

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
107TH LEGISLATURE

SENATE AMENDMENT "A" to H.P. 1160, L.D. 1459, Bill,  
"AN ACT Relating to Risk Sharing Plans in the Field of  
Property Insurance."

Amend said Bill by striking out all of the title and  
inserting in place thereof the following: 'AN ACT Providing  
for Temporary Interim Relief Relating to the Availability of  
Hospital and Medical Malpractice Insurance.'

Further amend said Bill by inserting before the enacting  
clause the following:

'Emergency preamble. Whereas, Acts of the Legislature  
do not become effective until 90 days after adjournment unless  
enacted as emergencies; and

Whereas, a crisis is developing in Maine with regard to  
the availability of hospital and medical malpractice  
insurance; and

Whereas, the effect of the situation has already been  
felt in the State of Maine; and

Whereas, it is vital that action be taken which will  
provide for the availability of medical malpractice insurance  
while a comprehensive review of the medical and hospital  
malpractice situation in Maine is being made; and

Whereas, in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health  
and safety; now, therefore, '

Further amend said Bill by striking out everything after the enacting clause and inserting in place thereof the following:

'24 MRSA c,20 is enacted to read:

CHAPTER 20

MAINE MEDICAL AND HOSPITAL MALPRACTICE  
JOINT UNDERWRITING ASSOCIATION ACT

§2401. Short title

This Act shall be known as the Maine Medical and Hospital Malpractice Joint Underwriting Association Act.

§2402. Definitions

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

1. Association. "Association" means the Joint Underwriting Association established pursuant to this chapter.

2. Commission. "Commission" means the commission to review the laws relating to medical and hospital malpractice insurance as established by the 107th Legislature.

3. Medical malpractice insurance. "Medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed physician, hospital or other licensed health care provider.

4. Net direct premiums. "Net direct premiums" means direct gross premiums written on the personal injury liability component of casualty insurance as defined in Title 24-A,

section 707, subsection 1, paragraphs A, B and J, including the liability component of multiple peril package policies, less return premiums thereon and dividends paid or credited to policyholders on such direct business, all as computed by the insurance superintendent, hereinafter referred to as "superintendent." Net direct premiums does not include premiums on contracts between insurers and reinsurers.

§2403. Temporary joint underwriting association

1. Establishment. A temporary joint underwriting association is hereby created, consisting of all insurers authorized to write and engage in writing, within this State on a direct basis, personal injury liability insurance, as defined in section 2402, subsection 4, including insurers covering such perils in multiple peril package policies. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact such kind of insurance in this State. No insurer with total assets less than \$5,000,000 shall be required to participate in the association created by this Act.

2. Purpose. The purpose of the association shall be to provide for a period not to exceed 2 years, a market for medical malpractice insurance on a self-supporting basis without subsidy from its members, pending receipt and consideration of the commission's recommendation and enactment of appropriate remedial legislation.

3. Underwriting operations. The association shall not commence underwriting operations for physicians until the

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superintendent, after due hearing and investigation, has determined that medical malpractice insurance cannot be made available for physicians in the voluntary market. Upon such determination, the association shall be the exclusive agency through which medical malpractice insurance may be written in this State on a primary basis for physicians.

The association shall not commence underwriting operations for hospitals until the superintendent, after due hearing and investigation, has determined that medical malpractice insurance is not readily available for hospitals in the voluntary market. Upon such determination, the association shall be authorized to issue policies of medical malpractice insurance to hospitals, but need not be the exclusive agency through which such insurance may be written on a primary basis in this State.

The association shall not commence underwriting operations for other licensed health care providers until the superintendent, after due hearing and investigation, has determined that medical malpractice cannot be made available for a specific type of licensed determination, the association shall be the exclusive agency through which medical malpractice insurance may be written in this State on a primary basis for such specific type of health care provider.

If the superintendent determines at any time that medical malpractice insurance can be made available in the voluntary market for all physicians, all hospitals or any specific type

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of other licensed health care providers, the association shall thereby cease its underwriting operations for such medical malpractice insurance which the superintendent has determined can be made available in the voluntary market.

4. Powers. The association shall, pursuant to the provisions of this chapter and the plan of operations with respect to medical malpractice insurance, have the power, on behalf of its members, to issue or to cause to be issued, policies of insurance to applicants, including incidental coverage and subject to limits as specified in the plan of operation but not to exceed \$1,000,000 for each claimant under one policy and \$3,000,000 for all claimants under one policy in any one year, to underwrite such insurance and to adjust and pay losses with respect thereto or to appoint service companies to perform those functions, to assume reinsurance from its members and to cede reinsurance.

5. Cooperation. The association and its members are authorized and encouraged to cooperate with the commission and the association's actual or prospective policyholders on all matters pertaining to the commission's duties and the insurance issued or to be issued by the association.

§2404. Plan of operation

1. Proposed plan. Within 30 days following the creation of the association, the director of the association shall submit to the superintendent, for his review, a proposed plan of operation consistent with the provisions of this chapter.

2. Provisions. The plan of operation shall provide for

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economic, fair and nondiscriminatory administration and for the prompt and efficient provision of medical malpractice insurance and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carrier or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.

3. Approval. The plan of operation shall be subject to approval by the superintendent after consultation with the members of the association, representatives of the public, representatives of the Maine Medical Association and Maine Hospital Association and other affected individuals and organizations. If the superintendent disapproves all or any part of the proposed plan of operation, the directors shall within 10 days submit for review an appropriate revised plan of operation or part thereof. If the directors fail to submit such revisions or such revisions are disapproved, the superintendent shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the superintendent shall become effective and operational upon order of the superintendent.

4. Amendments. Amendments of the plan of operation may be made by the directors of the association, subject to the

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approval of the superintendent, or shall be made at the direction of the superintendent.

§2405. Policy forms and rates

1. Requirements. All policies issued by the association shall provide for a continued period of coverage beginning with their respective dates and terminating automatically at 12:01 a.m., July 1, 1977, unless sooner terminated in accordance with this chapter. ~~←~~ ~~→~~ All such policies shall be issued subject to the group retrospective rating plan and the stabilization reserve fund authorized by this Act. All such policies shall be written so as to apply to injury which results from acts or omissions by the insured during the policy periods regardless of the date of discovery. No policy form shall be used by the association unless it has been filed with the superintendent and either he has approved it or 30 days have elapsed and he has not disapproved it as misleading or violative of public policy.

2. Cancellation. The association may cancel any of its policies in the event of nonpayment of any stabilization reserve fund charge by mailing or delivering to the insured at the address shown on the policy notice stating when not less than 15 days thereafter cancellation shall be effective.

3. Rates. The rates, rating plan, rating rules, rating classifications and territories applicable to the insurance written by the association, and statistics relating thereto, shall be subject to Title 24-A, chapter 25, giving due consideration to the past and prospective loss and expense



OF R.

experiencing for medical malpractice insurance written and to be written in this State, trends in the frequency and severity of losses, the investment income of the association and such other information as the superintendent may require. All rates shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and stabilization reserve fund and shall be calculated to be self-supporting. The superintendent shall take all appropriate steps to make available to the association the loss and expense experience on insurers previously writing medical malpractice insurance in this State and members of the association shall supply such information to the greatest extent possible.

4. Rating plan. All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the superintendent under which the final premium for all policyholders of the association, as a group, will be equal to the administrative expenses, loss and loss adjustment and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee approved by the superintendent, on policyholder supplied funds. The standard premium, before retrospective adjustment, for each policy issued by the association shall be established for portions of the policy of the association's rates, rating plans, rating rules, rating classifications and territories then in effect. The maximum final premium for all policyholders of the association, as a

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group, shall be limited as provided in section 2406, sub-section 5.

5. Examination. The superintendent shall examine the business of the association as often as he deems appropriate to make certain that the group retrospective rating plan is being operated in a manner consistent with this <sup>chapter.</sup> ~~act.~~ If he finds that it is not being so operated, he shall issue an order to the association, specifying in what respects its operation is deficient and stating what corrective action shall be taken.

6. Certification. The association shall certify to the superintendent the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within 60 days after such certification, the superintendent shall authorize the members of the association to commence recoupment of their respective shares of the deficit by the following procedure, applying a surcharge to be determined by the association at a rate not to exceed 2% of the annual premiums on future policies affording those kinds of insurance which form the basis for their participation in the association under procedures established by the association. The association shall amend the amount of its certification of deficit to the superintendent as the values of its incurred losses become finalized and the members of the association shall amend their recoupment procedure accordingly.

7. Temporary contribution. In the event that sufficient

OF R.

funds are not available for the sound financial operation of the association, pending recoupment as provided in section 6, all members shall, on a temporary basis, contribute to the financial requirements of the association in the manner provided for in section 2408. Any such contribution shall be reimbursed to the members by recoupment as provided in subsection 6.

§2406. Stabilization reserve fund

1. Creation. There is hereby created a stabilization reserve fund. The fund shall be administered by 3 directors, one of whom shall be the superintendent or his designee. The remaining 2 directors shall be appointed by the superintendent. One shall be a representative of the association, the other a representative of the Maine Medical Association.

2. Procedure. The directors shall act by majority vote with 2 directors constituting a quorum for the transaction of any business or the exercise of any power of the fund. The directors shall serve without salary, but each director shall be reimbursed for actual and necessary expenses incurred in the performance of his official duties as a director of the fund. The directors shall not be subject to any personal liability or accountability with respect to the administration of the fund.

3. Policyholder payments. Each policyholder shall pay to the association a stabilization reserve fund charge equal to 1/3 of each premium payment for the insurance through the association. Such charge shall be stated separately in the

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policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.

4. Payment of stabilization reserve fund charges. The association shall promptly pay to the trustee of the fund all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan authorized by this chapter.

5. Moneys in trust. All moneys received by the fund shall be held in trust by a corporate trustee of a bank or trust company selected by the directors. Any officer with whom or any bank or trust company with which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same subject to the approval of the directors. All investment income shall be credited to the fund. All expenses of administration of the fund shall be charged against the fund. The moneys held in trust shall be used solely for the purpose of discharging when due any retrospective premium charges payable to policyholders of the association under the group retrospective rating plan authorized by this chapter. Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If all moneys accruing to the fund are finally exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall thereupon terminate and shall be conclusively presumed to have been

discharged. Any moneys remaining in the fund after all such retrospective premium charges have been paid shall be returned to policyholders under procedures authorized by the directors.

§2407. Procedures

1. Application. Any licensed physician, hospital or other licensed health care provider shall, on or after the effective date of the plan of operations, be entitled to apply to the association for such coverage. Such application may be made on behalf of an applicant by a broker or agent authorized by the applicant.

2. Issuance of policy. If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, as shown by the insured having failed to make written objection to premium charges within 30 days after billing, then the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical malpractice insurance.

§2408. Participation

All insurers which are members of the association shall participate in its writing, expenses, servicing allowance, management fees and losses in the proportion that the net direct premiums of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this State by all members of the association. Each insurer's participation in

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the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer with the superintendent. No insurer with total assets less than \$5,000,000 shall be required to participate in the association created by this chapter.

§2409. Directors

The association shall be governed by a board of 11 directors to be elected annually. Eight directors shall be elected by cumulative voting by the members of the association, whose votes in such election shall be weighted in accordance with each member's net direct premium as defined in section 2402, <sup>subsection 4,</sup> written during the preceding calendar year. Two directors shall be appointed by the superintendent as representatives of the Maine Medical Association and one director from the Maine Hospital Association. The 8-member companies serving on the first board shall be elected at a meeting of the members held at a time and place designated by the superintendent. The superintendent shall appoint the other 3 directors serving on the first board on or before the date of such meeting.

§2410. Appeals and judicial review

1. Appeals. Any applicant to the association, any persons insured pursuant to this chapter or their representatives, or any affected insurer, may appeal to the superintendent

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within 30 days after any ruling, action or decision by or on behalf of the association with respect to those items the plan of operation defines as appealable matters.

2. Judicial review. All orders of the superintendent made pursuant to this chapter shall be subject to judicial review as provided by rule 80B of the Maine Rules of Civil Procedure, notwithstanding any other provision of law, proceeding for review may, if approved by a court of competent jurisdiction, act as a stay of the enforcement of any order or decision of the insurance superintendent disapproving or ordering the withdrawal, adjustment or termination of the effectiveness of any rate filing made by or on behalf of the association on the ground that the rates or premiums for the business of the association are unreasonable or excessive and the association may continue to charge rates pursuant to such filing pending final order of the court.

§2411. Annual statements

The association shall file in the office of the superintendent annually, not later than the first day of March, a statement which shall contain information with respect to its transactions, condition, operations and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the superintendent. The superintendent may, at any time, require the association to furnish additional information with respect to its transactions, condition or any matter connected therewith

OF R.

considered by the superintendent to be material and of assistance in evaluating the scope, operation and experience of the association.

§2412. Examinations

The superintendent shall make an examination into the affairs of the association at least annually. Such examination shall be conducted and the report thereon filed in the manner prescribed in Title 24-A, sections 221 to 227.

The expense of every such examination shall be borne and paid by the association.

§2413. Privileged communications

There shall be no liability on the part of and no cause of action of any nature shall arise against the communications, the association, the superintendent or his authorized representatives or any other person or organization for any statements made in good faith by them during any proceedings or concerning any matters within the scope of this chapter.

§2414. Public officers or employees

No member of the commission or board of directors of the stabilization reserve fund who is otherwise a public officer or employee shall suffer a forfeiture of his office or employment or any loss or diminution in the rights and privileges appertaining thereto by reason of membership on the commission or board of directors of the stabilization reserve fund.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.'



Statement of Fact

This amendment deletes the present provisions of the bill and enacts the Maine Medical and Hospital Malpractice Joint Underwriting Association Act.

(Conley)  
NAME: *Frederic P. Conley*  
COUNTY: Cumberland

Reproduced and distributed pursuant to Senate Rule 11-A.  
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