

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
OCTOBER 9, 1991

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

DEPARTMENT OF ENVIRONMENTAL PROTECTION
TOTAL

\$460,884

\$558,875

Sec. 16. Effective date. This Act takes effect on November 1, 1991.

Effective November 1, 1991.

CHAPTER 385

H.P. 814 - L.D. 1168

An Act to Clarify the Status of Employee Benefit Excess Insurance

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

Sec. 1. 24-A MRSA §409, as enacted by PL 1969, c. 132, §1, is amended to read:

§409. Insurance lines combinations

An insurer may be authorized to transact such kinds of insurance as it is qualified for under this Title, except that a reciprocal insurer ~~shall~~ may not transact life insurance. Qualified insurers may transact combinations of business as follows.

1. Multiple lines insurer. A multiple lines insurer is authorized to transact more than one kind of coverage if all kinds of coverage fall within the categories listed in sections 704 to 708.

2. All lines insurer. An all lines insurer is authorized to transact life insurance and one or more of the kinds of coverage, other than health insurance, that may be transacted by a multiple lines insurer.

3. Life or health insurer. A life or health insurer is authorized to transact life insurance, life and annuity insurance or health insurance as defined in sections 702 to 704. A life insurer, health insurer or a life and health insurer does not become an all lines insurer merely by transacting specific lines of casualty insurance that life or health insurers are expressly authorized by law to transact.

Sec. 2. 24-A MRSA §410, as amended by PL 1987, c. 707, §1, is further amended to read:

§410. Minimum paid-in capital and surplus requirements

1. To qualify for authority to transact any one kind of insurance, as defined in chapter 9, or combination of kinds of insurance as shown below, an insurer ~~shall~~ must possess and thereafter maintain unimpaired

paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or a reciprocal insurer, and when first so authorized ~~shall~~ must possess initial free surplus, all in amounts not less than as determined from the following table.

A health, life and health or multiple line (as described in section ~~710~~ 409) insurer may qualify for a certificate of authority to transact a legal services insurance business, as described in chapter 38, if it is otherwise qualified therefor and possesses and thereafter maintains, in addition to the amounts described in the following table, an additional amount of unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or reciprocal insurer, of not less than \$500,000.

An insurer may qualify for a certificate of authority to transact solely financial guaranty insurance as defined in section 709-A, if it is otherwise qualified therefor and possesses and thereafter maintains paid-in capital stock in the amount of \$2,500,000 and initial free surplus in an amount of \$47,500,000 or, if the insurer is a foreign mutual or reciprocal insurer, minimum required basic surplus in an amount of \$2,500,000 and initial free surplus in an amount of \$47,500,000.

Kind or Kinds of Insurance	Stock Insurers		Foreign mutual, Reciprocal Insurers	
	Minimum Required Capital Stock	Initial Free Surplus	Minimum Required Basic Surplus	Initial Free Surplus
Life	\$1,500,000	\$1,500,000	\$1,500,000 *	\$1,500,000 *
Health	1,000,000	1,000,000	1,000,000	1,000,000
Life and Health	2,500,000	2,500,000	2,500,000 *	2,500,000 *
Casualty	1,500,000	1,500,000	1,500,000	1,500,000
Marine and Transportation	1,500,000	1,500,000	1,500,000	1,500,000
Property	1,000,000	1,000,000	1,000,000	1,000,000
Surety	1,500,000	1,500,000	1,500,000	1,500,000
Title	500,000	500,000	500,000	500,000
Multiple line (as defined in section 710 409)	2,500,000	2,500,000	2,500,000	2,500,000

Life, and any one or more of Property; Casualty; Surety; Marine and Transportation				
<u>All line (as defined in section 409)</u>	5,000,000	5,000,000	5,000,000 *	5,000,000 *

Marine and Transportation	500,000	500,000	500,000	500,000
Property	500,000	500,000	500,000	500,000
Surety	500,000	500,000	500,000	500,000
Title	150,000	150,000	150,000	150,000
Multiple line (as defined in section 710 409)	1,000,000	1,000,000	1,000,000	1,000,000

* Does not apply as to a reciprocal insurer.

Except:

A. An insurer holding a valid certificate of authority to transact insurance in this State on January 1, 1970; may, if otherwise qualified therefor until January 1, 1989, continue to be so authorized while possessing paid-in capital stock, if a stock insurer, or surplus, if a mutual or reciprocal insurer, as required for such authority immediately prior to January 1, 1970.

B. Prior to January 1, 1989, the superintendent ~~shall~~ may not authorize such an insurer to transact any other kinds of insurance unless it complies with the requirements as to capital stock, if a stock insurer, or basic surplus, if a mutual or reciprocal insurer, as applied to all kinds of insurance it proposes to transact, as provided in the table contained in this paragraph.

A health, life and health or multiple line (as described in section ~~710~~ 409) insurer may qualify for a certificate of authority to transact a legal services insurance business, as described in chapter 38, if it is otherwise qualified therefor and possesses and thereafter maintains, in addition to the amounts described in the following table, an additional amount of unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or reciprocal insurer, of not less than \$500,000.

Kind or Kinds of Insurance	Stock Insurers		Foreign mutual, Reciprocal Insurers	
	Minimum Required Capital Stock	Initial Free Surplus	Minimum Required Basic Surplus	Initial Free Surplus
Life	\$500,000	\$1,000,000	\$1,000,000 *	\$1,000,000 *
Health	250,000	250,000	250,000	250,000
Life and Health	500,000	1,000,000	1,000,000 *	1,000,000 *
Casualty	500,000	500,000	500,000	500,000

Life, and any one or more of Property; Casualty; Surety; Marine and Transportation				
<u>All line (as defined in section 409)</u>	2,000,000	2,000,000	2,000,000 *	2,000,000 *

*Does not apply as to a reciprocal insurer.

C. Until January 1, 1989, a domestic mutual insurer formed prior to January 1, 1968, and while possessing surplus of not less than \$200,000 may be authorized to transact, in addition to the types of insurance it was transacting prior to July 24, 1984, any other additional kinds of insurance authorized by its charter; subject to those minimum required basic surplus amounts applicable as to foreign mutual insurers as contained in the table in paragraph B, if the insurer is to transact life insurance together with any one or more of property, casualty, surety or marine and transportation insurances.

D. Domestic mutual insurers holding a certificate of authority upon January 1, 1989, if otherwise qualified, and possessed of basic surplus in minimum required amounts as contained in the table in this paragraph may continue to be so authorized, provided those insurers continue to possess and maintain unimpaired basic surplus funds as determined in this paragraph and applicable to those lines or kinds of insurance permitted by its certificate of authority immediately prior to January 1, 1989. Upon application by any such insurer and written approval by the superintendent, the insurer's certificate of authority may be extended to permit the writing of other kinds or lines of insurance if the insurer is qualified and possessed of basic surplus funds in amounts contained in the table in this paragraph. A domestic mutual insurer holding a certificate of authority prior to January 1, 1989, but which does not possess and maintain

basic surplus in the minimum required amounts contained in the table in this paragraph, may continue to be authorized to transact insurance in this State and to write other kinds or lines of insurance, subject to the approval of the superintendent, as long as it maintains 100% reinsurance and has no liabilities.

For the purposes of this paragraph, any assuming reinsurer must be a corporation which possesses the ability to exercise control of the ceding insurer, must be an insurance company possessed of a certificate of authority to transact the same kinds of insurance in this State as those assumed and shall file a consolidated annual statement as required by section 423.

A health, life and health or multiple line (as described in section 710 409) insurer may qualify for a certificate of authority to transact a legal services insurance business, as described in chapter 38, if it is otherwise qualified therefor and possesses and thereafter maintains, in addition to the amounts described in the following table, an additional amount of unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or reciprocal insurer, of not less than \$500,000.

Kind or Kinds of Insurance	Domestic Mutual Insurers
Life	\$1,000,000
Health	500,000
Life and Health	1,250,000
Casualty	750,000
Marine and Transportation	1,000,000
Property	500,000
Surety	1,000,000
Title	350,000
Multiple Line (as defined in section 710 409)	1,250,000
<u>Life, and any one or more of Property, Casualty, Surety, Marine and Transportation All line (as defined in section 409)</u>	2,500,000

E. An insurer ~~which~~ that otherwise possesses funds as required under this subsection shall at all times maintain policyholders' surplus, combined paid-in capital stock, if any, and surplus, reasonable in amount, as determined by the superintendent, in relation to the kinds and amount of insurance it has in force, or being written and retained by it, net of applicable reinsurance. In making any such determination, the superintendent shall give due consideration to any applicable standards approved or adopted by the National Association of Insurance Commissioners and to the desirability of substantial uniformity as to such requirements among the respective states.

2. Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in any and all areas in which it operates or proposes to

operate, whether or not only a portion of such kinds are to be transacted in this State.

3. As to surplus required for authority to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual legal reserve insurers hereafter formed ~~shall be~~ are governed by chapter 47.

Sec. 3. 24-A MRSA §411, sub-§3, as enacted by PL 1969, c. 132, §1, is amended to read:

3. If a casualty insurer or multiple line insurer, to transact health insurance. ~~Except; except~~ that this provision ~~shall~~ does not apply to a domestic insurer authorized to transact casualty insurance only, pursuant to section 410, subsection 1, paragraph A; or

Sec. 4. 24-A MRSA §411, sub-§4 is enacted to read:

4. To transact employee benefit excess insurance to the extent authorized pursuant to section 707, subsection 3.

Sec. 5. 24-A MRSA §707, sub-§1, ¶C, as enacted by PL 1969, c. 132, §1, is amended to read:

C. ~~Workmen's~~ Workers' compensation and employer's liability. Insurance, whether written on a primary or excess basis, of the obligations accepted by, imposed upon or assumed by employers under law for death, disablement or injury of employees;

Sec. 6. 24-A MRSA §707, sub-§1, ¶C-1 is enacted to read:

C-1. Employee benefit excess insurance. Insurance, protecting an employer against higher than expected obligations under an employee benefit plan, at retention levels that do not have the effect of making the plan an insured plan. The transaction of employee benefit excess insurance does not constitute the conduct of the business of reinsurance;

Sec. 7. 24-A MRSA §707, sub-§3 is enacted to read:

3. An insurer other than a casualty insurer may transact employee benefit excess insurance only if that insurer is authorized to insure the class of risk assumed by the underlying benefit plan. Employee benefit excess insurance, even if written by a life or health insurer, is not subject to chapters 29 to 37, except to the extent that particular provisions are made expressly applicable by rule or law. The superintendent may by rule set standards distinguishing excess insurance from basic insurance.

Sec. 8. 24-A MRSA §710, as enacted by PL 1969, c. 132, §1, is repealed.

Sec. 9. 24-A MRSA §1101, as amended by PL 1989, c. 846, Pt. B, §1 and affected by Pt. E, §4, is repealed and the following enacted in its place:

§1101. Scope of chapter

1. Subject to subsection 2 and section 1137, this chapter applies to all insurers except life or health insurers that transact business of a type described in section 409, subsection 3.

2. Each domestic all lines insurer, as defined in section 409, subsection 2, shall, for accounting and financing purposes, establish and maintain distinct accounts dedicated exclusively to the insurance it transacts under its life or health insurance authority and to the remainder of its business. Each account must include reserves and surplus funds adequate to financially support the underwriting activity. All assets allocated to life accounts and health accounts are subject to chapter 13-A rather than this chapter. The books and records of any insurer writing more than one kind of business must reflect the assets and operations relating to each underwriting activity in detail sufficient to demonstrate compliance with this chapter and chapter 13-A.

Sec. 10. 24-A MRSA §1151, as repealed and replaced by PL 1989, c. 846, Pt. B, §8 and affected by Pt. E, §4, is amended to read:

§1151. Scope of chapter

Except as provided in sections 1101 and 1161, this chapter applies only to a domestic insurer's life or health insurer that transact business exclusively of a type described in sections 702, 703 or 704, or any combination of those types section 409, subsection 3.

Sec. 11. 24-A MRSA §2452 is enacted to read:

§2452. Employee benefit excess insurance; nondiscrimination; prohibited clauses

1. Discrimination prohibited. A policy of employee benefit excess insurance may not discriminate unfairly among or against beneficiaries of the underlying benefit plan, or treat conditions related to the Human Immunodeficiency Virus, or HIV, more restrictively than other sicknesses or disabling conditions.

2. Commutation clause. A policy of employee benefit excess insurance may not contain a commutation clause that extinguishes the excess carrier's gross claims liability to the insured person through the recapture of loss reserves, unless the policy contains a provision giving the insured the option of requiring that the funds transferred in support of such a commutation have been evaluated by a qualified health actuary who is a member of the American Academy of Actuaries and has certified that the aggregate value of reserves to be recaptured are reasonably adequate to discharge the insured's expected liability for future costs of the health benefits covered by the excess policy.

3. Review. An employee benefit excess insurance form is not exempt from the review provisions otherwise applicable under section 2412 on the ground that the form is designed for insurance on a particular subject.

See title page for effective date.

CHAPTER 386

S.P. 608 - L.D. 1612

**An Act to Revise the Laws Governing
Banking Institutions**

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

Sec. 1. 9-B MRSA §334, sub-§1, as amended by PL 1981, c. 352, §3, is further amended to read:

1. Superintendent's approval. A financial institution or a service corporation wholly owned by one or more financial institutions authorized to do business in this State may establish or participate in the establishment use of a satellite or off-premise facility, as defined in section 131; provided that no such facility shall be established. A financial institution or service corporation may not establish a satellite facility without prior approval of the superintendent, pursuant to section 336.

Sec. 2. 9-B MRSA §334, sub-§4, as amended by PL 1985, c. 647, §4, is repealed and the following enacted in its place:

4. Use of established facilities by additional institutions. A satellite facility established under this chapter must be made available for use by other financial institutions authorized to do business in this State. The superintendent may not approve the establishment of any satellite facility unless all financial institutions using the facility have equal access to the facility. When a facility is shared, the identification and promotion of that facility must be generic to the facility or network system, not to a specific financial institution.

Sec. 3. 9-B MRSA §334, sub-§5, as amended by PL 1983, c. 614, §1, is amended to read:

5. Location of facilities on premises. Nothing shall may preclude a financial institution from locating an electronic terminal on the premises of its main office or of a branch office for its customers' convenience. Access by other financial institutions to such on-premise facilities shall be at the discretion of said financial institution. At the discretion of that financial institution, customers of other financial institutions may have access to those on-premise facilities.

An on-premise facility is a facility which that is located physically on the premises of a main office or branch or one which that is an extension of or ancillary to an existing main office or branch. Only one ancillary or extended facility is