

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2119

S.P. 810 In Senate, January 21, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 26.
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 Senator COLLINS of Aroostook.

STATE OF MAINE

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

**AN ACT to Amend the Maine Insurance
Guaranty Association Law.**

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3

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

6 **Sec. 1.** 24-A M RSA §4433, as amended by PL
7 1985, c. 279, §1, is repealed.

1 Sec. 2. 24-A MRSA §4433-A is enacted to read:

2 §4433-A. Scope

3 1. Application. This subchapter applies to all
4 kinds of direct insurance, but does not apply to the
5 following:

6 A. Life, annuity, health or disability insurance;

7 B. Mortgage guaranty, financial guaranty or other
8 forms of insurance offering protection against
9 investment risks;

10 C. Fidelity or surety bonds, or any other bonding
11 obligations;

12 D. Credit insurance;

13 E. Insurance of warranties or service contracts;

14 F. Title insurance;

15 G. Ocean marine insurance;

16 H. Any transaction or combination of transactions
17 between a person, including affiliates of that
18 person, and an insurer, including affiliates of
19 that insurer, which involves the transfer of
20 investment or credit risk unaccompanied by the
21 transfer of insurance risk; and

22 I. Insurance contracts procured as surplus lines
23 coverage pursuant to chapter 19.

24 Sec. 3. 24-A MRSA §4435, sub-§§ 1-A, 3-A and
25 3-B are enacted to read:

26 1-A. Affiliate. "Affiliate" means a person who,
27 directly or indirectly, through one or more
28 intermediaries, controls, is controlled by or is under
29 common control with an insolvent insurer on December
30 31st of the year next preceding the date the insurer
31 becomes an insolvent insurer.

1 3-A. Claimant. "Claimant" means any insured
2 making a first party claim or any person instituting a
3 liability claim, provided that no person who is an
4 affiliate of the insolvent insurer may be a claimant.

5 3-B. Control. "Control" means the possession,
6 direct or indirect, of the power to direct or cause
7 the direction of the management and policies of a
8 person, whether through the ownership of voting
9 securities, by contract other than a commercial
10 contract for goods or nonmanagement services, or
11 otherwise, unless the power is the result of an
12 official position with or corporate office held by the
13 person. Control shall be presumed to exist if any
14 person, directly or indirectly, owns, controls, holds
15 with the power to vote or holds proxies representing
16 10% or more of the voting securities of any other
17 person. This presumption may be rebutted by showing
18 that control does not in fact exist.

19 Sec. 4. 24-A MRSA §4435, sub-§4, as amended by
20 PL 1973, c. 625, §159, is further amended to read:

21 4. Covered Claim. "Covered claim" means an
22 unpaid claim, including one for unearned premiums,
23 submitted by a claimant, arising under and within the
24 coverage and applicable limits of a policy of a kind
25 of insurance referred to in section 4433 4433-A to
26 which this subchapter applies issued by an insurer
27 which becomes an insolvent insurer after May 9, 1970,
28 and where when:

29 A. The claimant or insured is a resident of this
30 State at the time of the insured event or provided
31 that, for entities other than an individual, the
32 residence of a claimant or insured is the state in
33 which its principal place of business is located
34 at the time of the insured event; or

35 B. The property from which the claim arises is
36 permanently located in this State.

37 "Covered claim" shall does not include any amount
38 awarded as punitive or exemplary damages; sought as a
39 return of premium under any retrospective rating plan;

1 or due any insurer, reinsurer, insurance pool or
2 underwriting association, as subrogation recoveries or
3 otherwise.

4 Sec. 5. 24-A MRSA §4435, sub-§5, as enacted by
5 PL 1969, c. 561, is amended to read:

6 5. Insolvent insurer. "Insolvent insurer" means
7 an insurer:

8 A. Authorized to transact insurance in this State
9 either at the time the policy was issued or when
10 the insured event occurred, and against whom an
11 order of liquidation with a finding of insolvency
12 has been entered after May 9, 1970, by a court of
13 competent jurisdiction in the insurer's state of
14 domicile or under the provisions of chapter 57 and
15 which order of liquidation has not been stayed or
16 been the subject of a writ of supersedeas or other
17 comparable order.

18 B. Determined to be insolvent by a court of
19 competent-jurisdiction.

20 Sec. 6. 24-A MRSA §4435, sub-§9 is enacted to
21 read:

22 9. Person. "Person" means any individual,
23 corporation, partnership, association or voluntary
24 organization.

25 Sec. 7. 24-A MRSA §4436, sub-§1, as enacted by
26 PL 1969, c. 561, is amended to read:

27 1. The ~~workmen's~~ workers' compensation
28 insurance account;

29 Sec. 8. 24-A MRSA §4438, sub-§1, ¶A, as
30 amended by PL 1985, c. 279, §4, is repealed and the
31 following enacted in its place:

32 A. Be obligated to pay covered claims existing
33 prior to the determination of the insolvency
34 arising within 30 days after the determination of
35 insolvency, or before the policy expiration date

1 if less than 30 days after the determination of
2 insolvency, or before the insured replaces the
3 policy or causes its cancellation, if within 30
4 days of the determination. The obligation shall
5 be satisfied by paying to the claimant an amount
6 as follows:

7 (1) The full amount of a covered claim for
8 benefits under workers' compensation
9 insurance coverage;

10 (2) An amount not exceeding \$10,000 per
11 policy for a covered claim for the return of
12 an unearned premium; or

13 (3) An amount not exceeding \$300,000 per
14 claimant for all other covered claims.

15 In no event is the association obligated to pay a
16 claimant an amount in excess of the obligation of
17 the insolvent insurer under the policy or coverage
18 from which the claim arises. Notwithstanding any
19 other provisions of this subchapter, a covered
20 claim shall not include any claim filed with the
21 association after the final date set by the court
22 for the filing of claims against the liquidator or
23 receiver of an insolvent insurer. The association
24 shall pay only that amount of each unearned
25 premium which is in excess of \$100.

26 Sec. 9. 24-A MRSA §4441, sub-§1, ¶A, as
27 enacted by PL 1969, c. 561, is amended to read:

28 A. Notify the association of the existence of an
29 insolvent insurer not later than 3 days after he
30 receives notice of the determination of the
31 insolvency. The association shall be entitled to
32 a copy of any complaint seeking an order of
33 liquidation with a finding of insolvency against a
34 member insurer at the same time that the complaint
35 is filed with a court of competent jurisdiction;
36 and

37 Sec. 10. 24-A MRSA §4442, as enacted by PL
38 1969, c. 561, is repealed and the following enacted in

1 its place:

2 §4442. Effect of paid claims

3 1. Assignment of rights. Any person recovering
4 on a covered claim under this subchapter shall be
5 deemed to have assigned his rights under the policy to
6 the association to the extent of his recovery from the
7 association. Every insured or claimant seeking the
8 protection of this subchapter shall cooperate with the
9 association to the same extent as that person would
10 have been required to cooperate with the insolvent
11 insurer. The association shall have no cause of
12 action against the insured of the insolvent insurer
13 for any sums it has paid out, except such causes of
14 action as the insolvent insurer would have had if
15 those sums had been paid by the insolvent insurer, and
16 except as provided in subsection 2. In the case of an
17 insolvent insurer operating on a plan with assessment
18 liability, payment of claims by the association shall
19 not operate to reduce the liability of insureds to the
20 receiver, liquidator or statutory successor for unpaid
21 assessments.

22 2. Association's right to recover. The
23 association has the right to recover from the
24 following persons the amount of any covered claim paid
25 on behalf of that person pursuant to this subchapter:

26 A. Any insured whose net worth on December 31st
27 of the year next preceding the date the insurer
28 becomes an insolvent insurer exceeds \$50 million
29 and whose liability obligations to other persons
30 are satisfied in whole or in part by payments made
31 under this subchapter; and

32 B. Any person who is an affiliate of the
33 insolvent insurer and whose liability obligations
34 to other persons are satisfied in whole or in part
35 by payments made under this subchapter.

36 3. Effect of settlement. The receiver,
37 liquidator or statutory successor of an insolvent
38 insurer shall be bound by settlements of covered

1 claims by the association or a similar organization in
2 another state. The court having jurisdiction shall
3 grant those claims priority equal to that which the
4 claimant would have been entitled in the absence of
5 this subchapter against the assets of the insolvent
6 insurer. The expenses of the association or similar
7 organization in handling claims shall be accorded the
8 same priority as the liquidator's expenses.

9 4. Statements filed. The association shall file
10 periodically with the receiver or liquidator of the
11 insolvent insurer, statements of the covered claims
12 paid by the association and estimates of anticipated
13 claims on the association which shall preserve the
14 rights of the association against the assets of the
15 insolvent insurer.

16 Sec. 11. 24-A MRSA §4443, as enacted by PL
17 1969, c. 561, is repealed and the following enacted in
18 its place:

19 §4443. Nonduplication of recovery

20 1. Insurance policy. Any person having a claim
21 against an insurer under any provision in an insurance
22 policy, other than that of an insolvent insurer, which
23 is also a covered claim, shall be required to exhaust
24 first his right under the policy. Any amount
25 otherwise payable on a covered claim under this
26 subchapter shall be reduced by the amount of any
27 recovery under the insurance policy.

28 2. Governmental insurance or guaranty program.
29 Any person having a claim or legal right of recovery
30 under any governmental insurance or guaranty program,
31 which is also a covered claim, shall be required to
32 exhaust first his right under the program. Any amount
33 payable on a covered claim under this subchapter shall
34 be reduced by the amount of any recovery under that
35 program.

36 3. Insurance guaranty association. Any person
37 having a claim which may be recovered from more than
38 one insurance guaranty association or its equivalent

1 shall seek recovery first from the association of the
2 place of residence of the insured, except that if it
3 is a first party claim for damage to property with a
4 permanent location, that person shall seek recovery
5 first from the association of the location of the
6 property, and if it is a workers' compensation claim,
7 that person shall seek recovery first from the
8 association of the residence of the claimant. Any
9 recovery under this subchapter shall be reduced by the
10 amount of recovery from any other insurance guaranty
11 association or its equivalent.

12 Sec. 12. 24-A MRSA §4444, as amended by PL
13 1973, c. 585, §12, is further amended to read:

14 §4444. Prevention of insolvencies

15 To aid in the detection and prevention of insurer
16 insolvencies:

17 1. Recommendation. The board of directors, upon
18 majority vote, shall notify the superintendent of
19 any information indicating that any member insurer may
20 be insolvent or in a financial condition hazardous to
21 policyholders or the public. may:

22 A. Make recommendations to the superintendent for
23 the detection and prevention of insurer
24 insolvencies; and

25 B. Respond to requests by the superintendent to
26 discuss and make recommendations regarding the
27 status of any member insurer whose financial
28 condition may be hazardous to policyholders or the
29 public. These recommendations shall not be public
30 documents; and

31 2. Examination. The board of directors may,
32 upon majority vote, request that the superintendent
33 order an examination of any member insurer which the
34 board in good faith believes may be in a financial
35 condition hazardous to policyholders or the public.
36 Within 30 days of the receipt of such request, the
37 superintendent shall begin such examination. The cost
38 of the examination shall be paid by the association

1 and the examination report shall be treated as are
2 other examination reports. In no event shall the
3 examination report, or any portion thereof, be
4 released to the board of directors prior to its
5 release to the public, but this shall not preclude the
6 superintendent from complying with subsection 3. The
7 superintendent shall notify the board of directors
8 when the examination is completed. The request for an
9 examination shall be kept on file by the
10 superintendent but shall not be open to public
11 inspection prior to the release of the examination
12 report, or part thereof to the public, in accordance
13 with-section-227.

14 3. Report. The superintendent shall report to
15 the board of directors when he has reasonable cause to
16 believe that any member insurer examined or being
17 examined at the request of the board of directors may
18 be insolvent or in a financial condition hazardous to
19 policyholders-or-the-public.

20 4. Recommendations. The board of directors
21 may, upon majority vote, make reports and
22 recommendations to the superintendent upon any matter
23 germane to the solvency, liquidation, rehabilitation
24 or conservation of any member insurer. Such reports
25 and recommendations shall not be considered public
26 documents-or-be-open-to-public-inspection.

27 5. Prevention. The board of directors may,
28 upon majority vote, make recommendations to the
29 superintendent for the detection and prevention of
30 insurer-insolvencies.

31 6. Report. At the request of the
32 superintendent the The board of directors shall, at
33 the conclusion of any insurer insolvency in which the
34 association was obligated to pay covered claims,
35 prepare a report on the history and causes of such
36 insolvency, based on the information available to the
37 association, and submit such report to the
38 superintendent.

39 Sec. 13. 24-A MRSA §4449, as amended by PL
40 1985, c. 279, §8, is further amended to read:

1 §4449. Stay of proceedings; reopening of default
2 judgments

3 All proceedings in which the insolvent insurer is
4 a party or is obligated to defend a party in any court
5 in this State shall be stayed for 60 days from the
6 date the insolvency is determined, and may be stayed
7 by the Superior Court for additional time solely as is
8 deemed necessary up to 6 months, and such additional
9 time thereafter as may be determined by the court,
10 from the date the insolvency is determined or an
11 ancillary proceeding is instituted in the State,
12 whichever is later, to permit proper defense by the
13 association of all pending causes of action. The
14 association shall provide to the superintendent a copy
15 of any such request for stay and supporting documents
16 filed with the court. As to any covered claims
17 arising from a judgment under any decision, verdict or
18 finding based on the default of the insolvent insurer
19 or its failure to defend an insured, the association
20 either on its own behalf or on behalf of such insured
21 may apply to have such judgment, order, decision,
22 verdict or finding set aside by the same court or
23 administrator that made such judgment, order,
24 decision, verdict or finding and shall be permitted to
25 defend against such claim on the merits.

26 The liquidator, receiver or statutory successor of
27 an insolvent insurer covered by this subchapter shall
28 permit access by the board of directors, or its
29 authorized representative, to those of the insolvent
30 insurer's records which are necessary for the board to
31 carry out its functions under this subchapter with
32 regard to covered claims. The liquidator, receiver or
33 statutory successor shall provide the board or its
34 representative with copies of these records upon
35 request by the board and at the expense of the board.

36 STATEMENT OF FACT

37 The purpose of this bill is to provide a mechanism

1 for the payment of covered claims under certain
2 insurance policies to avoid excessive delay in payment
3 and to avoid financial loss to claimants or
4 policyholders because of the insolvency of an insurer,
5 to assist in the detection and prevention of insurer
6 insolvencies and to provide an association to assess
7 the cost of such protection among insurers.

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