

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2163

S.P. 844

In Senate, January 9, 1990

Reported by Senator BUSTIN of Kennebec for the Committee on Banking and Insurance pursuant to Public Law 1989, chapter 67.

Reference to the Committee on Banking and Insurance suggested and ordered printed pursuant to Joint Rule 18.

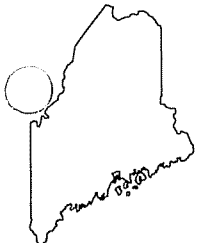
A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Amend the Laws Relating to the Maine Insurance Guaranty Association and the Maine Life and Health Insurance Guaranty Association.



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

2
4 **Sec. 1.** 24-A MRSA §4433, sub-§1, ¶D, as amended by PL 1987, c. 707, §3, is further amended to read:

6 D. Marine and transportation insurance, as defined in
8 section 708, ~~except for~~ excluding wet marine insurance, as
10 defined in section 708, subsection 2, but not excluding
12 marine protection and indemnity insurance.

14 **Sec. 2.** 24-A MRSA §4435, sub-§1-A is enacted to read:

16 1-A. Affiliate. "Affiliate" means a person who directly,
18 or indirectly, through one or more intermediaries, controls, is
20 controlled by or is under common control with an insolvent
22 insurer on December 31st of the year immediately before the year
24 in which the insurer becomes an insolvent insurer.

26 **Sec. 3.** 24-A MRSA §4435, sub-§4, as amended by PL 1973, c. 625, §159, is further amended to read:

28 **4. Covered claim.** "Covered claim" means an unpaid claim,
30 including one for unearned premiums but excluding one for
32 punitive damages, arising under and within the coverage and
34 applicable limits of a policy of a kind of insurance referred to
36 in section 4433 to which this subchapter applies issued by an
38 insurer which becomes an insolvent insurer after May 9, 1970, and
40 where:

42 A. The claimant or insured is a resident of this State at
44 the time of the insured event; or

46 B. The property from which the claim arises is permanently
48 located in this State.

50 "Covered claim" shall not include any amount due any insurer,
reinsurer, affiliate, insurance pool or underwriting association,
as subrogation recoveries or otherwise.

Sec. 4. 24-A MRSA §4438, sub-§1, ¶A, as repealed and replaced
by PL 1987, c. 707, §8, is amended to read:

 A. Be obligated to pay covered claims existing prior to the
determination of the insolvency or arising within 30 days
after the determination of insolvency, or before the policy
expiration date if less than 30 days after the determination
of insolvency, or before the insured replaces the policy or
causes its cancellation, if within 30 days of the
determination. The obligation shall be satisfied by paying
to the claimant an amount as follows:

2 (1) The Except as provided in this paragraph, the full
amount of a covered claim for benefits or unearned
premium under workers' compensation insurance coverage;

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

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

10 In no event is the association obligated to pay a claimant
12 an amount in excess of the obligation of the insolvent
insurer under the policy or coverage from which the claim
14 arises. The association shall pay only that amount of
unearned premium in excess of \$50. Notwithstanding any
16 other provisions of this subchapter, a covered claim shall
not include any claim filed with the association after the
18 final date set by the court for the filing of claims against
the liquidator or receiver of an insolvent insurer;

20 **Sec. 5. 24-A MRSA §4440-A, sub-§3, as enacted by PL 1989, c.**
22 **67, §8, is repealed.**

24 **Sec. 6. 24-A MRSA §4440-A, sub-§4 is enacted to read:**

26 **4. Notification to Legislature.** Within 7 days after the
board of directors votes to levy an assessment under this
28 section, the chair of the board of directors shall notify the
chairs of the legislative committee having jurisdiction over
30 insurance matters that the association has voted to make such an
assessment. The notification must:

32 **A. Be in writing; and**

34 **B. Include the total amount to be assessed against each**
36 **account and the name of the account to which the assessed**
funds will be credited.

38 **Sec. 7. 24-A MRSA §4452 is enacted to read:**

40 **§4452. Report to Legislature**

42 **At the end of each calendar year, the association shall**
44 **submit a report of its activities to the joint standing committee**
of the Legislature having jurisdiction over banking and insurance
46 **matters. The report must include the amount of assessments made**
against each account, the name of the insolvent insurer to which
48 **the assessments are attributable and the amount of funds**
borrowed, if any, by the association and the repayment date of
50 **any loan.**

52 **Sec. 8. 24-A MRSA §4603, sub-§1-A is enacted to read:**

2 1-A. Persons covered. This chapter shall provide coverage
4 for the policies and contracts specified in subsection 1:

6 A. To any person, except for a nonresident certificate
8 holder under a group policy or contract, who is the
beneficiary, assignee or payee of a person covered under
paragraph B; and

10 B. To any person who owns, or is a certificate holder
12 under, a policy or contract specified in subsection 1 or, in
the case of an unallocated annuity contract, to a person who
14 is the contract holder and who:

16 (1) Is a resident; or

18 (2) Is not a resident, if all the following conditions
are met:

20 (i) The insurer that issued the policy or
22 contract is domiciled in this State;

24 (ii) The insurer never held a license or
26 certificate of authority in the state in which the
person resides;

28 (iii) The state has an association similar to the
Maine Life and Health Insurance Guaranty
30 Association; and

32 (iv) The person is not eligible for coverage by
the association in that state.

34 Sec. 9. 24-A MRSA §4603, sub-§2, ¶¶C and D, as enacted by PL
36 1983, c. 846, are amended to read:

38 C. Any such policy or contract or part thereof assumed by
the impaired insurer under a contract of reinsurance, other
40 than reinsurance for which assumption certificates have been
issued; and

42 D. Any such policy or contract issued by assessment mutuals
44 and nonprofit hospital and medical service plans; and

46 Sec. 10. 24-A MRSA §4603, sub-§2, ¶E is enacted to read:

48 E. Any portion of a policy or contract to the extent that
the rate of interest on which it is based:

50 (1) Averaged over a period of 4 years before the date
52 on which the association becomes obligated with respect
to the policy or contract, exceeds a rate of interest

2 determined by subtracting 2 percentage points from
4 Moody's Corporate Bond Yield Average averaged over the
6 same 4-year period or for a lesser period if the policy
8 or contract was issued less than 4 years before the
10 association became obligated; and

12 (2) After the date on which the association becomes
14 obligated with respect to the policy or contract,
16 exceeds the rate of interest determined by subtracting
18 3 percentage points from Moody's Corporate Bond Yield
20 Average as most recently available.

22 Sec. 11. 24-A MRSA §4605, sub-§6-A is enacted to read:

24 6-A. Moody's Corporate Bond Yield Average. "Moody's
26 Corporate Bond Yield Average" means the monthly average
28 corporates as published by Moody's Investors Service, Inc., or
30 any successor to that index.

32 Sec. 12. 24-A MRSA §4609, sub-§8, as enacted by PL 1989, c.
34 67, §15, is amended to read:

36 8. **Assessment shortfalls.** If the maximum assessment,
38 together with the other assets of the association in any account,
40 does not provide in any one year in any one account an amount
42 sufficient to make all necessary payments from that account, the
44 shortfall shall be assessed as an obligation of the other
46 accounts of the association. Each member insurer's assessment
shall be in the proportion that its premium for the calendar year
preceding the assessment on the kinds of insurance in the
accounts to be assessed bears to the total premium of all member
insurers for the same calendar year on the kinds of insurance in
those accounts. The total of assessments against a member
insurer for shortfalls under this section and section 4440 in any
one calendar year shall not exceed 2% of that member insurer's
premiums in this State or for policies covered by the account.
~~This section is repealed 91 days after the adjournment of the~~
~~Second Regular Session of the 114th Legislature.~~ Within 7 days
after the board of directors votes to levy an assessment under
this subsection, the chair of the board of directors shall notify
the chairs of the joint standing committee of the Legislature
having jurisdiction over banking and insurance matters that the
association has voted to make that assessment. The notification
must be in writing and must include the total amount to be
assessed against each account and the name of the account to
which the assessed funds will be credited.

48 Sec. 13. 24-A MRSA §4619 is enacted to read:

50 §4619. Report to Legislature

2 At the end of each calendar year, the association shall
3 submit a report of its activities to the joint standing committee
4 of the Legislature having jurisdiction over banking and insurance
5 matters. The report must include the amount of assessments made
6 against each account, the name of the insolvent insurer to which
7 the assessments are attributable and the amount of funds
8 borrowed, if any, by the association and the repayment date of
9 any loan.

10 **Sec. 14. Study.** During the First Regular Session of the 116th
11 Legislature, the Joint Standing Committee on Banking and
12 Insurance shall review this Act and Public Law 1989, chapter 67.
13 To assist the committee, the Maine Insurance Guaranty Association
14 and the Maine Life and Health Insurance Guaranty Association
15 shall provide the committee with a report of the total
16 assessments made between 1989 and the date of the report, the
17 assessments made under the spillover assessment provisions of the
18 Maine Revised Statutes, Title 24-A, sections 4440-A and 4609, any
19 borrowing or other actions by the associations necessary to
20 fulfill their statutory obligations, and other information as the
21 committee may specifically request.

22 23 STATEMENT OF FACT

24
25 This is one of 2 bills containing the recommendations of the
26 Subcommittee to Study the Current Operation of Insurance Guaranty
27 Funds, a study subcommittee of the Joint Standing Committee on
28 Banking and Insurance. This bill sets forth recommended changes
29 in the laws governing the Maine Insurance Guaranty Association
30 and the Maine Life and Health Insurance Guaranty Association.

31
32 Guaranty associations are associations of insurers that
33 assume the responsibilities of insolvent insurers. The
34 Legislature enacted Public Law 1989, chapter 67, which made major
35 changes in the structure of the Maine Insurance Guaranty
36 Association (MIGA) and the Maine Life and Health Insurance
37 Guaranty Association (MLHGA). The changes were made to assure
38 that sufficient funds would be available, through assessment of
39 insurers, to pay the costs of insolvencies. The subcommittee
40 reviewed the operation of the MIGA and the MLHGA laws with the
41 goal of determining what additional changes, if any, should be
42 made to assure that goal.

43
44 The bill eliminates certain coverage of the guaranty
45 associations, provides for continuation of the special assessment
46 authority enacted in Public Law 1989, chapter 67, and requires
47 the Joint Standing Committee on Banking and Insurance in 1993 to
48 review this bill and the 1989 laws.

49
50 The bill makes the following changes to the laws governing
51 the MIGA, which covers most property and casualty insurance.
52

2 1. The bill excludes coverage of affiliates of insolvent
4 insurers. This avoids the possibility that an affiliate would
6 drain the resources of an insurer and then recover from the
guaranty association.

8 2. The bill excludes coverage of punitive damages.
Punitive damages are intended to punish the wrongdoer and should
10 be paid by the wrongdoer, not a guaranty association.

12 3. The bill subjects claims for return of unearned premium
14 to a \$50 deductible. This would save administrative costs for
the guaranty association without causing an undue financial
burden for policyholders.

16 4. The bill specifically includes "marine protection and
18 indemnity" coverage. This is comparable to general liability and
workers' compensation coverage for ocean and inland water
20 vessels, and should be covered the same as liability and workers'
compensation in any other context.

22 5. The bill removes the sunset provision on the "spillover"
24 assessment enacted by Public Law 1989, chapter 67. The spillover
assessment permits the MIGA to assess insurers writing all types
26 of property and casualty insurance to pay for the insolvency of
any one line of insurance when a 2% assessment of the insurers in
28 that one line is not sufficient to cover all the costs. That
spillover assessment is currently scheduled for repeal 91 days
30 after the adjournment of the 1990 legislative session.

32 The bill makes the following changes in the MLHGA, which
covers life, health and annuity policies and contracts.

34 1. The bill eliminates coverage of nonresidents when a
36 domestic insurer, one domiciled in Maine, becomes insolvent,
except under certain limited circumstances. Current Maine law
38 requires the MLHGA to cover all policyholders of a Maine domestic
insurer. Twenty-five of the 46 states with life and health
40 guaranty associations cover only their own residents.
Residents-only coverage spreads the costs of an insolvency among
42 all states in which the insurer operates rather than requiring
the state of domicile to bear the entire cost.

44 2. The bill provides that the guaranty association will not
46 make good on an insolvent insurer's promise to pay an
unreasonably high interest rate on a policyholder's investment in
48 a life or annuity contract. The bill limits the coverage to an
interest rate based on Moody's Corporate Bond Yield Average.

50 3. The bill removes the sunset provision on the spillover
52 assessment in the life and health fund for the same reasons as in
the MIGA.

2 The bill requires both associations to immediately notify
the Joint Standing Committee on Banking and Insurance of any
4 "spillover" assessment, and to report annually to the Legislature
on the assessments made by the association.

6
8 Finally, the bill requires the Joint Standing Committee on
Banking and Insurance to review the legislation in 1993.