

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

No. 2049

H.P. 1458

House of Representatives, January 15, 1998

An Act to Restore the Managing General Agents Act.

(EMERGENCY)

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative MAYO of Bath.
Cosponsored by Representative DAVIDSON of Brunswick.

2 or "MGA" means a person who negotiates and binds ceding
3 reinsurance contracts on behalf of an insurer or manages all or
4 part of the insurance business of an insurer, including the
5 management of a separate division, department or underwriting
6 office, and acts as a producer for the insurer, whether known as
7 a managing general agent, manager or other similar term; and who,
8 with or without the authority, either separately or together with
9 affiliates, directly or indirectly, produces and underwrites an
10 amount of gross direct written premium equal to or more than 5%
11 of the policyholder surplus as reported in the last annual
12 statement of the insurer in any one quarter of the year following
13 the last annual statement and adjusts or pays claims in excess of
14 an amount determined by the superintendent or negotiates
15 reinsurance on behalf of the insurer, or both. The term does not
16 include:

17 A. An employee of the insurer;

18 B. A manager of a branch of an alien insurer that is
19 located in the United States;

22 C. An underwriting manager who, pursuant to contract,
23 manages all or part of the insurance operations of the
24 insurer, is under common control with the insurer, subject
25 to section 222 and whose compensation is not based on the
26 volume of premiums written; and

28 D. The attorney-in-fact authorized by and acting for the
29 subscribers of a reciprocal insurer or interinsurance
30 exchange under powers of attorney.

32 4. Underwrite. "Underwrite" means the authority to accept
33 or reject risk on behalf of the insurer.

34 **§1493. License and registration requirement**

36 1. In-state risks. A person may not act in the capacity of
37 an MGA with respect to risks located in this State for an insurer
38 licensed in this State unless that person holds a valid Maine
39 producer license and appointment authorizing the producer to sell
40 the applicable kinds of insurance and unless registered with the
41 superintendent as a managing general agent pursuant to subsection
42 5.

44 2. Out-of-state risks. A person may not act in the
45 capacity of an MGA representing an insurer domiciled in this
46 State with respect to risks located outside this State unless
47 that person holds a valid Maine producer license and appointment
48 in this State and unless registered with the superintendent as a
49 managing general agent pursuant to subsection 5.

2 3. Bond. The superintendent may require a bond in an
4 amount acceptable to the superintendent for the protection of the
insurer.

6 4. Errors and omissions policy. The superintendent may
8 require the MGA to maintain an errors and omissions policy.

10 5. Application. Each managing general agent shall file
12 with the superintendent an application for registration as a
managing general agent and shall pay the fee in section 601.

14 A. The superintendent shall prescribe, consistent with the
16 applicable requirements of this subchapter, and furnish
18 forms required under this subchapter in connection with
application for an issuance of registration certificates and
for notification of termination of contracts pursuant to
section 1495.

20 B. The application for registration must include the name
22 and address of the insurer with whom the producer has an
24 appointment pursuant to section 1431 and with whom the
26 producer has a written contract pursuant to section 1494, a
statement of the duties that the producer is expected to
perform on behalf of the insurer, the lines of insurance for
which the producer is to be authorized to act and any other
information the superintendent requests.

28 C. If the superintendent finds that the application is
30 complete, the superintendent shall promptly issue a
32 certificate of registration to the producer; otherwise, the
34 superintendent shall refuse to issue the registration and
promptly notify the producer and the insurer of the refusal,
stating the grounds for refusal. The producer may request a
36 hearing on the superintendent's denial pursuant to section
229.

38 6. Duration. Unless notification of termination of
40 contract is received pursuant to section 1495, the certificate of
42 registration remains in effect as long as the registrant
continues to hold a valid Maine producer license and as long as
44 the registrant complies with the provisions of this subchapter.
A certificate of registration expires upon receipt by the
46 superintendent of notification of termination of contract
pursuant to section 1495 or upon notification of termination of
the producer's license and the registrant shall promptly deliver
48 the certificate of registration to the superintendent.

50 **§1494. Required contract provisions**

A person acting in the capacity of an MGA may not place

2 business with an insurer unless there is in force a written
4 contract between the parties that sets forth the responsibilities
6 of each party and, when both parties share responsibility for a
8 particular function, specifies the division of those
10 responsibilities. The contract must contain the following
12 minimum provisions.

14 1. Termination. The insurer may terminate the contract for
16 cause upon written notice to the MGA. The insurer may suspend
18 the underwriting authority of the MGA during the pendency of any
20 dispute regarding the cause for termination. However, the
22 suspension of an MGA does not relieve the MGA of the
24 responsibility to service business in existence at the time of
26 the suspension.

28 2. Accounting. The MGA shall render accounts to the
30 insurer detailing all transactions and remit all funds due under
32 the contract to the insurer on not less than a monthly basis.

34 3. Bank as fiduciary. All funds collected for the account
36 of an insurer must be held by the MGA in a fiduciary capacity in
38 a bank that is a member of the Federal Reserve System. This
40 account must be used for all payments on behalf of the insurer.
42 The MGA may retain no more than 3 months' estimated claims
44 payments and allocated loss adjustment expenses.

46 4. Records. Separate records of business written by the
48 MGA must be maintained. The insurer must have access and may
50 copy all accounts and records related to its business in a form
52 usable by the insurer. The superintendent must have access to
54 all books, bank accounts and records of the MGA in a form usable
56 to the superintendent. These records must be retained according
58 to section 3408.

60 5. Nonassignable. The contract may not be assigned in
62 whole or part by the MGA.

64 6. Guidelines. The contract must include appropriate
66 underwriting guidelines including:

68 A. The maximum annual premium volume;

70 B. The basis of the rates to be charged;

72 C. The types of risks that may be written;

74 D. Maximum limits of liability;

76 E. Applicable exclusions;

2 F. Territorial limitations;

4 G. Policy cancellation provisions; and

6 H. The maximum policy period.

8 The insurer has the right to cancel or not to renew any policy of
10 insurance subject to all applicable laws and rules regarding the
cancellation and nonrenewal of insurance policies.

12 7. Settlement authority. If the contract permits the MGA
14 to settle claims on behalf of the insurer;

16 A. All claims must be reported to the insurer in a timely
18 manner;

20 B. A copy of the claim file must be sent to the insurer at
22 its request or as soon as it becomes known that the claim:

24 (1) Has the potential to exceed an amount determined
26 by the superintendent or exceeds the limit set by the
28 insurer, whichever is less;

30 (2) Involves a coverage dispute;

32 (3) May exceed the MGA's claims settlement authority;

34 (4) Is open for more than 6 months; or

36 (5) Is closed by payment of an amount awarded as a
38 result of a judicial proceeding or an amount set by the
40 insurer, whichever is less;

42 C. All claim files must be the joint property of the
44 insurer and MGA; except that, upon an order of liquidation
46 of the insurer, the files become the sole property of the
48 insurer or its estate. The MGA must have reasonable access
50 to and may copy the files on a timely basis; and

D. Any settlement authority granted to the MGA may be
terminated for cause upon written notice by the insurer to
the MGA or upon the termination of the contract. The
insurer may suspend the settlement authority during the
pendency of any dispute regarding the cause for
termination. Upon termination of the MGA's authority to
settle claims, the MGA shall desist from any draw on funds
of the insurer and shall immediately forward to the insurer
all claims files with the MGA's immediate possession and any
claims received thereafter. The MGA shall promptly transfer

2 to the insurer any funds owed to the insurer or to any
4 policyholder and shall transfer to the insurer any property
of the insurer that is within the MGA's actual or
constructive possession.

6 8. Transmission. When electronic claims files are in
8 existence, the contract must address the timely transmission of
the data.

10 9. Interim profits. If the contract provides for a sharing
12 of interim profits by the MGA and the MGA has the authority to
14 determine the amount of the interim profits by establishing loss
16 reserves or controlling claim payments or in any other manner,
18 interim profits may not be paid to the MGA until one year after
they are earned for property insurance business and 5 years after
they are earned on casualty business and not until the profits
have been verified pursuant to section 1495.

20 10. Prohibitions. The MGA may not:

22 A. Bind reinsurance or retrocessions on behalf of the
24 insurer, except that the MGA may bind facultative
26 reinsurance contracts pursuant to obligatory facultative
28 agreements if the contract with the insurer contains
30 reinsurance underwriting guidelines including, for
reinsurance both assumed and ceded, a list of reinsurers
with which such automatic agreements are in effect, the
coverages and amounts or percentages that may be reinsured
and commission schedules;

32 B. Commit the insurer to participate in insurance or
reinsurance syndicates;

34 C. Make use of any producer without ensuring that the
36 producer is lawfully licensed in this State to transact the
kind of insurance for which the producer is used;

38 D. Without prior approval of the insurer, pay or commit the
40 insurer to pay a claim over an amount specified by the
42 insurer, net of reinsurance, which may not exceed 1% of the
insurer's policyholder surplus as of December 31st of the
preceding year;

44 E. Collect any payment from a reinsurer or commit the
46 insurer to any claim settlement with a reinsurer without
48 prior approval of the insurer. If prior approval is given,
a report must be promptly forwarded to the insurer;

50 F. Make use of any producer who serves on the insurer's
board of directors;

2 G. Jointly employ an individual who is employed with the
3 insurer; or

4
5 H. Assign specific duties under a contract with an insurer
6 to other parties.

8 **§1495. Duties of insurers**

10 1. Records for each MGA. The insurer shall require and
11 maintain on file an independent financial examination of current
12 origin prepared on the basis of statutory accounting prescribed
13 or permitted by the superintendent respecting each MGA with
14 which the insurer has done business.

16 2. Actuarial review. If an MGA establishes loss reserves,
17 the insurer shall annually obtain the opinion of an actuary or
18 actuaries who specialize in the type of insurance under
19 consideration, attesting to the adequacy of loss reserves
20 established for losses incurred and outstanding on business
21 produced by the MGA. This requirement is in addition to any
22 other required loss reserve certification.

24 3. On-site review. The insurer shall periodically and at
25 least semiannually conduct an on-site review of the underwriting
26 and claims processing operations of the MGA.

28 4. Binding authority. Binding authority for all
29 reinsurance contracts or participation in insurance or
30 reinsurance syndicates rests with an officer of the insurer, who
31 may not be affiliated with the MGA.

32 5. Notice of termination. Within 30 days of termination of
33 a contract with an MGA, the insurer shall provide written
34 notification of that termination to the superintendent.

36 6. Quarterly review. An insurer shall review its books and
37 records each quarter to determine if any producer has become, by
38 operation of section 1492, subsection 3, an MGA as defined in
39 that section. If the insurer determines that its producer has
40 become an MGA, the insurer shall promptly notify the producer and
41 the superintendent of that determination and the insurer and
42 producer must fully comply with the provisions of this subchapter
43 within 30 days.

44 7. Board member qualifications. An insurer may not appoint
45 to its board of directors an officer, director, employee,
46 producer or controlling shareholder of its managing general
47 agents. This subsection does not apply to relationships governed
48 by section 222 or chapter 77 to the extent that control of an
49 insurer is permissible under section 222 or chapter 77.
50

2 **§1496. Acts of MGA considered acts of insurer;**
4 **examination authority**

6 The acts of the MGA are deemed to be the acts of the insurer
8 on whose behalf it is acting. An MGA may be examined as if it
10 were the insurer.

12 **§1497. Penalties and liabilities**

14 **1. Penalties.** If the superintendent finds after a hearing
16 conducted in accordance with section 229 that any person has
18 violated any provision of this subchapter, the superintendent may
20 order:

22 A. For each separate violation, any penalty provided for by
24 section 12-A;

26 B. Revocation or suspension of the producer's license or
28 the insurer's certificate of authority; and

30 C. The MGA to reimburse the insurer, the rehabilitator or
32 liquidator of the insurer for any losses incurred by the
34 insurer caused by a violation of this subchapter committed
36 by the MGA.

38 **2. Effect of order.** The decision, determination or order
40 of the superintendent pursuant to subsection 1 is subject to
42 judicial review as provided by section 236.

44 **3. Penalties.** Nothing contained in this section affects
46 the right of the superintendent to impose any other penalties
48 provided for in this Title.

50 **4. Rights of others.** Nothing contained in this subchapter
limits or restricts the rights of policyholders, claimants and
auditors.

§1498. Rules

The superintendent may adopt reasonable rules for the
implementation and administration of this subchapter. Rules
adopted pursuant to this subchapter are routine technical rules
as defined in Title 5, chapter 375, subchapter II-A.

Sec. 2. Retroactivity. This Act applies retroactively to
October 1, 1997.

Emergency clause. In view of the emergency cited in the
preamble, this Act takes effect when approved.

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SUMMARY

During the last legislative session the Managing General Agents Act was repealed from the Maine Insurance Code. This bill enacts the Managing General Agents Act in the Maine Revised Statutes, Title 24-A, chapter 16, subchapter VIII. The language is similar to the previous law, except for the change of the term "agent" to "producer" and internal cross-reference changes.