

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1190

H.P. 858

House of Representatives, April 13, 1989

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

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

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative GARLAND of Bangor.

Cosponsored by Senator TWITCHELL of Oxford and Representative CURRAN of Westbrook.

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STATE OF MAINE

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

---

An Act to Amend the Law Relating to Property Insurance.

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

3 **Sec. 1. 24-A: MRSA §3002, sub-§1,** as amended by PL 1969, c.  
5 177, §56, is further amended to read:

7 1. No insurer shall ~~shall~~ may issue fire insurance policies on  
9 property in this State, other than those of the Maine standard  
11 fire insurance policy, which shall contain the following  
consideration and insuring clause, assignment clause and the  
general conditions and stipulations set forth after such these  
consideration, insuring and assignment clauses:

13 **Consideration and Insuring Clause**

15 In Consideration of the Provisions and Stipulations herein  
17 or added hereto and of the premium above specified, this Company,  
for the term of ..... from ..... at ~~noon~~ 12:01 a.m.  
(Standard Time) to ..... at ~~noon~~ 12:01 a.m. (Standard Time)  
19 at location of property involved, to an amount not exceeding the  
amount(s) above specified, does insure ..... and legal  
21 representatives, to the extent of the actual cash value of the  
property at the time of loss, but not exceeding the amount which  
23 it would cost to repair or replace the property with material of  
like kind and quality within a reasonable time after such loss,  
25 without allowance for any increased cost of repair or  
reconstruction by reason of any ordinance or law regulating  
27 construction or repair, and without compensation for loss  
resulting from interruption of business or manufacture, nor in  
29 any event for more than the interest of the insured, against all  
DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES  
31 ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT  
AS HEREINAFTER PROVIDED, to the property described herein while  
33 located or contained as described in this policy, or pro rata for  
five days at each proper place to which any of the property shall  
35 necessarily be removed for preservation from the perils insured  
against in this policy, but not elsewhere.

37 **Assignment Clause**

39 Assignment of this policy shall not be valid except with the  
41 written consent of this Company.

43 This policy is made and accepted subject to the foregoing  
45 provisions and stipulations and those hereinafter stated, which  
are hereby made a part of this policy, together with such other  
47 provisions, stipulations and agreements as may be added hereto,  
as provided in this policy.

49 **General Conditions and Stipulations**

51 Concealment, fraud. This entire policy shall be void if,  
whether before or after a loss, the insured has willfully

1       concealed or misrepresented any material fact or circumstance  
3       concerning this insurance or the subject thereof, or the interest  
5       of the insured therein, or in case of any fraud or false swearing  
7       by the insured relating thereto.

9               Uninsurable and excepted property. This policy shall not  
11       cover accounts, bills, currency, deeds, evidences of debt, money  
13       or securities; nor, unless specifically, named hereon in writing,  
15       bullion or manuscripts.

17               Perils not included. This Company shall not be liable for  
19       loss by fire or other perils insured against in this policy  
21       caused, directly or indirectly by: (a) enemy attack by armed  
23       forces, including action taken by military, naval or air forces  
25       in resisting an actual or an immediately impending enemy attack;  
27       (b) invasion; (c) insurrection; (d) rebellion; (e) revolution;  
29       (f) civil war; (g) usurped power; (h) order of any civil  
31       authority except acts of destruction at the time of and for the  
33       purpose of preventing the spread of fire, provided that such fire  
35       did not originate from any of the perils excluded by this policy;  
37       (i) neglect of the insured to use all reasonable means to save  
39       and preserve the property at and after a loss, or when the  
41       property is endangered by fire in neighboring premises; (j) nor  
43       shall this Company be liable for loss by theft.

45               Other insurance. Other insurance may be prohibited or the  
47       amount of insurance may be limited by endorsement attached  
49       hereto.

51               Conditions suspending or restricting insurance. Unless  
53       otherwise provided in writing added hereto this Company shall not  
55       be liable for loss occurring (a) while the hazard is increased by  
57       any means within the control or knowledge of the insured; or

59       (b) while a described building, whether intended for occupancy by  
61       owner or tenant, is vacant or unoccupied beyond a period of sixty  
63       consecutive days; or

65       (c) as a result of explosion or riot, unless fire ensue ensues,  
67       and in that event for loss by fire only.

69               Other perils or subjects. Any other peril to be insured  
71       against or subject of insurance to be covered in this policy  
73       shall be by endorsement in writing hereon or added hereto.

75               Added provisions. The extent of the application of insurance  
77       under this policy and of the contribution to be made by this  
79       Company in case of loss, and any other provision or agreement not  
81       inconsistent with the provisions of this policy, may be provided  
83       for in writing added hereto, but no provision may be waived  
85       except such as by the terms of this policy is subject to change.

1 Waiver provisions. No permission affecting this insurance  
2 shall exist, or waiver of any provision be valid, unless granted  
3 herein or expressed in writing added hereto. No provision,  
4 stipulation or forfeiture shall be held to be waived by any  
5 requirement or proceeding on the part of this Company relating to  
6 appraisal or to any examination provided for herein.  
7

8 Cancellation of policy. This policy shall be cancelled at  
9 any time at the request of the insured, in which case this  
10 Company shall, upon demand and surrender of this policy, refund  
11 the excess of paid premium above the customary short rates for  
12 the expired time. This policy may be cancelled at any time by  
13 this Company by giving to the insured a ten days' written notice  
14 of cancellation with or without tender of the excess of paid  
15 premium above the pro rata premium for the expired time, which  
16 excess, if not tendered, shall be refunded on demand. Notice of  
17 cancellation shall state that said excess premium (if not  
18 tendered) will be refunded on demand.  
19

20 Mortgagee interests and obligations. If loss hereunder is  
21 made payable, in whole or in part, to a designated mortgagee not  
22 named herein as the insured, such interest in this policy may be  
23 cancelled by giving to such mortgagee a ten days' written notice  
24 of cancellation.  
25

26 If the insured fails to render proof of loss such mortgagee,  
27 upon notice, shall render proof of loss in the form herein  
28 specified within sixty (60) days thereafter and shall be subject  
29 to the provisions hereof relating to appraisal and time of  
30 payment and of bringing suit. If this Company shall claim that no  
31 liability existed as to the mortgagor or owner, it shall, to the  
32 extent of payment of loss to the mortgagee, be subrogated to all  
33 the ~~mortgagee's~~ mortgagee's rights of recovery, but without  
34 impairing mortgagee's right to sue; or it may pay off the  
35 mortgage debt and require an assignment thereof and of the  
36 mortgage. Other provisions relating to the interests and  
37 obligations of such mortgagee may be added hereto by agreement in  
38 writing.  
39

40 Pro rata liability. This Company shall not be liable for a  
41 greater proportion of any loss than the amount hereby insured  
42 shall bear to the whole insurance covering the property against  
43 the peril involved, whether collectible or not.  
44

45 Requirements in case loss occurs. The insured shall give  
46 immediate written notice to this Company of any loss, protect the  
47 property from further damage, forthwith separate the damaged and  
48 undamaged personal property, put it in the best possible order,  
49 furnish a complete inventory of the destroyed, damaged and  
50 undamaged property, showing in detail quantities, costs, actual  
51 cash value and amount of loss claimed; and within sixty days  
52 after the loss, unless such time is extended in writing by this  
53 Company, the insured shall render to this Company a proof of

1 loss, signed and sworn to by the insured, stating the knowledge  
and belief of the insured as to the following: The time and  
3 origin of the loss, the interest of the insured and of all others  
in the property, the actual cash value of each item thereof and  
5 the amount of loss thereto, all encumbrances thereon, all other  
contracts of insurance, whether valid or not, covering any of  
7 said property, any changes in the title, use, occupation,  
location, possession or exposures of said property since the  
9 issuing of this policy, by whom and for what purpose any building  
herein described and the several parts thereof were occupied at  
11 the time of loss and whether or not it then stood on leased  
ground, and shall furnish a copy of all the descriptions and  
13 schedules in all policies and, if required, verified plans and  
specifications of any building, fixtures or machinery destroyed  
15 or damaged. The insured, as often as may be reasonably required,  
shall exhibit to any person designated by this Company all that  
17 remains of any property herein described, and submit to  
examinations under oath by any person named by this Company, and  
19 subscribe the same; and, as often as may be reasonably required,  
shall produce for examination all books of account, bills,  
21 invoices and other vouchers, or certified copies thereof if  
originals be lost, at such reasonable time and place as may be  
23 designated by this Company or its representative, and shall  
permit extracts and copies thereof to be made.

25  
Appraisal. In case the insured and this Company shall fail  
27 to agree as to the actual cash value or the amount of loss, then,  
on the written demand of either, each shall select a competent  
29 and disinterested appraiser and notify the other of the appraiser  
selected within twenty days of such demand. The appraisers shall  
31 first select a competent and disinterested umpire; and failing  
for fifteen days to agree upon such umpire, then, on request of  
33 the insured or this Company, such umpire shall be selected by a  
judge of a court of record in the state in which the property  
35 covered is located. The appraisers shall then appraise the loss,  
stating separately actual cash value and loss to each item; and,  
37 failing to agree, shall submit their differences, only, to the  
umpire. An award in writing, so itemized, of any two when filed  
39 with this Company shall determine the amount of actual cash value  
and loss. Each appraiser shall be paid by the party selecting him  
41 that appraiser and the expenses of appraisal and umpire shall be  
paid by the parties equally.

43  
Company's options. It shall be optional with this Company to  
45 take all, or any part, of the property at the agreed or appraised  
value, and also to repair, rebuild or replace the property  
47 destroyed or damaged with other of like kind and quality within a  
reasonable time, on giving notice of its intention so to do  
49 within thirty days after the receipt of the proof of loss herein  
required.

51

1 Abandonment. There can be no abandonment to this Company of  
any property.

3  
5 When loss payable. The amount of loss for which this Company  
may be liable shall be payable sixty days after proof of loss, as  
7 herein provided, is received by this Company and ascertainment of  
the loss is made either by agreement between the insured and this  
9 Company expressed in writing or by the filing with this Company  
of an award as herein provided.

11 Suit. No suit or action on this policy for the recovery of  
any claim shall be sustainable in any court of law or equity  
13 unless all the requirements of this policy shall have been  
15 complied with, and unless commenced within two years next after  
inception of the loss.

17 Subrogation. This Company may require from the insured an  
assignment of all right of recovery against any party for loss to  
19 the extent that payment therefor is made by this Company.

21 **Sec. 2. 24-A MRSA §3004-A** is enacted to read:

23 **§3004-A. Actual cash value**

25 **1. Actual cash value.** "Actual cash value", as used in  
27 section 3002, means the replacement cost of an insured item of  
property at the time of loss, less the value of physical  
29 depreciation as to the item damaged.

31 **Sec. 3. Transition provision.** To the extent that coverage in a  
policy which is issued with an effective time of 12:01 a.m.  
33 replaces coverage, pursuant to the Maine Revised Statutes, Title  
24-A, section 3002, subsection 1, in other policies terminating  
35 at noon standard time on the inception date of the new policy,  
the new policy shall be appropriately endorsed to reflect that  
37 coverage under the new policy shall not become effective until  
such other coverage has terminated.

39  
41 **STATEMENT OF FACT**

43 Maine law currently provides that the standard fire  
insurance policy becomes effective at noon on the policy's  
45 effective date. Section 1 of the bill amends the law to require  
a policy to become effective at 12:01 a.m. on the effective  
47 date. This is consistent with a national trend.

49 Actual cash value is not defined in the Maine Standard Fire  
Policy and has been the subject of several court decisions which  
51 on occasion may penalize the insured. Two decisions, Forex v.  
Quincy Mutual Fire, 295 A.2d 247 (Me. 1972) and Gendron v.  
53 Pawtucket Mutual Insurance Company, 384 A.2d 694 (Me. 1978)

1 defined actual cash value as the fair market value at the time  
the property is destroyed.

3

5 These decisions result in an inequitable treatment of the  
insured. For example, if a new home costs \$200,000, it will be  
7 insured for that amount which is the cost associated with  
replacing it in the event of total destruction. If, however, the  
home's fair market value is only \$150,000 and is destroyed, the  
9 insurer must only pay \$150,000. This is unfair to the insured.

11 The bill remedies the inequity by holding the insurer liable  
for the replacement cost minus depreciation up to the total  
13 amount of the policy.