

MAINE STATE LEGISLATURE

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(AFTER DEADLINE)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2432

H.P. 1779 House of Representatives, March 3, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 27.
Reference to the Committee on Banking and Insurance
suggested and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative STEVENS of Bangor.

Cosponsored by Representative CLARK of Millinocket and
Senator THERIAULT of Aroostook.

STATE OF MAINE

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

1 AN ACT to Create a Joint Underwriting
2 Association for Directors and
3 Officers of Corporations.
4

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

7 24-A MRSA §2325-A is enacted to read:

8 §2325-A. Mandatory risk-sharing plans

1 1. Establishment of plans. If the superintendent
2 determines that there is insufficient voluntary
3 participation in a market assistance plan for any type
4 of insurance listed in this subsection and if the
5 superintendent finds, after notice and hearing, that
6 in this State any of the types of insurance listed in
7 this subsection are not readily available in the
8 voluntary market and the public interest requires the
9 availability, the superintendent may by rule adopt
10 plans or may call upon insurers to submit plans for
11 the superintendent's approval to provide the insurance
12 coverage for any of the following risks in this State
13 which are equitably entitled to coverage, but are
14 otherwise unable to obtain that coverage:

15 A. Directors and officers of nonprofit and for
16 profit corporations.

17 2. Purposes and contents of risk-sharing plans.
18 Any plan adopted or approved under this section shall:

19 A. Give consideration to:

20 (1) The need for readily accessible coverage;

21 (2) Alternative methods of improving the
22 market affected;

23 (3) The inherent limitations of the
24 insurance mechanism;

25 (4) The need for reasonable underwriting
26 standards; and

27 (5) The requirement of reasonable loss
28 prevention measures;

29 B. Establish procedures that will create minimum
30 interference with the voluntary market;

31 C. Provide for participation of insurers subject
32 to each plan in an equitable and efficient manner;
33 and

34 D. Establish procedures for review of complaints

1 by applicants and participants.

2 3. Persons required to participate. Each plan
3 shall require participation by all insurers authorized
4 in this State to write the types of insurance covered
5 by the specific plans. Coverage shall be available
6 through all agents licensed to represent the insurers
7 for the types of business covered by the specific
8 plans, except that the superintendent may exclude
9 classes of insurers or agents for administrative
10 convenience or because it is not equitable or
11 practicable to require them to participate in the plan.

12 A. The term "types of insurance" means those
13 coverages listed in section 707, subsection 1,
14 paragraphs A to N.

15 B. The superintendent may require participation
16 by admitted insurers authorized to write casualty
17 insurance as defined in section 707, subsection 1,
18 if the superintendent determines that those
19 insurers authorized to write the type of insurance
20 covered by a plan have, in the aggregate,
21 insufficient capacity to support the plan.

22 C. If a mandatory risk-sharing plan includes more
23 than one type of insurance within the policy, the
24 superintendent may establish reasonable allocation
25 percentages among the affected types of insurance.

26 D. No insurer with total net worth less than
27 \$5,000,000 may be required to participate in a
28 risk-sharing plan. Insurers under common
29 management or ownership shall constitute a single
30 member for purposes of this limitation.

31 E. The superintendent may exempt an insurer
32 otherwise required to participate in a plan on the
33 basis of financial condition.

34 4. Surplus lines insurers. Insurers which are
35 approved pursuant to section 2007, subsection 2, as
36 surplus lines insurers may be required to participate
37 as servicing carriers in a plan offering coverage
38 which authorized insurers do not have sufficient

1 ability to service. A plan may also provide for
2 participation by surplus lines insurers at their
3 option, but the superintendent shall have the
4 authority to restrict or exclude participation of
5 surplus lines insurers when the superintendent
6 believes their participation is not necessary.

7 5. Classification and rates. Each plan shall
8 provide for the method of classifying risks and making
9 and filing rates applicable to the plan. Any
10 assessments paid by participating insurers to
11 apportion a plan operating deficit may be recouped
12 through the insurers' rates for the kind or kinds of
13 insurance upon which plan participation is determined
14 under subsection 3, including the type of policies
15 issued through the plan, which rate shall not be
16 considered excessive within the meaning of section
17 2303 because it includes a factor for recoupment
18 pursuant to this subsection.

19 6. Basis of participation. The plan shall
20 specify the basis of participation of insurers and
21 agents and the conditions under which risks must be
22 accepted.

23 7. Duty to provide service. Every participating
24 insurer and agent shall provide to any person seeking
25 coverages of the types available in the plans full
26 information on the requirements and procedures for
27 obtaining coverage under the plans whenever the
28 business is not placed in the voluntary market.

29 8. Commission rates. The superintendent shall
30 determine reasonable and adequate commission rates to
31 be paid to agents or brokers for coverage written
32 under this section. In determining the reasonableness
33 and adequacy of the commission rates, the
34 superintendent shall consider the commission rates
35 paid on similar coverage in the voluntary market.

36 9. Provision of marketing facilities. If the
37 superintendent finds that the lack of agents in an
38 area makes the functioning of the plan difficult, the
39 superintendent may order that the plan appoint agents
40 in such a manner and on such terms as

1 superintendent designates or take other appropriate
2 steps to ensure that service is available.

3 10. Continuation of plan. Not less frequently
4 than once a year during the term of a plan, after
5 notice and hearing, the superintendent shall determine
6 whether the type of insurance is readily available in
7 the voluntary market and whether the public interest
8 requires the continuance or renewal of the plan.

9 11. Penalty. Any insurer in violation of this
10 section shall be assessed by the superintendent a
11 civil penalty of not more than \$1,000 for each
12 violation. An insurer commits a separate violation
13 for each day that the violation continues.

14 STATEMENT OF FACT

15 This bill allows the Superintendent of Insurance
16 to require that insurance be available to cover
17 members of boards of directors of profit and nonprofit
18 corporations. Having such insurance would allow
19 people to serve on boards without fear of personal
20 loss.

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