

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND ELEVEN

H.P. 993 - L.D. 1352

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

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

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

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

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

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

**Sec. 1. 24-A MRSA §2001-A** is enacted to read:

**§2001-A. Scope**

This chapter applies exclusively to transactions when this State is the home state of the applicant or insured. Nothing in this chapter applies to the sale, solicitation, negotiation, placement or writing of contracts of insurance for any applicant or insured whose home state is in a jurisdiction other than in this State.

**Sec. 2. 24-A MRSA §2002-A, sub-§3,** as amended by PL 1997, c. 592, §48, is further amended to read:

**3.** Producers with surplus lines authority may procure the following kinds of insurance from eligible surplus lines insurers without adherence to the procedures set

forth in section 2004 or any other requirement to determine whether the full amount or type of insurance sought can be obtained from admitted insurers:

- A. Wet marine and transportation insurance;
- B. Insurance on subjects located, resident or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this State;
- C. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations; ~~or~~
- D. Insurance on aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight, or cargo of such aircraft, or against liability other than workers' compensation and employer's liability arising out of the ownership, maintenance or use of such aircraft; ~~or~~
- E. Insurance placed by a producer with surplus lines authority for an exempt commercial purchaser if:

- (1) The producer has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that provides greater protection with more regulatory oversight; and
- (2) The exempt commercial purchaser has subsequently requested in writing for the producer to procure or place such insurance from a nonadmitted insurer.

**Sec. 3. 24-A MRSA §2003**, as amended by PL 1997, c. 592, §49, is further amended to read:

**§2003. Definitions**

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

- 1. "Producer" ~~as used in this chapter and unless context otherwise requires,~~ means a producer with surplus lines authority duly licensed as such under this chapter.
- 2. To "export" means to place insurance in an unauthorized nonadmitted insurer under this Surplus Lines Law ~~insurance covering a subject of insurance resident, located or to be performed in Maine.~~
- 3. "Admitted insurer" means an insurer licensed to engage in the business of insurance in this State.
- 4. "Affiliate" means, with respect to an insured, any entity that controls, is controlled by or is under common control with the insured.
- 5. "Affiliated group" means any group of affiliates.
- 6. "Exempt commercial purchaser" means an exempt commercial purchaser as defined by the federal Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203, Section 527.

7. "Home state" means:

A. With respect to an insured:

(1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(2) If 100% of the insured risk is located out of the state referred to in subparagraph 1, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or

B. With respect to an affiliated group, if more than one of the insureds from an affiliated group are named insureds on a single nonadmitted insurance contract, the home state, as determined pursuant to paragraph A, of the member of the affiliated group that has the largest percentage of premium attributed to it under that insurance contract.

8. "Nonadmitted insurance" means any property and casualty insurance permitted to be placed through a surplus lines broker with a nonadmitted insurer eligible to accept that insurance.

9. "Nonadmitted insurer" means an insurer not licensed to engage in the business of insurance in this State. "Nonadmitted insurer" does not include a risk retention group, as that term is defined in section 6093, subsection 13.

**Sec. 4. 24-A MRSA §2007**, as amended by PL 1997, c. 592, §54, is further amended to read:

**§2007. Eligible surplus lines insurers**

**1.** A producer may not knowingly place surplus lines insurance with an insurer that is unsound financially or that is ineligible under this section.

**2.** The superintendent shall from time to time publish a list of all surplus lines insurers determined by the superintendent to be eligible currently, and shall mail a copy of such list to each producer at the producer's office last of record with the superintendent. This subsection may not be construed to cast upon the superintendent the duty of determining the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the superintendent, may indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the superintendent has no credible evidence to the contrary. While any such list is in effect, the producer shall restrict to the insurers so listed all surplus lines business placed by the producer.

**3.** The superintendent shall approve a United States insurer's request for eligibility if the insurer:

A. Is authorized to write such insurance in its domiciliary jurisdiction;

B. Has established satisfactory evidence of good repute and financial integrity; and

C. Maintains capital and surplus, or its equivalent under the laws of its state of domicile, in an amount at least equal to the greater of:

(1) The minimum capital and surplus that would be required if the insurer were licensed in this State; and

(2) \$15,000,000.

4. The superintendent may list an insurer as eligible if it does not meet the minimum capital and surplus requirements of subsection 3 upon an affirmative finding of acceptability by the superintendent. The finding must be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability and company record and reputation within the industry. The superintendent may not make an affirmative finding of acceptability if the nonadmitted insurer's capital and surplus is less than \$4,500,000.

5. A non-United States insurer is considered eligible to write insurance on an unauthorized basis in this State if it is listed on the quarterly listing of alien insurers maintained by the National Association of Insurance Commissioners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Any insurance company incorporated by a state of the United States or province of ~~the Dominion~~ of Canada whose laws impose upon insurance companies chartered by this State any greater tax than is herein provided shall pay the same tax upon business done by it in this State, in place of the tax provided in any other section of this Title. If it is not paid as provided in section 2521-A, the Superintendent of Insurance shall suspend the right of said company to do business in this State. Any insurance company incorporated by another country ~~shall be~~ is regarded for the purpose of this section as though

incorporated by the state where it has elected to make its deposit and establish its principal agency in the United States. For nonadmitted insurance premiums subject to section 2531, the rate applied pursuant to this section must be the highest rate that the state or province applies to nonadmitted insurance premiums taxed in that state or province.

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

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

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

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

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

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

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

**1. Authority; multistate agreement.** The State Tax Assessor may, after consultation with the Department of Professional and Financial Regulation, Bureau of Insurance, enter into a multistate agreement, in accordance with the federal Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203, Section 521, for the reporting of nonadmitted insurance premiums and the collection and allocation of nonadmitted insurance taxes. For any nonadmitted insurance premiums that are subject to taxation by this State and interstate allocation of taxes in accordance with the federal Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203, Section 521, the rate of taxation on each participating state's share of the premium must be that state's applicable nonadmitted insurance premium tax rate.

**2. Fiscal analysis; consultation.** The State Tax Assessor may not enter into a multistate agreement pursuant to subsection 1 unless the assessor has:

A. Completed a fiscal analysis of the impact of the agreement that examines the expected effects on the State's gross receipt of premium tax; and

B. Concluded, after consultation with representatives of surplus lines insurers, admitted insurers and surplus lines producers, that entering into the agreement:

(1) Is in this State's financial best interest;

(2) Does not significantly increase administrative burden and cost to the State, surplus lines insurers and insureds; and

(3) Is consistent with the requirements of the federal Nonadmitted and Reinsurance Reform Act of 2010, Public Law 111-203.

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

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

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

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In House of Representatives, ..... 2011

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2011

Read twice and passed to be enacted.

..... President

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Approved ..... 2011

..... Governor