

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)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 579

H. P. 467

House of Representatives, February 6, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Hewes of Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Create a Life and Health Insurance Guaranty Association.

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

24-A MRSA c. 57, sub-c. IV, is enacted to read:

SUBCHAPTER IV

MAINE LIFE AND HEALTH INSURANCE GUARANTY
ASSOCIATION ACT

§ 4460. Title

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

§ 4461. Purpose

The purpose of this subchapter is to protect policyowners, insureds, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts. To provide this protection, an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages. Members of the association are subject to assessment to provide funds to carry out the purpose of this subchapter, and the association is authorized to assist the superintendent in the prescribed manner, in the detection and prevention of insurer impairments.

§ 4462. Scope

1. Application. This subchapter shall apply to direct life insurance policies, health insurance policies, annuity contracts, contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this State at any time.

2. Exemptions. This subchapter shall not apply to:

A. Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder:

B. Any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.

§ 4463. Construction

This subchapter shall be liberally construed to effect the purpose under section 4461 which shall constitute an aid and guide to interpretation.

§ 4464. Definitions

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

1. Account. "Account" means either of the 3 accounts created under section 4465.

2. Association. "Association" means the Maine Life and Health Insurance Guaranty Association created under section 4465.

3. Contractual obligation. "Contractual obligation" means any obligation under covered policies.

4. Covered policy. "Covered policy" means any policy or contract within the scope of this subchapter under section 4462.

5. Impaired insurer. "Impaired insurer" means an insurer which after the effective date of this subchapter becomes insolvent and is placed under a final order of liquidation, rehabilitation or conservation by a court of competent jurisdiction, or an insurer deemed by the superintendent after the effective date of this subchapter to be unable or potentially unable to fulfill its contractual obligations.

6. Member insurer. "Member insurer" means any person authorized to transact in this State any kind of insurance to which this subchapter applies under section 4462.

7. Premiums. "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in section 4468, "premiums" are those for the calendar year preceding the determination of impairment.

8. Resident. "Resident" means any person who resides in this State at the time the impairment is determined and to whom contractual obligations are owed.

§ 4465. Creation of the association

1. The Association. There is created a nonprofit unincorporated legal entity to be known as the Maine Life and Health Insurance Guaranty Association. All member insurers 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 the plan of operation established and approved under section 4469 and shall exercise its powers through a board of directors established under section 4466. For purposes of administration and assessment, the association shall maintain 3 accounts:

- A. The health insurance account;
- B. The life insurance account; and
- C. The annuity account.

2. Supervision. The association shall come under the immediate supervision of the superintendent and shall be subject to the applicable provisions of the laws of this State.

§ 4466. Board of directors

The board of directors of the association shall consist of not less than 5 nor more than 9 members 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 superintendent. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors and initially organize the association, the superintendent shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting, each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the superintendent may appoint the initial members.

In approving selections or in appointing members to the board, the superintendent 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, but members of the board shall not otherwise be compensated by the association for their services.

§ 4467. Powers and duties of the association

1. Powers and duties. The association shall:

- A. With regard to a domestic insurer that is an impaired insurer under an order of liquidation or rehabilitation, subject to the approval of the superintendent:

- (1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured the covered policies of the impaired insurer;
- (2) Assume payment of the contractual obligations of the impaired insurer; and
- (3) Provide such moneys, pledges, notes, guarantees or other means as are reasonably necessary to discharge such duties;

B. With regard to a foreign or alien insurer that is an impaired insurer under an order of liquidation, rehabilitation or conservation, subject to the approval of the superintendent:

- (1) Guarantee, assume or reinsure or cause to be guaranteed, assumed or reinsured the covered policies of residents;
- (2) Assume payment of the contractual obligations of the impaired insurer to residents; and
- (3) Provide such moneys, pledges, notes, guarantees or other means as are reasonably necessary to discharge such duties;

C. Have standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this subchapter. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations;

D. Be deemed the assignee of rights under covered policies held by any person receiving benefits under this subchapter to the extent of the benefits received because of this subchapter whether the benefits are payment of contractual obligations or continuation of coverage and shall have the authority to require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this subchapter upon such person. The association shall be subrogated to those rights against the assets of any impaired insurer and shall have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this subchapter;

E. Have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction provides by statute or regulation, for residents of this State protection substantially similar to that provided by this subchapter for residents of other states;

F. Have no liability for contractual obligations of the impaired insurer which are greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by subsection 2, paragraph B of this section.

G. Have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of \$300,000.

2. **Permission. The association may:**

A. Prior to an order of liquidation or rehabilitation with regard to a domestic insurer and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and subject to approval by the impaired insurer and the superintendent:

(1) Guarantee or reinsure, or cause to be guaranteed, assumed or re-insured, all the covered policies of the impaired insurer;

(2) Provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate subparagraph (1) of this paragraph, and assume payment of the contractual obligations of the impaired insurer pending action under subparagraph (1) of this paragraph; and

(3) Loan money to the impaired insurer;

B. Request that in carrying out its duties under subsection 1, paragraphs A and B of this section there be imposed policy liens, contract liens, moratoriums on payments or other similar means and such liens, moratoriums or similar means may be imposed if the superintendent finds that the amounts which can be assessed under this subchapter are less than the amounts needed to assure full and prompt performance of the impaired insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums or similar means to be in the public interest, and approves the specific policy liens, contract liens, moratoriums or similar means to be used. Before being obligated under subsection 1, paragraphs A and B of this section, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans and such temporary moratoriums and liens may be imposed if they are approved by the superintendent;

C. Render assistance and advice to the superintendent, upon his request, concerning rehabilitation, payment of claims, continuations of coverage or the performance of other contractual obligations of any impaired insurer;

D. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this subchapter;

E. Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 4468;

F. Borrow money to effect the purposes of this subchapter. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

G. Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this subchapter;

H. Negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the association;

I. Take such legal action as may be necessary to avoid payment of improper claims;

J. Exercise, for the purposes of this subchapter and to the extent approved by the superintendent, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.

3. Other authority. The authority, powers and duties provided in this section shall be in addition to those enumerated in other sections.

§ 4468. Assessments

1. Authority. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

2. Classes. There shall be 3 classes of assessments, as follows:

A. Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

B. Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 4467 with regard to an impaired domestic insurer.

C. Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 4467 with regard to an impaired foreign or alien insurer.

3. Amount of assessment.

A. The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bears to the premiums received by such insurer on all covered policies;

B. Class A and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this State by each assessed member insurer on policies covered by each account bears to such premiums received on business in this State by all assessed member insurers;

C. Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired insurer on policies covered by such account bears to such premiums received in all such states by the impaired insurer. The assessments against member insurers shall be in the propor-

tion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bears to such premiums received on business in each state by all assessed member insurers;

D. Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the purposes of this subchapter. Classification under this section shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

4. Abatements. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed 2% of such insurer's premiums in this State on the policies covered by the account. In the event an assessment against a member insurer is abated, or deferred, in whole or in part, the amount by which such assessment is abated or deferred shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this subchapter.

5. Refunds. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

6. Premiums. It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this subchapter, to consider the amount reasonably necessary to meet its assessment obligations under this subchapter.

7. Certificates. The association shall issue to each insurer paying an assessment under this subchapter a certificate of contribution, in a form prescribed by the superintendent, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue, unless a longer period has been allowed by the superintendent. A member insurer shall at its option have the right to show such certificates of contribution as assets in the form approved by the superintendent at percentages of the original face amount approved by the superintendent, for calendar years as follows:

- A. 100% for the calendar year of issuance;
- B. 80% for the first calendar year after the year of issuance;
- C. 60% for the 2nd calendar year after the year of issuance;
- D. 40% for the 3rd calendar year after the year of issuance;
- E. 20% for the 4th calendar year after the year of issuance;
- F. 0% for the 5th calendar year after the year of issuance and thereafter.

The insurer may offset the amount written off by it in a calendar year under this section, against its premium tax liability to this State accrued with respect to business transacted in such year. Any sums acquired by refund from the association, which have theretofore been written off by contributing insurers and offset against premium taxes as provided in this section and are not then needed for purposes of this subchapter, shall be paid by the insurer to the State Tax Assessor and by him paid to the Treasurer of the State for deposit in the General Fund.

§ 446g. Plan of operation

1. Submission.

A. The association shall submit to the superintendent 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 superintendent;

B. If the association fails to submit a suitable plan of operation within 180 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 superintendent shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this subchapter. Such rules shall continue in force until modified by the superintendent or superseded by a plan submitted by the association and approved by the superintendent.

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

3. Plan. The plan of operation shall, in addition to requirements enumerated elsewhere in this subchapter:

A. Establish procedures for handling the assets of the association;

B. Establish the amount and method of reimbursing members of the board of directors under section 4466;

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

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

- E. Establish the procedures whereby selections for the board of directors will be made and submitted to the superintendent;
- F. Establish any additional procedures for assessments under section 4468;
- G. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

4. Delegation. The plan of operation may provide that any or all powers and duties of the association, except those under section 4467, subsection 2, paragraph F and section 4468, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent, in 2 or more states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the superintendent, 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.

§ 4470. Duties and powers of the superintendent

1. Powers and duties. The superintendent shall:

A. Notify the board of directors of the existence of an impaired insurer not later than 3 days after a determination of impairment is made or he receives notice of impairment;

B. Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer; and

C. When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this subchapter.

2. Permission. The superintendent may 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. As an alternative, the superintendent may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed 5% of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month.

3. Appeal. Any action of the board of directors or the association may be appealed to the superintendent by any member insurer, if such appeal is taken within 30 days of the action being appealed. Any final action or order of the superintendent shall be subject to judicial review in a court of competent jurisdiction.

4. Failure to act. If the association fails to discharge its duties under section 4467, subsection 1, paragraphs A and B, the superintendent shall have

the powers of the association under this subchapter with respect to such failure.

5. Notice. The liquidator, rehabilitator or conservator of any impaired insurer may notify all interested persons of the effect of this subchapter.

§ 4471. Prevention of impairments

1. Notification. The board of directors shall, upon majority vote, notify the superintendent of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

2. Examination. The board of directors may, upon majority vote, request that the superintendent order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations. The superintendent may conduct such examination. The examination may be conducted as a National Association of Insurance Commissioners' examination or may be conducted by such persons as the superintendent designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the superintendent from his obligation to comply with subsection 3 of this section. The superintendent shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the superintendent, but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

3. Report. The superintendent shall report to the board of directors when he has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

4. Recommendations. The board of directors may, upon majority vote, make reports and recommendations to the superintendent 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.

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

6. Causes. The board of directors shall, at the conclusion of any insurer impairment in which the association carried out its duties under this subchapter or exercised any of its powers under this subchapter, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit such report to the superintendent.

§ 4472. Appointment of association nominee

The association may recommend a natural person to serve as a special deputy to act for the superintendent and under his supervision in the liquidation, rehabilitation or conservation of any member insurer.

1. **Assessment mutuels.** Nothing in this subchapter shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

2. **Records.** Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired insurer, upon the termination of the impairment of the insurer or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 4474.

3. **Creditor.** For the purpose of carrying out its obligations under this subchapter, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee. All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this subchapter. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.

4. **Ownership.** Prior to the termination of any liquidation, rehabilitation or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policyowners of the impaired insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer. No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

5. **Unfair trade practice.** It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this subchapter in the sale of insurance.

6. **Distributions.**

A. If an order for liquidation or rehabilitation of an insurer domiciled in this State has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the 5 years preceding the petition for liquidation or rehabilitation, subject to the limitations of paragraphs B, C and D of this subsection;

B. No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did

not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations;

C. Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions he would have received if they had been paid immediately. If 2 persons are liable with respect to the same distributions, they shall be jointly and severally liable.

D. The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer;

E. If any person liable under paragraph C of this subsection is insolvent, all its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

§ 4474. Examination of the association; annual report

The association shall be subject to examination and regulation by the superintendent. The board of directors shall submit to the superintendent, not later than May 1st of each year, a financial report for the preceding calendar year in a form approved by the superintendent and a report of its activities during the preceding calendar year.

§ 4475. Tax exemptions

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 property.

§ 4476. Immunity

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

§ 4477. Stay of proceedings: reopening default judgments

All proceedings in which the impaired insurer is a party in any court in this State shall be stayed 60 days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

STATEMENT OF FACT

The purpose of this Act is to protect certain owners and beneficiaries of life and health insurance and annuity contracts against loss resulting from the financial impairment of certain life and health insurers.