## MAINE STATE LEGISLATURE

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	FIRST REGULAR SESSION
	ONE HUNDRED AND TWELFTH LEGISLATURE
Legi	slative Document No. 1488
	Reference to the Committee on Business and Commerce suggested and red printed.
(	JOY J. O'BRIEN, Secretary of the Senate ented by Senator Danton of York. Cosponsored by Representative Aliberti of Lewiston and Representative w of Lewiston.
	STATE OF MAINE
	IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-FIVE
	AN ACT to Amend the Maine Insurance Guaranty Association Act.
	it enacted by the People of the State of Maine as lows:
PL :	Sec. 1. 24-A MRSA §4433, sub-§2, as amended by 1969, c. 561, is further amended to read:
sha:	2. Exceptions. Except, that this subchapter ll not apply as to:
	A. Contracts of reinsurance;
	B. Mortgage guaranty insurance; and
	C. Credit insurance, as defined in section 707, subsection 1, paragraph $I = \frac{1}{2}$ ; and
	D. Insurance contracts procured as surplus lines coverage pursuant to chapter 19.

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Sec. 2. 24-A MRSA §4435, sub-§7, as enacted by
PL 1969, c. 561, is amended to read:

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- 7. Net direct written premiums. "Net direct written premiums" means direct gross premiums written on insurance policies to which this subchapter applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers or premiums written through the United States Government Flood Insurance Program.

The board of directors of the association shall consist of not less than 7 persons serving terms established in the plan of operation. The members of the board shall be selected by member insurers subthe approval of the commissioner Vacancies on the board shall be superintendent. the remaining period of the term in the filled for same manner as initial appointments by a majority vote of the remaining board members, subject to the approval of the superintendent. If no members selected within 60 days after May 9, 1970, the superintendent may appoint the initial members of the beard of directors.

- 27 Sec. 4. 24-A MRSA §4438, sub-§1, ¶A, as amended by PL 1981, c. 17, is further amended to read:
  - A. Be obligated to the extent of covered claims existing prior to the determination of the insurer's insolvency, or arising after such determination but prior to the first to occur of the following events:
    - (1) Expiration of 30 days after the date of such determination of insolvency;
    - (2) Expiration of the policy; or
    - (3) Replacement or cancellation of the policy at the instance of the insured;

Except as to covered claims arising under werkmen's workers' compensation policies, the obligation of the association shall not extend to any portion of a covered claim which exceeds the lesser of the obligation of the insurer, now insolvent, under the policy from which the claim arises, or \$150,000 \$300,000. The association shall pay in full covered claims arising under werkmen's workers' compensation policies;

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

- D. Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims. The association shall pay covered claims in any reasonable order, including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested;
- 24 Sec. 6. 24-A MRSA §4440, sub-§§1 and 4, as en-25 acted by PL 1969, c. 561, are amended to read:
  - 1. <u>Proportion</u>. The assessments of each member insurer provided for under section 4438, shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding same calendar year on the kinds of insurance in the account.
  - 4. Exemptions. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. It is a condition of any deferral that during the period of deferment no dividends

- may be paid by the member insurer to its shareholders 1 2 or policyholders. A deferred assessment is paid when 3 payment will not reduce capital or surplus below re-4 quired levels, and the association shall then refund 5 to its other member insurers an amount equal to the 6 deferred assessment in the proportions corresponding 7 to the increases in their assessments by virtue of 8 that deferment.
- 9 Sec. 7. 24-A MRSA §4444, sub-§6, as amended by 10 PL 1973, c. 585, §12, is further amended to read:
- 11 6. Causes. The At the request of the superin12 tendent the board of directors shall, at the conclu13 sion of any insurer insolvency in which the associa14 tion was obligated to pay covered claims, prepare a
  15 report on the history and causes of such insolvency,
  16 based on the information available to the associa17 tion, and submit such report to the superintendent.

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§4449. Stay of proceedings; reopening of default judgments

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this State shall be stayed for 60 days from the date the insolvency is determined, and may be stayed by the Superior Court for additional time solely as is deemed necessary to permit proper defense by the association of all pending causes of ac-The association shall provide to the superintendent a copy of any such request for stay and supporting documents filed with the court. As to any covered claims arising from a judgment under any deverdict or finding based on the default of cision, the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such ment, order, decision, verdict or finding set aside by the same court or administrator that made judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

## Sec. 9. 24-A MRSA §4451 is enacted to read:

## §4451. Advertising restrictions

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3 Any person who makes, publishes or circulates, or causes to be made, published or circulated, any 4 5 statement which uses the existence of the association 6 for the purpose of sales, solicitation or inducement 7 to purchase any form of insurance shall be deemed to have committed an unfair trade practice which is sub-8 9 ject to a cease and desist order pursuant to 2165 and to any applicable penalty provided by this 10 11 Title.

## 12 STATEMENT OF FACT

The purpose of this bill is to clarify portions of the Maine Insurance Code regulating the Maine Insurance Guaranty Association Act, an organization composed of insurance companies which would become obligated to pay claims involving property, casualty, surety or marine insurance in the event of the insolvency of a member insurer.

Section 1 reaffirms the intent of the current law that surplus lines contracts of insurance are not covered by the Maine Insurance Guaranty Association Act.

Section 2 excludes premiums written through the federal flood insurance program from the definition of "net direct written premiums" utilized to calculate the contribution of each member insurer to the Maine Insurance Guaranty Association.

Section 3 provides that vacancies which arise on the association's board of directors may be filled by a vote of the remaining directors, subject to the approval of the superintendent.

Section 4 makes a significant change which would expand the protections provided by the law. This increases the Maine Insurance Guaranty Association's maximum obligation for a covered claim from \$150,000 to \$300,000. The existing statutory limit is not sufficient in terms of current economic realities.

Section 5 clarifies the association's discretion to pay covered claims in any reasonable order.

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 Section 6 clarifies the base year upon which an assessment is to be levied. Section 6 also provides that a member insurer who received a deferment of an assessment from the association could not pay dividends to its shareholders or policyholders during the period of deferment. This section also establishes a mechanism for refunding excess assessments to other member insurers after a deferred assessment is paid.

Section 7 leaves it to the discretion of the superintendent as to whether the association must prepare a report concerning an insurer's insolvency.

Section 8 provides that the Superior Court may extend the "automatic stay" of pending proceedings involving an insolvent insurer beyond the current 60-day limit if the court finds the extension necessary to permit proper defense by the association.

Section 9 makes it unlawful for any person to advertise the existence of the Maine Insurance Guaranty Association for the purpose of soliciting the sale of insurance.

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