

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 814, L.D. 1168, Bill, "An Act to Clarify the Status of Employee Benefit Excess Insurance"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 24-A MRSA §409, as enacted by PL 1969, c. 132, §1, is amended to read:

**§409. Insurance lines combinations**

An insurer may be authorized to transact such kinds of insurance as it is qualified for under this Title, except that a reciprocal insurer shall may not transact life insurance. Qualified insurers may transact combinations of business as follows.

1. Multiple lines insurer. A multiple lines insurer is authorized to transact more than one kind of coverage if all kinds of coverage fall within the categories listed in sections 704 to 708.

2. All lines insurer. An all lines insurer is authorized to transact life insurance and one or more of the kinds of coverage, other than health insurance, that may be transacted by a multiple lines insurer.

3. Life or health insurer. An insurer is authorized to transact only one or more of the kinds of coverage defined in sections 702 to 704. A life insurer, health insurer or a life and health insurer does not become an all lines insurer merely by transacting specific lines of casualty insurance that life or health insurers are expressly authorized by law to transact.

Sec. 2. 24-A MRSA §410, as amended by PL 1987, c. 707, §1, is further amended to read:

§410. Minimum paid-in capital and surplus requirements

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

A health, life and health or multiple line (as described in section 710 409) insurer may qualify for a certificate of authority to transact a legal services insurance business, as described in chapter 38, if it is otherwise qualified therefor and possesses and thereafter maintains, in addition to the amounts described in the following table, an additional amount of unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or reciprocal insurer, of not less than \$500,000.

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

Kind or Kinds of Insurance	Stock Insurers		Foreign mutual, Reciprocal Insurers	
	Minimum Required Capital Stock	Initial Free Surplus	Minimum Required Basic Surplus	Initial Free Surplus
Life	\$1,500,000	\$1,500,000	\$1,500,000*	\$1,500,000*
Health	1,000,000	1,000,000	1,000,000	1,000,000
Life and Health	2,500,000	2,500,000	2,500,000*	2,500,000*
Casualty	1,500,000	1,500,000	1,500,000	1,500,000
Marine and Transportation	1,500,000	1,500,000	1,500,000	1,500,000

COMMITTEE AMENDMENT "A" to H.P. 814, L.D. 1168

2	Property	1,000,000	1,000,000	1,000,000	1,000,000
4	Surety	1,500,000	1,500,000	1,500,000	1,500,000
6	Title	500,000	500,000	500,000	500,000
8	Multiple line				
10	(as defined				
12	in section				
14	<u>710 409</u> )	2,500,000	2,500,000	2,500,000	2,500,000
16	Life,--and--any				
18	one--or--more--of				
20	Property,--Ca-				
22	sualty,--Sure-				
24	ty,--Marine--and				
26	Transportation				
28	<u>All line (as</u>				
30	<u>defined in</u>				
32	<u>section 409)</u>	5,000,000	5,000,000	5,000,000*	5,000,000*

\* Does not apply as to a reciprocal insurer.

Except:

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

B. Prior to January 1, 1989, the superintendent shall may not authorize such an insurer to transact any other kinds of insurance unless it complies with the requirements as to capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, as applied to all kinds of insurance it proposes to transact, as provided in the table contained in this paragraph.

A health, life and health or multiple line (as described in section 710 409) insurer may qualify for a certificate of authority to transact a legal services insurance business, as described in chapter 38, if it is otherwise qualified therefor and possesses and thereafter maintains, in addition to the amounts described in the following table, an additional amount of unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or reciprocal insurer, of not less than \$500,000.

COMMITTEE AMENDMENT "A" to H.P. 814, L.D. 1168

	Stock Insurers	Foreign mutual, Reciprocal Insurers			
	Minimum Required Capital Stock	Initial Free Surplus	Minimum Required Basic Surplus	Initial Free Surplus	
2					
4	Kind or				
6	Kinds of				
8	Insurance				
10	Life	\$500,000	\$1,000,000	\$1,000,000*	\$1,000,000*
12	Health	250,000	250,000	250,000	250,000
14	Life and Health	500,000	1,000,000	1,000,000*	1,000,000*
16	Casualty	500,000	500,000	500,000	500,000
18	Marine and Transportation	500,000	500,000	500,000	500,000
20	Property	500,000	500,000	500,000	500,000
22	Surety	500,000	500,000	500,000	500,000
24	Title	150,000	150,000	150,000	150,000
26	Multiple line (as defined in section 710 409)	1,000,000	1,000,000	1,000,000	1,000,000
32	<del>Life, and any one or more of Property, Casu- alty, Surety, Marine and Transportation</del>				
34					
36					
38	<u>All line (as defined in section 409)</u>	2,000,000	2,000,000	2,000,000*	2,000,000*
40					

\*Does not apply as to a reciprocal insurer.

C. Until January 1, 1989, a domestic mutual insurer formed prior to January 1, 1968, and while possessing surplus of not less than \$200,000 may be authorized to transact, in addition to the types of insurance it was transacting prior to July 24, 1984, any other additional kinds of insurance authorized by its charter; subject to those minimum required basic surplus amounts applicable as to foreign mutual insurers as contained in the table in paragraph B, if the insurer is to transact life insurance together with any one

2 or more of property, casualty, surety or marine and transportation insurances.

4 D. Domestic mutual insurers holding a certificate of  
6 authority upon January 1, 1989, if otherwise qualified, and  
8 possessed of basic surplus in minimum required amounts as  
10 contained in the table in this paragraph may continue to be  
12 so authorized, provided those insurers continue to possess  
14 and maintain unimpaired basic surplus funds as determined in  
16 this paragraph and applicable to those lines or kinds of  
18 insurance permitted by its certificate of authority  
20 immediately prior to January 1, 1989. Upon application by  
22 any such insurer and written approval by the superintendent,  
24 the insurer's certificate of authority may be extended to  
26 permit the writing of other kinds or lines of insurance if  
the insurer is qualified and possessed of basic surplus  
funds in amounts contained in the table in this paragraph. A  
domestic mutual insurer holding a certificate of authority  
prior to January 1, 1989, but which does not possess and  
maintain basic surplus in the minimum required amounts  
contained in the table in this paragraph, may continue to be  
authorized to transact insurance in this State and to write  
other kinds or lines of insurance, subject to the approval  
of the superintendent, as long as it maintains 100%  
reinsurance and has no liabilities.

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

34 A health, life and health or multiple line (as described in  
36 section 710 409) insurer may qualify for a certificate of  
38 authority to transact a legal services insurance business,  
as described in chapter 38, if it is otherwise qualified  
therefor and possesses and thereafter maintains, in addition  
40 to the amounts described in the following table, an  
42 additional amount of unimpaired paid-in capital stock, if a  
stock insurer, or unimpaired basic surplus, if a foreign  
mutual or reciprocal insurer, of not less than \$500,000.

Kind or Kinds of Insurance	Domestic Mutual Insurers
Life	\$1,000,000
Health	500,000
Life and Health	1,250,000
Casualty	750,000
Marine and Transportation	1,000,000

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COMMITTEE AMENDMENT "A" to H.P. 814, L.D. 1168

2	Property	500,000
	Surety	1,000,000
	Title	350,000
4	Multiple Line (as defined in section 710 409)	1,250,000
6	<del>Life, and any one or more</del>	
8	<del>of Property, Casualty,</del>	
	<del>Surety, Marine and</del>	
10	<del>Transportation All line</del> <u>(as defined in section 409)</u>	2,500,000

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

26 2. Capital and surplus requirements are based upon all the  
28 kinds of insurance transacted by the insurer in any and all areas  
30 in which it operates or proposes to operate, whether or not only  
a portion of such kinds are to be transacted in this State.

32 3. As to surplus required for authority to transact one or  
34 more kinds of insurance and thereafter to be maintained, domestic  
mutual legal reserve insurers hereafter formed ~~shall be~~ are  
governed by chapter 47.

36 Sec. 3. 24-A MRSA §411, sub-§3, as enacted by PL 1969, c. 132,  
38 §1, is amended to read:

40 3. If a casualty insurer or multiple line insurer, to  
42 transact health insurance, ~~---Except; except~~ that this provision  
44 shall does not apply to a domestic insurer authorized to transact  
casualty insurance only, pursuant to section 410, subsection 1,  
paragraph A; or

46 Sec. 4. 24-A MRSA §411, sub-§4 is enacted to read:

48 4. To transact employee benefit excess insurance to the  
extent authorized pursuant to section 707, subsection 3.

50 Sec. 5. 24-A MRSA §707, sub-§1, ¶C, as enacted by PL 1969, c.  
132, §1, is amended to read:

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2 C. ~~Workmen's~~ Workers' compensation and employer's  
liability. Insurance, whether written on a primary or  
4 excess basis, of the obligations accepted by, imposed upon  
or assumed by employers under law for death, disablement or  
injury of employees;

6  
8 **Sec. 6. 24-A MRSA §707, sub-§1, ¶C-1 is enacted to read:**

10 C-1. Employee benefit excess insurance. Insurance,  
protecting an employer against higher than expected  
12 obligations under an employee benefit plan, at retention  
levels that do not have the effect of making the plan an  
14 insured plan. The transaction of employee benefit excess  
insurance does not constitute the conduct of the business of  
reinsurance;

16  
18 **Sec. 7. 24-A MRSA §707, sub-§3 is enacted to read:**

20 3. An insurer other than a casualty insurer may transact  
employee benefit excess insurance only if that insurer is  
22 authorized to insure the class of risk assumed by the underlying  
benefit plan. Employee benefit excess insurance, even if written  
24 by a life or health insurer, is not subject to chapters 29 to 37,  
except to the extent that particular provisions are made  
26 expressly applicable by rule or law. The superintendent may by  
rule set standards distinguishing excess insurance from basic  
insurance.

28  
30 **Sec. 8. 24-A MRSA §710, as enacted by PL 1969, c. 132, §1, is**  
**repealed.**

32 **Sec. 9. 24-A MRSA §1101, as amended by PL 1989, c. 846, Pt.**  
34 **B, §1 and affected by Pt. E, §4, is repealed and the following**  
**enacted in its place:**

36 **§1101. Scope of chapter**

38 1. Subject to subsection 2 and section 1137, this chapter  
40 applies to all insurers except life or health insurers that  
transact business of a type described in section 409, subsection  
3.

42  
44 2. Each domestic all lines insurer, as defined in section  
409, subsection 2, shall, for accounting and financing purposes,  
46 establish and maintain distinct accounts dedicated exclusively to  
the insurance it transacts under its life or health insurance  
48 authority and to the remainder of its business. Each account  
must include reserves and surplus funds adequate to financially  
50 support the underwriting activity. All assets allocated to life  
accounts and health accounts are subject to chapter 13-A rather  
52 than this chapter. The books and records of any insurer writing  
more than one kind of business must reflect the assets and



2 operations relating to each underwriting activity in detail  
3 sufficient to demonstrate compliance with this chapter and  
4 chapter 13-A.

5 Sec. 10. 24-A MRSA §1151, as repealed and replaced by PL  
6 1989, c. 846, Pt. B, §8 and affected by Pt. E, §4, is amended to  
7 read:

8 **§1151. Scope of chapter**

9 Except as provided in sections 1101 and 1161, this chapter  
10 applies only to a domestic insurers life or health insurer that  
11 transact transacts business exclusively of a type described in  
12 sections 702, 703 or 704, or any combination of those types  
13 section 409, subsection 3.

14 Sec. 11. 24-A MRSA §2452 is enacted to read:

15 **§2452. Employee benefit excess insurance; nondiscrimination;**  
16 **prohibited clauses**

17 **1. Discrimination prohibited.** A policy of employee benefit  
18 excess insurance may not discriminate unfairly among or against  
19 beneficiaries of the underlying benefit plan, or treat conditions  
20 related to the Human Immunodeficiency Virus, or HIV, more  
21 restrictively than other sicknesses or disabling conditions.

22 **2. Commutation clause.** A policy of employee benefit excess  
23 insurance may not contain a commutation clause that extinguishes  
24 the excess carrier's gross claims liability to the insured person  
25 through the recapture of loss reserves, unless the policy  
26 contains a provision giving the insured the option of requiring  
27 that the funds transferred in support of such a commutation have  
28 been evaluated by a qualified health actuary who is a member of  
29 the American Academy of Actuaries and has certified that the  
30 aggregate value of reserves to be recaptured are reasonably  
31 adequate to discharge the insured's expected liability for future  
32 costs of the health benefits covered by the excess policy.

33 **3. Review.** An employee benefit excess insurance form is  
34 not exempt from the review provisions otherwise applicable under  
35 section 2412 on the ground that the form is designed for  
36 insurance on a particular subject.'

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**STATEMENT OF FACT**

Current law makes no express provision for excess insurance  
providing catastrophic coverage to self-funded employee benefit  
plans qualifying under the Employee Retirement Income Security  
Act of 1974, ERISA, Public Law 93-406, Sept. 2, 1974. This

COMMITTEE AMENDMENT "A" to H.P. 814, L.D. 1168

2 amendment sets standards for approval of excess insurance  
4 policies and codifies the current treatment of such insurance as  
6 a form of casualty insurance that may appropriately be written by  
8 liability insurers. The amendment also allows life and health  
10 insurance carriers to write excess insurance for self-funded  
plans to the same extent that they are already authorized to  
reinsure insured plans. The amendment further establishes a  
distinction between "excess" and "basic" insurance so that the  
"excess insurance" designation can not be used as a vehicle for  
evading mandated health insurance benefits.

12 The amendment also makes clear that life or health insurers  
14 writing employee benefit excess insurance or other types of  
casualty insurance, such as congenital defect insurance, written  
under their life or health insurance authority, do not thereby  
16 become "all lines" insurers. Finally, the amendment corrects an  
error in the existing law that inadvertently made investments  
18 supporting the health insurance business of "multiple lines"  
insurers subject to the regulatory standards of the Maine Revised  
20 Statutes, Title 24-A, chapter 13-A. The amendment makes all  
investments of "multiple lines" insurers that do not write life  
22 insurance or annuity business subject to chapter 13; the only  
insurers required to maintain distinct life or health insurance  
24 and property insurance, casualty insurance portfolios will be the  
"all lines" insurers.  
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