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No. 1352

H.P. 993

House of Representatives, March 29, 2011

An Act To Implement the Requirements of the Federal Nonadmitted and Reinsurance Reform Act of 2010

(EMERGENCY)

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative RICHARDSON of Warren.
Cosponsored by Senator: WHITTEMORE of Somerset.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the federal Nonadmitted and Reinsurance Reform Act of 2010, Title V,
4 Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public
5 Law 111-203, which takes effect July 21, 2011, was enacted after the adjournment of the
6 Second Regular Session of the 124th Legislature and requires states to revise their
7 eligibility standards for surplus lines insurance and directs states to adopt a multistate
8 premium tax allocation system before June 16, 2011; and

9 **Whereas,** the implementation dates imposed by federal law are less than 90 days
10 after the anticipated adjournment of the Legislature; and

11 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
12 the meaning of the Constitution of Maine and require the following legislation as
13 immediately necessary for the preservation of the public peace, health and safety; now,
14 therefore,

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

16 **Sec. 1. 24-A MRSA §2002-A, sub-§3, ¶C,** as enacted by PL 1993, c. 153, §16,
17 is amended to read:

18 C. Insurance on operations of railroads engaged in transportation in interstate
19 commerce and their property used in such operations; ~~or~~

20 **Sec. 2. 24-A MRSA §2002-A, sub-§3, ¶D,** as enacted by PL 1993, c. 153, §16,
21 is amended to read:

22 D. Insurance on aircraft owned or operated by manufacturers of aircraft or of aircraft
23 operated in commercial interstate flight, or cargo of such aircraft, or against liability
24 other than workers' compensation and employer's liability arising out of the
25 ownership, maintenance or use of such aircraft; or

26 **Sec. 3. 24-A MRSA §2002-A, sub-§3, ¶E** is enacted to read:

27 E. Insurance sold to an exempt commercial purchaser in compliance with the
28 requirements of the federal Nonadmitted and Reinsurance Reform Act of 2010,
29 Public Law 111-203, Section 525.

30 **Sec. 4. 24-A MRSA §2003, sub-§2,** as enacted by PL 1969, c. 132, §1, is
31 amended to read:

32 **2.** To "export" means to place in an unauthorized insurer under this Surplus Lines
33 Law insurance ~~covering a subject of insurance resident, located or to be performed in~~
34 Maine when the State has jurisdiction over the placement of coverage in accordance with
35 the federal Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203,
36 Section 522.

1 **Sec. 5. 24-A MRSA §2016, sub-§2**, as enacted by PL 1991, c. 674, §1, is
2 repealed.

3 **Sec. 6. 24-A MRSA §2101, sub-§2, ¶E**, as amended by PL 1973, c. 625, §141,
4 is further amended to read:

5 E. The employee, compensated on salary only, of a Maine employer who on behalf
6 of the employer assists in the procurement or administration of insurance coverages
7 on the property, risks and insurable interests of the employer; or

8 **Sec. 7. 24-A MRSA §2101, sub-§2, ¶F** is enacted to read:

9 F. Transactions outside this State arising from the unsolicited application of the
10 insured, if the transaction is lawful in the jurisdiction in which it occurs and the
11 applicable premium tax has been paid in compliance with Title 36, section 2513.

12 **Sec. 8. 24-A MRSA §2113**, as corrected by RR 2001, c. 2, Pt. A, §39, is repealed.

13 **Sec. 9. 36 MRSA §191, sub-§2, ¶PP**, as corrected by RR 2009, c. 2, §107, is
14 amended to read:

15 PP. The disclosure to the Department of Conservation of information contained on
16 the commercial forestry excise tax return filed pursuant to section 2726, such as the
17 landowner name, address and acreage, to facilitate the administration of chapter 367;
18 ~~and~~

19 **Sec. 10. 36 MRSA §191, sub-§2, ¶QQ**, as reallocated by RR 2009, c. 2, §108, is
20 amended to read:

21 QQ. The disclosure of registration, reporting and payment information to the
22 Department of Agriculture, Food and Rural Resources necessary for the
23 administration of Title 32, chapter 28; and

24 **Sec. 11. 36 MRSA §191, sub-§2, ¶RR** is enacted to read:

25 RR. The disclosure to tax officials of other states, and to clearinghouses and other
26 administrative entities acting on behalf of participating states, of information
27 necessary for the administration of a multistate agreement entered into pursuant to
28 section 2532.

29 **Sec. 12. 36 MRSA §2513, first ¶**, as amended by PL 2009, c. 625, §9, is further
30 amended to read:

31 Every insurance company or association that does business or collects premiums or
32 assessments including annuity considerations in the State, including surety companies
33 and companies engaged in the business of credit insurance or title insurance, shall, for the
34 privilege of doing business in this State and in addition to any other taxes imposed for
35 that privilege, pay a tax upon all gross direct premiums including annuity considerations,
36 whether in cash or otherwise, on contracts written on risks located or resident in the State
37 for insurance of life, annuity, fire, casualty and other risks at the rate of 2% a year. Every
38 ~~surplus lines~~ nonadmitted insurer that does business or collects premiums in the State

1 shall, for the privilege of doing business in this State and in addition to any other taxes
2 imposed for that privilege, pay a tax upon all gross direct premiums, whether in cash or
3 otherwise, ~~on contracts written on risks located or resident in the State at the rate of 3% a~~
4 ~~year as provided in section 2531. The producer of those contracts must collect the tax and~~
5 ~~report and pay the tax to the State Tax Assessor as provided in section 2521-A, except~~
6 ~~that an insurance agency may elect to collect and pay the tax on surplus lines premiums~~
7 ~~on behalf of all of its employees who are surplus lines producers.~~ For purposes of this
8 section, the term "annuity considerations" includes amounts paid to an insurance
9 company for the purchase of a contract that may result in an annuity, even if the
10 annuitization never occurs or does not occur until some time in the future and the
11 amounts are in the meantime applied to an investment vehicle other than an annuity. This
12 section does not apply to mutual fire insurance companies subject to tax under section
13 2517 or to captive insurance companies formed or licensed under Title 24-A, chapter 83
14 or under the laws of another state.

15 **Sec. 13. 36 MRSA §2519**, as repealed and replaced by PL 1973, c. 727, §9, is
16 amended to read:

17 **§2519. Ratio of tax on foreign insurance companies**

18 Any insurance company incorporated by a state of the United States or province of
19 ~~the Dominion~~ of Canada whose laws impose upon insurance companies chartered by this
20 State any greater tax than is herein provided shall pay the same tax upon business done by
21 it in this State, in place of the tax provided in any other section of this Title. If it is not
22 paid as provided in section 2521-A, the Superintendent of Insurance shall suspend the
23 right of said company to do business in this State. Any insurance company incorporated
24 by another country ~~shall be~~ is regarded for the purpose of this section as though
25 incorporated by the state where it has elected to make its deposit and establish its
26 principal agency in the United States. For nonadmitted insurance premiums subject to
27 section 2531, the rate applied pursuant to this section must be the highest rate that the
28 state or province applies to nonadmitted insurance premiums taxed in that state or
29 province.

30 **Sec. 14. 36 MRSA §2531** is enacted to read:

31 **§2531. Taxation of nonadmitted insurance coverage**

32 **1. Generally.** All gross direct insurance premiums and annuity considerations paid
33 to insurers that do not have certificates of authority to do business in this State, issued by
34 the Superintendent of Insurance pursuant to Title 24-A, are subject to taxation in
35 accordance with this section if this State is the insured's home state, as defined in the
36 federal Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203, Section
37 527. This section does not apply to reinsurance premiums paid by an authorized
38 domestic insurer.

39 **2. Rate and incidence of tax.** Except as otherwise provided in section 2519 or
40 2532, the rate of taxation is 3% of the premiums subject to tax under this section. For all
41 coverage placed in accordance with Title 24-A, chapter 19, the tax must be paid by the

1 surplus lines producer. For all other nonadmitted insurance, the tax must be paid by the
2 insured.

3 **3. Returns.** Except as otherwise provided in accordance with a multistate agreement
4 entered into pursuant to section 2532, every producer holding surplus lines authority in
5 this State shall file a return and pay the tax due in accordance with section 2521-A and
6 every insured subject to tax in accordance with this section shall file a return and pay the
7 tax due subject to the same requirements as provided in section 2521-A. An insurance
8 agency may elect to collect and pay the tax on surplus lines premiums on behalf of all of
9 its employees who are surplus lines producers and file a single return.

10 **Sec. 15. 36 MRS §2532** is enacted to read:

11 **§2532. Authority to enter into multistate agreement**

12 The assessor may enter into a multistate agreement, in accordance with the federal
13 Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203, Section 521, for
14 the reporting of nonadmitted insurance premiums and the collection and allocation of
15 nonadmitted insurance taxes. For any nonadmitted insurance premiums that are subject
16 to taxation by this State and interstate allocation of taxes in accordance with the federal
17 Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203, Section 521,
18 the rate of taxation on each participating state's share of the premium must be that state's
19 applicable nonadmitted insurance premium tax rate.

20 **Sec. 16. Effective date.** This Act takes effect July 21, 2011, except that that
21 section of this Act that enacts the Maine Revised Statutes, Title 36, section 2532 takes
22 effect when approved.

23 **Sec. 17. Application.** This Act applies to taxes on all premiums received on or
24 after July 1, 2011.

25 **Emergency clause.** In view of the emergency cited in the preamble, this
26 legislation takes effect when approved, except as otherwise indicated.

27 **SUMMARY**

28 This bill amends surplus lines eligibility standards and nonadmitted insurance
29 premium tax laws to conform to the requirements of the federal Nonadmitted and
30 Reinsurance Reform Act of 2010. It authorizes the State Tax Assessor to enter into a
31 multistate agreement as directed by federal law; transfers the administration of self-
32 procured insurance premium taxes from the Department of Professional and Financial
33 Regulation, Bureau of Insurance to the Department of Administrative and Financial
34 Services, Maine Revenue Services; and makes conforming technical changes to other
35 provisions of the surplus lines insurance and premium tax laws.