

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1601

S.P. 554

In Senate, May 5, 2003

An Act To Authorize the Superintendent of Insurance To Establish a Fair Access to Insurance Requirements Plan

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Insurance and Financial Services 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 MAYO of Sagadahoc.
Cosponsored by Representative O'NEIL of Saco and
Senators: President DAGGETT of Kennebec, DAVIS of Piscataquis, LaFOUNTAIN of York,
MARTIN of Aroostook, TREAT of Kennebec, TURNER of Cumberland, WOODCOCK of
Franklin, Representative: Speaker COLWELL of Gardiner.

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

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Sec. 1. 24-A MRSA §3043 is enacted to read:

§3043. Fair access to insurance requirements plan

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "FAIR Access to Insurance Requirements Plan" or "FAIR Plan" means the plan that the superintendent may establish pursuant to subsection 2.

B. "FAIR Plan Association" or "association" means a nonprofit association established pursuant to this section to develop and administer a program to provide residential property insurance in designated underserved areas in this State.

C. "Insurer" means any licensed insurer writing property and casualty insurance in this State, including:

(1) A Lloyd's plan company; and

(2) A reciprocal or interinsurance exchange.

D. "Residential property insurance" means the coverage against loss to real or tangible personal property at a fixed location provided in a homeowner's policy, residential fire and allied lines policy or farm owner's policy.

E. "Inspection bureau" means the organization or organizations designated by the FAIR Plan Association with the approval of the superintendent to make inspections to determine the condition of the properties for which residential property insurance is sought and to perform such other duties as may be authorized by the FAIR Plan Association or the superintendent. The manner and scope of the inspection and evaluation report for residential property must be prescribed by the association pursuant to the plan of operation.

F. "Net direct premiums" means gross direct written premiums less return premiums upon canceled contracts, irrespective of reinsurance assumed or ceded, written on residential property pursuant to this section.

G. "Underserved area" means an area designated as underserved by the superintendent.

2 2. Authority. If the superintendent determines, after a
public hearing, that in all or any part of the State residential
4 property insurance is not reasonably available in the voluntary
market to a substantial number of insurable risks and that at
6 least 50% of the applicants to the residential property market
assistance program pursuant to subsection 4 who are qualified
8 under the plan of operation, after the superintendent has made
insurer participation mandatory under the plan of operation
10 pursuant to subsection 3, have not been placed with an insurer in
the previous 12-month period, the superintendent may establish
12 the Fair Access to Insurance Requirements Plan, or FAIR Plan, to
deliver residential property insurance to citizens of this State
14 in underserved areas that must be determined and designated by
the superintendent by rule. Each insurer, as a condition of its
16 authority to transact residential property insurance in this
State, shall participate in the FAIR Plan Association in
18 accordance with this section.

20 3. Governing committee; plan of operation. The FAIR Plan
is administered as follows.

22 A. The FAIR Plan must be administered by the governing
24 committee of the association, appointed according to
paragraph B, pursuant to a plan of operation. Subject to
26 the approval of the superintendent, the governing committee
shall develop a plan of operation and propose amendments to
28 the plan of operation. The plan of operation and any
amendments to the plan of operation must be adopted by the
30 superintendent by rule. The governing committee may on its
own initiative or at the request of the superintendent amend
32 the plan of operation.

34 B. The governing committee of the association is composed
of 11 members appointed by the superintendent as follows:

36 (1) Five members who represent the interests of
38 insurers;

40 (2) Four public members; and

42 (3) Two members who are licensed producers.

44 The superintendent or the superintendent's designated
46 representative from within the bureau serves as an ex
officio, nonvoting member.

48 To be eligible to serve on the governing committee as a
50 representative of insurers, a person must be a full-time
employee of an authorized insurer.

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C. The plan of operation must provide:

(1) For the issuing of residential property insurance pursuant to this section and the distribution of the losses and the expenses in the writing of such insurance in this State;

(2) That all insurers writing residential property insurance shall participate in the writings, expenses, profits and losses of the association, in the proportion that the net direct premiums of each participating insurer written in this State during the preceding calendar year bear to the aggregate net direct premium written in this State by all participating insurers. This information must be determined in accordance with a residential property statistical plan adopted by the superintendent;

(3) That a participating insurer is entitled to receive credit for similar insurance voluntarily written in a designated underserved area and its participation in the writings in the association must be reduced in accordance with the provisions of the plan of operation;

(4) For the immediate binding of eligible risks; for the use of premium installment payment plans, adequate marketing and service facilities; and for the establishment of reasonable service standards;

(5) Procedures for efficient, economical, fair and nondiscriminatory administration of the FAIR Plan Association;

(6) Procedures for determining the net level of participation required for each insurer in the FAIR Plan Association;

(7) For the use of deductibles and other underwriting devices and for assessment of all participating insurers in amounts sufficient to operate the association; the establishment of maximum limits of liability to be placed through the association; and commissions to be paid to the licensed agents submitting applications;

(8) That the association issue policies in its own name;

2 (9) Reasonable underwriting standards for determining
3 insurability of the risk;

4 (10) Procedures for the assumption and ceding of
5 reinsurance by the association; and

6 (11) Any other procedures or operational matters
7 considered necessary by the governing committee or the
8 superintendent.

10 4. FAIR Plan Association. Pursuant to procedures and
11 requirements set forth in the plan of operation under subsection
12 3, paragraph C, the FAIR Plan Association shall develop and
13 administer a program for participation by all insurers writing
14 residential property insurance in this State. The association
15 shall make residential property insurance available to applicants
16 in underserved areas whose property is insurable in accordance
17 with reasonable underwriting standards but who, after diligent
18 efforts, are unable to procure such insurance through the
19 voluntary market as evidenced by 2 declinations from insurers
20 actually writing residential property insurance in the State.

22 5. Powers of association; centralized operations
23 authorized. The following are the powers and centralized
24 operations of the association.

26 A. The association is authorized, for FAIR Plan purposes
27 only, to issue policies of insurance and endorsements to
28 policies of insurance in its own name or a trade name duly
29 adopted for that purpose and to act on behalf of all
30 participating insurers in connection with these policies and
31 otherwise in any manner necessary to accomplish the purposes
32 of this section, including, but not limited to, issuance of
33 policies, collection of premiums, issuance of cancellations
34 and payment of commissions, losses, judgments and expenses.

36 B. The participating insurers are liable to the association
37 as provided in this section and the plan of operation for
38 the expenses and liabilities so incurred by the association,
39 and the association shall make assessments against the
40 participating insurers as required to meet such expenses and
41 liabilities. In connection with any policy issued by the
42 association;

44 (1) Service of any notice, proof of loss, legal
45 process or other communication with respect to the
46 policy must be made upon the association; and

48 (2) Any action by the insured constituting a claim
49 under the policy may be brought only against the
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2 association, and the association is the proper party
3 for all purposes in any action brought under or in
4 connection with any such policy.

5 The requirements in subparagraph (1) and subparagraph (2)
6 must be set forth in any policy issued by the association
7 and the form and content of any such policy are subject to
8 the approval of the superintendent.

9 C. The association is authorized to assume and cede
10 reinsurance in conformity with the plan of operation.

11 D. Each insurer must participate in the writings, expenses,
12 profits and losses of the association in the proportion that
13 its net direct premiums written bear to the aggregate net
14 direct premiums written by all insurers.

15 6. Property inspection; FAIR Plan procedure. The following
16 provisions govern property inspection and FAIR Plan procedure.

17 A. Any person having an insurable interest in real or
18 tangible personal property at a fixed location in an
19 underserved area who, after diligent effort, has been unable
20 to obtain residential property insurance, as evidenced by 2
21 current declinations from insurers actually writing
22 residential property insurance in the State, is entitled
23 upon application to the association to an inspection and
24 evaluation of the property by representatives of the
25 inspection bureau.

26 B. An application may be made on behalf of the applicant by
27 a licensed producer and must be submitted on a form
28 prescribed by the association.

29 C. Promptly after the request for inspection is received,
30 an inspection must be made and an inspection report filed
31 with the association and made available to the applicant
32 upon request.

33 D. If the inspection bureau finds that the residential
34 property meets the reasonable underwriting standards
35 established in the plan of operation, the applicant must be
36 so informed in writing and a policy or binder must be issued
37 by the association. If the residential property does not
38 meet the criteria, the applicant must be informed, in
39 writing, of the reasons for the failure of the residential
40 property to meet the criteria.

41 E. If, at any time, the applicant makes improvements in the
42 residential property or its condition that the applicant

2 believes are sufficient to make the residential property
3 meet the criteria, a representative of the inspection bureau
4 shall reinspect the residential property upon request. In
5 any case, the applicant for residential property insurance
6 is eligible for one reinspection any time within 60 days
7 after the initial FAIR Plan inspection. If upon
8 reinspection the residential property meets the reasonable
9 underwriting standards established in the plan of operation,
10 the applicant must be so informed in writing and a policy or
11 binder must be issued by the association.

12 **7. Approval of rates.** The association shall file with the
13 superintendent for approval the proposed rates and supplemental
14 rate information to be used in connection with the issuance of
15 policies or endorsements. Rates must be set in an amount
16 sufficient to carry all claims to maturity and to meet the
17 expenses incurred in the writing and servicing of the business.
18 Within 60 days of the filing of the proposed rates, the
19 superintendent shall enter an order either approving or
20 disapproving, in whole or in part, the proposed rates. The
21 superintendent may, upon notice to the association, extend the
22 period for entering an order under this section an additional 30
23 days. Such a policy or endorsement may not be issued until such
24 time as the superintendent approves the rates to be applied to
25 the policy or endorsement. An order disapproving a rate must
26 state the grounds for the disapproval and the findings in support
27 of the disapproval.

28 **8. Appeals; judicial review.** The following provisions
29 govern appeals and judicial review.

30 A. Any applicant or affected insurer has the right of
31 appeal to the superintendent. A decision of the association
32 may be appealed to the superintendent within 30 days after
33 such decision.

34 B. All orders or decisions of the superintendent made
35 pursuant to this section constitute final agency action and
36 are subject to judicial review in accordance with the Maine
37 Administrative Procedure Act.

38 **9. Immunity from liability.** There is no liability on the
39 part of and no cause of action against insurers, the inspection
40 bureau, the association, the governing committee or their agents
41 or employees or the superintendent or the superintendent's
42 authorized representatives with respect to any inspection
43 required to be undertaken by this section or for any acts or
44 omissions in connection with such an inspection or for any
45 statements made in any report and communication concerning the
46 insurability of the property, in the findings required by the
47 superintendent.

2 provisions of this section or at the hearings conducted in
3 connection with such an inspection.

4 10. Insolvency. In the event any participating insurer
5 fails, by reason of insolvency, to pay any assessment, the
6 association shall cause the reimbursement ratios to be
7 immediately recalculated, excluding from this recalculation the
8 amount of the insolvent insurer's assessment determined by the
9 superintendent to be uncollectible, so that such uncollectible
10 amount is, in effect, assumed and redistributed among the
11 remaining participating insurers.

12 11. Assessments and premium surcharges. If a deficit
13 occurs in the association, the association shall assess
14 participating insurers in accordance with this subsection and
15 each insurer may charge a premium surcharge on every property
16 insurance policy issued by it insuring property in this State,
17 the effective date of which policy is within the 3-year period
18 commencing 90 days after the date of assessment by the
19 association. The amount of the surcharge must be calculated on
20 the basis of a uniform percentage of the premium on such policies
21 equal to 1/3 of the ratio of the amount of an insurer's
22 assessment to the amount of its direct earned premiums as
23 reported in its financial statement to the bureau for the
24 calendar year immediately preceding the year in which the
25 assessment is made, such that over the period of 3 years the
26 aggregate of all such surcharges by an insurer equals the amount
27 of the assessment of such insurer. The minimum surcharge on a
28 policy is \$1. A surcharge may be rounded to the nearest dollar.

29 12. Sanctions. If the association, inspection bureau or a
30 participating insurer is found to be in violation of or in
31 failure to comply with this section, such entity is subject to
32 the penalties authorized in section 12-A. The superintendent may
33 also utilize any other disciplinary procedures authorized by this
34 Title, including the cease and desist procedures authorized by
35 section 12-A.

36 13. Annual report. The association shall compile a
37 calendar year annual operating report and submit this annual
38 report to the superintendent and the joint standing committee of
39 the Legislature having jurisdiction over insurance and financial
40 services matters on or before March 31st of the following
41 calendar year. The annual report is a public record as defined
42 in Title 1, section 402, subsection 3.

43 14. Powers of superintendent. In addition to any powers
44 conferred upon the superintendent by this section or any other
45 law, the superintendent shall supervise the association and the
46 inspection bureau. In addition, the superintendent may:

2 A. Examine the operation of the association and the
4 inspection bureau through free access to all the books,
6 records, files, papers and documents relating to their
8 operation and may summon, qualify and examine as witnesses
 all persons having knowledge of such operations, including
 the governing committee or officers or employees of the
 association;

10 B. Do all things necessary to enable the State and the
12 association to fully participate in any federal program of
14 reinsurance that may be enacted for purposes similar to the
 purposes of this section;

16 C. Require such reports from the association concerning
18 risks insured by the association pursuant to this section as
 may be considered necessary;

20 D. Adopt policy forms, endorsements, rates and rating and
 rule manuals for use by the association; and

22 E. Establish a consumer education program designed to
24 increase the ability of consumers to differentiate among
26 different products and providers in the property and
 casualty market.

28 15. Rules. The superintendent may adopt rules to implement
30 this section. Rule adopted pursuant to this subsection are
 routine technical rules as defined in Title 5, chapter 375,
 subchapter 2-A.

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SUMMARY

36 This bill provides that the Superintendent of Insurance may
38 establish a Fair Access to Insurance Requirements Plan, or FAIR
40 Plan, under certain circumstances, if the superintendent
42 determines, after a public hearing, that in all or any part of
44 the State residential property insurance is not reasonably
46 available in the voluntary market to a substantial number of
48 insurable risks. The FAIR Plan would be developed and
 administered by the FAIR Plan Association, a nonprofit
 association appointed by the superintendent that includes members
 from the insurance industry and the public. The FAIR Plan
 Association would develop and administer a program for
 participation by all licensed insurers writing residential
 property insurance in this State that would make residential
 property insurance available to applicants in underserved areas
 whose property is insurable in accordance with reasonable

2 underwriting standards but who, after diligent efforts, are
unable to procure such insurance through the voluntary market, as
evidenced by 2 declinations from insurers actually writing
4 residential property insurance in this State.