Physical damage insurance availability

No physical damage insurer shall refuse to make physical damage coverage available to any applicant for the reason that such applicant has, or may acquire, auto liability insurance through the facility plan as provided herein. No such insurer may levy a surcharge or increased rate for such physical damage coverage on the basis that such applicant has, or may acquire, auto liability insurance through the facility plan as provided herein.

Any such insurer or representative thereof failing to comply with, or otherwise violating the provisions of this section, shall be subject to suspension or revocation of his certificate of authority.

§ 4814. Hearings; review

1. Any applicant for a policy from any carrier, any person insured under such a policy, any member of the facility and any agent duly licensed to write motor vehicle insurance may request a formal hearing and ruling by the board of governors of the facility on any alleged violation of or failure to comply with the plan of operation or the provisions of this chapter or any alleged improper act or ruling of the facility directly affecting him as to coverage or premium or in the case of a member directly affecting its assessment, and in the case of an agent, any matter affecting his appointment to a carrier or his account therewith. The request for hearing must be made within 15 days after the date of the alleged violation or improper act or ruling. The hearing shall be held within 15 days after the receipt of the request. The hearing may be held by any panel of the board of governors consisting of not less than 3 members, and the ruling of a majority of the panel shall be deemed to be the formal ruling of the board, unless the full board on its own motion shall modify or rescind the action of the panel.

2. Any formal ruling by the board of governors may be appealed to the superintendent by filing notice of appeal with the facility and superintendent within 30 days after issuance of the ruling.

3. The superintendent shall issue an order approving the action or decision, disapproving the action or decision, or directing the board of governors to reconsider the ruling.

4. Any aggrieved person or organization, any member of the facility or the facility may request a public hearing and ruling by the superintendent on the provisions of the plan of operation, rules, regulations or policy forms approved by the superintendent. The request for hearing shall specify the

matter or matters to be considered. The hearing shall be held within 30 days after receipt of the request. The superintendent shall give public notice of the hearing and the matter or matters to be considered not less than 15 days in advance of the hearing date.

5. In any hearing held pursuant to this section by the board of governors or the superintendent, the board or the superintendent, as the case may be, shall issue a ruling or order within 30 days after the close of the hearing.

6. All rulings or orders of the superintendent under this section shall be subject to appeal as provided in section 236.

**Sec. 3. Effective date.** This chapter shall be effective for the purpose of organization of the facility on June 1, 1974, and shall be effective regarding the operation of the plan on January 1, 1975.

Section 1 of this Act shall be effective on January 1, 1976. All policies issued pursuant to Title 24-A, section 2325, shall remain in effect until the expiration date of such policies.

#### STATEMENT OF FACT

The purpose of this bill is to abolish the assigned risk plan and to provide a reinsurance plan for sharing of losses by all insurers. Motorists will be able to go to the agency or company of their choice and will be entitled to coverage if they have valid drivers' licenses and the money to pay their premiums.