

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 915

S.P. 268

In Senate, February 15, 2001

An Act to Amend the Maine Insurance Guaranty Association Act.

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

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

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator ABROMSON of Cumberland.
Cosponsored by Representative MAYO of Bath and
Senator LaFOUNTAIN of York, Representatives: RICHARDSON of Brunswick, O'NEIL of
Saco.

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

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

6 C. Credit insurance, vendors single-interest insurance,
8 collateral protection insurance or any similar insurance
protecting the interests of a creditor arising out of a
creditor-debtor transaction;

10 **Sec. 2. 24-A MRSA §4433, sub-§2, ¶F**, as amended by PL 1989, c.
12 67, §1, is further amended to read:

14 F. Financial guaranty insurance or other forms of insurance
offering protection against investment risks; and

16 **Sec. 3. 24-A MRSA §4433, sub-§2, ¶G**, as amended by PL 1991, c.
18 885, Pt. E, §32 and affected by §47, is further amended to read:

20 G. Contracts of workers' compensation excess insurance
22 issued to workers' compensation self-insurers approved under
former Title 39, section 23 or under Title 39-A, section 403
24 by any insurer after the effective date of this paragraph,
or in the case of a contract that automatically renews, not
26 later than one year after the effective date of this
paragraph;

28 **Sec. 4. 24-A MRSA §4433, sub-§2, ¶¶H to K** are enacted to read:

30 H. Life, annuity, health or disability insurance;

32 I. Insurance of warranties or service contracts, including
34 insurance that provides for the repair, replacement or
service of goods or property, or indemnification of repair,
36 replacement or service; for the operational or structural
failure of the goods or property due to a defect in
38 materials, workmanship or normal wear and tear; or for
reimbursement for the liability incurred by the issuer of
agreements or service contracts that provide such benefits;

40 J. A transaction or combination of transactions between a
42 person, including affiliates of that person, and an insurer,
including affiliates of that insurer, that involves the
44 transfer of investment or credit risk unaccompanied by
transfer of insurance risk; and

46 K. Insurance provided by or guaranteed by a governmental
48 entity.

2 **Sec. 5. 24-A MRSA §4435, sub-§4**, as amended by PL 1995, c.
289, §12, is further amended to read:

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

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

16 B. The property from which the claim arises is permanently
18 located in this State.

"Covered claim" does not include any amount due any insurer,
20 reinsurer, affiliate, insurance pool or underwriting association,
as subrogation recoveries or otherwise, except that any payment
22 made to the workers' compensation residual market pool pursuant
to section 4438, subsection 1, paragraph A-1 must be included as
24 a covered claim. "Covered claim" does not include any
first-party claims by an insured whose net worth exceeds
26 \$10,000,000 on December 31st of the year prior to the year in
which the member insurer becomes an insolvent insurer. An
28 insured's net worth on that date is deemed to include the
aggregate net worth of the insured and all its subsidiaries as
30 calculated on a consolidated basis.

32 **Sec. 6. 24-A MRSA §4435, sub-§5**, as amended by PL 1995, c.
289, §13, is further amended to read:

34 **5. Insolvent insurer.** "Insolvent insurer" means an a
36 member insurer:

38 A. Authorized to transact insurance in this State either at
the time the policy was issued or when the insured event
40 occurred; and

42 B. Determined-to-be-insolvent Against whom a final order of
liquidation has been entered with a finding of insolvency by
44 a court of competent jurisdiction.

46 Effective July 1, 1995, the workers' compensation residual market
pool, as created by the Bureau of Insurance Rules, Chapter 440,
48 is deemed an insolvent insurer.

50 **Sec. 7. 24-A MRSA §4435, sub-§9-A** is enacted to read:

2 **9-A. Person.** "Person" means an individual or legal entity,
3 including a governmental entity.

4 **Sec. 8. 24-A MRSA §4438, sub-§1, ¶A,** as amended by PL 1989, c.
5 751, §4, is further amended to read:

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

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

17 (2) An amount not exceeding ~~\$100,000~~ **\$10,000** per
18 policy for a covered claim for the return of an
19 unearned premium; or

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

22 In no event is the association obligated to pay a claimant
23 an amount in excess of the obligation of the insolvent
24 insurer under the policy or coverage from which the claim
25 arises. The association shall pay only that amount of
26 unearned premium in excess of \$50. Notwithstanding any
27 other provisions of this subchapter, a covered claim ~~shall~~
28 **does** not include any claim filed with the association after
29 the earlier of 18 months after the date of the order of
30 liquidation or the final date set by the court for the
31 filing of claims against the liquidator or receiver of an
32 insolvent insurer;

33 **Sec. 9. 24-A MRSA §4438, sub-§1, ¶A-1,** as enacted by PL 1995,
34 c. 289, §14, is amended to read:

35 A-1. Pay to the workers' compensation residual market pool
36 the sum of \$1,538,039 on or before February 15th, May 15th,
37 August 15th and November 15th of each year beginning August
38 15, 1996 and continuing for 40 consecutive calendar
39 quarters. Each payment made under this paragraph must be
40 treated as the payment of a covered claim except that the
41 association may not seek reimbursement or recoupment from
42 any source other than by assessments to member insurers.

2 Member insurers are allowed to ~~recognize~~ recoup assessments
made pursuant to this paragraph ~~in rates and premiums~~ as
4 provided in section 4447;

6 **Sec. 10. 24-A MRSA §4438, sub-§2, ¶C**, as enacted by PL 1969,
c. 561, is amended to read:

8 C. Sue or be sued and may intervene as a party before any
10 court in this State that has jurisdiction over an insolvent
insurer as defined by this subchapter;

12 **Sec. 11. 24-A MRSA §4441, sub-§2, ¶A**, as enacted by PL 1969,
14 c. 561, is amended to read:

16 A. Require that the association notify the insureds of the
18 determination order of liquidation with a finding of
insolvency and of their rights under this subchapter. Such
20 notifications shall must be by mail at their last known
addresses, where available, but if required information for
22 notification by mail is not available, notice by publication
in a newspaper of general circulation in this State ~~shall be~~
24 is sufficient.

26 **Sec. 12. 24-A MRSA §4447**, as enacted by PL 1969, c. 561, is
repealed and the following enacted in its place:

28 **§4447. Premium tax offset**

30 **1. Premium tax offset permitted.** Each member insurer
32 paying an assessment under section 4440 may offset 100% of the
amount of such assessment against its premium tax liability to
34 the State. This offset must be taken over a period of the 5
successive tax years following the year of payment of the
36 assessment at the rate of 20% per year of the assessment paid to
the association. If the offset is less than 20% in any year, any
38 unused balance may be carried over to any succeeding year until
such time as the offset is fully used. Each member insurer that
40 has offset assessments paid to the association from its premium
tax liability to the State shall pay to the State 100% of any
42 sums that are acquired by refund from the association pursuant to
section 4438, subsection 1, paragraph F. The association shall
44 notify the superintendent that such refunds have been made.

46 **2. Insurer may transfer offset to affiliate.** A member
insurer may transfer any offset provided under this section to an
48 affiliate.

50 **Sec. 13. Application.** This Act applies to the obligations of
the Maine Insurance Guaranty Association, established pursuant

2 to the Maine Revised Statutes, Title 24-A, section 4436, under
policies of insolvent insurers as these obligations exist on or
4 after the effective date of this Act.

6 SUMMARY

8 This bill makes the following changes to the Maine Insurance
Guaranty Association Act.

10 1. It exempts additional types of insurance from being
12 subject to the Act.

14 2. It excludes first-party claims by an insured whose net
16 worth exceeds \$10,000,000.

18 3. It amends the definition of "insolvent insurer" to
clarify that it applies to that group of insurers defined as
"member insurers," and amends the definition to mean a member
20 insurer against whom a final order of liquidation has been
22 entered.

24 4. It enacts a definition of "person" to mean any
individual or legal entity, including a governmental entity.

26 5. It sets a \$10,000 cap on a claim for the return of an
28 unearned premium.

30 6. It provides that claims resulting from an insolvency
must be filed no later than 18 months after the insolvency.

32 7. It provides that the Maine Insurance Guaranty
Association may intervene as a party in a case involving an
34 insolvent insurer.

36 8. It provides a premium tax offset for an insurer that
pays an assessment pursuant to the Act.