

# MAINE STATE LEGISLATURE

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PROPERTY CASUALTY AND  
LIABILITY INSURANCE  
Report of a Study by the  
JOINT STANDING COMMITTEE ON  
BUSINESS & COMMERCE  
2nd Regular Session of the  
112th Maine Legislature

January, 1986

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Staff: Jeri B. Gautschi, Legislative Analyst

Office of Policy & Legal Analysis  
Room 101, State House--Sta. 13  
Augusta, Maine 04333  
(207) 289-1670

## The Study

### I. Introduction

In increasing numbers small businesses, truckers, bus companies, municipalities, and service providers all over the U.S. and in Maine are reporting substantial increases in property casualty and liability insurance premiums, short notice of non-renewal, or sometimes unavailability of insurance. There have also been a few instances of mid-term cancellations in Maine. Because of this crisis in property casualty and liability insurance, the Joint Standing Committee on Business and Commerce undertook a study to try to determine the cause of the problem and identify possible solutions.

The full Committee held three day-long public hearings in November and early January and heard testimony from truckers, municipalities, small businesses, day care centers, physicians, trial lawyers, and publicly funded service agencies regarding problems with insurance premium prices or unavailability of insurance. Representatives of insurance companies and insurance agents also testified about causes and possible solutions to the problem. Representatives from the Department of Finance and Administration explained the state self-insurance program to the Committee. The Director of the Risk Management Division of the Department of Finance and Administration also discussed with the Committee the possibility of self-insurance of publicly funded agencies through the state if limits could be placed on awards for these agencies. The Bureau of Insurance explained that their role in insurance regulation is to oversee the rates and financial solvency of insurance companies. They also have the ability to set up Market Assistance Programs, which they have done for daycare providers.

### II. Causes of the Problem

There is conflicting evidence regarding causes and solutions to the current insurance situation. Below are two sides to the argument, one from insurance groups and one from consumer advocates.

In discussing the root of the problem, the insurance industry testified that the problem has resulted from a combination of factors and the cyclical nature of the insurance industry. Insurance claims are paid out of total premium income and the income earned in the investment of these premiums. Competition between insurance companies to increase market share caused insurance companies to price premiums below cost since income from high interest rates would bring in the necessary money to pay claims and make a profit. When interest rates fell, insurance companies were faced with either raising rates or getting out of unpredictable or risky lines. Once premium income is restored to a profitable level, the current crisis of availability and cost will disappear and the competitive pricing is likely to reemerge. In addition,

amounts of awards to plaintiffs are increasing to unpredictable levels. Because of all these factors the property casualty and liability insurance industry has reported an operating loss. Ted Briggs, Superintendent of Insurance, also agreed with this assessment of the situation.

On the other hand, Ralph Nader and Robert Hunter (head of National Insurance Consumer Organization) have testified before a Congressional subcommittee that insurers have manufactured a liability crisis to pressure regulators for rate increases and to force tort reform. Representative James Florio (D-NJ) has promised a full-scale investigation by his subcommittee on Commerce, Transportation and Tourism. Representative John Dingell (D-MI) chairman of the Oversight and Investigations Subcommittee is also looking into the issue. Both groups are subcommittees of the House Committee on Energy and Commerce.

### III. Possible Solutions

#### A. MAP (Market Assistance Programs)

MAP's are voluntary agreements between state governments and insurance companies to write insurance at an agreed upon price for those persons or groups that can not find coverage. At least eight other states have some sort of a MAP, and several others are considering the possibility. Maine's Insurance Bureau has set up a MAP for day care providers with nineteen insurance companies who volunteered to help with the problem. The premiums are higher but at least the providers will be able to get insurance.

#### B. JUA (Joint Underwriting Associations)

A JUA is a legislatively mandated association of all insurers in the state who must write insurance policies for those who cannot get coverage in the marketplace. As a condition to doing business in the state for profitable lines, the insurers must also do business in less profitable lines. At least five states, including Maine, now have JUA's in their states covering medical malpractice, liquor liability, or other areas. Maine has a provision for a temporary JUA for medical malpractice which could not issue any policy providing coverage after July 1, 1982 (24 MRSA §2401). The JUA could only become operational upon a determination by the Superintendent of Insurance that insurance could not be made readily available in the voluntary market.

#### C. Mid-term cancellation provisions

Some insurance companies who have reinsured and have lost their reinsurance find that they are liable for more than they originally had thought. These companies are canceling policies or raising rates mid-term often without

more than a day's notice. At least twelve states have reacted to these cancellations by enacting provisions which limit the ability of insurance companies to cancel. These provisions include an adequate amount of notice before cancellation, prior approval by the state, or other restrictions. A few other states prohibit any mid-term increases or cancellations, institute a fine, revoke licenses, or prosecute each incident on a case by case basis as an unfair trade practice.

#### D. Guaranty fund legislation

Guaranty fund legislation is a mechanism to protect insureds which goes into effect if an insurance company goes bankrupt. If an insurance company goes bankrupt, all other insurers are forced to pay into a fund. There usually is a specified limit on claims. Maine has three guaranty funds: workers compensation self-insurance, life/health insurance, and property/casualty insurance.

#### E. Rate Regulation

New York has rolled back some rates temporarily freezing them at lower levels, while studying the insurance crisis problem. Illinois is also introducing legislation which would require insurance companies to justify rate increases for property/casualty coverage. This Illinois legislation is being backed by many businesses and property-owner groups. Ted Briggs, Superintendent of Insurance, cautioned the committee that too much regulation might cause some companies to cease doing business in Maine altogether since Maine represents only 1% of the market.

#### F. Self-insurance

Many states and municipalities are now either self-insuring or will be in the near future. Maine Municipal Association is currently investigating a self-insurance program where the municipalities would pool their resources. A bill allowing them to self-insure is being introduced by Senator Charles Pray, President of the Senate, in the Second Regular Session of the 112th Legislature.

#### G. Tort reform

Most tort reform proposals from around the country are in the area of medical malpractice. However, tort reform in other areas has taken place in at least two states. The reforms include limiting punitive awards in bad faith suits, parental liability increases, and mandatory arbitration for civil claims less than \$15,000. Medical malpractice tort reforms include limiting contingency fees, rewriting statutes of limitation, eliminating joint and several liability, putting caps on non-economic damages, eliminating the collateral source rule (to eliminate overinflated awards), allowing defendants to pay in

installments, abolishing punitive damages for hospitals and physicians, requiring pre-trial screening of cases to eliminate frivolous claims, and making plaintiffs and their attorneys liable for court costs and defendants' legal fees if the plaintiff loses. At least eight states have passed one or more of these reforms.

#### H. Administrative action

Many states have sent memos to insurance companies or have issued bulletins advising insurance companies not to cancel policies mid-term and to work out satisfactory solutions. These bulletins warn companies that they might be guilty of unfair and deceptive trade practices for inappropriate increases or cancellations.

#### Findings

-Some service providers in Maine have been in danger of being forced out of business or being forced to temporarily suspend their services because of large increases in premiums, cancellation of insurance, or unavailability of insurance at any price. Some day care providers have gone out of business, and some individuals have decided not to go into the day care business because of the high cost of insurance. There are also some businesses that have chosen to operate without liability insurance because of the high cost. Even where insurance is available, cost is still a problem for some individuals, businesses, and agencies in Maine.

-The judicial system in the U.S. is in need of reform.

-Market Assistant Programs (MAP's) are an answer to availability problems. Some of the Committee members believe that the Superintendent of Insurance needs to be in a stronger position in order to be able to establish MAP's when the need arises. Other members believe that he will be able to establish MAP's with the law remaining the way it is.

-Excesses in the legal system are not the only cause of this crisis. Insurance premium pricing has not been sensitive to claims or risks involved. Because of intense competition and high interest rates on investments, insurance companies in the recent past were setting extremely low prices which had no relationship to claims or risks. Some insurers entered new lines of insurance which many people bought because of the low price.

The Committee is disturbed by the pricing practices of the insurance industry and the resulting wide swings in prices. The Committee hopes that such practices will be discontinued in the future so that regulation at the state and national level will not be necessary.

-The problem in Maine is currently being addressed through one Market Assistance Program for day care providers set up by the Bureau of Insurance. The Risk Management Division of the Department of Finance and Administration also tries to give advice to people who inquire.

-Further study is needed on the structure of financial regulation and the possibility of integrated financial regulation where different departments having regulatory authority might work together.

#### RECOMMENDATIONS

-The Business and Commerce Committee urges the Judiciary Committee or a Joint Select Committee to study tort reforms including caps on awards, limits on contingency fees, changes in statutes of limitations, eliminating joint and several liability eliminating the collateral source rule, requiring pre-trial screening of cases to eliminate frivolous claims, and changes in payment of court costs..

-Legislation should be introduced limiting mid-term cancellations and providing adequate notice for non-renewals or allowed cancellations.

-Legislation should be introduced giving the Superintendent of Insurance power to set up mandatory Joint Underwriting Associations (JUA's) in certain problem areas for a limited time when a problem arises. While voluntary programs (MAP's) are preferred, this would give the Superintendent of Insurance the power to set up a JUA without convening the Legislature when voluntary programs are being resisted by insurers. A minority of the Committee did not join in this recommendation.

JG/elk/4598

PROPOSED LEGISLATION



AN ACT PERTAINING TO THE ESTABLISHMENT  
OF MANDATORY RISK SHARING PLANS

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

Sec. 1 Title 24-A M.R.S.A. Section 2325-A is enacted to read:

Section 2325-A. Mandatory Risk-Sharing Plans.

1. Establishment of Plans. If the Superintendent finds, after notice and hearing, that in this state any of the types of insurance listed below are not readily available in the voluntary market and that the public interest requires such availability, he may, by rule, either promulgate plans to provide such insurance coverage for any risks in this state which are equitably entitled to but otherwise unable to obtain such coverage or he may call upon industry to prepare plans for his approval.
  - A. Day Care and Day Nursery Liability
  - B. Liquor Liability
  - C. Municipal Liability and Liability for Public Entities
2. Purposes and Contents of Risk-Sharing Plans. Any plan promulgated or prepared as provided for by this chapter shall:
  - A. Give consideration to:
    1. The need for adequate and readily accessible coverage;
    2. Alternative methods of improving the market affected;
    3. The inherent limitation of the insurance mechanism;
    4. The need for reasonable underwriting standards; and
    5. The requirement of reasonable loss prevention measures;
  - B. Establish procedures that will create minimum interference with the voluntary market.
  - C. Spread the burden imposed by the plan equitably and efficiently within the industry; and
  - D. Establish procedures for applicants and participants to have grievances reviewed by an impartial body.
3. Persons Required to Participate. Each plan shall require participation by all insurers authorized in this state to write the kinds of insurance covered by the specific plans and all agents licensed to represent such insurers for the kinds of business covered by the specific plans, except that the superintendent may exclude

classes of insurers or agents for administrative convenience or because it is not equitable or practicable to require them to participate in the plan.

4. Voluntary Participation. The plan may provide for optional participation by insurers not required to participate as provided in Subsection 3.
5. Classification and Rates. Each plan shall provide for the method of classifying risks and making and filing rates applicable thereto.
6. Basis of Participation. The plan shall specify the basis of participation of insurers and agents and the conditions under which risks must be accepted.
7. Duty to Provide Service. Every participating insurer and agent shall provide to any person seeking coverages of kinds available in the plans, the services prescribed in the plans, including full information on the requirements and procedures for obtaining coverage under the plans whenever the business is not placed in the voluntary market.
8. The superintendent shall determine reasonable and adequate commission rates to be paid to agents or brokers for coverage written under this chapter. In determining the reasonableness and adequacy of such commission rates the superintendent shall consider the commission rates paid on similar coverage in the normal market.
9. Provisions of Marketing Facilities. If the superintendent finds that the lack of cooperating insurers or agents in an area makes the functioning of the plan difficult, he may order that the plan appoint agents in such a manner and on such terms as he designates or take other appropriate steps to insure that service is available.
10. Transition. Procedures established under the existing assigned risk plan as provided in section 2325, subsection 2 of this title shall continue in effect until and unless changed as provided in this section.
11. Any mandatory risk sharing plan created as required by this section shall not issue any policies with an inception date one year after the initial policy issue date or anniversary thereof unless the superintendent has found, after notice and hearing, that the type of insurance is not readily available in the voluntary market and that public interest requires renewal of the plan.

AN ACT Relating to Cancellation and Nonrenewal of  
Property and Casualty Insurance Contracts

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

Section 1. Title 24-A M.R.S.A. § 2908 is enacted to read:

§ 2908 Cancellation and Nonrenewal.

(1) For purposes of this section, the following words have the following meanings:

- A. "Cancellation" means termination of a policy at a date other than its expiration date.
- B. "Expiration Date" means the date upon which coverage under a policy ends. It also means, for a policy written for a term longer than one year or with no fixed expiration date, each annual anniversary date of such policy.
- C. "Nonpayment of Premium" means the failure or inability of the named insured to discharge any obligation in connection with the payment of premium on a policy of insurance subject to this regulation, whether such payments are payable directly to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit.
- D. "Nonrenewal" means termination of a policy at its expiration date.
- E. "Renewal" or "to renew" means the issuance of or the offer to issue by an insurer a policy succeeding a policy previously issued and delivered by the same insurer or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date.

(2) Permissible grounds for cancellation. Except as provided by subsection (7) no contract of casualty insurance may be cancelled by an insurer prior to the expiration of the policy except on grounds stated in the policy which pertain to the following:

- A. Nonpayment of premium;
- B. Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- C. Substantial change in the risk which increases the risk of loss after insurance coverage has been issued or renewed, including but not limited to an increase in exposure due to regulation, legislation or court decision;
- D. Failure to comply with reasonable loss control recommendations;
- E. Substantial breach of contractual duties, conditions or warranties; or
- F. Determination by the Superintendent that the continuation of a

class or block of business to which the policy belongs would jeopardize a company's solvency or would place the insurer in violation of the insurance laws of this state or any other state.

(3) Policies issued for more than one year. If a policy has been issued for a term longer than one year and, for additional premium consideration, a premium has been guaranteed, the insurer may not ~~nonrenew~~ or increase the policy premium for the term of that policy.

*refuse to  
renew the  
policy*

(4) Renewal with Altered Terms. If an insurer offers or purports to renew a contract but on less favorable terms to the insured or at higher rates, and/or a higher rating plan, the new terms or rates and/or rating plan may take effect on the renewal date if the insurer has provided the insured 30 days notice. If the insurer has not so notified the contractholder, the contractholder may elect to cancel the renewal policy within the 30 day period after receipt of such notice or delivery. Earned premium for the period of coverage for such time as the renewal contract may have been in force, shall be calculated pro rata at the lower of the current or previous year's rate. If the insured accepts the renewal, the premium increase, if any, and other changes shall be effective the day following the prior policy's expiration or anniversary date. This section shall not apply if the change is a rate, form or plan filed with the Superintendent and applicable to the entire class of business to which the policy belongs or to a premium increase based on the altered nature or extent of the risk insured against.

(5) Notice.

A. Cancellation shall not be effective prior to 10 days after receipt by the insured of a notice of cancellation. The notice shall state the effective date of and the reason or reasons for cancellation.

B. Nonrenewal subject to this section shall not be effective prior to 30 days after receipt by the insured of written notice. If an insurer provides a notice of nonrenewal as described in this subsection and thereafter extends the policy 90 days or less, an additional notice of nonrenewal is not required with respect to this extension.

C. A post office certificate of mailing to the named insured at his last known address shall be conclusive proof of receipt of notice on the 3rd calendar day after mailing.

(6) Hearing before Superintendent. Any insured who has received a notice of an insurer's intent to cancel a policy may, within 45 days of the receipt of the notice, request a hearing before the Superintendent. The purpose of this hearing shall be limited to establishing the existence of the proof or evidence given by the insurer in its notice of cancellation. The burden of proof of the reason for cancellation shall be upon the insurer. The Superintendent shall have the authority to order that a policy remain in effect.

(7) Nonliability for Certain Statements. Except as provided in Title 10, Chapter 210, no insurer or licensed agent or employee of the insurer may be held liable in any civil action for statements made in a

notice of cancellation or nonrenewal or at a hearing held under this section if the statements were made in good faith and, in the case of cancellation, are reasonably related to the grounds for cancellation.

- (8) Applicability. This section does not apply to any insurance policy that has not been previously renewed if the policy has been in effect less than 60 days at the time notice of cancellation is mailed or otherwise delivered. This section does not apply to any policy subject to the Maine Automobile Cancellation Control Act, subchapter II of this chapter. This section does not apply to workers' compensation insurance or any assigned risk program. The Superintendent may suspend, in whole or in part, the applicability of this section to any insurer if, in his discretion, its application would endanger the ability of the insurer to fulfill its contractual obligations.
- (9) Effective date. This section shall apply to all policies delivered, issued for delivery or renewed in this State after the effective date of this Act. In the case of policies issued for more than one year or those having no fixed expiration date, this section shall apply to such policies on or after the first policy anniversary occurring after the effective date of this Act.

Section 2. 24-A M.R.S.A. § 3007 is enacted to read:

§ 3007. Cancellation and Nonrenewal.

(1) Definition.

- A. "Cancellation" means termination of a policy at a date other than its expiration date.
- B. "Expiration Date" means the date upon which coverage under a policy ends. It also means, for a policy written for a term longer than one year or with no fixed expiration date, each annual anniversary date of such policy.
- C. "Nonpayment of premium" means the failure or inability of the named insured to discharge any obligation in connection with the payment of premium on a policy of insurance subject to this regulation, whether such payments are payable directly to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit.
- D. "Nonrenewal" means termination of a policy at its expiration date.
- E. "Renewal" or "to renew" means the issuance of or the offer to issue by an insurer a policy succeeding a policy previously issued and delivered by the same insurer or the issuance of a certificate or notice extending the terms of an existing policy for a specified period beyond its expiration date.

(2) Permissible grounds for cancellation. Except as provided by subsection (7) no contract of property insurance may be cancelled by an insurer prior to the expiration of the policy except on grounds stated in the policy which pertain to the following:

- A. Nonpayment of premium;
- B. Fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- C. Substantial change in the risk which increases the risk of loss after insurance coverage has been issued or renewed, including but not limited to an increase in exposure due to regulation, legislation or court decision;
- D. Failure to comply with reasonable loss control recommendations;
- E. Substantial breach of contractual duties, conditions or warranties; or
- F. Determination by the Superintendent that the continuation of a class or block of business to which the policy belongs would jeopardize a company's solvency or would place the insurer in violation of the insurance laws of this state or any other state.

refuse  
to renew

(3) Policies issued for more than one year. If a policy has been issued for a term longer than one year, and for additional premium consideration, a premium has been guaranteed, the insurer may not nonrenew or increase the policy premium for the term of that policy.

(4) Renewal with Altered Terms. If an insurer offers or purports to renew a contract but on less favorable terms to the insured or at higher rates, and/or a higher rating plan, the new terms or rates and/or rating plan may take effect on the renewal date if the insurer has provided the insured as provided in this section. If the insurer has not so notified the contractholder, the contractholder may elect to cancel the renewal policy within the 30 day period after receipt of such notice or delivery. Earned premium for the period of coverage for such time as the renewal contract may have been in force, shall be calculated pro rata at the lower of the current or previous year's rate. If the insured accepts the renewal, the premium increase, if any, and other changes shall be effective the day following the prior policy's expiration or anniversary date. This section shall not apply if the change is a rate, form or plan filed with the Superintendent and applicable to the entire class of business to which the policy belongs or to a premium increase based on the altered nature or extent of the risk insured against.

(5) Notice.

- A. To the extent that section 3002 is applicable, notice of cancellation shall be given as provided for in that section. If section 3002 is not applicable, cancellation shall not be effective prior to 10 days after receipt by the insured of a notice of cancellation. The notice shall state the effective date of and the reason or reasons for cancellation.
- B. Nonrenewal subject to this section shall not be effective prior to 30 days after receipt by the insured of written notice.

C. A post office certificate of mailing to the named insured at his last known address shall be conclusive proof of receipt of notice on the 3rd calendar day after mailing.

- (6) Hearing before Superintendent. Any insured who has received a notice of an insurer's intent to cancel a policy may, within 45 days of the receipt of the notice, request a hearing before the Superintendent. The purpose of this hearing shall be limited to establishing the existence of the proof or evidence given by the insurer in its notice of cancellation. The burden of proof of the reason for cancellation shall be upon the insurer. The Superintendent shall have the ability to order that a policy remain in force.
- (7) Nonliability for Certain Statements. Except as provided in Title 10, Chapter 210, no insurer or licensed agent or employee of the insurer may be held liable in any civil action for statements made in a notice of cancellation or nonrenewal or at a hearing held under this section if the statements were made in good faith and, in the case of cancellation, are reasonably related to the grounds for cancellation.
- (8) Applicability. This notice does not apply to any insurance policy that has not been previously renewed if the policy has been in effect less than 60 days at the time notice of cancellation is mailed or otherwise delivered. This section does not apply to any policy subject to the Maine Property Insurance Cancellation Control Act, Subchapter V of this chapter. This section does not apply to any policy issued pursuant to any assigned risk plan. The Superintendent may suspend, in whole or in part, the applicability of this section to any insurer if, in his discretion, its application would endanger the ability of the insurer to fulfill its contractual obligation.
- (9) Effective date. This section shall apply to all policies delivered, issued for delivery or renewed in this State after the effective date of this Act. In the case of policies issued for more than one year or those having no fixed expiration date, this section shall apply to such policies on or after the first policy anniversary occurring after the effective date of this Act.