

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 2053

6  
7 H.P. 1456

House of Representatives, February 24, 1986

8 Reported by Representative Brannigan from the Committee on Business  
9 and Commerce. Sent up for concurrence and ordered printed. Approved by  
10 the Legislative Council on September 25, 1985.

EDWIN H. PERT, Clerk

11 Reported from the Joint Standing Committee on Business and Commerce  
under Joint Rule 19.

12 STATE OF MAINE  
13

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

17 AN ACT Pertaining to the Establishment of  
18 Mandatory Risk-sharing Plans.  
19

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

22 24-A MRSA §2325-A is enacted to read:

23 §2325-A. Mandatory risk-sharing plans

24 1. Establishment of plans. If the superintend-  
25 ent finds, after notice and hearing, that in this  
26 State any of the types of insurance listed in this  
27 subsection are not readily available in the voluntary  
28 market and that the public interest requires the  
29 availability, he may by rule promulgate plans to pro-  
30 vide the insurance coverage for any risks in this  
31 State which are equitably entitled to, but otherwise  
32 unable to obtain, the coverage or he may call upon  
33 industry to prepare plans for his approval:

34 A. Day-care and nursery liability;

1           B. Liquor liability; and

2           C. Municipal liability and liability for public  
3           entities.

4           2. Purposes and contents of risk-sharing plans.  
5           Any plan promulgated or prepared under this section  
6           shall:

7           A. Give consideration to:

8                   (1) The need for adequate and readily ac-  
9                   cessible coverage;

10                   (2) Alternative methods of improving the  
11                   market affected;

12                   (3) The inherent limitation of the insur-  
13                   ance mechanism;

14                   (4) The need for reasonable underwriting  
15                   standards; and

16                   (5) The requirement of reasonable loss pre-  
17                   vention measures;

18           B. Establish procedures that will create minimum  
19           interference with the voluntary market;

20           C. Spread the burden imposed by the plan equita-  
21           bly and efficiently within the industry; and

22           D. Establish procedures for applicants and par-  
23           ticipants to have grievances reviewed by an im-  
24           partial body.

25           3. Persons required to participate. Each plan  
26           shall require participation by all insurers autho-  
27           rized in this State to write the kinds of insurance  
28           covered by the specific plans and all agents licensed  
29           to represent the insurers for the kinds of business  
30           covered by the specific plans, except that the super-  
31           intendent may exclude classes of insurers or agents  
32           for administrative convenience or because it is not  
33           equitable or practicable to require them to partici-  
34           pate in the plan.

1           4. Voluntary participation. The plan may pro-  
2 vide for optional participation by insurers not re-  
3 quired to participate as provided in subsection 3.

4           5. Classification and rates. Each plan shall  
5 provide for the method of classifying risks and mak-  
6 ing and filing rates applicable to the plan.

7           6. Basis of participation. The plan shall spec-  
8 ify the basis of participation of insurers and agents  
9 and the conditions under which risks must be ac-  
10 cepted.

11           7. Duty to provide service. Every participating  
12 insurer and agent shall provide to any person seeking  
13 coverages of kinds available in the plans the ser-  
14 vices prescribed in the plans, including full infor-  
15 mation on the requirements and procedures for obtain-  
16 ing coverage under the plans whenever the business is  
17 not placed in the voluntary market.

18           8. Commission rates. The superintendent shall  
19 determine reasonable and adequate commission rates to  
20 be paid to agents or brokers for coverage written un-  
21 der this chapter. In determining the reasonableness  
22 and adequacy of the commission rates, the superin-  
23 tendent shall consider the commission rates paid on  
24 similar coverage in the normal market.

25           9. Provisions of marketing facilities. If the  
26 superintendent finds that the lack of cooperating in-  
27 surers or agents in an area makes the functioning of  
28 the plan difficult, he may order that the plan ap-  
29 point agents in such a manner and on such terms as he  
30 designates or take other appropriate steps to insure  
31 that service is available.

32           10. Transition. Procedures established under  
33 the existing assigned risk plan, as provided in sec-  
34 tion 2325, subsection 2, shall continue in effect  
35 unless changed as provided in this section.

36           11. Application. Any mandatory risk-sharing  
37 plan created as required by this section shall not  
38 issue any policies with an inception date one year  
39 after the initial policy issue date or anniversary of  
40 the plan, unless the superintendent has found, after

1 notice and hearing, that the type of insurance is not  
2 readily available in the voluntary market and that  
3 public interest requires renewal of the plan.

4 STATEMENT OF FACT

5 This bill adds a new section to the Maine Insur-  
6 ance Code which will give the Superintendent of In-  
7 surance the authority to establish a mandatory risk-  
8 sharing plan, popularly known as a JUA or Joint Un-  
9 derwriting Association, whenever needed liability in-  
10 surance in certain areas is not available in the vol-  
11 untary market and public interest requires the avail-  
12 ability. The bill applies to liability insurance for  
13 day care, liquor, municipalities and public entities.  
14 These are areas where there have been some problems  
15 in availability of liability insurance recently.

16 Since these plans require insurers to partici-  
17 pate, certain limitations are placed on the superin-  
18 tendent. The bill requires notice and hearing before  
19 any plan can be established and limits the duration  
20 of any plan to one year.

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