

# MAINE STATE LEGISLATURE

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Date: 4-15-08

(Filing No. S-637)

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STATE OF MAINE  
SENATE  
123RD LEGISLATURE  
FIRST SPECIAL SESSION

SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1608, L.D. 2247, Bill, "An Act To Continue Maine's Leadership in Covering the Uninsured"

Amend the amendment by striking out everything after the title and before the summary and inserting the following:

'Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

PART A

Sec. A-1. 24-A MRSA §2736-C, sub-§2, ¶B, as enacted by PL 1993, c. 477, Pt. C, §1 and affected by Pt. F, §1, is amended to read:

B. A carrier may not vary the premium rate due to the gender, ~~health status~~ geographic area, claims experience or policy duration of the individual. A carrier may vary the premium rate based on health status, age, occupation or industry and tobacco use only as permitted in paragraph D.

Sec. A-2. 24-A MRSA §2736-C, sub-§2, ¶C, as amended by PL 2001, c. 410, Pt. A, §1 and affected by §10, is further amended to read:

C. A carrier may vary the premium rate due to ~~smoking status and family membership. The superintendent may adopt rules setting forth appropriate methodologies regarding rate discounts based on smoking status. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.~~

Sec. A-3. 24-A MRSA §2736-C, sub-§2, ¶D, as amended by PL 2001, c. 410, Pt. A, §2 and affected by §10, is further amended to read:

D. A carrier may vary the premium rate due to age, health status, occupation or industry and ~~geographic area only under the following schedule and within the listed percentage bands~~ and tobacco use in accordance with the following limitations.

SENATE AMENDMENT

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SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1608, L.D. 2247

1 (1) For all policies, contracts or certificates that are executed, delivered, issued  
2 for delivery, continued or renewed in this State between December 1, 1993 and  
3 July 14, 1994, the premium rate may not deviate above or below the community  
4 rate filed by the carrier by more than 50%.

5 (2) For all policies, contracts or certificates that are executed, delivered, issued  
6 for delivery, continued or renewed in this State between July 15, 1994 and July  
7 14, 1995, the premium rate may not deviate above or below the community rate  
8 filed by the carrier by more than 33%.

9 (3) For all policies, contracts or certificates that are executed, delivered, issued  
10 for delivery, continued or renewed in this State after July 15, 1995, the premium  
11 rate may not deviate above or below the community rate filed by the carrier by  
12 more than 20%.

13 (4) For all policies, contracts or certificates that are executed, delivered, issued  
14 for delivery, continued or renewed in this State after January 1, 2010, the  
15 premium rate may not deviate above or below the community rate filed by the  
16 carrier by more than 40%.

17 (5) A variation in rate is not permitted on the basis of changes in health status  
18 after a policy, contract or certificate is issued or renewed.

19 **Sec. A-4. 24-A MRSA §2736-C, sub-§2, ¶G** is enacted to read:

20 G. A carrier that offered individual health plans prior to January 1, 2010 may close  
21 its individual book of business sold prior to January 1, 2010 and may establish a  
22 separate community rate for individuals applying for coverage under an individual  
23 health plan on or after January 1, 2010.

24 **Sec. A-5. 24-A MRSA §2736-C, sub-§3,** as corrected by RR 2001, c. 1, §30, is  
25 amended to read:

26 **3. Guaranteed issuance and guaranteed renewal.** Carriers providing individual  
27 health plans must offer all health plans approved by the Maine Individual High-risk  
28 Reinsurance Pool Association pursuant to section 3908, subsection 1 as a condition of  
29 offering individual health plans in this State. Carriers must meet the following  
30 requirements on issuance and renewal.

31 A. Coverage issued through the Maine Individual High-risk Reinsurance Pool  
32 Association established pursuant to chapter 54 must be guaranteed to all residents of  
33 this State other than those eligible without paying a premium for Medicare Part A.  
34 On or after January 1, 1998, such coverage must be guaranteed to all legally  
35 domiciled federally eligible individuals, as defined in section 2848, regardless of the  
36 length of time they have been legally domiciled in this State. Except for federally  
37 eligible individuals, such coverage need not be issued to an individual whose  
38 coverage was terminated for nonpayment of premiums during the previous 91 days or  
39 for fraud or intentional misrepresentation of material fact during the previous 12  
40 months. When a managed care plan, as defined by section 4301-A, provides  
41 coverage a carrier may:

**SENATE AMENDMENT**

MRS.

SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1608, L.D. 2247

1 (1) Deny coverage to individuals who neither live nor reside within the approved  
2 service area of the plan for at least 6 months of each year; and

3 (2) Deny coverage to individuals if the carrier has demonstrated to the  
4 superintendent's satisfaction that:

5 (a) The carrier does not have the capacity to deliver services adequately to  
6 additional enrollees within all or a designated part of its service area because  
7 of its obligations to existing enrollees; and

8 (b) The carrier is applying this provision uniformly to individuals and groups  
9 without regard to any health-related factor.

10 A carrier that denies coverage in accordance with this paragraph may not enroll  
11 individuals residing within the area subject to denial of coverage or groups or  
12 subgroups within that area for a period of 180 days after the date of the first  
13 denial of coverage.

14 B. Renewal is guaranteed, pursuant to section 2850-B.

15 C. A carrier is exempt from the guaranteed issuance requirements of paragraph A  
16 provided that the following requirements are met:

17 (1) The carrier does not issue or deliver any new individual health plans on or  
18 after the effective date of this section;

19 (2) If any individual health plans that were not issued on a guaranteed renewable  
20 basis are renewed on or after December 1, 1993, all such policies must be  
21 renewed by the carrier and renewal must be guaranteed after the first such  
22 renewal date; and

23 (3) The carrier complies with the rating practices requirements of subsection 2.

24 D. Notwithstanding paragraph A, carriers offering supplemental coverage for the  
25 Civilian Health and Medical Program for the Uniformed Services, CHAMPUS, are  
26 not required to issue this coverage if the applicant for insurance does not have  
27 CHAMPUS coverage.

28 E. An individual may not be denied health insurance due to age or gender. This  
29 paragraph may not be construed to require a carrier to actively market health  
30 insurance to an individual 65 years of age or older.

31 **Sec. A-6. 24-A MRSA c. 54** is enacted to read:

32 **CHAPTER 54**

**SENATE AMENDMENT**

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**MAINE INDIVIDUAL HIGH-RISK REINSURANCE POOL ASSOCIATION**

**§3901. Short title**

This chapter is known and may be cited as "the Maine Individual High-risk Reinsurance Pool Association Act."

**§3902. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Association.** "Association" means the Maine Individual High-risk Reinsurance Pool Association established in section 3903.

**2. Board.** "Board" means the board of directors of the association.

**3. Covered person.** "Covered person" means an individual resident of this State, exclusive of dependents, who:

- A. Is eligible to receive benefits from an insurer;**
- B. Is eligible for benefits under the federal Health Insurance Portability and Accountability Act of 1996; or**
- C. Has been certified as eligible for federal trade adjustment assistance or for pension benefit guarantee corporation assistance, as provided by the federal Trade Adjustment Assistance Reform Act of 2002.**

**4. Dependent.** "Dependent" means a resident spouse, a domestic partner as defined in section 2832-A, subsection 1 or a dependent child as defined in section 2742-B, subsection 1.

**5. Health maintenance organization.** "Health maintenance organization" means an organization authorized under chapter 56 to operate a health maintenance organization in this State.

**6. Insurer.** "Insurer" means an entity that is authorized to write medical insurance or that provides medical insurance in this State. "Insurer" includes an insurance company, nonprofit hospital and medical service organization, fraternal benefit society, health maintenance organization, self-insurance arrangement that provides health care benefits in this State to the extent allowed under the federal Employee Retirement Income Security Act of 1974, 3rd-party administrator, multiple-employer welfare arrangement, any other entity providing medical insurance or health benefits subject to state insurance regulation, any reinsurer reinsuring health insurance in this State or the Dirigo Health Program established in chapter 87 or any other state-run or state-sponsored health benefit program whether fully insured or self-funded.

**7. Medical insurance.** "Medical insurance" means a hospital and medical expense-incurred policy, nonprofit hospital and medical service plan, health maintenance organization subscriber contract or other health care plan or arrangement that pays for or furnishes medical or health care services by insurance or otherwise, whether sold as an individual or group policy. "Medical insurance" does not include accidental injury,

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1 specified disease, hospital indemnity, dental, vision, disability income, Medicare  
2 supplement, long-term care or other limited benefit health insurance or credit insurance;  
3 coverage issued as a supplement to liability insurance; insurance arising out of workers'  
4 compensation or similar law; or automobile medical payment insurance or insurance  
5 under which benefits are payable with or without regard to fault and that is statutorily  
6 required to be contained in any liability insurance policy or equivalent self-insurance.

7 **8. Medicare.** "Medicare" means coverage under both Parts A and B of Title XVIII  
8 of the Social Security Act, 42 United States Code, Section 1395 et seq., as amended.

9 **9. Plan.** "Plan" means the medical insurance plan adopted by the board pursuant to  
10 this chapter.

11 **10. Producer.** "Producer" means a person who is licensed to sell health insurance in  
12 this State.

- 13 **11. Resident.** "Resident" means an individual who:
- 14 A. Is legally located in the United States and has been legally domiciled in this State
  - 15 for a period established by the board and subject to the approval of the superintendent
  - 16 and not to exceed one year;
  - 17 B. Is legally domiciled in this State on the date of application to the plan and is
  - 18 eligible for enrollment in the risk pool under this chapter as a result of the federal
  - 19 Health Insurance Portability and Accountability Act of 1996; or
  - 20 C. Is legally domiciled in this State on the date of application to the plan and has
  - 21 been certified as eligible for federal trade adjustment assistance or for pension benefit
  - 22 guarantee corporation assistance, as provided by the federal Trade Adjustment
  - 23 Assistance Reform Act of 2002.

24 **12. Reinsurer.** "Reinsurer" means an insurer from whom a person providing health  
25 insurance for a resident procures insurance for itself with the insurer with respect to all or  
26 part of the medical insurance risk of the person. "Reinsurer" includes an insurer that  
27 provides employee benefits excess insurance.

28 **13. Third-party administrator.** "Third-party administrator" means an entity that is  
29 paying or processing medical insurance claims for a resident.

30 **§3903. Maine Individual High-risk Reinsurance Pool Association**

31 **1. Risk pool established.** The Maine Individual High-risk Reinsurance Pool  
32 Association is established as a nonprofit legal entity. As a condition of doing business,  
33 every insurer that has sold medical insurance within the previous 12 months or is actively  
34 marketing a medical insurance policy in this State shall participate in the association.  
35 The Dirigo Health Program established in chapter 87 and any other state-run or state-  
36 sponsored health benefit program shall also participate in the association.

37 **2. Board of directors.** The association is governed by a board of directors in  
38 accordance with the following.

- 39 A. The board consists of 11 members appointed as follows:
  - 40 (1) Six members appointed by the superintendent, of whom:

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1 (a) Two members must be chosen from the general public and may not be  
2 associated with the medical profession, a hospital or an insurer;

3 (b) Two members must represent medical providers;

4 (c) One member must represent health insurance producers; and

5 (d) One member must represent a statewide association representing small  
6 businesses that receives the majority of its funding from persons and  
7 businesses in the State.

8 A board member appointed by the superintendent may be removed at any time  
9 without cause; and

10 (2) Five members appointed by insurers belonging to the association, at least 2  
11 of whom are domestic insurers.

12 B. Terms for initial appointments to the board are as follows. Of those members of  
13 the board appointed by the superintendent, 2 members serve for a term of one year, 2  
14 members for a term of 2 years and 2 members for a term of 3 years. Of those  
15 members appointed by insurers, one member serves for a term of one year, one  
16 member serves for a term of 2 years and one member serves for a term of 3 years.  
17 The appointing authority shall designate the period of service of each initial  
18 appointee at the time of appointment. All terms after the initial terms must be for 3  
19 years.

20 C. The board shall elect one of its members as chair.

21 D. Board members may be reimbursed from funds of the association for actual and  
22 necessary expenses incurred by them as members but may not otherwise be  
23 compensated for their services.

24 **3. Plan of operation; rules.** The association shall adopt a plan of operation in  
25 accordance with the requirements of this chapter and submit its articles, bylaws and  
26 operating rules to the superintendent for approval. If the association fails to adopt the  
27 plan of operation and suitable articles and bylaws within 90 days after the appointment of  
28 the board, the superintendent shall adopt rules to effectuate the requirements of this  
29 chapter, and those rules remain in effect until superseded by a plan of operation and  
30 articles and bylaws submitted by the association and approved by the superintendent.  
31 Rules adopted pursuant to this subsection by the superintendent are routine technical rules  
32 as defined in Title 5, chapter 375, subchapter 2-A.

33 **4. Immunity.** A board member is not liable and is immune from suit at law or  
34 equity for any conduct performed in good faith that is within the subject matter over  
35 which the board has been given jurisdiction.

36 **§3904. Liability and indemnification**

37 **1. Liability.** The board and its employees may not be held liable for any obligations  
38 of the association. A cause of action may not arise against the association; the board, its  
39 agents or its employees; any insurer belonging to the association or its agents, employees

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1 or producers; or the superintendent for any action or omission in the performance of  
2 powers and duties pursuant to this chapter.

3 2. Indemnification. The board in its bylaws or rules may provide for  
4 indemnification of, and legal representation for, its members and employees.

5 **§3905. Duties and powers of association**

6 **1. Duties.** The association shall:

7 A. Establish administrative and accounting procedures for the operation of the  
8 association;

9 B. Establish procedures under which applicants and participants in the plan may  
10 have grievances reviewed by an impartial body and reported to the board;

11 C. Select a plan administrator in accordance with section 3906;

12 D. Establish procedures for the handling and accounting of pool assets;

13 E. Collect assessments as provided in section 3907. The level of payments must be  
14 established by the board. Assessments must be collected pursuant to the plan of  
15 operation approved by the board. In addition to the collection of such assessments,  
16 the association shall collect an organizational assessment or assessments from all  
17 insurers as necessary to provide for expenses that have been incurred or are estimated  
18 to be incurred prior to receipt of the first calendar year assessments. Organizational  
19 assessments must be equal in amount for all insurers but may not exceed \$500 per  
20 insurer for all such assessments. Assessments are due and payable within 30 days of  
21 receipt of the assessment notice by the insurer; and

22 F. Comply with all reserve requirements and solvency requirements applicable to  
23 insurers that offer fully insured products in the event that the association offers a self-  
24 funded health plan.

25 **2. Powers.** The association may:

26 A. Exercise powers granted to insurers under the laws of this State;

27 B. Enter into contracts as necessary or proper to carry out the provisions and  
28 purposes of this chapter, including the authority, with the approval of the  
29 superintendent, to enter into contracts with similar organizations in other states for  
30 the joint performance of common administrative functions or with persons or other  
31 organizations for the performance of administrative functions;

32 C. Sue or be sued, including taking any legal actions necessary or proper to recover  
33 or collect assessments due the association;

34 D. Take any legal actions necessary to avoid the payment of improper claims against  
35 the association or the coverage provided by or through the association, to recover any  
36 amounts erroneously or improperly paid by the association, to recover any amounts  
37 paid by the association as a result of mistake of fact or law or to recover other  
38 amounts due the association;

39 E. Define the health benefit plans for which reinsurance will be provided under this  
40 chapter;



1 F. Appoint appropriate legal, actuarial and other committees as necessary to provide  
2 technical assistance in the operation of the plan, policy or other contract design and  
3 any other function within the authority of the association;

4 G. Borrow money to effect the purposes of the association. Any notes or other  
5 evidence of indebtedness of the association not in default must be legal investments  
6 for insurers and may be carried as admitted assets;

7 H. Establish rules, conditions and procedures for reinsuring risks of insurers under  
8 the pool in accordance with section 3909;

9 I. Provide for reinsurance of risks incurred by the association. The provision of  
10 reinsurance may not subject the association to any of the capital or surplus  
11 requirements, if any, otherwise applicable to reinsurers; and

12 J. Apply for funds or grants from public or private sources, including federal grants  
13 provided to qualified high-risk reinsurance pools.

14 **3. Additional duties and powers.** The superintendent may, by rule, establish  
15 additional powers and duties of the board and may adopt such rules as are necessary and  
16 proper to implement this chapter. Rules adopted pursuant to this subsection are routine  
17 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

18 **4. Review for solvency.** The superintendent shall review the operations of the  
19 association at least every 3 years to determine its solvency. If the superintendent  
20 determines that the funds of the association are insufficient to support the need for  
21 reinsurance, the superintendent may order the association to increase its assessments. If  
22 the superintendent determines that the funds of the association are insufficient, the  
23 superintendent may order the association to charge an additional assessment.

24 **5. Annual report.** The association shall report annually to the joint standing  
25 committee of the Legislature having jurisdiction over health insurance matters by March  
26 15th. The report must include information on the benefits and rate structure of coverage  
27 offered by the association, the financial solvency of the association and the administrative  
28 expenses of the plan.

29 **6. Audit.** The association must be audited at least every 3 years. A copy of the audit  
30 must be provided to the superintendent and to the joint standing committee of the  
31 Legislature having jurisdiction over health insurance matters.

32 **§3906. Selection of plan administrator**

33 **1. Selection of plan administrator.** The board shall select an insurer or 3rd-party  
34 administrator, through a competitive bidding process, to administer the plan.

35 **2. Contract with plan administrator.** The plan administrator selected pursuant to  
36 subsection 1 is contracted for a period of 3 years. At least one year prior to the expiration  
37 of each 3-year period of service by a plan administrator, the board shall invite all insurers,  
38 including the current plan administrator, to submit bids to serve as the plan administrator  
39 for the succeeding 3-year period. The selection of the plan administrator for the  
40 succeeding period must be made at least 6 months prior to the expiration of the 3-year  
41 period.

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1 **3. Duties of plan administrator.** The plan administrator selected pursuant to  
2 subsection 1 shall:

3 A. Perform all administrative functions relating to the plan;

4 B. Pay a producer's referral fee as established by the board to each producer who  
5 refers an applicant to the plan, if the applicant's application is accepted. The selling  
6 or marketing of the plan is not limited to the plan administrator or its producers. The  
7 plan administrator shall pay the referral fees from funds received as premiums for the  
8 plan;

9 C. Submit regular reports to the board regarding the operation of the plan. The  
10 frequency, content and form of the reports must be as determined by the board;

11 D. Following the close of each calendar year, determine net premiums, reinsurance  
12 premiums less administrative expense allowance, the expenses of administration  
13 pertaining to the reinsurance operations of the association and the incurred losses of  
14 the year and report this information to the superintendent; and

15 E. Pay reinsurance amounts as provided for in the plan of operation.

16 **4. Payment to plan administrator.** The plan administrator selected pursuant to  
17 subsection 1 must be paid, as provided in the contract of the association under subsection  
18 2, for the plan administrator's direct and indirect expenses incurred in the performance of  
19 the plan administrator's services. As used in this subsection, "direct and indirect  
20 expenses" includes that portion of the audited administrative costs, printing expenses,  
21 management expenses, building overhead expenses and other actual operating and  
22 administrative expenses of the plan administrator that are approved by the board as  
23 allocable to the administration of the plan and included in the specifications of a bid  
24 under subsection 2.

25 **§3907. Assessments against insurers**

26 **1. Assessments.** For the purpose of providing the funds necessary to carry out the  
27 powers and duties of the association, the board shall assess member insurers at such a  
28 time and for such amounts as the board finds necessary. Assessments are due not less  
29 than 30 days after written notice to the member insurers and accrue interest at 12% per  
30 annum on and after the due date.

31 **2. Maximum assessment.** Each insurer must be assessed by the board an amount  
32 not to exceed \$2 per covered person insured or reinsured by each insurer per month for  
33 medical insurance. An insurer may not be assessed on policies or contracts insuring  
34 federal or state employees.

35 **3. Determination of assessment.** The board shall make reasonable efforts to ensure  
36 that each covered person is counted only once with respect to an assessment. For that  
37 purpose, the board shall require each insurer that obtains excess or stop loss insurance to  
38 include in its count of covered persons all individuals whose coverage is insured, in  
39 whole or in part, through excess or stop loss coverage. The board shall allow a reinsurer  
40 to exclude from its number of covered persons those who have been counted by the  
41 primary insurer or by the primary reinsurer or primary excess or stop loss insurer for the  
42 purpose of determining its assessment under this subsection. The board may verify each

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SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1608, L.D. 2247

1 insurer's assessment based on annual statements and other reports determined to be  
2 necessary by the board. The board may use any reasonable method of estimating the  
3 number of covered persons of an insurer if the specific number is unknown.

4 **4. Assessments to cover net losses.** The board shall assess member insurers at such  
5 a time and for such amounts as the board finds necessary to cover any net loss in  
6 accordance with this subsection.

7 A. Prior to April 1st of each year, the association shall determine and report to the  
8 superintendent the association's net loss for the previous calendar year, including  
9 administrative expenses and incurred losses for the year, taking into account  
10 investment income and other appropriate gains and losses and any assessments  
11 transferred to the association pursuant to section 604-A and an estimate of the  
12 assessments needed to fund the loss incurred by the association in the previous  
13 calendar year.

14 B. Individual assessments of each insurer are determined by multiplying net losses, if  
15 net earnings are negative, by a fraction, the numerator of which is the insurer's total  
16 premiums earned in the preceding calendar year from all health benefit plans,  
17 including excess or stop loss coverage, and the denominator of which is the total  
18 premiums earned in the preceeding calendar year from all health benefit plans.

19 C. The association shall impose a penalty of interest for late payment of assessments.

20 **5. Deferral of assessment.** An insurer may apply to the superintendent for a deferral  
21 of all or part of an assessment imposed by the association under this section. The  
22 superintendent may defer all or part of the assessment if the superintendent determines  
23 that the payment of the assessment would place the insurer in a financially impaired  
24 condition. If all or part of the assessment is deferred, the amount deferred must be  
25 assessed against other insurers in a proportionate manner consistent with this section.  
26 The insurer that receives a deferral remains liable to the association for the amount  
27 deferred and is prohibited from reinsuring any person through the association until such  
28 time as the insurer pays the assessments.

29 **6. Excess funds.** If assessments and other receipts by the association, board or plan  
30 administrator exceed the actual losses and administrative expenses of the plan, the board  
31 shall hold the excess as interest and may use those excess funds to offset future losses or  
32 to reduce plan premiums. As used in this subsection, "future losses" includes reserves for  
33 claims incurred but not reported.

34 **7. Failure to pay assessment.** The superintendent may suspend or revoke, after  
35 notice and hearing, the certificate of authority to transact insurance in this State of any  
36 insurer that fails to pay an assessment. As an alternative, the superintendent may levy a  
37 penalty on any insurer that fails to pay an assessment when due. In addition, the  
38 superintendent may use any power granted to the superintendent by this Title to collect  
39 any unpaid assessment.

40 **§3908. Requirements for coverage**

41 **1. Approved coverage.** The association shall approve a choice of 2 or more  
42 coverage options for which reinsurance is available through the plan. Policies approved  
43 by the association must be available for sale beginning on January 1, 2010. At least one

1 coverage option must be a standardized health plan as defined in Bureau of Insurance  
2 Rule Chapter 750. Any person whose medical insurance coverage is involuntarily  
3 terminated for any reason other than nonpayment of premiums may apply for coverage  
4 under the plan. If such coverage is applied for within 90 days after the involuntary  
5 termination and if premiums are paid for the entire period of coverage, the effective date  
6 of the coverage is the date of termination of the previous coverage.

7 **2. Rates.** Rates for coverage approved by the association must meet the  
8 requirements of this subsection.

9 **A.** Rates may not be unreasonable in relation to the benefits provided, the risk  
10 experience and the reasonable expenses of providing the coverage.

11 **B.** Rate schedules must comply with section 2736-C and are subject to approval by  
12 the superintendent.

13 **C.** Standard risk rates for coverage issued by the association must be established by  
14 the association, subject to approval by the superintendent, using reasonable actuarial  
15 techniques, and must reflect anticipated experiences and expenses of such coverage  
16 for standard risks. The premium for the standard risk rates must range from a  
17 minimum of 125% to a maximum of 150% of the weighted average of rates charged  
18 by those insurers and health maintenance organizations with individuals enrolled in  
19 similar medical insurance plans.

20 **3. Compliance with state law.** Products approved by the association must comply  
21 with all relevant requirements of this Title applicable to individual health insurance  
22 policies, including requirements for mandated coverage for specific health services, for  
23 specific diseases and for certain providers of health care services.

24 **§3909. Reinsurance; premium rates**

25 **1. Reinsurance amount.** Any insurer offering the coverage options approved by the  
26 association pursuant to section 3908, subsection 1 must be reinsured by the association to  
27 the level of coverage provided in this subsection and is liable to the association for the  
28 reinsurance premium rate established in accordance with subsection 2.

29 **A.** The association may not reimburse a reinsuring insurer with respect to claims of  
30 a reinsured person until the insurer has incurred an initial level of claims for that  
31 person of \$5,000 for covered benefits in a calendar year. In addition, the reinsuring  
32 insurer is responsible for 10% of the next \$25,000 of claims paid during a calendar  
33 year. The association shall reimburse reinsuring insurers for claims paid in excess of  
34 \$25,000. The association may annually adjust the initial level of claims and the  
35 maximum limit to be retained by the reinsuring insurer to reflect increases in costs  
36 and utilization within the standard market for health plans within the State. The  
37 adjustments may not be less than the annual change in the medical component of the  
38 Consumer Price Index unless the superintendent approves a lower adjustment factor  
39 as requested by the association.

40 **B.** A reinsuring insurer shall apply all managed care, utilization review, case  
41 management, preferred provider arrangements, claims processing and other methods  
42 of operation without regard to whether claims paid for coverage are reinsured under  
43 this subsection.

1       **2. Premium rates.** The association, as part of the plan of operation, shall establish a  
2 methodology for determining premium rates to be charged reinsuring insurers to reinsure  
3 persons eligible for coverage under this chapter. The methodology must include a system  
4 for classification of persons eligible for coverage that reflects the types of case  
5 characteristics used by insurers for individual health plans pursuant to section 2736-C.  
6 The methodology must provide for the development of base reinsurance premium rates,  
7 subject to approval of the superintendent, set at levels that reasonably approximate gross  
8 premiums charged for individual health plans with similar benefits to the coverage  
9 options approved by the association pursuant to section 3908, subsection 1 and that are  
10 adjusted to reflect retention levels required under this Title. The association shall  
11 periodically review the methodology established under this subsection and may make  
12 changes to the methodology as needed with the approval of the superintendent. The  
13 association may consider adjustments to the premium rates charged for reinsurance to  
14 reflect the use of effective cost containment and managed care arrangements by a  
15 reinsuring insurer.

16       **§3910. Eligibility for coverage**

17       **1. Eligibility; application for coverage.** A resident is eligible for coverage under  
18 the plan if evidence is provided of rejection, a requirement of restrictive riders, a rate  
19 increase or a preexisting conditions limitation on a qualified plan, the effect of which is to  
20 substantially reduce coverage from that received by a person considered a standard risk  
21 by at least one insurer belonging to the association within 6 months of the date of the  
22 certificate, or if the resident meets other eligibility requirements adopted by rule by the  
23 superintendent that are not inconsistent with this chapter and that indicate that a person is  
24 unable to obtain coverage substantially similar to that which may be obtained by a person  
25 who is considered a standard risk. Rules adopted pursuant to this subsection are routine  
26 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

27       **2. Change of domicile.** The board shall develop standards for eligibility for  
28 coverage by the association for any natural person who changes that person's domicile to  
29 this State and who at the time domicile is established in this State is insured by an  
30 organization similar to the association. The eligible maximum lifetime benefits for that  
31 covered person may not exceed the lifetime benefits available through the association,  
32 less any benefits received from a similar organization in the former domiciliary state.

33       **3. Eligibility without application.** The board shall develop a list of medical or  
34 health conditions for which a person is eligible for plan coverage without applying for  
35 health insurance under subsection 1. A person who can demonstrate the existence or  
36 history of a medical or health condition on the list developed by the board may not be  
37 required to provide the evidence specified in subsection 1. The board may amend the list  
38 from time to time as appropriate.

39       **4. Exclusions from eligibility.** A person is not eligible for coverage under the plan  
40 if:

41       A. The person has or obtains health insurance coverage substantially similar to or  
42 more comprehensive than a plan policy or would be eligible to have coverage if the  
43 person elected to obtain it, except that:

2008

SENATE AMENDMENT “*B*” to COMMITTEE AMENDMENT “A” to H.P. 1608, L.D. 2247

- 1            (1) A person may maintain other coverage for the period of time the person is
- 2            satisfying a preexisting condition waiting period under a plan policy; and
- 3            (2) A person may maintain plan coverage for the period of time the person is
- 4            satisfying a preexisting condition waiting period under another health insurance
- 5            policy intended to replace the plan policy;
- 6            B. The person is determined eligible for health care benefits under the MaineCare
- 7            program pursuant to Title 22;
- 8            C. The person previously terminated plan coverage, unless 6 months have elapsed
- 9            since the person's last termination;
- 10          D. The person is an inmate or resident of a public institution; or
- 11          E. The person's premiums are paid for or reimbursed under any government-
- 12          sponsored program or by any government agency or health care provider, except as
- 13          an otherwise qualifying full-time employee, or dependent thereof, of a government
- 14          agency or health care provider.
- 15          **5. Termination of coverage.** The coverage of any person ceases:
- 16          A. On the date a person is no longer a resident;
- 17          B. Upon the death of the covered person;
- 18          C. On the date state law requires cancellation of the policy; or
- 19          D. At the option of the association, 30 days after the association makes any inquiry
- 20          concerning the person's eligibility or place of residence to which the person does not
- 21          reply.

The coverage of any person who ceases to meet the eligibility requirements of this section may be terminated immediately.

**6. Unfair trade practice.** It constitutes an unfair trade practice for any insurer, producer, employer or 3rd-party administrator to refer an individual employee or a dependent of an individual employee to the association or to arrange for an individual employee or a dependent of an individual employee to apply to the plan for the purpose of separating such an employee or dependent from a group health benefits plan provided in connection with the employee's employment.

**§3911. Actions against association or members based upon joint or collective actions**

Participation in the association, the establishment of rates, forms or procedures or any other joint or collective action required by this chapter may not be the basis of any legal action or criminal or civil liability or penalty against the association or any insurer belonging to the association.

PART B

**Sec. B-1.** 24-A M.R.S.A §6913, as amended by PL 2007, c. 1, Pt. X, §§1 and 2 and affected by §3, is repealed.

**SENATE AMENDMENT**







2005

SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1608, L.D. 2247

1 Hearings held under this section must conform to the procedural requirements set  
2 forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4.

3 **Sec. D-4. 24-A MRSA §2736-C, sub-§2, ¶F**, as enacted by PL 2003, c. 469, Pt.  
4 E, §12, is amended to read:

5 F. A carrier that adjusts its rate shall account for the savings offset payment or any  
6 recovery in that offset payment in its experience consistent with this section and  
7 former section 6913.

8 **Sec. D-5. 24-A MRSA §2736-C, sub-§5**, as amended by PL 2003, c. 469, Pt. E,  
9 §13, is further amended to read:

10 **5. Loss ratios.** For all policies and certificates issued on or after the effective date of  
11 this section, the superintendent shall disapprove any premium rates filed by any carrier,  
12 whether initial or revised, for an individual health policy unless it is anticipated that the  
13 aggregate benefits estimated to be paid under all the individual health policies maintained  
14 in force by the carrier for the period for which coverage is to be provided will return to  
15 policyholders at least 65% of the aggregate premiums collected for those policies, as  
16 determined in accordance with accepted actuarial principles and practices and on the  
17 basis of incurred claims experience and earned premiums. For the purposes of this  
18 calculation, any ~~savings offset~~ payments paid pursuant to former section 6913 must be  
19 treated as incurred claims.

20 **Sec. D-6. 24-A MRSA §2808-B, sub-§2-A, ¶C**, as enacted by PL 2003, c. 469,  
21 Pt. E, §16, is amended to read:

22 C. Rates for small group health plans must be filed in accordance with this section  
23 and subsections 2-B and 2-C for premium rates effective on or after July 1, 2004,  
24 except that the filing of rates for small group health plans are not required to account  
25 for any ~~savings offset~~ payment or any recovery of that ~~offset~~ payment pursuant to  
26 subsection 2-B, paragraph D and former section 6913 for rates effective before July  
27 1, 2005.

28 **Sec. D-7. 24-A MRSA §2808-B, sub-§2-B, ¶A**, as enacted by PL 2003, c. 469,  
29 Pt. E, §16, is amended to read:

30 A. The superintendent shall disapprove any premium rates filed by any carrier,  
31 whether initial or revised, for a small group health plan unless it is anticipated that the  
32 aggregate benefits estimated to be paid under all the small group health plans  
33 maintained in force by the carrier for the period for which coverage is to be provided  
34 will return to policyholders at least 75% of the aggregate premiums collected for  
35 those policies, as determined in accordance with accepted actuarial principles and  
36 practices and on the basis of incurred claims experience and earned premiums. For  
37 the purposes of this calculation, any ~~savings offset~~ payments paid pursuant to former  
38 section 6913 must be treated as incurred claims.

39 **Sec. D-8. 24-A MRSA §2808-B, sub-§2-B, ¶D**, as enacted by PL 2003, c. 469,  
40 Pt. E, §16, is amended to read:

**SENATE AMENDMENT**

1 D. A carrier that adjusts its rate shall account for the savings offset payment or any  
2 recovery of that savings offset payment in its experience consistent with this section  
3 and former section 6913.

4 **Sec. D-9. 24-A MRSA §2808-B, sub-§2-B, ¶F**, as enacted by PL 2003, c. 469,  
5 Pt. E, §16, is amended to read:

6 F. Any rate hearing conducted with respect to filings that meet the criteria in  
7 paragraph E is subject to this paragraph.

8 (1) A person requesting a hearing shall provide the superintendent with a written  
9 statement detailing the circumstances that justify a hearing, notwithstanding the  
10 satisfaction of the criteria in paragraph E.

11 (2) If the superintendent decides to hold a hearing, the superintendent shall issue  
12 a written statement detailing the circumstances that justify a hearing,  
13 notwithstanding the satisfaction of the criteria in paragraph E.

14 (3) In any hearing conducted under this paragraph, the bureau and any party  
15 asserting that the rates are excessive have the burden of establishing that the rates  
16 are excessive. The burden of proving that rates are adequate, not unfairly  
17 discriminatory and in compliance with the requirements of ~~section 6913~~ this Title  
18 remains with the carrier.

19 **Sec. D-10. 24-A MRSA §2808-B, sub-§2-C, ¶C**, as enacted by PL 2003, c.  
20 469, Pt. E, §16, is amended to read:

21 C. If incurred claims were less than 78% of aggregate earned premiums over a  
22 continuous 36-month period, the carrier shall refund a percentage of the premium to  
23 the current in-force policyholder. For the purposes of calculating this loss-ratio  
24 percentage, any ~~savings offset~~ payments paid pursuant to former section 6913 must  
25 be treated as incurred claims. The excess premium is the amount of premium above  
26 that amount necessary to achieve a 78% loss ratio for all of the carrier's small group  
27 policies during the same 36-month period. The refund must be distributed to  
28 policyholders in an amount reasonably calculated to correspond to the aggregate  
29 experience of all policyholders holding policies having similar benefits. The total of  
30 all refunds must equal the excess premiums.

31 (1) For determination of loss-ratio percentages in 2005, actual aggregate incurred  
32 claims expenses include expenses incurred in 2005 and projected expenses for  
33 2006 and 2007. For determination of loss-ratio percentages in 2006, actual  
34 incurred claims expenses include expenses in 2005 and 2006 and projected  
35 expenses for 2007.

36 (2) The superintendent may waive the requirement for refunds during the first 3  
37 years after the effective date of this subsection.

38 **Sec. D-11. 24-A MRSA §2839-B, sub-§2**, as enacted by PL 2003, c. 469, Pt. E,  
39 §17, is amended to read:

40 **2. Annual filing.** Every carrier offering group health insurance specified in  
41 subsection 1 shall annually file with the superintendent on or before April 30th a

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SENATE AMENDMENT "B" to COMMITTEE AMENDMENT "A" to H.P. 1608, L.D. 2247

1 certification signed by a member in good standing of the American Academy of  
2 Actuaries or a successor organization that the carrier's rating methods and practices are in  
3 accordance with generally accepted actuarial principles and with the applicable actuarial  
4 standards of practice as promulgated by an actuarial standards board. The filing must  
5 also certify that the carrier has included in its experience any savings offset payments or  
6 recovery of those savings offset payments consistent with former section 6913. The filing  
7 also must state the number of policyholders, certificate holders and dependents, as of the  
8 close of the preceding calendar year, enrolled in large group health insurance plans  
9 offered by the carrier. A filing and supporting information are public records except as  
10 provided by Title 1, section 402, subsection 3.

11 **Sec. D-12. 24-A MRSA §6908, sub-§1, ¶A**, as enacted by PL 2003, c. 469, Pt.  
12 A, §8, is amended to read:

13 A. Take any legal actions necessary or proper to recover or collect ~~savings offset~~  
14 payments due Dirigo Health or that are necessary for the proper administration of  
15 Dirigo Health;

16 **PART E**

17 **Sec. E-1. Appropriations and allocations.** The following appropriations and  
18 allocations are made.

19 **DIRIGO HEALTH**

20 **Dirigo Health Fund 0988**

21 Initiative: Deallocates funds for Dirigo Health costs that were funded by the savings  
22 offset payment.

23	<b>DIRIGO HEALTH FUND</b>	<b>2007-08</b>	<b>2008-09</b>
24	All Other	\$0	(\$32,900,000)
25			
26	<b>DIRIGO HEALTH FUND TOTAL</b>	<hr/>	<hr/>
		\$0	(\$32,900,000)

27 ' '

28 **SUMMARY**

29 This amendment strikes Committee Amendment "A" and instead does the following.

30 1. This amendment establishes a reinsurance pool for the individual health insurance  
31 market and is modeled on a similar reinsurance pool in Idaho. The amendment requires a  
32 maximum assessment of \$2 per person covered under health insurance policies.

33 2. The amendment also expands the community rating bands in the individual health  
34 insurance market for policies issued or renewed on or after January 1, 2010. The  
35 amendment prohibits a carrier from varying the premium rate due to geographic area. In  
36 addition, this amendment provides that the premium rate may not deviate above or below  
37 the community rate filed by the carrier by more than 40% on the basis of age, health

**SENATE AMENDMENT**

SENATE AMENDMENT "b" to COMMITTEE AMENDMENT "A" to H.P. 1608, L.D. 2247

1 status, occupation or industry or tobacco use. Under current law, a carrier may not vary  
2 the premium rate on the basis of health status. The amendment provides that a carrier  
3 that offered individual health plans prior to January 1, 2010 may close its individual book  
4 of business sold prior to January 1, 2010 and may establish a separate community rate for  
5 individuals applying for coverage under an individual health plan after January 1, 2010.

6 3. The amendment repeals the savings offset payment used to fund subsidies for  
7 individuals, sole proprietors and employees of small employers enrolled in the Dirigo  
8 Health Program, with an effective date of July 1, 2008 or the effective date of the Act,  
9 whichever occurs later.

10 4. The amendment requires that Dirigo Health submit quarterly reports on  
11 information regarding enrollment in the Dirigo Health Program.

12 5. The amendment corrects cross-references to reflect the repeal of the savings offset  
13 payment.

14 6. The amendment adds an appropriations and allocations section.

15 **FISCAL NOTE REQUIRED**

16 (See attached)

17 **SPONSORED BY:** *Lisa A. Snowe-Mello*

18 (Senator SNOWE-MELLO)

19 **COUNTY: Androscoggin**



# 123rd MAINE LEGISLATURE

LD 2247

LR 3143(09)

## An Act To Continue Maine's Leadership in Covering the Uninsured

Fiscal Note for Senate Amendment "*b*" to Committee Amendment "A"

Sponsor: Sen. Snowe-Mello of Androscoggin

Fiscal Note Required: Yes

### Fiscal Note

	2007-08	2008-09	Projections 2009-10	Projections 2010-11
<b>Net Cost (Savings)</b>				
General Fund	\$0	\$860,397	\$889,514	\$885,311
<b>Appropriations/Allocations</b>				
General Fund	\$0	(\$43,857)	\$0	\$0
Dirigo Health Fund	\$0	(\$61,502,356)	(\$65,954,381)	(\$67,092,790)
<b>Revenue</b>				
General Fund	\$0	(\$904,254)	(\$889,514)	(\$885,311)
Other Special Revenue Funds	\$0	(\$48,595)	(\$48,792)	(\$48,561)
Dirigo Health Fund	\$0	(\$61,502,356)	(\$65,954,381)	(\$67,092,790)

### Fiscal Detail and Notes

The fiscal note reflects the incremental difference between the amendment and Committee Amendment "A".

This amendment eliminates the proposed increases in the cigarette tax and other tobacco products tax, which reduces General Fund revenue by \$904,254 in fiscal year 2008-09 and reduces revenue for the Dirigo Health Fund by \$28,502,356 in fiscal year 2008-09. It also eliminates the General Fund appropriation of \$43,857 in fiscal year 2008-09 for Maine Revenue Services.

The amendment would retain the elimination the Saving Offset Payment (SOP), one of the funding sources for the Dirigo Health Program, beginning with the assessment effective July 1, 2008, but would not offset the lost revenue. For the purposes of this fiscal note, the baseline assumption for future year SOPs is the \$32.8 million SOP assessed for the year beginning July 1, 2008.

The amendment establishes a reinsurance pool for the individual health insurance market financed with an assessment on member insurers with a maximum assessment of \$2 per covered person. Because this assessment would be assessed and collected by the Association, a non-profit legal entity, there is no direct fiscal impact on State programs or accounts.

<b>Dirigo Health Fund Summary</b>	<b>2008-09</b>	<b>Projections 2009-10</b>	<b>Projections 2010-11</b>
Revenue Changes:			
Elimination of the Savings Offset Payment	<u>(\$32,900,000)</u>	<u>(\$32,800,000)</u>	<u>(\$32,800,000)</u>
Revenue Changes	(\$32,900,000)	(\$32,800,000)	(\$32,800,000)
Allocation Changes:			
Other Dirigo Net Allocation Change	<u>(\$32,900,000)</u>	<u>(\$32,800,000)</u>	<u>(\$32,800,000)</u>
Allocation Changes	(\$32,900,000)	(\$32,800,000)	(\$32,800,000)