

MAINE STATE LEGISLATURE

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(New Draft of S.P. 810, L.D. 2119)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2609

S.P. 981

In Senate, March 31, 1988

Reported by Senator BUSTIN of Kennebec for the Committee on BANKING AND INSURANCE and printed under Joint Rule 2. Original Bill sponsored by Senator THERIAULT of Aroostook. Cosponsored by: Senator COLLINS of Aroostook.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

1 **AN ACT to Amend the Maine Insurance**
2 **Guaranty Association Law.**
3

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

6 Sec. 1. 24-A MRSA §410, sub-§1, as repealed and
7 replaced by PL 1983, c. 709, §1, is amended to read:

1 1. To qualify for authority to transact any one
 2 kind of insurance, as defined in chapter 9, or
 3 combination of kinds of insurance as shown below, an
 4 insurer shall possess and thereafter maintain
 5 unimpaired paid-in capital stock, if a stock insurer,
 6 or unimpaired basic surplus, if a foreign mutual or a
 7 reciprocal insurer, and when first so authorized shall
 8 possess initial free surplus, all in amounts not less
 9 than as determined from the following table.

10 A health, life and health or multiple line (as
 11 described in section 710) insurer may qualify for a
 12 certificate of authority to transact a legal services
 13 insurance business, as described in chapter 38, if it
 14 is otherwise qualified therefor and possesses and
 15 thereafter maintains, in addition to the amounts
 16 described in the following table, an additional amount
 17 of unimpaired paid-in capital stock, if a stock
 18 insurer, or unimpaired basic surplus, if a foreign
 19 mutual or reciprocal insurer, of not less than
 20 \$500,000.

21 An insurer may qualify for a certificate of authority
 22 to transact solely financial guaranty insurance as
 23 defined in section 709-A, if it is otherwise qualified
 24 therefor and possesses and thereafter maintains
 25 paid-in capital stock in the amount of \$2,500,000 and
 26 initial free surplus in an amount of \$47,500,000 or,
 27 if the insurer is a foreign mutual or reciprocal
 28 insurer, minimum required basic surplus in an amount
 29 of \$2,500,000 and initial free surplus in an amount of
 30 \$47,500,000.

31 32 33	34 35 36 37	31 32 33		31 32 33	
		Stock Insurers		Foreign mutual, Reciprocal Insurers	
	Kind or Kinds of Insurance	Minimum Required Capital Stock	Initial Free Surplus	Minimum Required Basic Surplus	Initial Free Surplus
38	Life	\$1,500,000	\$1,500,000	\$1,500,000*	\$1,500,000*
39	Health	1,000,000	1,000,000	1,000,000	1,000,000

1	Life and				
2	Health	2,500,000	2,500,000	2,500,000*	2,500,000*
3	Casualty	1,500,000	1,500,000	1,500,000	1,500,000
4	Marine and				
5	Transportation	1,500,000	1,500,000	1,500,000	1,500,000
6	Property	1,000,000	1,000,000	1,000,000	1,000,000
7	Surety	1,500,000	1,500,000	1,500,000	1,500,000
8	Title	500,000	500,000	500,000	500,000
9	Multiple line				
10	(as defined in				
11	section 710)	2,500,000	2,500,000	2,500,000	2,500,000
12	Life, and any				
13	one or more				
14	of Property,				
15	Casualty,				
16	Surety, Marine				
17	and Trans-				
18	portation	5,000,000	5,000,000	5,000,000*	5,000,000*

19 * Does not apply as to a reciprocal insurer.

20

21 Except:

22 A. An insurer holding a valid certificate of
23 authority to transact insurance in this State on
24 January 1, 1970, may, if otherwise qualified
25 therefor until January 1, 1989, continue to be so
26 authorized while possessing paid-in capital stock,
27 if a stock insurer, or surplus, if a mutual or
28 reciprocal insurer, as required for such authority
29 immediately prior to January 1, 1970.

30 B. Prior to January 1, 1989, the superintendent
31 shall not authorize such an insurer to transact
32 any other kinds of insurance unless it complies
33 with the requirements as to capital stock, if a
34 stock insurer, or basic surplus, if a mutual or

1 reciprocal insurer, as applied to all kinds of
 2 insurance it proposes to transact, as provided in
 3 the table contained in this paragraph.

4 A health, life and health or multiple line (as
 5 described in section 710) insurer may qualify for
 6 a certificate of authority to transact a legal
 7 services insurance business, as described in
 8 chapter 38, if it is otherwise qualified therefor
 9 and possesses and thereafter maintains, in
 10 addition to the amounts described in the following
 11 table, an additional amount of unimpaired paid-in
 12 capital stock, if a stock insurer, or unimpaired
 13 basic surplus, if a foreign mutual or reciprocal
 14 insurer, of not less than \$500,000.

		Stock Insurers		Foreign mutual, Reciprocal Insurers	
18		Minimum		Minimum	
19	Kind or	Required	Initial	Required	Initial
20	Kinds of	Capital	Free	Basic	Free
21	Insurance	Stock	Surplus	Surplus	Surplus
22	Life	\$500,000	\$1,000,000	\$1,000,000*	\$1,000,000*
23	Health	250,000	250,000	250,000	250,000
24	Life and				
25	Health	500,000	1,000,000	1,000,000*	1,000,000*
26	Casualty	500,000	500,000	500,000	500,000
27	Marine and				
28	Transportation	500,000	500,000	500,000	500,000
29	Property	500,000	500,000	500,000	500,000
30	Surety	500,000	500,000	500,000	500,000
31	Title	150,000	150,000	150,000	150,000
32	Multiple line				
33	(as defined in				
34	section 710)	1,000,000	1,000,000	1,000,000	1,000,000

1 Life, and any
2 one or more
3 of Property,
4 Casualty, Surety,
5 Marine and
6 Transportation 2,000,000 2,000,000 2,000,000* 2,000,000*
7

8 * Does not apply as to a reciprocal insurer.

9 C. Until January 1, 1989, a domestic mutual
10 insurer formed prior to January 1, 1968, and while
11 possessing surplus of not less than \$200,000 may
12 be authorized to transact, in addition to the
13 types of insurance it was transacting prior to
14 July 24, 1984, any other additional kinds of
15 insurance authorized by its charter; subject to
16 those minimum required basic surplus amounts
17 applicable as to foreign mutual insurers as
18 contained in the table in paragraph B, if the
19 insurer is to transact life insurance together
20 with any one or more of property, casualty, surety
21 or marine and transportation insurances.

22 D. Domestic mutual insurers holding a certificate
23 of authority upon January 1, 1989, if otherwise
24 qualified, and possessed of basic surplus in
25 minimum required amounts as contained in the table
26 in this paragraph may continue to be so
27 authorized, provided those insurers continue to
28 possess and maintain unimpaired basic surplus
29 funds as determined in this paragraph and
30 applicable to those lines or kinds of insurance
31 permitted by its certificate of authority
32 immediately prior to January 1, 1989. Upon
33 application by any such insurer and written
34 approval by the superintendent, the insurer's
35 certificate of authority may be extended to permit
36 the writing of other kinds or lines of insurance
37 if the insurer is qualified and possessed of basic
38 surplus funds in amounts contained in the table in
39 this paragraph. A domestic mutual insurer holding
40 a certificate of authority prior to January 1,
41 1989, but which does not possess and maintain

1 basic surplus in the minimum required amounts
2 contained in the table in this paragraph, may
3 continue to be authorized to transact insurance in
4 this State and to write other kinds or lines of
5 insurance, subject to the approval of the
6 superintendent, as long as it maintains 100%
7 reinsurance and has no liabilities.

8 For the purposes of this paragraph, any assuming
9 reinsurer must be a corporation which possesses
10 the ability to exercise control of the ceding
11 insurer, must be an insurance company possessed of
12 a certificate of authority to transact the same
13 kinds of insurance in this State as those assumed
14 and shall file a consolidated annual statement as
15 required by section 423.

16 A health, life and health or multiple line (as
17 described in section 710) insurer may qualify for
18 a certificate of authority to transact a legal
19 services insurance business, as described in
20 chapter 38, if it is otherwise qualified therefor
21 and possesses and thereafter maintains, in
22 addition to the amounts described in the following
23 table, an additional amount of unimpaired paid-in
24 capital stock, if a stock insurer, or unimpaired
25 basic surplus, if a foreign mutual or reciprocal
26 insurer, of not less than \$500,000.

27	Kind or	Domestic Mutual
28	Kinds of Insurance	Insurers
29	Life	\$1,000,000
30	Health	500,000
31	Life and Health	1,250,000
32	Casualty	750,000
33	Marine and Transportation	1,000,000
34	Property	500,000
35	Surety	1,000,000
36	Title	350,000
37	Multiple Line (as defined	
38	in section 710)	1,250,000
39	Life, and any one or more	
40	of Property, Casualty,	
41	Surety, Marine and Transportation	2,500,000

1 E. An insurer which otherwise possesses funds as
2 required under this subsection shall at all times
3 maintain policyholders' surplus, combined paid-in
4 capital stock, if any, and surplus, reasonable in
5 amount, as determined by the superintendent, in
6 relation to the kinds and amount of insurance it
7 has in force, or being written and retained by it,
8 net of applicable reinsurance. In making any such
9 determination, the superintendent shall give due
10 consideration to any applicable standards approved
11 or adopted by the National Association of
12 Insurance Commissioners and to the desirability of
13 substantial uniformity as to such requirements
14 among the respective states.

15 Sec. 2. 24-A MRS A §709-A is enacted to read:

16 §709-A. Financial guaranty insurance defined

17 The term "financial guaranty insurance" includes
18 any insurance under which loss is payable upon proof
19 of occurrence of any of the following events to the
20 damage of an insured claimant or obligee:

21 1. Failure of any obligor or obligors on any debt
22 instrument or other monetary obligation, including
23 common or preferred stock, to pay when due the
24 principal, interest, dividend or purchase price of the
25 instrument or obligation, whether the failure is the
26 result of a financial default or insolvency and
27 whether or not the obligation is incurred directly or
28 as guarantor by, or on behalf of, another obligor
29 which has also defaulted;

30 2. Changes in the level of interest rates,
31 whether short term or long term, or in the difference
32 between interest rates existing in various markets;

33 3. Changes in the rate of exchange of currency,
34 or from the inconvertibility of one currency into
35 another for any reason; or

36 4. Changes in the value of specific assets,
37 including the residual value of property at the

1 termination of a lease.

2 Sec. 3. 24-A MRSA §4433, sub-§1, ¶D, as enacted
3 by PL 1969, c. 561, is amended to read:

4 D. Marine and transportation insurance, as
5 defined in section 708, except for wet marine
6 insurance, as defined in section 708, subsection 2.

7 Sec. 4. 24-A MRSA §4433, sub-§2, ¶C, as amended
8 by PL 1985, c. 279, §1, is further amended to read:

9 C. Credit insurance, as defined in section 707,
10 subsection 1, paragraph 1, and ;

11 Sec. 5. 24-A MRSA §4433, sub-§2, ¶D, as enacted
12 by PL 1985, c. 279, §1, is amended to read:

13 D. Insurance contracts procured as surplus lines
14 coverage pursuant to chapter 197 ;

15 Sec. 6. 24-A MRSA §4433, sub-§2, ¶¶E and F are
16 enacted to read:

17 E. Title insurance; and

18 F. Financial guaranty insurance.

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

21 1. The workmen's workers' compensation
22 insurance account;

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

26 A. Be obligated to pay covered claims existing
27 prior to the determination of the insolvency or
28 arising within 30 days after the determination of
29 insolvency, or before the policy expiration date
30 if less than 30 days after the determination of
31 insolvency, or before the insured replaces the

1 policy or causes its cancellation, if within 30
2 days of the determination. The obligation shall
3 be satisfied by paying to the claimant an amount
4 as follows:

5 (1) The full amount of a covered claim for
6 benefits or unearned premium under workers'
7 compensation insurance coverage;

8 (2) An amount not exceeding \$100,000 per
9 policy for a covered claim for the return of
10 an unearned premium; or

11 (3) An amount not exceeding \$300,000 per
12 claim for all other covered claims.

13 In no event is the association obligated to pay a
14 claimant an amount in excess of the obligation of
15 the insolvent insurer under the policy or coverage
16 from which the claim arises. Notwithstanding any
17 other provisions of this subchapter, a covered
18 claim shall not include any claim filed with the
19 association after the final date set by the court
20 for the filing of claims against the liquidator or
21 receiver of an insolvent insurer;

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

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

34 Sec. 10. 24-A MRSA §4443, as enacted by PL
35 1969, c. 561, is repealed and the following enacted in
36 its place:

37 §4443. Nonduplication of recovery

1 1. Insurance policy. Any person having a claim
2 against an insurer under any provision in an insurance
3 policy, other than that of an insolvent insurer, which
4 is also a covered claim, shall be required to exhaust
5 first the person's right under the policy. Any amount
6 otherwise payable on a covered claim under this
7 subchapter shall be reduced by the amount of any
8 recovery under the insurance policy.

9 2. Governmental insurance. Any person having a
10 claim or legal right of recovery under any
11 governmental insurance, which is also a covered claim,
12 shall be required to exhaust first that person's right
13 under that insurance. Any amount payable on a covered
14 claim under this subchapter shall be reduced by the
15 amount of any recovery under that insurance.

16 3. Insurance guaranty association. Any person
17 having a claim which may be recovered from more than
18 one insurance guaranty association or its equivalent
19 shall seek recovery first from the association of the
20 place of residence of the insured, except that, if it
21 is a first party claim for damage to property with a
22 permanent location, that person shall seek recovery
23 first from the association of the location of the
24 property, and, if it is a workers' compensation claim,
25 that person shall seek recovery first from the
26 association of the residence of the claimant. Any
27 recovery under this subchapter shall be reduced by the
28 amount of recovery from any other insurance guaranty
29 association or its equivalent.

30 Sec. 11. 24-A MRSA §4444, sub-§6, as amended by
31 PL 1985, c. 279, §7, is further amended to read:

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

1 court. Current law is "60 days" and the original bill
2 was "6 months."

3 Sections 3, 4, 5, 6 and 10 of the original bill
4 have been deleted in this new draft. Three of the
5 sections contained unnecessary or expanded
6 definitions. One deleted section would have added a
7 requirement of an order of liquidation by a court to
8 the definition of insolvent insurer. Another deleted
9 section would have exempted insureds with a net worth
10 of \$50,000,000 or more from the protection of the
11 guaranty association.

12

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