

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 810

S.P. 284

In Senate, March 17, 1987

Reference to the Committee on Banking and Insurance suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate  
Presented by Senator THERIAULT of Aroostook.  
Cosponsored by Representative ALLEN of Washington,  
Representative RACINE of Biddeford.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Create the Maine Property and  
Casualty Joint Underwriting Association.

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

Sec. 1. 5 MRSA §12004, sub-§8, ¶A, sub-¶(15-A) is enacted to read:

<u>(15-A) Insurance</u>	<u>Maine Property and Casualty Joint Underwriting Association-Board of Directors</u>	<u>Expenses Only</u>	<u>24 MRSA</u>
			<u>\$2455</u>

Sec. 2. 24 MRSA c. 20, as amended, is repealed.

1 Sec. 3. 24 MRSA c. 20-A is enacted to read:

2 CHAPTER 20-A

3 MAINE PROPERTY AND CASUALTY JOINT

4 UNDERWRITING ASSOCIATION ACT

5 §2451. Title

6 This chapter shall be known and may be cited as  
7 the "Maine Property and Casualty Joint Underwriting  
8 Association Act."

9 §2452. Scope

10 1. Application. This chapter applies to the  
11 following areas of property and casualty insurance:

12 A. Day care center liability;

13 B. Liquor law liability;

14 C. Officers and directors of nonprofit organiza-  
15 tions' liability;

16 D. Product liability;

17 E. Nurse midwife liability;

18 F. Whitewater rafting company liability;

19 G. Commercial motor vehicle liability;

20 H. Medical malpractice liability; and

21 I. Any other area of property and casualty lia-  
22 bility insurance which the Bureau of Insurance  
23 deems appropriate.

24 2. Exceptions. This chapter does not apply to:

25 A. Private passenger motor vehicle insurance;

26 B. Environmental impairment liability insurance;  
27 and

1           C. Workers' compensation insurance.

2           §2453. Definitions

3           As used in this chapter, unless the context oth-  
4           erwise indicates, the following terms have the fol-  
5           lowing meanings.

6           1. Association. "Association" means the Maine  
7           Property and Casualty Joint Underwriting Association  
8           established pursuant to this chapter.

9           2. Board. "Board" means the Board of Directors  
10           of the Maine Property and Casualty Joint Underwriting  
11           Association.

12           3. Director. "Director" means the Director of  
13           the Maine Property and Casualty Joint Underwriting  
14           Association.

15           4. Superintendent. "Superintendent" means the  
16           Superintendent of Insurance.

17           §2454. Creation of association

18           1. Creation. There is created a nonprofit legal  
19           entity to be known as the Maine Property and Casualty  
20           Joint Underwriting Association. Every insurer autho-  
21           riized to write and engage in writing commercial prop-  
22           erty and casualty insurance in this State shall be a  
23           member of the association and remain a member as a  
24           condition of its authority to transact business in  
25           this State. The association shall perform its func-  
26           tions under the plan of operation established and ap-  
27           proved under section 2459 and shall exercise its pow-  
28           ers through a board of directors established under  
29           section 2455.

30           2. Supervision of association. The association  
31           shall come under the immediate supervision of the su-  
32           perintendent and shall be subject to the applicable  
33           provisions of the insurance laws of this State.

34           §2455. Board of directors

35           1. Membership. The board of directors of the  
36           association, as established in Title 5, section

1 12004, subsection 8, paragraph A, subparagraph  
2 (15-A), shall consist of 4 members appointed by the  
3 superintendent, 2 of whom shall be associated with  
4 the insurance industry and 2 of whom shall not be as-  
5 sociated with the insurance industry. The superin-  
6 tendent shall be an ex officio member of the board,  
7 act as chairman and vote only in the case of a tie.

8 2. Length of term. Initially, one member asso-  
9 ciated with the insurance industry and one member not  
10 associated with the insurance industry shall each  
11 serve a term of 2 years. The remaining 2 initial  
12 members and all members appointed thereafter shall  
13 serve terms of 4 years. A vacancy on the board  
14 shall be filled by the superintendent for the unex-  
15 pired term.

16 3. Quorum. Three members, not including the su-  
17 perintendent, shall constitute a quorum.

18 4. Reimbursements. Members of the board may be  
19 reimbursed from the assets of the association for ex-  
20 penditures incurred by them as members of the board of  
21 directors, but members of the board shall not be com-  
22 pensated otherwise by the association for their ser-  
23 vices.

24 §2456. Powers and duties of association

25 In addition to the powers and duties enumerated  
26 in this chapter, the association may:

27 1. Information. Require insurance companies and  
28 the Bureau of Insurance to provide information in a  
29 timely fashion;

30 2. Policy writing. Pursuant to the provisions  
31 of this chapter and the plan of operations with re-  
32 spect to liability insurance and on behalf of its  
33 members, issue or cause to be issued policies of in-  
34 surance to applicants, including incidental coverage  
35 and subject to limits as specified in the plan of co-  
36 operation, underwrite that insurance and adjust and  
37 pay losses with respect to the insurance or appoint  
38 service companies to perform those functions, assume  
39 reinsurance from its members and cede reinsurance;

1           3. Enter into contracts. Enter into such con-  
2 tracts as necessary or proper to carry out the provi-  
3 sions and purposes of this chapter;

4           4. Sue. Sue or be sued, including taking any le-  
5 gal actions necessary or proper for recovery of any  
6 unpaid assessments under section 2460;

7           5. Employ personnel. Employ or retain such per-  
8 sons as necessary to handle the financial transac-  
9 tions of the association and to perform such other  
10 functions as become necessary or proper under this  
11 chapter; and

12           6. Other powers. Do all things necessary to  
13 carry out the purposes of this chapter.

14       §2457. Powers and duties of board of directors

15           1. General rule. Whenever the board, on its own  
16 motion or on petition of persons seeking coverage,  
17 determines that more than 5% of standard risks in any  
18 line or subline of insurance specified in section  
19 2452, subsection 1, cannot obtain coverage through  
20 the voluntary market at standard rates, the board  
21 shall implement the provisions of section 2458 and  
22 provide for adequate coverage. Whenever the board  
23 determines that coverage has been available to 95% or  
24 more of the standard risks in any line or subline of  
25 insurance for at least 6 consecutive months, the plan  
26 under section 2458 shall be discontinued and insur-  
27 ance coverage obtained in the voluntary market at  
28 standard rates.

29           2. Application process. Any standard risk who  
30 is unable to obtain coverage may petition the board  
31 to provide insurance in a certain line or subline and  
32 the board, after consideration of the extent of the  
33 problem based on data obtained from the bureau and  
34 any other appropriate sources, shall render a deci-  
35 sion based on the petition within 45 days.

36           3. Risk management program. The board shall  
37 adopt a program for risk management for each line or  
38 subline of insurance to be offered coverage. Compli-  
39 ance with the risk management program shall be a con-  
40 dition precedent to obtaining and maintaining cover-

1 age from the board-approved plan.

2 4. Separation of funds. The board shall, at its  
3 discretion, shall create separate accounts for each  
4 line or subline of insurance plan that it creates and  
5 shall not commingle funds.

6 §2458. Casualty insurance and risk apportionment  
7 plans

8 1. Plan. The board, after consultation with  
9 property and casualty insurers transacting business  
10 in this State, shall adopt a plan or plans for the  
11 equitable apportionment among those insurers of prop-  
12 erty and casualty liability insurance coverage for  
13 individuals or groups who are standard risks, but are  
14 unable to procure the coverage through the voluntary  
15 market at standard rates or through a statutorily ap-  
16 proved plan authorized by the board or the bureau.  
17 The board may adopt a joint underwriting plan which  
18 shall provide for one or more designated insurers  
19 able and willing to provide policyholder and claim  
20 services, including the issuance of insurance poli-  
21 cies, to act on behalf of all other insurers required  
22 to participate in the joint underwriting plan. Any  
23 joint underwriting plan adopted shall provide for the  
24 equitable apportionment of any profits realized, or  
25 losses and expenses incurred, among participating in-  
26 surers. The plan shall include, but not be limited  
27 to:

28 A. Rules for the classification of risks and  
29 rates which reflect to the maximum extent possi-  
30 ble the past loss experience and prospective loss  
31 experience of insureds in this State;

32 B. A rating plan which reasonably reflects the  
33 prior claims experience of the insureds; and

34 C. Excess coverage by insureds if the board, in  
35 its discretion, requires that coverage by insur-  
36 ers participating in the joint underwriting plan.

37 2. Premium contingency assessment. If an under-  
38 writing deficit exists at the end of the year the  
39 plan is in effect, each policyholder shall pay to the  
40 joint underwriting plan a premium contingency assess-

1 ment not to exceed 1/5 of the premium payment paid by  
2 the policyholder for that year. The joint underwrit-  
3 ing plan shall pay no further claims on any policy  
4 for which the policyholder fails to pay the premium  
5 contingency assessment.

6 3. Adjustment of rates. Any deficit sustained  
7 under the plan shall first be recovered through a  
8 premium contingency assessment. Concurrently, the  
9 rates for insureds shall be adjusted for the next  
10 year to be actuarially sound in conformance with  
11 rules of the bureau.

12 4. Proportional recovery. If there is any re-  
13 maining deficit under the plan after maximum collec-  
14 tion of the premium contingency assessment, this def-  
15 icit shall be recovered from the companies participa-  
16 ting in the plan in the proportion that the net di-  
17 rect premiums of each member written during the pre-  
18 ceding calendar year bears to the aggregate net di-  
19 rect premiums written in this State by all members of  
20 the joint underwriting plan.

21 5. Required participation. Upon adoption of a  
22 plan, all property and casualty liability insurers  
23 shall subscribe to and participate in the plan as a  
24 condition of doing business in this State.

25 §2459. Plan of operation

26 1. Proposed plan. Within 30 days following the  
27 creation of the association, the director of the as-  
28 sociation shall submit to the superintendent, for his  
29 review, a proposed plan of operation consistent with  
30 this chapter.

31 2. Provisions. The plan of operation shall pro-  
32 vide for economic, fair and nondiscriminatory admin-  
33 istration, prompt and efficient provision of liabili-  
34 ty insurance and procedures for petitioning the board  
35 under section 2457 and shall contain other provi-  
36 sions, including, but not limited to, preliminary as-  
37 essment of all members for initial expenses neces-  
38 sary to commence operations, establishment of neces-  
39 sary facilities, management of the association, as-  
40 essment of members to defray losses and expenses,  
41 commission arrangements, reasonable and objective un-



1 derwriting standards, acceptance and cession of rein-  
2 surance, appointment of servicing carrier or other  
3 servicing arrangements and procedures for determining  
4 amounts of insurance to be provided by the associa-  
5 tion.

6 3. Approval. The plan of operation shall be  
7 subject to approval by the superintendent after con-  
8 sultation with members of the association, represen-  
9 tatives of the public and other affected individuals  
10 and organizations. If the superintendent disapproves  
11 all or any part of the proposed plan of operation,  
12 the directors, within 10 days, shall submit for re-  
13 view an appropriate revised plan of operation or part  
14 of such a plan, as the case may be. The plan of op-  
15 eration approved or promulgated by the superintendent  
16 shall become effective and operational upon order of  
17 the superintendent.

18 4. Amendments. Amendments to the plan of opera-  
19 tion may be made by the directors of the association,  
20 subject to the approval of the superintendent, or  
21 shall be made at the direction of the superintendent.

22 §2460. Policy forms and rates

23 1. Requirements. No policy form may be used by  
24 the association unless it has been filed with the su-  
25 perintendent and either he has approved it or 30 days  
26 have elapsed and he has not disapproved it as mis-  
27 leading or violative of public policy.

28 2. Cancellation. The association may cancel any  
29 of its policies in the event of nonpayment of any  
30 premium or premium contingency assessment by mailing  
31 or delivering, to the insured at the address shown on  
32 the policy, notice stating when, not less than 15  
33 days thereafter, cancellation shall be effective.

34 3. Rates. The rates, rating plan, rating rules,  
35 rating classifications and territories applicable to  
36 the insurance written by the association, and statis-  
37 tics relating thereto, shall be subject to Title  
38 24-A, chapter 25, giving due consideration to the  
39 past and prospective loss and expense experiences for  
40 the lines or sublines of insurance involved, trends  
41 in the frequency and severity of losses, the invest-

1 ment income of the association and other such infor-  
2 mation as the superintendent may require. All rates  
3 shall be on an actuarially-sound basis and calculated  
4 to be self-supporting.

5 §2461. Assessments

6 For the purpose of providing funds necessary to  
7 carry out the powers and duties of the association,  
8 the board of directors shall assess all property and  
9 casualty insurance companies licensed to do business  
10 in this State, based pro rata on premiums written in  
11 this State. The costs shall be recoverable from pre-  
12 miums written. The contribution system shall be es-  
13 tablished by the board under section 2459.

14 §2462. Annual statements

15 The association shall file in the office of the  
16 superintendent annually, not later than March 1st, a  
17 statement which shall contain information with re-  
18 spect to its transactions, conditions, operations and  
19 affairs during the preceding year. The statement  
20 shall contain such matters and information as are  
21 prescribed and shall be in such form as approved by  
22 the superintendent. The superintendent may, at any  
23 time, require the association to furnish additional  
24 information with respect to its transactions, condi-  
25 tions or any matter connected therewith considered by  
26 the superintendent to be material and of assistance  
27 in evaluating the scope, operation and experience of  
28 the association.

29 §2463. Examinations

30 The superintendent shall make an examination of  
31 the affairs of the association at least annually.  
32 The examination shall be conducted and the report  
33 filed in the manner prescribed in Title 24-A, sec-  
34 tions 221 to 227. The expense of every such examina-  
35 tion shall be borne and paid by the association.

36 §2464. Privileged communications

37 There shall be no liability on the part of the  
38 association and no cause of action of any nature  
39 shall arise against the association or its agents or

1 employees, members of the board of directors, the su-  
2 perintendent or his representatives or any other per-  
3 son for any statements made in good faith by them  
4 during any proceedings or concerning any matters  
5 within the scope of this chapter.

6 STATEMENT OF FACT

7 This bill addresses the current liability insur-  
8 ance crisis by creating a mechanism to provide prop-  
9 erty and casualty insurance in areas where obtaining  
10 such insurance is difficult to obtain.

11 Section 2 repeals the authority to create a joint  
12 underwriting association for medical malpractice.  
13 This authority expired in 1981. The new chapter cre-  
14 ates a similar mechanism for several lines of liabil-  
15 ity insurance.

16 The Maine Revised Statutes, Title 20-A, section  
17 2452, lists areas of insurance which have been diffi-  
18 cult to obtain in recent years and which require in-  
19 surance as a condition for obtaining a license from  
20 the State. It allows for inclusion of other areas  
21 upon recommendation by the Superintendent of Insur-  
22 ance. It excludes certain areas of coverage.

23 Title 20-A, section 2454 establishes a joint un-  
24 derwriting association. All property and casualty  
25 insurers in the State must become and remain members  
26 of this association.

27 Title 20-A, section 2455 establishes a board of  
28 directors, composed of 2 members from the insurance  
29 industry, 2 nonindustry members and the superintend-  
30 ent, ex officio, as board chairman. Board members  
31 serve terms of 4 years.

32 Title 20-A, section 2456 lists powers and duties  
33 of the association, including the creation of a plan  
34 of operations, the obtaining of information from in-  
35 surance companies and the writing of policies in des-  
36 ignated areas.

37 Title 20-A, section 2457 establishes the process

1 for creating a joint underwriting plan. The board  
2 may create a plan when it determines that more than  
3 5% of the standard risks in any line cannot obtain  
4 coverage. This bill also establishes the petitioning  
5 process for a standard risk to receive coverage and a  
6 mandatory risk management program for those under the  
7 plan's coverage.

8 Title 20-A, section 2458 contains detailed provi-  
9 sions for the establishment of a joint underwriting  
10 plan. It provides for a limited premium contingency  
11 assessment in the event of an underwriting deficit.

12 Title 20-A, section 2459 requires the board of  
13 the association to develop a plan of operation which  
14 will provide for economic, fair and nondiscriminatory  
15 administration, for the prompt provision of insurance  
16 and for administrative procedures.

17 Title 20-A, section 2460 requires conformity with  
18 policy forms, rating and cancellation requirements.

19 Title 20-A, section 2461 provides for an assess-  
20 ment of member companies to cover start-up costs and  
21 ongoing expenses of administration.

22 Title 20-A, sections 2462 and 2463 provide for  
23 annual statements from the association and annual ex-  
24 aminations by the superintendent.

25 Title 20-A, section 2464 provides immunity for  
26 statements made in good faith in connection with the  
27 actions of the association.

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