

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)

(EMERGENCY)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 149

S. P. 70

In Senate, January 26, 1977

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

MAY M. ROSS, Secretary

Presented by Senator Conley of Cumberland.

Cosponsor: Senator Pierce of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Providing for Extension and Modification of the Joint Underwriting Association.

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

Whereas, a crisis developed within Maine with regard to the availability of hospital and medical malpractice insurance; and

Whereas, the regular session of the 107th Legislature enacted as an emergency measure, "An Act Providing for Temporary Interim Relief Relating to the Availability of Hospital and Medical Malpractice Insurance;" and

Whereas, the crisis with regard to availability of hospital and medical malpractice insurance still exists in Maine; and

Whereas, the enabling legislation now needs extension and modification as herein provided in order to guarantee the availability of said insurance in Maine; 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,

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

Sec. 1. 24 MRSA § 2402, sub-§ 3, as enacted by PL 1975, c. 442, is amended to read:

3. **Medical malpractice insurance.** "Medical malpractice insurance" means insurance coverage against the legal liability of the insured, **including the liability of the insured, if any, for the acts of his employees or independent contractors providing services to 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 or facility, or any other person involved in the providing of health care services as either an employee or agent of a physician or a health care facility.

Sec. 2. 24 MRSA § 2403, sub-§ 1, as enacted by PL 1975, c. 442, is amended by adding at the end the following new sentence:

Insurers under common management or ownership shall constitute a single member.

Sec. 3. 24 MRSA § 2403, sub-§ 2, as enacted by PL 1975, c. 442, is amended to read:

2. **Purpose.** The purpose of the association shall be to provide for a ~~period not to exceed 2 years, until July 1, 1979,~~ 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.~~

Sec. 4. 24 MRSA § 2403, sub-§ 3, 1st ¶, as enacted by PL 1975, c. 442, is repealed and the following enacted in its place:

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

Sec. 5. 24 MRSA § 2403, sub-§ 3, 4th ¶, as enacted by PL 1975, c. 442, is amended to read:

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 of other licensed health care providers or facilities, 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.

Sec. 6. 24 MRSA § 2405, sub-§ 1, 1st sentence, as enacted by PL 1975, c. 442, is repealed and the following enacted in its place:

The association shall not issue any policies that provide coverage beyond the term of the enabling legislation.

Sec. 7. 24 MRSA § 2407, sub-§ 1, 1st sentence, as enacted by PL 1975, c. 442, is amended to read:

Any licensed physician, hospital or other licensed health care provider or facility shall, on or after the effective date of the plan of operations, be entitled to apply to the association for such coverage.

Sec. 8. 24 MRSA § 2409, as enacted by PL 1975, c. 442, is amended by adding at the end the following new sentence:

The directors of the association shall have no liability to the association or to any other persons with respect to their performance or failure to perform their duties concerning any matters within the scope of this chapter so long as they act in good faith.

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

STATEMENT OF FACT

The purpose of this bill is to extend the life of the Maine Joint Underwriting Association for malpractice insurance and to remove the exclusivity provision as it relates to physicians.