MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1168

H.P. 814

House of Representatives, March 18, 1991

Submitted by Department of Professional and Financial Regulation pursuant to Joint Rule 24. Reference to the Committee on Banking and Insurance suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative GARLAND of Bangor.

Cosponsored by Senator THERIAULT of Aroostook and Representative KETOVER of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

An Act to Clarify the Status of Employee Benefit Excess Insurance.



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

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

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C-1. Employee benefit excess insurance. Insurance against unusually high obligations under an employee benefit plan at retention levels that do not have the effect of making the plan an insured plan;

Sec. 2. 24-A MRSA §707, sub-§3 is enacted to read:

3. An insurer other than a casualty insurer may transact employee benefit excess insurance only if that insurer is authorized to insure the class of risk assumed by the underlying benefit plan. Employee benefit excess insurance, even when written by a life and health insurer, is not subject to any provisions of this Title that by their terms apply only to life and health insurance. The superintendent may by rule set standards distinguishing excess insurance from basic insurance.

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Sec. 3. 24-A MRSA \$1101, as amended by PL 1989, c. 846, Pt. B, §1, and affected by Pt. E, §4, is further amended to read:

\$1101. Scope of chapter

26 Except as provided in section 1137, this chapter applies only to domestic insurers that transact business other than as 28 described in section 702, life insurance; section 703, annuity; er section 704, health insurance; or section 707, subsection 1, paragraph C-1, employee benefit excess insurance. If an insurer 30 subject to this chapter also transacts life insurance, health insurance or an annuity business, that insurer shall, for 32 and financing purposes, accounting establish and maintain distinct accounts dedicated exclusively to 34 those The accounts must include reserves and surplus funds insurance. 36 adequate to financially support the underwriting activity. assets allocated to the conduct of life insurance, health insurance or annuity business are subject to chapter 13-A rather 38 than this chapter. The books and records of an insurer writing 40 these additional kinds of business must reflect the assets and operations relating to each underwriting activity in detail 42 sufficient to demonstrate compliance with this chapter If an insurer required to maintain separate chapter 13-A. accounts pursuant to this section also transacts employee benefit 44 excess insurance, the insurer may elect to assign assets 46 allocated to the conduct of employee benefit excess insurance to either account except when otherwise expressly provided by rule 48 or statute.

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

§1151. Scope of chapter

Except as provided in sections 1101 and 1161, this chapter applies only to domestic insurers that transact business exclusively of a type described in seetiens section 702, 703 or 704, section 707, subsection 1, paragraph C-1, or any combination of those types.

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STATEMENT OF FACT

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Current law makes no express provision for excess insurance providing catastrophic coverage to self-funded employee benefit plans under the Employee Retirement Income Security Act of 1974, as amended. This bill codifies the current treatment of such insurance as a form of casualty insurance, which appropriately be written by liability insurers. The bill also allows life and health carriers to write excess insurance for self-funded plans to the same extent that they are already authorized to reinsure insured plans. In either case, the insurance should be considered part of the ordinary class of business of the insurer and not subject to the special accounting procedures for general lines insurers under the Maine Revised Statutes, Title 24-A, section 1101. Finally, 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.