

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 552

6  
7 H.P. 451

House of Representatives, February 3, 1983

8 Referred to the Committee on Business Legislation, sent up for  
9 concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Perkins of Brooksville.  
Cosponsor: Representative Racine of Biddeford.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Amend the Maine Insurance  
18 Guaranty Association Act.  
19

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

22 Sec. 1. 24-A MRSA §4379, sub-§3, as enacted by  
23 PL 1969, c. 132, §1, is amended to read:

24 3. Loss claims. All claims under policies for  
25 losses incurred, including third party claims, and  
26 all claims against the insurer for liability for bod-  
27 ily injury or for injury to or destruction of tan-  
28 gible property which are not under policies, except  
29 the first \$200 of losses otherwise payable to any  
30 claimant under this subsection. All claims under life  
31 insurance policies and annuity contracts, whether for  
32 death proceeds, annuity proceeds or investment  
33 values, shall be treated as loss claims, as well as  
34 claims of the Maine Insurance Guaranty Association

1 and any similar organization in another state.  
2 Claims shall not be cumulated by assignment to avoid  
3 application of the \$200 deductible provision. That  
4 portion of any loss for which indemnification is provided  
5 by other benefits or advantages recovered or  
6 recoverable by the claimant shall not be included in  
7 this class, other than benefits or advantages re-  
8 covered or recoverable in discharge of familial obli-  
9 gations of support or by way of succession at death  
10 or as proceeds of life insurance, or as gratuities.  
11 No payment made by an employer to his employee shall  
12 may be treated as a gratuity.

13 Sec. 2. 24-A MRSA §4433, sub-§1, as enacted by  
14 PL 1969, c. 561, is repealed and the following  
15 enacted in its place:

16 1. Application. This subchapter shall apply only  
17 to direct insurance of the following kinds:

18 A. Property insurance, as defined in section  
19 705;

20 B. Casualty insurance, as defined in section  
21 707, subsections 1, paragraphs A through H and J  
22 through N; and

23 C. Marine and transportation insurance, as de-  
24 defined in section 708, but excluding that part de-  
25 defined as "wet marine and transportation" insur-  
26 ance.

27 Sec. 3. 24-A MRSA §4435, sub-§4, as amended by  
28 PL 1973, c. 625, §159, is repealed and the following  
29 enacted in its place:

30 4. Covered claim. "Covered claim" means an  
31 unpaid claim, including one for unearned premiums,  
32 arising under and within the coverage and applicable  
33 limits of an insurance policy to which this subchap-  
34 ter applies issued by an insurer which becomes an  
35 insolvent insurer after May 9, 1970, and where:

36 A. The claimant or insured is a resident of this  
37 State at the time of the insured event; or

38 B. The property from which the claim arises is  
39 permanently located in this State.

1 "Covered claim" shall not include any amounts due for  
2 services rendered to or for the insolvent insurer,  
3 nor due any reinsurer, insurer, insurance pool or  
4 underwriting association, as subrogation recoveries  
5 or otherwise; provided, that a claim for any such  
6 amount, asserted against a person insured under a  
7 policy issued by an insurer which has become an  
8 insolvent insurer, which, if it were not a claim by  
9 or for the benefit of a reinsurer, insurer, insurance  
10 pool or underwriting association, would be a covered  
11 claim, may be filed directly with the receiver of the  
12 insolvent insurer, but in no event may any such claim  
13 be asserted against the insured of such insolvent  
14 insurer.

15 Sec. 4. 24-A MRSA §4435, sub-§5, as enacted by  
16 PL 1969, c. 561, is repealed and the following  
17 enacted in its place:

18 5. Insolvent insurer. "Insolvent insurer" means  
19 an insurer:

20 A. Authorized under section 8, subsection 1 and  
21 section 404 to transact insurance in this State  
22 either at the time the policy was issued or when  
23 the insured event occurred; and

24 B. Against which a final order of liquidation  
25 with a finding of insolvency has been entered by  
26 a court of competent jurisdiction in the  
27 insurer's state of domicile.

28 Sec. 5. 24-A MRSA §4437, first ¶, as amended by  
29 PL 1973, c. 625, §160, is further amended to read:

30 The board of directors of the association shall  
31 consist of not less than 7 persons serving terms as  
32 established in the plan of operation. The members of  
33 the board shall be selected by member insurers sub-  
34 ject to the approval of the commissioner. Vacancies  
35 on the board shall be filled for the remaining period  
36 of the term in the same manner as initial appoint-  
37 ments by a majority vote of the remaining board mem-  
38 bers, subject to the approval of the superintendent.  
39 If no members are selected within 60 days after May  
40 9, 1970, the superintendent may appoint the initial  
41 members of the board of directors.

1           **Sec. 6. 24-A MRSA §4438, sub-§1, ¶A**, as amended  
2 by PL 1981, c. 17, is further amended to read:

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

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

10                   (2) Expiration of the policy; or

11                   (3) Replacement or cancellation of the  
12 policy at the instance of the insured;

13           Except as to covered claims arising under  
14 workmen's workers' compensation policies, the  
15 obligation of the association shall not extend to  
16 any portion of a covered claim which exceeds the  
17 lesser of the obligation of the insurer, now  
18 insolvent, under the policy from which the claim  
19 arises, or \$150,000, nor to any claim filed with  
20 the association after the final date for the  
21 filing of claims against the liquidator or  
22 receiver of the insolvent insurer, nor in any  
23 event after the expiration of 3 years from the  
24 date of entry of the final order of liquidation  
25 against that insurer. The association shall pay  
26 in full covered claims arising under workmen's  
27 workers' compensation policies;

28           **Sec. 7. 24-A MRSA §4438, sub-§1, ¶C**, as enacted  
29 by PL 1969, c. 561, is amended to read:

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

34                   (1) The obligations of the association  
35 under paragraph A, subsequent to an insol-  
36 vency;

37                   (2) The expenses of handling covered claims  
38 subsequent to an insolvency;

1 (3) The cost of examinations under section  
2 4445 4444, subsection 2; and

3 (4) Other expenses authorized by this sub-  
4 chapter;

5 Sec. 8. 24-A MRSA §4438, sub-§1, ¶D, as enacted  
6 by PL 1969, c. 561, is amended to read:

7 D. Investigate claims brought against the asso-  
8 ciation and adjust, compromise, settle and pay  
9 covered claims to the extent of the association's  
10 obligation and deny all other claims. The associ-  
11 ation shall pay claims in any order which it may  
12 deem reasonable, including the payment of claims  
13 as they are received from the claimants or in  
14 groups or categories of claims. The association  
15 may review settlements, releases and judgments to  
16 which the insolvent insurer or its insureds were  
17 parties to determine the extent to which ~~such~~  
18 ~~those~~ settlements, releases and judgments may be  
19 properly contested;

20 Sec. 9. 24-A MRSA §4440, sub-§1, as enacted by  
21 PL 1969, c. 561, is amended to read:

22 1. Proportion. The assessments of each member  
23 insurer provided for under section 4438, shall be in  
24 the proportion that the net direct written premiums  
25 of the member insurer for the ~~preceeding~~ preceeding calendar year  
26 calendar year preceding the assessment on the kinds  
27 of insurance in the account bears to the net direct  
28 written premiums of all member insurers for the pre-  
29 eeding calendar year calendar year preceding the  
30 assessment on the kinds of insurance in the account.

31 Sec. 10. 24-A MRSA §4440, sub-§4, as enacted by  
32 PL 1969, c. 561, is amended to read:

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

1 during the period of deferment, no dividend may be  
2 paid to shareholders or policyholders. Deferred  
3 assessments may be paid when that payment will not  
4 reduce capital or surplus below required minimums and  
5 shall be refunded to member insurers in the propor-  
6 tions corresponding to the increase in their assess-  
7 ments by virtue of that deferment.

8       Sec. 11. 24-A MRSA §4440, sub-§5, as enacted by  
9 PL 1969, c. 561, is amended to read:

10       5. Set off. Each member insurer serving as a  
11 servicing facility may set off against any assess-  
12 ment, authorized payments made on covered claims and  
13 expenses incurred in the payment of such those claims  
14 by the member insurer, if they are chargeable to the  
15 account for which the assessment is made.

16       Sec. 12. 24-A MRSA §4444, sub-§6, as amended by  
17 PL 1973, c. 585, §12, is further amended to read:

18       6. Causes. ~~The~~ At the request of the superinten-  
19 dent, the board of directors shall, at the conclusion  
20 of any insurer insolvency in which the association  
21 was obligated to pay covered claims, prepare a report  
22 on the history and causes of such that insolvency,  
23 based on the information available to the associa-  
24 tion, and submit such that report to the superinten-  
25 dent.

26       Sec. 13. 24-A MRSA §4447, as enacted by PL 1969,  
27 c. 561, is repealed and the following enacted in its  
28 place:

29 §4447. Recoupment of assessments

30       The rates and premiums charged for insurance  
31 policies to which this subchapter applies shall,  
32 unless the superintendent establishes recoupment  
33 procedures as provided in this section, include  
34 amounts sufficient to recoup a sum equal to the  
35 amounts paid to the association by the member insurer  
36 less any amounts returned to the member insurer by  
37 the association, and those rates shall not be deemed  
38 excessive because they contain an amount reasonably  
39 calculated to recoup assessments paid by the member  
40 insurer.

1           The superintendent may establish features whereby  
2           the association shall:

3           1. Issue certificates. Issue to each insurer  
4           paying an assessment under this section, a certifi-  
5           cate of contribution, in appropriate forms and terms  
6           as prescribed by the superintendent, for the amount  
7           so paid. All outstanding certificates shall be of  
8           equal dignity and priority without reference to  
9           amounts or dates of issue;

10           2. Record on financial statements. A certifi-  
11           cate of contribution shall be shown by the insurer in  
12           its financial statements as an admitted asset for the  
13           amount and period of time that the superintendent may  
14           approve, provided that unless a longer period has  
15           been allowed by the superintendent, the insurer shall  
16           in any event at its option have the right to so show  
17           a certificate of contribution as an admitted asset at  
18           percentages or original face amount for calendar  
19           years as follows:

20           A. 100% for the calendar year of issuance;

21           B. 80% for the first calendar year after the  
22           year of issuance;

23           C. 60% for the 2nd calendar year after the year  
24           of issuance;

25           D. 40% for the 3rd calendar year after the year  
26           of issuance; and

27           E. 20% for the 4th calendar year after the year  
28           of issuance which shall be the last year each  
29           certificate shall be carried as an asset;

30           3. Offset. The insurer shall offset the amount  
31           written off by it in a calendar year under subsection  
32           2 against its premium tax liability to this State ac-  
33           crued with respect to business transacted in that  
34           year; and

35           4. Recovery of offset sums. Any sums recovered  
36           by the association, representing sums which have  
37           already been written off by contributing insurers and  
38           offset against premium taxes as provided in subsec-



1 tion 3, shall be paid by the association to the  
2 director of revenue who shall handle these funds.

3 Sec. 14. 24-A MRSA §4449, as enacted by PL 1969,  
4 c. 561, is amended to read:

5 §4449. Stay of proceedings; reopening of default  
6 judgments

7 All proceedings in which the insolvent insurer is  
8 a party or is obligated to defend a party in any  
9 court in this State shall be stayed ~~for 60 days from~~  
10 ~~the date the insolvency is determined up to 6 months~~  
11 ~~and any additional time thereafter that may be deter-~~  
12 ~~mined by the court from the date of entry of the~~  
13 ~~final order of liquidation or institution of an~~  
14 ~~ancillary proceeding in this State, whichever is~~  
15 ~~later, to permit proper defense by the association of~~  
16 ~~all pending causes of action. As to any covered~~  
17 ~~claims arising from a judgment under any decision,~~  
18 ~~verdict or finding based on the default of the insol-~~  
19 ~~vent insurer or its failure to defend an insured, the~~  
20 ~~association either on its own behalf or on behalf of~~  
21 ~~such the insured may apply to have such that judg-~~  
22 ~~ment, order, decision, verdict or finding set aside~~  
23 ~~by the same court or administrator that made such the~~  
24 ~~judgment, order, decision, verdict or finding and~~  
25 ~~shall be permitted to defend against such that claim~~  
26 ~~on the merits.~~

27 Sec. 15. 24-A MRSA §4451 is enacted to read:

28 §4451. Prohibition against advertising

29 Any person who makes, publishes or circulates, or  
30 causes to be made, published or circulated, any  
31 statement which uses the existence of the association  
32 for the purpose of sales, solicitation or inducement  
33 to purchase any form of insurance within the scope of  
34 this subchapter shall be fined not more than \$250 for  
35 each offense.

#### 36 STATEMENT OF FACT

37 The purpose of this bill is to more closely con-  
38 form the provisions of the Maine Insurance Guaranty

1 Association Act to the Post-Assessment Property and  
2 Liability Insurance Guaranty Association Act, and to  
3 clarify ambiguities in the current law.

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