

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1997

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Legislative Document

No. 1928

S.P. 693

In Senate, December 8, 1997

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**An Act Relating to Reciprocal Insurers and Captive Insurance Companies.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 8, 1997. Referred to the Committee on Banking and Insurance and ordered printed pursuant to Joint Rule 308.

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

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York.

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

2  
4       **Sec. 1. 24-A MRSA §3851**, as enacted by PL 1969, c. 132, §1,  
is amended to read:

6       **§3851. "Reciprocal" insurance defined**

8       "Reciprocal" insurance is that resulting from an interchange  
10 among persons or entities, known as "subscribers," of reciprocal  
agreements of indemnity, the interchange being effectuated  
12 through an "attorney-in-fact" common to all such persons or  
entities.

14       **Sec. 2. 24-A MRSA §3853, sub-§2**, as enacted by PL 1969, c.  
132, §1, is amended to read:

16       2. Such an insurer may purchase reinsurance upon the risk  
18 of any subscriber or subscribers, and may ~~grant~~ assume or cede  
reinsurance as to any kind of insurance it is authorized to  
20 transact direct.

22       **Sec. 3. 24-A MRSA §3856, sub-§1**, as amended by PL 1973, c.  
585, §12, is further amended to read:

24       1. ~~Twenty-five~~ Three or more persons ~~domiciled in this~~  
26 State or entities may organize a domestic reciprocal insurer and  
make application to the superintendent for a certificate of  
28 authority to transact insurance.

30       **Sec. 4. 24-A MRSA §3860, sub-§2**, as enacted by PL 1969, c.  
132, §1, is amended to read:

32       2. The bond shall ~~must~~ be in the penal sum of \$25,000  
34 \$250,000, aggregate in form, conditioned that the attorney will  
faithfully account for all ~~moneys~~ money and other property of the  
36 insurer coming into ~~his~~ the attorney's hands, and that ~~he~~ the  
attorney will not withdraw or appropriate to ~~his~~ the attorney's  
38 own use from the funds of the insurer, any ~~moneys~~ money or  
property to which ~~he~~ the attorney is not entitled under the power  
40 of attorney.

42       **Sec. 5. 24-A MRSA §3866**, as enacted by PL 1969, c. 132, §1,  
is amended to read:

44       **§3866. Who may be subscribers**

46       Individuals, partnerships and corporations of this State may  
48 make application, enter into agreement for and hold policies or  
contracts in or with and be a subscriber of any domestic, foreign  
50 or alien reciprocal insurer. Any corporation now or hereafter  
organized under the laws of this State, including nonprofit

2 corporations, shall, in addition to the rights, powers, and  
franchises specified in its articles of incorporation or other  
4 organizational document, have full power and authority as a  
subscriber to exchange insurance contracts through such a  
6 reciprocal insurer. The right to exchange such contracts is  
hereby declared to be incidental to the purposes for which such  
8 corporations are organized and to be as fully granted as the  
rights and powers expressly conferred upon such corporations.  
10 Government or governmental agencies, state or political  
subdivisions thereof, boards, associations, estates, trustees or  
12 fiduciaries are authorized to exchange nonassessable reciprocal  
interinsurance contracts with each other and with individuals,  
14 partnerships and corporations to the same extent that  
individuals, partnerships and corporations are herein authorized  
16 to exchange reciprocal interinsurance contracts. Any officer,  
representative, trustee, receiver or legal representative of any  
18 such subscriber shall must be recognized as acting for or on its  
behalf for the purpose of such contract but shall is not be  
20 personally liable upon such contract by reason of acting in such  
representative capacity.

22 **Sec. 6. 24-A MRSA §6701, sub-§2, ¶¶A and B,** as enacted by PL  
1997, c. 435, §1, are amended to read:

24 A. Own, control or hold with power to vote all of the  
26 outstanding voting securities of an association captive  
insurance company incorporated as a stock insurer; ~~or~~

28 B. Have complete voting control over an association captive  
30 insurance company incorporated as a mutual insurer; or

32 **Sec. 7. 24-A MRSA §6701, sub-§2, ¶C** is enacted to read:

34 C. Comprise a reciprocal insurer in accordance with chapter  
36 53.

38 **Sec. 8. 24-A MRSA §6702, sub-§1, ¶B,** as enacted by PL 1997, c.  
435, §1, is amended to read:

40 B. Holds at least one meeting of its board of directors, or  
42 other governing body, each year in this State. For pure  
captive insurance companies and pure nonprofit captive  
44 insurance companies, the annual in-state meeting requirement  
may be satisfied by a teleconferenced or videoconferenced  
46 meeting if at least one Maine resident member of the board  
of directors, or other governing body, participates in the  
48 meeting from this State;

50 **Sec. 9. 24-A MRSA §6702, sub-§2,** as enacted by PL 1997, c.  
435, §1, is amended to read:

2           **2. Charter and bylaws.** In order to receive a license, a  
3 captive insurance company must file with the superintendent a  
4 certified copy of its charter and bylaws, or other organizational  
5 document, a statement under oath of its president and secretary,  
6 or if a reciprocal insurer its attorney-in-fact, showing its  
7 financial condition and any other statements or documents  
8 required by the superintendent.

10           **Sec. 10. 24-A MRSA §6702, sub-§3, ¶E,** as enacted by PL 1997,  
11 c. 435, §1, is amended to read:

12           E. The character, reputation, financial standing and  
13 purposes of the incorporators or other organizers;

16           **Sec. 11. 24-A MRSA §6702, sub-§6, ¶¶G and H,** as enacted by PL  
17 1997, c. 435, §1, are amended to read:

18           G. Title insurance as defined by section 709; and  
19  
20           H. Credit life insurance and credit health insurance as  
21 defined by section 2853, ~~relating to specific loans or other~~  
22 ~~credit transactions between its parent or affiliated~~  
23 ~~companies and any of their directors, officers and~~  
24 ~~employees.~~

26           **Sec. 12. 24-A MRSA §6702, sub-§6, ¶¶I to P** are enacted to read:

28           I. Health insurance as defined in section 704 to the extent  
29 not inconsistent with federal law;

32           J. Life insurance as defined in section 702 to the extent  
33 not inconsistent with federal law;

34           K. Annuities as defined in section 703 to the extent not  
35 inconsistent with federal law;

38           L. Financial guaranty insurance as defined in section 709-A;

40           M. Group legal services insurance as defined in section  
41 2883 to the extent not inconsistent with federal law;

42           N. Medicare supplement policies as defined in section 5001  
43 to the extent not inconsistent with federal law;

46           O. Nursing home care policies as defined in section 5051,  
47 subsection 3, long-term care policies as defined in section  
48 5051, subsection 1 and alternative policies pursuant to  
49 section 5051-B to the extent not inconsistent with federal  
50 law; and

2           P. To the extent not inconsistent with federal law or other  
4           provisions of this chapter, and upon approval by the  
6           superintendent, other types of insurance that do not clearly  
          fall within any of the definitions set forth in this  
          subsection.

8           **Sec. 13. 24-A MRSA §6702, sub-§7, as enacted by PL 1997, c.**  
10          **435, §1, is amended to read:**

12           **7. Exceptions.** A captive insurance company, when permitted  
14          by its articles of association ~~or~~, charter or other  
16          organizational document, may apply to the superintendent for a  
          license to provide any insurance described in subsection 6,  
          except that:

18           A. A pure captive insurance company may not insure any  
20          risks other than those of its parent and affiliated  
          companies or controlled unaffiliated businesses;

22           B. An association captive insurance company may not insure  
24          any risks other than those of the member organizations of  
          its association and their affiliated companies;

26           C. An industrial insured captive insurance company may not  
28          insure any risks other than those of the industrial insureds  
          that comprise the industrial insured group and their  
          affiliated companies;

30           D. A captive insurance company may not provide personal  
32          motor vehicle or homeowner's insurance coverage or any  
          component thereof; and

34           E. A captive insurance company may not accept or cede  
36          reinsurance except as provided in section 6711.

38           **Sec. 14. 24-A MRSA §6705, sub-§1, ~~D~~, as enacted by PL 1997,**  
          **c. 435, §1, is amended to read:**

40           D. In the case of an association captive insurance company  
42          incorporated as a mutual insurer or organized as a  
          reciprocal insurer, not less than \$750,000; and

44           **Sec. 15. 24-A MRSA §6706, sub-§2, as enacted by PL 1997, c.**  
46          **435, §1, is amended to read:**

48           **2. Association captive insurance company.** An association  
50          captive insurance company or an industrial insured captive  
          insurance company may be ~~incorporated~~:

2 A. As Incorporated as a stock insurer with its capital  
divided into shares and held by the stockholders; ~~or~~

4 B. As Incorporated as a mutual insurer without capital  
stock, the governing body of which must be elected by the  
6 member organizations of its association; or

8 C. Organized as a reciprocal insurer in accordance with  
chapter 53.

10 **Sec. 16. 24-A MRSA §6706, sub-§§6 and 7, as enacted by PL 1997,**  
12 **c. 435, §1, are amended to read:**

14 **6. Board of directors.** At least one of the members of the  
board of directors or other governing body of a captive insurance  
16 company incorporated or formed in this State must be a resident  
of this State.

18 **7. Captive insurance company.** A captive insurance company  
20 ~~formed~~ incorporated under this chapter, except for a pure  
nonprofit captive insurance company, has the privileges granted  
22 by and is subject to Title 13-A and this chapter. In the event  
of conflict between Title 13-A and this chapter, this chapter  
24 controls.

26 **Sec. 17. 24-A MRSA §6707, sub-§2, as enacted by PL 1997, c.**  
28 **435, §1, is amended to read:**

30 **2. Annual report.** An association captive insurance company  
or ~~risk-retention~~ captive insurance company shall file an annual  
statement in accordance with statutory accounting practices,  
32 which must be a true statement of its financial condition,  
transactions and affairs as of the immediately preceding December  
34 31st, in general form and context as approved by the National  
Association of Insurance Commissioners, or other format  
36 prescribed by the superintendent, verified by oaths of at least 2  
of the insurer's principal officers.

38 **Sec. 18. 24-A MRSA §6715, as enacted by PL 1997, c. 435, §1,**  
40 **is amended to read:**

42 **§6715. Confidential information**

44 All information submitted to the superintendent pursuant to  
section 6702, subsection -4- 3 is confidential and is not a  
46 public record within the meaning of Title 1, chapter 13,  
subchapter I. Each report or statement filed with the  
48 superintendent pursuant to section 6707, except those filed by or  
with respect to industrial insured groups as defined in section  
50 6701, subsection 8, is confidential and is not a public record

2 within the meaning of Title 1, chapter 13, subchapter I. The  
3 confidential nature of this information does not limit the  
4 ability of the superintendent, in the superintendent's  
5 discretion, to disclose such information to a public official in  
6 another state, as long as the public official agrees in writing  
7 to maintain the confidentiality of such information and the laws  
8 of the state in which the public official serves designate such  
information as confidential.

10 **Sec. 19. 24-A MRSA §6716, sub-§1, ¶D,** as enacted by PL 1997,  
11 c. 435, §1, is amended to read:

12 D. Stating in the articles of redomestication:

14 (1) The name of the ~~corporation~~ company;

16 (2) The date of ~~incorporation~~ formation and state or  
18 country of ~~incorporation~~ formation;

20 (3) The street address of the principal office in this  
22 State;

24 (4) The names and titles of the officers and directors  
of the ~~corporation~~ company;

26 (5) A statement that the ~~corporation~~ company is moving  
28 its domicile from its present state or country to this  
State;

30 (6) A statement that redomestication will occur upon  
32 filing the articles of redomestication and that the  
~~corporation~~ company is subject to the laws of this  
State; and

34 (7) A statement that copies of the articles of  
36 incorporation or other organizational document and any  
38 amendments certified by the proper officer of the state  
40 or country under the laws of which the ~~corporation~~  
company is ~~incorporated~~ formed are attached. If any of  
42 these documents are in a foreign language, a  
translation under oath of the translator must accompany  
these documents.

44 **Sec. 20. 24-A MRSA §6717, sub-§3, ¶¶A and B,** as enacted by PL  
45 1997, c. 435, §1, are amended to read:

46 A. Name of the ~~corporation~~ company;

48 B. Dates that notice of the ~~corporation's~~ company's intent  
50 to transfer domicile from this State was published, once in



2 each of 4 successive weeks in 4 publications in a newspaper  
of general circulation published in this State;

4 **Sec. 21. 36 MRSA §2513-B, sub-§§1 and 2**, as enacted by PL 1997,  
c. 435, §2, are amended to read:

6  
8 **1. Generally.** A captive insurance company shall pay to the  
State Tax Assessor a tax at a rate of .375 of 1% on the first  
10 \$20,000,000, ~~+.30~~ .275 of 1% on the next \$20,000,000, ~~+.20~~ .175 of  
12 1% on the next \$20,000,000 and .075 of 1% of each \$1 thereafter  
on the direct premiums collected or contracted for on policies or  
14 contracts of insurance written by the captive insurance company  
during the year ending December 31st next preceding, after  
deducting from the direct premiums subject to the tax the amounts  
paid to policyholders as return premiums that must include  
dividends on unabsorbed premiums or premium deposits returned or  
credited to policyholders.

18  
20 **2. Reinsurance.** A captive insurance company shall pay to  
the State Tax Assessor a tax at the rate of ~~+.225~~ .215 of 1% on  
22 the first \$20,000,000 of assumed reinsurance premium, ~~+.150~~ .125  
of 1% on the next \$20,000,000, ~~+.50~~ .050 of 1% on the next  
24 \$20,000,000 and ~~+.25~~ .025 of 1% of each \$1 thereafter. However,  
no reinsurance tax applies to premiums for risks or portions of  
risks that are subject to taxation on a direct basis pursuant to  
26 subsection 1. No reinsurance premium tax is payable in  
connection with the receipt of assets in exchange for the  
28 assumption of loss reserves and other liabilities of another  
insurer under common ownership and control if that transaction is  
30 part of a plan to discontinue the operations of another insurer  
and if part of the intent of the parties to that transaction is  
32 to renew or maintain that business with the captive insurance  
company.

34 **Sec. 22. 36 MRSA §2513-B, sub-§3**, as enacted by PL 1997, c.  
36 435, §2, is repealed.

38  
40 **SUMMARY**

42 This bill makes the following changes to the laws governing  
reciprocal insurers and captive insurance companies.

44 1. It lowers the number of incorporators required to form a  
domestic reciprocal insurer in this State from 25 to 3.

46 2. It raises the amount of the bond required for reciprocal  
48 insurers from \$25,000 to \$250,000.

2           3. It permits nonprofit corporations to be subscribers of  
reciprocal insurers.

4           4. It amends the requirement that a captive insurance  
6 company hold at least one meeting each year in Maine to allow  
teleconferenced and videoconferenced meetings if one board member  
participates in the meeting from this State.

8           5. It expands the lines of insurance that a captive  
10 insurance company may engage in to include life, health and other  
medical expense coverages.

12           6. It allows a captive insurance company to be organized as  
14 a reciprocal insurer as well as a domestic mutual insurer.

16           7. It corrects a cross-reference.

18           8. It lowers the rate of taxation for captive insurance  
companies.

20           9. It repeals the requirement that Maine-domiciled  
22 corporations that form captive insurance companies must pay 2%  
tax on direct premiums.