

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1519

S.P. 574

In Senate, May 8, 2013

An Act To Update the Maine Insurance Code To Maintain Conformance with Uniform National Standards

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 black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator WOODBURY of Cumberland.
Cosponsored by Senator GRATWICK of Penobscot and
Representative: WALLACE of Dexter.

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

2 **PART A**

3 **Sec. A-1. 24-A MRSA §216, sub-§5**, as amended by PL 1999, c. 184, §19, is
4 repealed and the following enacted in its place:

5 5. In order to assist the superintendent in the regulation of insurers in this State, it is
6 the duty of the superintendent to maintain as confidential a document or information
7 received from the National Association of Insurance Commissioners or International
8 Association of Insurance Supervisors, public officials of other jurisdictions and members
9 of supervisory colleges in which the superintendent participates pursuant to section 222,
10 subsection 7-B, agencies of the Federal Government or political subdivisions or other
11 agencies of this State, if the document or the information has been provided to the
12 superintendent with notice that it is confidential under the laws of the jurisdiction that is
13 the source of the document or information.

14 A. Any information furnished pursuant to this subsection by or to the superintendent
15 that has been designated confidential by the official or agency furnishing the
16 information remains the property of the agency furnishing the information and must
17 be held as confidential by the recipient of the information, except as authorized by the
18 official or agency furnishing the information.

19 B. The superintendent may share information, including otherwise confidential
20 information, with the National Association of Insurance Commissioners or
21 International Association of Insurance Supervisors, public officials of other
22 jurisdictions and members of supervisory colleges in which the superintendent
23 participates pursuant to section 222, subsection 7-B, agencies of the Federal
24 Government or political subdivisions or other agencies of this State, if the other
25 jurisdiction, political subdivision or agency agrees to maintain the same level of
26 confidentiality as is available under Maine law and has demonstrated that it has the
27 legal authority to do so.

28 C. The superintendent may enter into one or more written agreements with the
29 National Association of Insurance Commissioners governing sharing and using
30 information under this subsection that:

31 (1) Specify procedures and protocols regarding the confidentiality and security
32 of information shared with the National Association of Insurance Commissioners
33 and its affiliates and subsidiaries pursuant to this paragraph, including procedures
34 and protocols for sharing by the National Association of Insurance
35 Commissioners with other state, federal or international insurance regulators;

36 (2) Specify that ownership of information shared with the National Association
37 of Insurance Commissioners and its affiliates and subsidiaries pursuant to this
38 paragraph remains with the superintendent and that the use of information by the
39 National Association of Insurance Commissioners is subject to the direction of
40 the superintendent;

41 (3) Require prompt notice to be given by the National Association of Insurance
42 Commissioners to any insurer whose confidential information is in the possession

1 of the National Association of Insurance Commissioners pursuant to this
2 paragraph when that information is the subject of a request or subpoena for
3 disclosure or production; and

4 (4) Require the National Association of Insurance Commissioners and its
5 affiliates and subsidiaries to consent to intervention by an insurer in any judicial
6 or administrative action in which the National Association of Insurance
7 Commissioners and its affiliates and subsidiaries may be required to disclose
8 confidential information about the insurer shared with the National Association
9 of Insurance Commissioners and its affiliates and subsidiaries pursuant to this
10 paragraph.

11 D. This subsection does not alter prohibitions or restrictions applicable to ex parte
12 contacts in the course of an adjudicatory proceeding in which a state agency is a
13 party.

14 E. For purposes of this subsection, "other agencies of this State" includes bureau
15 personnel and consultants designated as serving in an advocacy capacity in an
16 adjudicatory proceeding before the superintendent.

17 **Sec. A-2. 24-A MRSA §222, sub-§1**, as repealed and replaced by PL 1975, c.
18 356, §1, is repealed.

19 **Sec. A-3. 24-A MRSA §222, sub-§1-A** is enacted to read:

20 **1-A. Examination.** For purposes of ascertaining compliance with law, or
21 relationships and transactions between any person as defined hereafter and any insurer or
22 proposed insurer subject to this section, the superintendent may as often as the
23 superintendent determines to be advisable examine the accounts, records, documents and
24 transactions pertaining to or affecting the insurance affairs or proposed insurance affairs,
25 or transactions of the insurer or proposed insurer as may be in the possession of any
26 holding company, its subsidiaries or affiliates as is necessary to ascertain the financial
27 condition, including the enterprise risk to the insurer by the ultimate controlling party, or
28 legality of conduct of the insurer or proposed insurer or the holding company as a whole
29 or any combination of entities within the insurance holding company system and to verify
30 any information provided or required to be provided to the superintendent pursuant to this
31 section.

32 A. The superintendent's investigatory and examination authority under this
33 subsection extends to the examination of:

34 (1) Any business entity structured to hold the stock of an insurance company, or
35 person holding the shares of voting stock or policyholder proxies of an insurer as
36 voting trustee or otherwise, for the purpose of controlling the management
37 thereof;

38 (2) Any insurance producer, adjuster or consultant or other insurance or
39 reinsurance representative or intermediary or any person acting as or purporting
40 to be any of the foregoing;

41 (3) Any person having a contract giving that person by terms or in fact the
42 exclusive or dominant right to manage or control the insurer; and

1 (4) Any person in this State engaged in or proposing to be engaged in or acting
2 as or purporting to be so engaged or proposing to be engaged in the business of
3 insurance or in this State assisting in the promotion, formation or financing of an
4 insurer or insurance holding corporation or corporation or other group financing
5 an insurer or the production of its business.

6 B. Subject to the limitations contained in this subsection and in addition to the
7 powers that the superintendent has under section 221 and sections 223 to 228 relating
8 to the examination of insurers, the superintendent may order an insurer registered
9 under subsection 8 to produce records, books or papers in the possession of the
10 insurer or affiliates as may be necessary to verify the information required to be
11 provided to the superintendent under this section and any additional information
12 pertinent to transactions between the insurer and affiliates. The books, records,
13 papers and information are subject to examination in the same manner as prescribed
14 in this chapter for an examination conducted under section 221, except that expenses
15 incurred by the superintendent in examining an affiliate that is not an insurer must be
16 borne by the registered insurer subject to the limitations of section 228, subsection 1.
17 The superintendent may issue subpoenas, administer oaths and examine any person
18 under oath for purposes of determining compliance with this subsection.

19 C. A member of an insurer's insurance holding company system shall comply fully
20 and accurately with a request by the insurer to provide it with information necessary
21 to respond to an examination request by the superintendent pursuant to this section.

22 D. The superintendent may order an insurer registered under subsection 8 to produce
23 information not in the possession of the insurer if the insurer can obtain access to the
24 information pursuant to contractual relationships, statutory obligations or any other
25 method. If the insurer cannot obtain the information requested by the superintendent,
26 the insurer shall provide the superintendent a written objection with a detailed
27 explanation of the reason that the insurer cannot obtain the information and the
28 identity of the holder of the information. It is a violation of this section to submit an
29 objection to production of information without a reasonable basis or to fail to produce
30 information on the basis of an objection that the superintendent has denied after
31 notice and opportunity for hearing.

32 **Sec. A-4. 24-A MRSA §222, sub-§2, ¶B,** as amended by PL 1999, c. 113, §8, is
33 further amended to read:

34 B. Control_

35 (1) ~~'Control,' including 'controlling,' 'controlled by' and 'under common control~~
36 ~~with,'~~ "Control," including "controlling," "controlled by" and "under common
37 control with," means the possession, direct or indirect, of the power to direct or
38 cause the direction of the management and policies of a person, whether through
39 the ownership of voting securities, by contract other than a commercial contract
40 for goods or nonmanagement services, or otherwise, unless the power is solely
41 the result of an official position with or a corporate office held by the person.
42 Control is presumed to exist if any person is the beneficial owner of 10% or more
43 of the voting securities or guaranty capital shares, if applicable, ~~or voting rights~~
44 ~~in the case of mutual or reciprocal insurers, or guaranty capital shares if a mutual~~

1 insurer has established a guaranty fund, has the right to cast 10% or more of the
2 votes in the election of directors or other governing body of any other person. A
3 beneficial owner may rely in determining the amount of voting securities of any
4 person outstanding upon information set forth in that person's most recent
5 quarterly or annual report filed with the Securities and Exchange Commission
6 pursuant to the Exchange Act unless the beneficial owner knows or has reason to
7 believe that the information contained in the quarterly or annual report is
8 inaccurate. Two or more domestic mutual insurance companies that have
9 restricted their licensed territories to the State are not considered subject to this
10 section merely because those insurance companies commonly share facilities,
11 incurred expenses, or personnel services, or otherwise utilize cost allocations
12 based on generally accepted accounting principles including pro rata sharing of
13 assumed risks. A person may have more than one controlling person, even if
14 those controlling persons are not acting in concert.

15 (2) Notwithstanding the presumption of control contained in subparagraph (1),
16 the superintendent, upon application of the insurance company, may determine
17 that the insurer is not controlled by the person presumed to control it. In
18 addition, the superintendent, after notice and an opportunity to be heard, may
19 determine, notwithstanding the absence of the presumption in subparagraph (1),
20 that a person does control an insurance company or companies.

21 (3) The presumption of control contained in subparagraph (1) does not apply to a
22 securities broker-dealer holding, in the usual and customary broker's function,
23 less than 20% of the voting securities of another person. However, such a
24 broker-dealer shall disclose to the superintendent the identity of any person, or
25 group of persons the broker-dealer knows or reasonably believes to be acting in
26 concert, on whose behalf the broker-dealer holds 5% or more of the voting
27 securities of a domestic insurer or any entity the broker-dealer knows or
28 reasonably believes to be a controlling person of a domestic insurer and shall
29 disclose to the superintendent on request the beneficial owners of any securities
30 held by the broker-dealer of any entity that is, or that the superintendent believes
31 might be or might become, a member of the insurance holding company system
32 of an insurer subject to registration under subsection 8.

33 **Sec. A-5. 24-A MRSA §222, sub-§2, ¶B-1**, as enacted by PL 1989, c. 385, §3,
34 is repealed and the following enacted in its place:

35 B-1. Exchange Act. "Exchange Act" means the federal Securities Act of 1933, 15
36 United States Code, Chapter 2-A, Subchapter 1 and the federal Securities Exchange
37 Act of 1934, 15 United States Code, Chapter 2-B.

38 **Sec. A-6. 24-A MRSA §222, sub-§2, ¶B-2** is enacted to read:

39 B-2. Enterprise risk. "Enterprise risk" means an activity, circumstance, event or
40 series of events involving one or more affiliates of an insurer that, if not remedied
41 promptly, is likely to have a material adverse effect upon the financial condition or
42 liquidity of the insurer, or of its insurance holding company system as a whole,
43 including, but not limited to, anything that would cause or exacerbate a risk-based

1 capital event as described in sections 6453 to 6456 or would cause the insurer to be in
2 unsound or hazardous financial condition as determined by the superintendent.

3 **Sec. A-7. 24-A MRSA §222, sub-§2, ¶D**, as repealed and replaced by PL 1975,
4 c. 356, §1, is amended to read:

5 D. Insurer. "Insurer" ~~shall have~~ has the same meaning ~~given it as~~ as in section 4 and
6 includes a fraternal benefit society required to be licensed under section 4124 or
7 4125.

8 **Sec. A-8. 24-A MRSA §222, sub-§2, ¶¶D-3 to D-5** are enacted to read:

9 D-3. Own risk and solvency assessment or ORSA. "Own risk and solvency
10 assessment" or "ORSA" means a confidential internal assessment that is conducted
11 by an insurer or insurance holding company system of the material and relevant risks
12 associated with its current business plan and the sufficiency of its capital resources to
13 support those risks and that is appropriate to the nature, scale and complexity of the
14 operations of the insurer or insurance holding company system.

15 D-4. ORSA guidance manual. "ORSA guidance manual" means the NAIC Own
16 Risk and Solvency Assessment (ORSA) Guidance Manual, as amended from time to
17 time. A change in the ORSA guidance manual is effective with regard to this State
18 on January 1st following the calendar year in which the change has been adopted by
19 the National Association of Insurance Commissioners.

20 D-5. ORSA summary report. "ORSA summary report" means a confidential high-
21 level summary of an insurer's or insurance holding company system's own risk and
22 solvency assessment and includes a combination of separate reports that collectively
23 meet the requirements of the ORSA guidance manual.

24 **Sec. A-9. 24-A MRSA §222, sub-§4-A**, as enacted by PL 1989, c. 385, §5, is
25 repealed.

26 **Sec. A-10. 24-A MRSA §222, sub-§4-B**, as enacted by PL 1989, c. 385, §5, is
27 repealed.

28 **Sec. A-11. 24-A MRSA §222, sub-§4-C** is enacted to read:

29 **4-C. Acquisitions; tender offers; divestitures.** The following provisions apply to a
30 transaction or proposed transaction that results or might result in the change of direct or
31 indirect control of a domestic insurer.

32 A. Except as provided in paragraph B, a person other than the issuer may not make a
33 tender offer for, or a request or invitation for tenders of, or an agreement to exchange
34 securities for, or otherwise acquire any voting security, or any security convertible
35 into a voting security, of a domestic insurer or of any person controlling a domestic
36 insurer if, as a result of the consummation thereof, the person making the tender
37 offer, request or agreement would, directly or indirectly, acquire actual or
38 presumptive control of the insurer or controlling person, and a person may not enter
39 into an agreement to merge with or otherwise acquire actual or presumptive control
40 of a domestic insurer or its controlling person, unless:

1 (1) The person has filed with the superintendent and has sent the domestic
2 insurer an application containing the information required by paragraph C;

3 (2) The offer, request, invitation, agreement or acquisition has been approved by
4 the superintendent in the manner prescribed in subsection 7; and

5 (3) Ten days has elapsed from the date of approval by the superintendent and no
6 injunction or other court order precludes consummation of the offer, request,
7 invitation, agreement or acquisition.

8 B. A controlling person of a domestic insurer seeking to divest its controlling interest
9 in the domestic insurer in any manner, including any partial divestiture that would
10 cause that person to cease to be a controlling person, shall file with the
11 superintendent, with a copy to the insurer, confidential notice of its proposed
12 divestiture at least 30 days before the cessation of control, unless the divestiture
13 transaction consists of the transfer of the divesting person's interest to one or more
14 acquiring persons, all of whom have reported their respective acquisitions pursuant to
15 paragraph A. Unless the superintendent grants an exemption under paragraph D, the
16 divesting person shall file an application substantially similar to the application
17 required under paragraph C, with such modifications as the superintendent
18 determines to be appropriate based on the nature of the transaction. The
19 superintendent shall decide whether to approve the application using the criteria in
20 subsection 7, paragraph A and may hold a public hearing if the superintendent
21 determines that a hearing is in the interests of policyholders or the public. If 20 days
22 has elapsed after the superintendent's receipt of a notice filed under this paragraph
23 and the superintendent has not disapproved the proposed divestiture or postponed its
24 effective date pending further review, the superintendent is deemed to have granted
25 an exemption under paragraph D, subparagraph (2).

26 C. An application required by paragraph A must contain the following information
27 as applicable, made under oath or affirmation, except that if the proposed transaction
28 is subject to regulation under the Exchange Act or Title 32, chapter 135, the
29 superintendent may accept the relevant documents filed with the United States
30 Securities and Exchange Commission or the Department of Professional and
31 Financial Regulation, Office of Securities in lieu of some or all of the documents
32 required by this paragraph:

33 (1) The name and address of each person by whom or on whose behalf the
34 merger or other acquisition of control is to be effected and:

35 (a) If the person acquiring control is an individual, the person's principal
36 occupation and all offices and positions held during the past 5 years and any
37 convictions for crimes other than minor traffic violations during the past 10
38 years; and

39 (b) If the person acquiring control is not an individual, a report of the nature
40 of its business operations during the past 5 years or for a lesser period the
41 person and any predecessors have been in existence; an informative
42 description of the business intended to be done by the person and the person's
43 subsidiaries; and a list of all individuals who are or who have been selected
44 to become directors or executive officers of the person or who perform or

1 will perform functions appropriate to such positions. The list must include
2 the information required by division (a) for each individual listed;

3 (2) The source, nature and amount of the consideration used or to be used in
4 effecting the merger or other acquisition of control, a description of any
5 transaction through which funds were or are to be obtained for any such purpose,
6 including any pledge of the insurer's stock or the stock of any of its subsidiaries
7 or controlling affiliates, and the identity of persons furnishing consideration. If a
8 source of consideration is a loan made in the lender's ordinary course of business,
9 the identity of the lender is confidential if the person filing the application so
10 requests;

11 (3) Fully audited financial information as to the earnings and financial condition
12 of each acquiring person for the preceding 5 fiscal years, or for a lesser period if
13 the acquiring person and any predecessors have been in existence for less than 5
14 years, and similar unaudited information as of a date not earlier than 90 days
15 before the filing of the application;

16 (4) Any plans or proposals that each acquiring person may have to liquidate the
17 insurer, to sell its assets or merge or consolidate it with any person or to make
18 any other material change in its business or corporate structure or management;

19 (5) The number of shares of any security referred to in paragraph A that each
20 acquiring person proposes to acquire, the terms of the offer, request, invitation,
21 agreement or acquisition referred to in paragraph A and a statement as to the
22 method by which the fairness of the proposal was arrived at;

23 (6) The amount of each class of any security referred to in paragraph A that is
24 beneficially owned or concerning which there is a right to acquire beneficial
25 ownership by each acquiring person;

26 (7) A full description of any contracts, arrangements or understandings with
27 respect to any security referred to in paragraph A in which any acquiring person
28 is involved, including but not limited to transfer of any of the securities, joint
29 ventures, loan or option arrangements, puts or calls, guarantees of loans,
30 guarantees against loss or guarantees of profits, division of losses or profits or the
31 giving or withholding of proxies. The description must identify the persons with
32 whom the contracts, arrangements or understandings have been entered into;

33 (8) A description of the purchase by any acquiring person of any security
34 referred to in paragraph A during the 12 calendar months preceding the filing of
35 the application, including the dates of purchase, names of the purchasers and
36 consideration paid or agreed to be paid;

37 (9) A description of any recommendations to purchase any security referred to in
38 paragraph A made during the 12 calendar months preceding the filing of the
39 application by any acquiring person or by anyone based upon interviews with or
40 at the suggestion of the acquiring person;

41 (10) Copies of all tender offers for, requests or invitations for tenders of,
42 exchange offers for and agreements to acquire or exchange any securities referred

1 to in paragraph A and copies of any additional related soliciting material that has
2 been distributed;

3 (11) The terms of any agreement, contract or understanding made or proposed to
4 be made with any broker-dealer as to solicitation of securities referred to in
5 paragraph A for tender and the amount of any fees, commissions or other
6 compensation to be paid to broker-dealers with regard to the solicitation of
7 securities referred to in paragraph A;

8 (12) An agreement by the person required to file the application to provide the
9 annual enterprise risk report required by subsection 8, paragraph B-1 for as long
10 as control by the person exists;

11 (13) An acknowledgement by the person required to file the application that the
12 person and all subsidiaries within its control in the insurance holding company
13 system will provide information to the superintendent upon request as necessary
14 to evaluate enterprise risk to the insurer;

15 (14) A statement as to whether or not the proposed transaction will result in an
16 increase in market share in this State in any line of insurance as specified in the
17 annual statement required to be filed under section 423 for one or more insurers
18 with combined market share greater than 5% and, if so, such further information
19 on the competitive impact of the proposed transaction as the superintendent
20 requires by rule or order; and

21 (15) Such additional information as the superintendent may prescribe by rule or
22 order.

23 D. The superintendent may exempt a person otherwise subject to the requirements of
24 this subsection and subsection 7 from some or all of those requirements if the person
25 demonstrates to the satisfaction of the superintendent that an exemption will not be
26 detrimental to the interests of policyholders in the State or the public and that the
27 transaction satisfies at least one of the following criteria:

28 (1) The interests of the State in regulating the transaction are minimal relative to
29 the interests of other jurisdictions or are minimal relative to the impact of the
30 transaction as a whole;

31 (2) The person proposes a divestiture of control under paragraph B and the
32 superintendent determines that the prior approval process is not necessary in the
33 circumstances of the transaction;

34 (3) A party proposing to acquire presumed control submits a disclaimer fully
35 disclosing all material relationships and bases for affiliation with the insurer and
36 demonstrating to the satisfaction of the superintendent that the person will not be
37 acquiring actual control. As a condition of granting an exemption under this
38 subparagraph, the superintendent may require the person to agree to reasonable
39 restrictions on the exercise of rights or powers that might otherwise tend to result
40 in control;

41 (4) The superintendent elects to participate in a consolidated approval
42 proceeding conducted under the laws of one or more other states pursuant to
43 subsection 7-A, paragraph E; and

1 (5) The transaction involves the control of a person that is not primarily engaged
2 in the business of insurance, directly or through its affiliates, and there will be no
3 material impact on the management or operations of a domestic insurer.

4 A person requesting an exemption under this paragraph must agree to provide
5 additional information if needed by the superintendent and to postpone the effective
6 date of the transaction if ordered by the superintendent while the request for
7 exemption is pending.

8 **Sec. A-12. 24-A MRSA §222, sub-§5**, as amended by PL 1989, c. 385, §6, is
9 further amended to read:

10 **5. Tender offer material.** All requests or invitations for tenders or advertisements
11 making a tender offer or requesting or inviting tenders of such voting securities for
12 control of a domestic insurer or its controlling person made by or on behalf of any such
13 person ~~shall~~ must contain any information specified in subsection ~~4-B~~ 4-C as the
14 superintendent may prescribe; and ~~shall~~ must be filed with the superintendent at the time
15 that material is first published or sent or given to security holders. Copies of any
16 additional material soliciting or requesting such tender offers subsequent to the initial
17 solicitation or request ~~shall~~ must contain the information that the superintendent may
18 prescribe as necessary or appropriate in the public interest or for the protection of
19 policyholders; and ~~shall~~ must be filed with the superintendent at the time copies of that
20 material are first published or sent or given to security holders.

21 **Sec. A-13. 24-A MRSA §222, sub-§6**, as amended by PL 2007, c. 466, Pt. D, §1,
22 is further amended to read:

23 **6. Information as to applicant.** If ~~the~~ a person required to file ~~the statement~~
24 ~~referred to in subsection 4-A~~ an application under subsection 4-C is a partnership, limited
25 partnership, syndicate or other group, the superintendent may require that the information
26 called for by subsection ~~4-A~~ 4-C must be given with respect to each partner of ~~such~~ the
27 partnership or limited partnership, each member of ~~such~~ the syndicate or group and each
28 person who controls any such partner or member. If ~~the~~ a person required to file ~~the~~
29 ~~statement referred to in subsection 4-A~~ an application under subsection 4-C is a
30 corporation, the superintendent may require that the information called for ~~thereby~~ by
31 subsection 4-C must be given with respect to ~~such~~ the corporation and each officer and
32 director thereof and each person who is directly or indirectly the beneficial owner of more
33 than 10% of the outstanding securities of ~~such~~ the corporation.

34 **Sec. A-14. 24-A MRSA §222, sub-§7**, as amended by PL 2007, c. 466, Pt. D, §2,
35 is further amended to read:

36 **7. Approval, disapproval of proposed change of control.**

37 A. The superintendent shall hold a hearing in accordance with the procedures set
38 forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter ~~IV~~
39 4, within 30 days after the ~~statement~~ application required by subsection ~~4-A~~ 4-C has
40 been filed with the superintendent. The superintendent shall make a determination
41 within 30 days after the conclusion of that hearing. The superintendent shall approve

1 any purchase, exchange, merger or other ~~acquisition~~ change of control referred to in
2 subsection ~~4-A~~ 4-C unless the superintendent finds that:

3 (1) After the change of control, the domestic insurer could not satisfy the
4 requirements for the issuance of a certificate of authority according to
5 requirements in force at the time of the issuance; or last renewal or continuation
6 of its certificate of authority to do the insurance business ~~which~~ that it intends to
7 transact in this State;

8 (2) The effect of the purchases, exchanges, merger of a controlling person of the
9 insurer; or other ~~acquisitions~~ changes of control may be substantially to lessen
10 competition in insurance in this State or tend to create a monopoly ~~therein; in this~~
11 State or would violate the laws of this State or of the United States relating to
12 monopolies or restraints of trade;

13 (3) The financial condition of an acquiring person ~~is such as~~ would jeopardize
14 the financial stability of the insurer or prejudice the interest of its policyholders;

15 (4) The plans or proposals ~~which that~~ the acquiring or divesting person has to
16 liquidate the insurer, to sell its assets or to merge it with any person, or to make
17 any other major change in its business or corporate structure or management, are
18 unfair or prejudicial to policyholders;

19 (5) The competence, experience and integrity of those persons who would
20 control the operation of the insurer indicate that it would not be in the interest of
21 policyholders or the public to permit them to do so;

22 (6) Any merger of a domestic insurer does not comply with section 3474; or

23 (7) The ~~acquisition~~ change of control would tend to affect adversely the
24 contractual obligations of the domestic insurer or its ability and tendency to
25 render service in the future to its policyholders and the public.

26 B. ~~Subparagraphs~~ Paragraph A, subparagraphs (3) to (7) do not apply to any change
27 of control if and to the extent that the superintendent, by rule or by order, exempts the
28 ~~same change of control~~ same change of control from the provisions of those subparagraphs as not
29 ~~comprehended~~ included within the purpose of this subsection.

30 C. Merger, consolidation or bulk reinsurance as to a domestic insurer ~~shall~~ may be
31 effectuated only pursuant to the applicable provisions of chapter 47, subchapter ~~IV, 4~~
32 and sections 3875, 4108 and 4109, as related to organization and powers of insurers.

33 D. Violation.

34 (1) Failure to file the ~~statement~~ application required under subsection ~~4-A~~ 4-C
35 constitutes a violation of this ~~chapter~~ section.

36 (2) Effectuation of or any attempt to effectuate an acquisition of; control of;
37 divestiture of control of or merger with a domestic insurer ~~within~~ earlier than 30
38 days ~~of~~ after the filing of the ~~statement~~ application required by subsection ~~4-A,~~
39 ~~prior to~~ 4-C, ~~before~~ the superintendent's decision if a hearing is held or after
40 disapproval ~~of such acquisition of control or merger~~ by the superintendent ~~of the~~
41 acquisition, divestiture or merger, constitutes a violation of this ~~chapter~~ section.

1 **Sec. A-15. 24-A MRSA §222, sub-§§7-A and 7-B** are enacted to read:

2 **7-A. Consolidated proceedings.** If a proposed change of control requires, or is part
3 of a series of related transactions that require, the approval of the insurance regulators of
4 more than one state, a person filing an application under subsection 4-C with respect to
5 the change of control may file a request for a consolidated approval proceeding with the
6 National Association of Insurance Commissioners.

7 A. The applicant shall file a copy of the application made under subsection 4-C with
8 the National Association of Insurance Commissioners within 5 days after making the
9 request for a consolidated approval proceeding.

10 B. Within 10 days after receiving notice from the National Association of Insurance
11 Commissioners of a request for a consolidated approval proceeding, the
12 superintendent shall issue an order, with notice to the applicant and to the National
13 Association of Insurance Commissioners, specifying whether the superintendent
14 elects to participate in the consolidated proceeding or to opt out of the consolidated
15 proceeding.

16 C. If the superintendent opts out of the consolidated approval proceeding pursuant to
17 paragraph B, the superintendent shall hold a public hearing under subsection 7 unless
18 the superintendent grants an exemption under subsection 4-C, paragraph D. Opting
19 out of the consolidated proceeding does not preclude or limit the superintendent's
20 authority to coordinate a proceeding conducted under subsection 7 with the
21 consolidated proceeding or with other parallel proceedings in other states.

22 D. With the agreement of the other participating insurance regulators, the
23 superintendent may initiate a consolidated approval proceeding under this paragraph
24 to render decisions on all applications within the scope of the order of consolidation
25 issued by the superintendent. A consolidated approval proceeding convened under
26 this paragraph is a public adjudicatory proceeding. Except as provided in this
27 paragraph, the proceeding must be conducted in the same manner as a proceeding
28 under subsection 7.

29 (1) A person who would have the right to participate in a proceeding on any of
30 the consolidated applications held under subsection 7 or substantially similar
31 laws of other states has the right to participate in the proceeding.

32 (2) The chief insurance regulator of a participating state has the right to
33 participate in making the decision or in designating a decision-making panel.

34 (3) The proceeding is public, except that deliberations of a decision-making
35 panel are not public proceedings and communications in the course of those
36 deliberations among panel members and their advisers, other than the decision
37 itself, are not public records.

38 (4) The proceeding may be held in any state with a significant connection to the
39 subject transactions or in a nearby location in an adjacent state. Sessions may be
40 held in different states. Provision must be made for parties, witnesses, insurance
41 regulators and members of the public to attend and participate in the proceeding
42 by telecommunication.

1 (5) The superintendent, decision-making panel or presiding officer may vary the
2 applicable procedural requirements under this Title and Title 5 to the extent the
3 superintendent, panel or presiding officer determines to be reasonably necessary
4 for the fair and effective administration of a consolidated multistate proceeding.

5 (6) The decision is subject to judicial review in the same manner as a final
6 agency action of the superintendent.

7 E. The superintendent may participate, including serving as a decision maker or
8 member of a decision-making panel, in a consolidated approval proceeding
9 conducted under the laws of one or more other states if the consolidated proceeding
10 provides for a public hearing with substantially similar rights of participation and
11 judicial review as a proceeding conducted pursuant to paragraph D. If the
12 superintendent elects under this paragraph to participate in a consolidated proceeding
13 that is conducted under the laws of one or more other states, the application is exempt
14 from further review under this section pursuant to subsection 4-C, paragraph D,
15 subparagraph (4) and the consolidated proceeding, notwithstanding the
16 superintendent's participation, is not subject to any provisions of the law of this State
17 governing adjudicatory proceedings, judicial review, public records or public
18 meetings.

19 **7-B. Supervisory colleges.** In order to assess the business strategy, financial
20 position, legal and regulatory position, risk exposure including enterprise risk, risk
21 management and governance processes of a domestic insurer that is part of an insurance
22 holding company system with international operations, the superintendent may participate
23 in a supervisory college with other regulators charged with supervision of the insurer or
24 its affiliates, including other state, federal and international regulatory agencies. A
25 supervisory college may be convened as either a temporary or permanent forum for
26 communication and cooperation among the regulators charged with the supervision of the
27 insurer or its affiliates.

28 A. The superintendent's powers with respect to supervisory colleges include, but are
29 not limited to:

30 (1) Initiating the establishment of a supervisory college or participating in a
31 supervisory college initiated by one or more other regulators;

32 (2) Entering into agreements providing the basis for cooperation between the
33 superintendent and the other participating regulators and for the activities of the
34 supervisory college, including but not limited to agreements for sharing
35 confidential information under section 216, subsection 5;

36 (3) Obtaining and providing assistance in examinations conducted under
37 subsection 1-A or under the examination authority of other participating
38 jurisdictions;

39 (4) Clarifying the membership and participation of other regulators in the
40 supervisory college;

41 (5) Clarifying the functions of the supervisory college and the role of other
42 regulators, including the designation of the superintendent or another member of
43 the supervisory college as a group-wide supervisor;

1 (6) Coordinating the ongoing activities of the supervisory college, including
2 planning meetings, supervisory activities and processes for information sharing;
3 and

4 (7) Establishing a crisis management plan.

5 B. A domestic insurer whose activities are subject to this subsection is liable for and
6 shall pay the reasonable expenses of the superintendent's participation in a
7 supervisory college, including reasonable travel expenses. The superintendent may
8 establish a regular assessment to the insurer for the payment of these expenses.

9 C. This section may not be construed to delegate to a supervisory college the
10 authority of the superintendent to regulate or supervise an insurer or its affiliates
11 within this State.

12 **Sec. A-16. 24-A MRSA §222, sub-§8, ¶A**, as amended by PL 1999, c. 113, §11,
13 is further amended to read:

14 A. ~~Every~~ An insurer that is authorized to do business in this State and that is a
15 member of an insurance holding company system shall register with the
16 superintendent, except that these requirements do not apply to a foreign insurer
17 domiciled in a jurisdiction that in the opinion of the superintendent has adopted by
18 statute or regulation disclosure statements and standards substantially similar to those
19 contained in this ~~chapter~~ section. An insurer domiciled in a jurisdiction that has not
20 adopted by statute or regulation disclosure requirements and standards substantially
21 similar to those contained in this section may be treated as a domestic insurer for
22 purposes of this section. Each insurer that is subject to registration under this
23 subsection shall register within 15 days after it becomes subject to registration, and
24 annually thereafter by May 1st, unless the superintendent, for good cause shown,
25 extends the time for registration and then an insurer ~~must file~~ shall register within that
26 extended time. ~~Nothing in this~~ This section ~~may be construed to~~ does not prohibit the
27 superintendent from requesting any authorized insurer that is a member of a an
28 insurance holding company system and not subject to registration under this section
29 ~~for to provide~~ a copy of the registration statement or other information filed by such
30 insurer with the insurance regulatory authority of its state of domicile. Upon request
31 of the insurer or of the insurance regulatory authority of another jurisdiction in which
32 the insurer is authorized to transact insurance, the superintendent at the insurer's
33 expense shall furnish a copy of the registration statement or other information filed
34 by a domestic insurer with the superintendent pursuant to this ~~chapter~~ section;

35 **Sec. A-17. 24-A MRSA §222, sub-§8, ¶B**, as amended by PL 2001, c. 72, §5, is
36 further amended to read:

37 B. ~~Every~~ An insurer subject to registration shall file a registration statement ~~on a~~
38 ~~form provided by~~ with the superintendent, ~~which on a form and in a format~~
39 prescribed by the National Association of Insurance Commissioners. The registration
40 statement must contain current information about:

41 (1) The capital structure, general financial condition, ownership and
42 management of the insurer and of any person controlling the insurer;

1 (1-A) The identity and relationship of every member of the insurance holding
2 company system;

3 (2) The following transactions currently outstanding between the insurer and its
4 affiliates:

5 (a) Loans and other investments, and purchases, sales or exchanges of
6 securities of the affiliate by the insurer or of the insurer by its affiliates;

7 (b) Purchases, sales or exchanges of assets;

8 (c) Transactions not in the ordinary course of business;

9 (d) Guarantees or undertakings for the benefit of an affiliate that result in an
10 actual contingent exposure of the insurer's assets to liability, other than
11 insurance contracts entered into in the ordinary course of the insurer's
12 business;

13 (e) All management and service contracts and all cost-sharing arrangements;
14 ~~other than cost allocation arrangements based upon generally accepted~~
15 ~~accounting principles;~~

16 (f) Reinsurance agreements; ~~and~~

17 (g) Dividends and other distributions to shareholders; and

18 (h) Consolidated tax allocation agreements;

19 (2-A) Any pledge of the insurer's stock, including stock of any subsidiary or
20 controlling affiliate, for a loan made to any member of the insurance holding
21 company system;

22 (2-B) If requested by the superintendent, financial statements of or within the
23 insurance holding company system, including all affiliates. The required
24 financial statements may include but are not limited to annual audited financial
25 statements filed with the United States Securities and Exchange Commission
26 pursuant to the Exchange Act. An insurer required to file financial statements
27 pursuant to this subparagraph may satisfy the request by providing the
28 superintendent with the most recently filed parent corporation financial
29 statements that have been filed with the United States Securities and Exchange
30 Commission;

31 (3) Other matters concerning transactions between the insurer and any affiliate as
32 may be required by the superintendent; and

33 (4) Any other information required by the superintendent by rule;

34 **Sec. A-18. 24-A MRSA §222, sub-§8, ¶¶B-1 to B-3** are enacted to read:

35 B-1. The controlling person with ultimate control of an insurer subject to registration
36 shall also file an annual enterprise risk report. The report must be appropriate to the
37 nature, scale and complexity of the operations of the insurance holding company
38 system and must, to the best of the controlling person's knowledge and belief, identify
39 the material risks within the insurance holding company system, if any, that could
40 pose enterprise risk to the insurer. The report must be filed with the lead state

1 regulator of the insurance holding company system as determined by the procedures
2 within the financial analysis handbook adopted by the National Association of
3 Insurance Commissioners;

4 B-2. An insurer subject to registration shall file statements confirming that the
5 insurer's board of directors oversees corporate governance and internal controls and
6 that the insurer's officers or senior management have approved and implemented and
7 continue to maintain and monitor corporate governance and internal control
8 procedures;

9 B-3. A domestic insurer that is subject to registration, and has annual premium of
10 \$500,000,000 or more or is a member of an insurance holding company system with
11 annual premium of \$1,000,000,000 or more, shall conduct an own risk and solvency
12 assessment in accordance with the requirements of this paragraph at least annually,
13 and also at any time when there are significant changes to the risk profile of the
14 insurer or its insurance holding company system, except as otherwise provided in
15 subparagraph (1). For purposes of this paragraph, "premium" means direct written
16 and unaffiliated assumed premium, including international direct and assumed
17 premium but excluding premiums reinsured with the Federal Crop Insurance
18 Corporation within the United States Department of Agriculture, Risk Management
19 Agency and with the National Flood Insurance Program within the United States
20 Department of Homeland Security, Federal Emergency Management Agency.

21 (1) This paragraph does not apply if:

22 (a) The insurer is an agency, authority or instrumentality of the United States,
23 its possessions and territories, the Commonwealth of Puerto Rico, the District
24 of Columbia or a state or political subdivision of a state;

25 (b) The insurer and its insurance holding company system did not meet
26 either of the minimum premium criteria of this paragraph in the financial
27 statements immediately preceding their most recent financial statements and
28 the superintendent has not required compliance with this paragraph under
29 subparagraph (2); or

30 (c) The superintendent has granted a waiver from the requirements of this
31 paragraph based upon unique circumstances. In deciding whether to grant a
32 waiver, the superintendent may consider the type and volume of business
33 written by the insurer, the ownership and organizational structure of the
34 insurer and its insurance holding company system and any other factor the
35 superintendent considers relevant to the insurer or the insurer's insurance
36 holding company system. If the insurer's insurance holding company system
37 includes insurers domiciled in more than one state, the superintendent shall
38 coordinate with the lead regulator and with other domiciliary regulators in
39 considering whether to grant the insurer's request for a waiver.

40 (2) The superintendent may require an insurer that does not meet either of the
41 minimum premium criteria of this paragraph to comply with the requirements of
42 this paragraph if:

43 (a) The superintendent determines that the insurer should be subject to this
44 paragraph due to unique circumstances, including, but not limited to, the type

1 and volume of business written by the insurer, the ownership and
2 organizational structure of the insurer and its insurance holding company
3 system, federal agency requests and international supervisor requests;
4 (b) The insurer is subject to a corrective order or required to adopt a risk-
5 based capital plan under sections 6453 to 6456;
6 (c) The superintendent has determined in accordance with rules adopted by
7 the superintendent that the insurer is in hazardous financial condition; or
8 (d) The superintendent has determined that the insurer otherwise exhibits
9 qualities of a troubled insurer.
10 (3) If an insurer's insurance holding company system has annual premium of
11 \$1,000,000,000 or more, the assessment and reporting required by this paragraph
12 must be conducted for each insurer within the insurance holding company
13 system, either on a systemwide basis or separately for insurers or combinations of
14 insurers within the insurance holding company system.
15 (4) An insurer subject to this paragraph shall maintain a risk management
16 framework to assist the insurer with identifying, assessing, monitoring, managing
17 and reporting on its material and relevant risks. An insurer may satisfy this
18 requirement by participating in an applicable risk management framework
19 maintained by the insurance holding company system of which the insurer is a
20 member.
21 (5) An insurer subject to this paragraph shall prepare and submit regular ORSA
22 summary reports that satisfy the requirements of this subparagraph and shall
23 provide additional information to the superintendent upon request.
24 (a) Beginning no later than 2015, the ORSA summary report must be
25 prepared at least annually, on a timetable consistent with the insurer's internal
26 strategic planning processes, and submitted to the lead regulator of the
27 insurer's insurance holding company system, as determined by the procedures
28 within a financial analysis handbook adopted by the National Association of
29 Insurance Commissioners. If the superintendent is not the lead regulator, the
30 insurer shall submit the insurer's or insurance holding company system's most
31 recent ORSA summary report to the superintendent on request.
32 (b) The ORSA summary report must be prepared consistent with the ORSA
33 guidance manual. Documentation and supporting information must be
34 maintained and made available upon examination by or upon request of the
35 superintendent.
36 (c) The insurer's or insurance holding company system's chief risk officer, or
37 other executive having responsibility for the oversight of the insurer's
38 enterprise risk management process, shall sign the ORSA summary report
39 attesting to the best of the signer's belief and knowledge that the insurer
40 applies the enterprise risk management process described in the ORSA
41 summary report and that a copy of the report has been provided to the
42 insurer's board of directors or the appropriate committee of the board.

1 (d) An insurer may comply with this paragraph by providing the most recent
2 ORSA summary report and a report or reports that are substantially similar to
3 the ORSA summary report that are provided by the insurer or another
4 member of its insurance holding company system to the insurance
5 commissioner of another state or to an insurance supervisor or regulator of a
6 foreign jurisdiction if that report provides information that is comparable to
7 the information described in the ORSA guidance manual. Any report in a
8 language other than English must be accompanied by an English translation.

9 (6) The superintendent's review of the ORSA summary report, and any
10 additional requests for information, must be consistent with accepted regulatory
11 procedures for the analysis and examination of multistate or global insurers and
12 insurance groups.

13 **Sec. A-19. 24-A MRSA §222, sub-§8, ¶C**, as enacted by PL 1975, c. 356, §1, is
14 amended to read:

15 ~~C. No information need be disclosed~~ An insurer does not need to disclose on the
16 registration statement filed pursuant to this subsection ~~if such information that~~ is not
17 material to the purposes of this ~~chapter section~~. Unless the superintendent by rule,
18 ~~regulation~~ or order provides otherwise, sales, purchases, exchanges, loans or
19 extensions of credit or investments; involving 1/2 of 1% or less of an insurer's
20 admitted assets as of December 31st immediately preceding ~~shall~~ are not be deemed
21 material for purposes of this section;

22 **Sec. A-20. 24-A MRSA §222, sub-§8, ¶I**, as enacted by PL 1975, c. 356, §1, is
23 amended to read:

24 I. Any person may file with the superintendent a disclaimer of affiliation with any
25 authorized insurer ~~or such a~~. A disclaimer of affiliation may be filed by the insurer or
26 any member of an insurance holding company system. The disclaimer ~~shall~~ must
27 fully disclose all material relationships and bases for affiliation between ~~such~~ the
28 disclaiming person and the insurer as well as the bases for disclaiming ~~such~~
29 affiliation. ~~After a disclaimer has been filed, the insurer shall be relieved of any duty~~
30 ~~to register or report under this section which may arise out of the insurer's~~
31 ~~relationship with such person unless and until the superintendent disallows the~~
32 ~~disclaimer. The superintendent shall disallow a disclaimer only after a hearing~~
33 ~~thereon with notice to all parties in interest, and after making specific findings of fact~~
34 ~~to support such disallowance.~~

35 (1) An approved disclaimer relieves the disclaiming person of the duty to
36 register under this section.

37 (2) A disclaimer is deemed approved unless the superintendent, within 30 days
38 after receipt of a complete disclaimer, including any additional information
39 required by the superintendent, either disallows the disclaimer or notifies the
40 disclaiming person that a hearing will be held on the disclaimer.

41 (3) The superintendent may condition the approval of a disclaimer on terms and
42 conditions reasonably designed to ensure that the disclaiming person will not

1 exercise actual control or acquire the right to actual control over the insurer
2 without triggering the prior approval process under subsections 4-C and 7.

3 (4) If the superintendent takes action on a disclaimer without hearing, including
4 the imposition of conditions not agreed to by the disclaiming person, an
5 aggrieved person has the right to a hearing.

6 (5) The superintendent may rescind the approval of a disclaimer, after notice and
7 opportunity for hearing, on the basis of new information or changed
8 circumstances demonstrating the existence of control over the insurer.

9 **Sec. A-21. 24-A MRSA §222, sub-§9**, as amended by PL 1991, c. 828, §5, is
10 further amended to read:

11 **9. Transactions with affiliates; standards.** Transactions by insurers subject to
12 registration with their affiliates ~~that occur after the effective date of this chapter~~ are
13 subject to the following standards.

14 A. The terms, including any charges or fees for services performed, must be fair and
15 reasonable.

16 A-1. Agreements for cost-sharing services and management must include any
17 provisions required by the superintendent by rule.

18 B. The books, accounts and records of each party must be so maintained as to
19 disclose clearly and accurately the nature and details of the transaction, including all
20 accounting information necessary to support the reasonableness of any charges or
21 fees.

22 C. The insurer's surplus to policyholders following any dividends or distributions to
23 stockholder affiliates must be reasonable in relation to the insurer's outstanding
24 liabilities and adequate to its financial needs.

25 D. Expenses incurred and payment received must be allocated to the insurer in
26 conformity with customary insurance accounting practices consistently applied.

27 E. A domestic insurer ~~must~~ shall notify the superintendent in writing at least 30 days
28 in advance, unless the superintendent authorizes a shorter period, before entering into
29 or materially amending or modifying any of the following kinds of transactions with
30 any member of its holding company system:

31 (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or
32 investments that are equal to or exceed:

33 (a) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted
34 assets as of December 31st of the ~~preceeding~~ preceding year ~~or~~ and 25% of
35 surplus to policyholders;

36 (b) With respect to life insurers, 3% of the insurer's admitted assets as of
37 December 31st of the preceding year; or

38 (c) With respect to nonprofit hospital and medical service organizations and
39 their 100% controlled affiliates that operate as monoline health insurers or
40 health maintenance organizations, the lesser of 5% of the entity's admitted

1 assets as of December 31st of the preceding year ~~or~~ and 25% of surplus to
2 policyholders;

3 (2) Loans or extensions of credit to any person who is not an affiliate, if the
4 insurer makes the loan or extension of credit with the agreement or understanding
5 that the proceeds in whole or in substantial part, are to be used to make loans or
6 extensions of credit to, purchase assets of or make investments in any affiliate of
7 the insurer if the loan, extension of credit, purchase or investment is equal to or
8 exceeds:

9 (a) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted
10 assets as of December 31st of the preceding year ~~or~~ and 25% of surplus to
11 policyholders;

12 (b) With respect to life insurers, 3% of the insurer's admitted assets as of
13 December 31st of the preceding year; or

14 (c) With respect to nonprofit hospital and medical service organizations and
15 their 100% controlled affiliates that operate as monoline health insurers or
16 health maintenance organizations, the lesser of 5% of the entity's admitted
17 assets as of December 31st of the preceding year ~~or~~ and 25% of surplus to
18 policyholders;

19 (3) ~~Reinsurance~~ All reinsurance pooling agreements or modifications to the, and
20 all reinsurance agreements in which the reinsurance premium or a change in the
21 insurer's liabilities, or the projected reinsurance premium or a projected change in
22 the insurer's liabilities in any of the next 3 years, equals or exceeds 5% of the
23 insurer's surplus to policyholders, as of December 31st of the preceding year,
24 including those agreements that may require as consideration the transfer of
25 assets from an insurer to a nonaffiliate if an agreement or understanding exists
26 between the insurer and nonaffiliate that any portion of the assets will be
27 transferred to one or more affiliates of the insurer;

28 (4) ~~Management~~ All management agreements, cost-sharing arrangements and,
29 tax allocation agreements, service contracts that, and guaranties, with the
30 exception of guaranties that are quantifiable in amount and do not exceed, in the
31 aggregate, the lesser of 0.5% of admitted assets and 10% of surplus as regards
32 policyholders as of December 31st of the preceding year;

33 (a) ~~Delegate authority to effectuate reinsurance;~~

34 (b) ~~Provide for delegated corporate governance;~~

35 (c) ~~Provide for servicing of claims liabilities; or~~

36 (d) ~~In any other way contribute an element of expense that is material when~~
37 ~~related to operations of the insurer;~~

38 (5) Any transactions that are part of a plan or series of like transactions with
39 persons within the holding company system if the purpose of those separate
40 transactions is to avoid the statutory threshold amount and thus avoid the review
41 that would occur otherwise. If the superintendent determines that those separate

1 transactions were entered into over any 12-month period for such a purpose, the
2 superintendent may exercise authority under this subsection; and

3 (6) Any other material transactions specified by rule that the superintendent has
4 determined may adversely affect the interests of the insurer's policyholders.

5 A notice of amendment or modification of a transaction must include the reasons for
6 the change and the financial impact on the domestic insurer. The insurer shall notify
7 the superintendent within 30 days after terminating an agreement previously reported
8 under this paragraph.

9 The superintendent shall disapprove ~~any such a~~ transaction that is subject to this
10 paragraph if ~~it~~ the transaction violates the standards of this section or other applicable
11 law or adversely affects the interests of policyholders. The superintendent's failure to
12 make a determination on a proposed transaction within 30 days after it has been
13 submitted for review has the effect of an approval, unless the superintendent has
14 issued a notice of adjudicatory hearing on the proposal in accordance with section
15 230.

16 Any violation of this subsection, in addition to the penalties contained in subsection 14,
17 renders the transactions voidable at the initiative of the superintendent or otherwise under
18 applicable law. The superintendent's approval of a transaction in accordance with this
19 section, whether actual or by acquiescence, may not override any applicable law and does
20 not operate to authorize any transaction that would be contrary to law if it involved an
21 insurer not a member of the same holding company system.

22 **Sec. A-22. 24-A MRSA §222, sub-§10**, as amended by PL 1993, c. 313, §10, is
23 further amended to read:

24 **10. Insurer's surplus; adequacy factors.** For the purposes of this ~~chapter~~ section,
25 in determining whether an insurer's surplus to policyholders is reasonable in relation to
26 the insurer's outstanding liabilities and adequate to its financial needs, the following
27 factors, among others, may be considered:

- 28 A. The size of the insurer as measured by its assets, capital and surplus, reserves,
29 premium writings, insurance in force and other appropriate criteria;
- 30 B. The extent to which the insurer's business is diversified among the several lines of
31 insurance;
- 32 C. The number and size of the risks insured in each line of business;
- 33 D. The extent of the geographical dispersion of the insurer's insured risks;
- 34 E. The nature and extent of the insurer's reinsurance program;
- 35 F. The quality, diversification and liquidity of the insurer's investment portfolio;
- 36 G. The recent past and projected future trend in the size of the insurer's surplus as
37 regards policyholders;
- 38 H. The quality and liquidity of investments in subsidiaries or affiliates. The
39 department may discount any such investment or treat any investment as a

1 nonadmitted asset for purposes of determining the adequacy of surplus as regards
2 policyholders whenever the investment so warrants;

3 I. The adequacy of the insurer's reserves;

4 J. The surplus as regards policyholders maintained by other comparable insurers in
5 respect of the factors set out in this subsection; and

6 K. The quality of the company's earnings and the extent to which the reported
7 earnings include extraordinary items.

8 **Sec. A-23. 24-A MRSA §222, sub-§11-C, ¶B**, as enacted by PL 2009, c. 511,
9 Pt. A, §5, is amended to read:

10 B. The superintendent shall issue an order restricting or disallowing the payment of
11 dividends and distributions if the superintendent determines that the insurer's surplus
12 would not be reasonable in relation to the insurance company's outstanding liabilities,
13 that the insurer's surplus would be inadequate to that company's financial needs ~~or~~
14 that the insurer's financial condition would constitute a condition hazardous to
15 policyholders, claimants or the public or that a violation of subsection 4-C prevents
16 the superintendent from sufficiently understanding the enterprise risk to the insurer
17 posed by its affiliates or by its insurance holding company system.

18 **Sec. A-24. 24-A MRSA §222, sub-§12**, as amended by PL 1999, c. 113, §13, is
19 repealed.

20 **Sec. A-25. 24-A MRSA §222, sub-§13**, as amended by PL 1989, c. 385, §9, is
21 repealed.

22 **Sec. A-26. 24-A MRSA §222, sub-§13-A** is enacted to read:

23 **13-A. Confidential information.** This section applies to holding company
24 information that is in the possession or control of the superintendent or that is in the
25 possession or control of the National Association of Insurance Commissioners as a result
26 of a filing under this section or as a result of information sharing by the superintendent as
27 authorized by this section.

28 A. For purposes of this subsection, "holding company information" means any of the
29 following documents, materials and other information if the document, material or
30 other information has not expressly been designated as a public record under other
31 applicable law:

32 (1) Information obtained by the superintendent pursuant to an examination or
33 investigation pursuant to subsection 1-A to the same extent as the information
34 would have been confidential if obtained in an examination or investigation
35 conducted under section 220 or 221;

36 (2) A registration statement or report filed under subsection 8, including all
37 supporting information;

38 (3) A report filed under subsection 9, including all supporting information;

- 1 (4) A notice of proposed divestiture filed under subsection 4-C, paragraph B,
2 until the divestiture transaction has occurred;
- 3 (5) A disclosure of the beneficial owner of securities made by a broker-dealer
4 pursuant to subsection 2, paragraph B, subparagraph (3);
- 5 (6) The identity of a lender that is to finance a proposed transaction if declared
6 confidential under subsection 4-C, paragraph C, subparagraph (2);
- 7 (7) Information filed in support of any required attestation of risk management
8 or internal controls under subsection 4-C, paragraph C, subparagraph (12) or
9 (13);
- 10 (8) A competitive impact statement filed under subsection 4-C, paragraph C,
11 subparagraph (14), including all supporting information;
- 12 (9) Information obtained under an information-sharing agreement entered into
13 pursuant to this section to the extent that it is protected by the confidentiality
14 provisions of the agreement;
- 15 (10) Information obtained pursuant to this section from a jurisdiction other than
16 this State to the extent that it is confidential under the laws of the jurisdiction in
17 which it is normally maintained, if the superintendent had no way to obtain the
18 information without the confidentiality protection; and
- 19 (11) Information obtained under this section to the extent that it is confidential
20 under other applicable law, including, but not limited to, section 216, section 225
21 and Title 1, section 402, subsection 3.

22 B. Except as otherwise provided by paragraphs D and E and other applicable law,
23 holding company information is confidential, is not a public record, is not subject to a
24 subpoena, is not subject to discovery or admissible as evidence in any private civil
25 action and may not be made public by the superintendent without prior written
26 consent of the relevant insurer. Neither the superintendent nor any person who
27 received holding company information from or under the authority of the
28 superintendent under this section may be permitted or required to testify in any
29 private civil action concerning holding company information that is confidential
30 under this subsection.

31 C. The superintendent may share holding company information that is confidential
32 under this subsection only in accordance with the requirements of section 216,
33 subsection 5 and the following additional requirements.

34 (1) The recipient of the information must agree in writing to maintain the same
35 level of confidentiality as is available under Maine law. This requirement may be
36 satisfied through a multilateral confidentiality agreement to which both the
37 superintendent and the recipient are parties.

38 (2) If the recipient of the information is in the United States, the recipient's state
39 must have statutes or rules that expressly protect holding company information at
40 a level at least equivalent to the protections provided by this subsection and
41 section 216, subsection 5.

1 (3) ORSA-related information subject to subsection 8, paragraph B-3 may, with
2 the written consent of the insurer, be shared with a 3rd-party consultant under an
3 agreement containing the conditions specified in section 216, subsection 5,
4 paragraph C. In addition, any agreement for sharing ORSA-related information
5 with the National Association of Insurance Commissioners or a 3rd-party
6 consultant must further provide that:

7 (a) The recipient of the information agrees in writing to maintain the
8 confidentiality and privileged status of the ORSA-related information and has
9 verified in writing the legal authority to maintain confidentiality;

10 (b) Any preauthorization granted under the agreement for further sharing of
11 information provided by the superintendent must be limited to only the
12 domiciliary regulators of other insurers in the same insurance holding
13 company system; and

14 (c) The National Association of Insurance Commissioners or a 3rd-party
15 consultant may not store ORSA-related information shared pursuant to this
16 subparagraph in a permanent database after the underlying analysis is
17 completed.

18 D. This subsection does not prohibit the superintendent from using holding company
19 information in the furtherance of any regulatory or legal action brought as a part of
20 the superintendent's official duties.

21 E. Unless otherwise provided by applicable law, the superintendent may, after giving
22 notice and opportunity for hearing to the insurer and any affiliates, controlling person
23 or other persons that would be affected, order one or more items of holding company
24 information to be made a public record in its entirety or in redacted form if the
25 superintendent determines that public disclosure will be in the interest of
26 policyholders, shareholders or the public.

27 **Sec. A-27. 24-A MRSA §222, sub-§14, ¶A,** as amended by PL 2007, c. 466, Pt.
28 D, §3, is further amended to read:

29 A. Any person who willfully violates any of the provisions of this section, or the
30 rules and regulations promulgated by the superintendent under authority thereof, or
31 any person who willfully, in a filing pursuant to subsection 4-A 4-C or a registration
32 pursuant to subsection 8, paragraph B, makes any untrue statement of a material fact
33 or omits to state any material fact required to be stated therein or necessary to make
34 the statements therein not misleading, must upon conviction be fined not more than
35 \$1,000 or imprisoned not more than 3 years, or both;

36 **Sec. A-28. 24-A MRSA §222, sub-§18,** as amended by PL 1999, c. 113, §14, is
37 further amended to read:

38 **18. Rules.** The superintendent may, ~~upon notice and opportunity for all interested~~
39 ~~persons to be heard,~~ adopt reasonable rules as ~~necessary~~ to carry out and effectuate
40 provisions of this section. Rules adopted pursuant to this subsection are routine technical
41 rules as defined in Title 5, chapter 375, subchapter 2-A.

1 **Sec. A-29. 24-A MRSA §222, sub-§19**, as enacted by PL 1975, c. 356, §1, is
2 amended to read:

3 **19. Supplemental to existing provisions.** This section, as to insurance holding
4 company systems, supplements in particular those provisions contained in sections 407,
5 subsection 2; 410, subsection 1, paragraph B; 413; 423-C; 425; 1115; 1136; 3414; 3474;
6 3475; 3476; 3483; 3875 and 4407; and the provisions of this section ~~shall be~~ are deemed
7 to supersede or modify any such provisions or any other provisions of ~~the Maine~~
8 ~~Insurance Code, as it may be amended, only this Title~~ to the extent inconsistent therewith.

9 **Sec. A-30. 24-A MRSA §423-F** is enacted to read:

10 **§423-F. Own risk and solvency assessment**

11 **1. General requirement.** A domestic insurer that is not subject to registration under
12 section 222, subsection 8 shall comply with the requirements of section 222, subsection 8,
13 paragraph B-3 if the requirements of that paragraph would apply if the insurer were
14 subject to registration. The superintendent is considered the insurer's lead regulator for
15 purposes of this section.

16 **2. Confidentiality.** All documents prepared or filed pursuant to this section are
17 confidential to the same extent and subject to the same terms and procedures as if they
18 were prepared or filed pursuant to section 222, subsection 8, paragraph B-3.

19 **Sec. A-31. 24-A MRSA §1157, sub-§5, ¶D**, as amended by PL 2001, c. 72, §15,
20 is further amended to read:

21 D. Investments made or acquired by subsidiaries referred to in paragraph B,
22 subparagraph (1); are considered to be made or acquired directly by the insurer, pro
23 rata, in the case of a subsidiary not wholly owned; and, to such extent, are subject to
24 all the provisions and limitations on the making of investments specified in this
25 chapter with respect to investments by the insurer; must be valued in accordance with
26 the provisions of section 901-A and any other applicable provisions of this Title and
27 any applicable rules adopted by the superintendent; and must be located pursuant to
28 section 3408. Those subsidiaries are subject to examination by the superintendent
29 under section 221, subsection 1; and section 222, subsection 4 1-A.

30 **Sec. A-32. 24-A MRSA §4356, sub-§§12 and 13**, as enacted by PL 1969, c.
31 132, §1, are amended to read:

32 **12.** If the insurer has requested or consented to rehabilitation by vote or written
33 authorization of a majority of its directors or stockholders, or members, as to mutual
34 insurers; ~~or~~

35 **13.** If the insurer has failed to pay any valid judgment against it within 30 days after
36 the same became final; or

37 **Sec. A-33. 24-A MRSA §4356, sub-§14** is enacted to read:

1 14. If a violation of section 222, subsection 4-C prevents the superintendent from
2 sufficiently understanding the enterprise risk to the insurer posed by its affiliates or by its
3 insurance holding company system.

4 **PART B**

5 **Sec. B-1. 24-A MRSA §601, sub-§26**, as amended by PL 2003, c. 203, §1, is
6 further amended to read:

7 **26. Accredited reinsurers.** Application ~~fee~~ fees for accreditation ~~as reinsurer of~~
8 reinsurers may not exceed \$500.

9 **Sec. B-2. 24-A MRSA §601, sub-§26-A** is enacted to read:

10 **26-A. Certified reinsurers.** Application fees for certification of reinsurers may not
11 exceed \$1,000.

12 **Sec. B-3. 24-A MRSA §731-B, sub-§1, ¶B-1**, as enacted by PL 2001, c. 47, §2,
13 is amended to read:

14 B-1. Is accredited as a reinsurer in this State, in accordance with the following
15 standards.

16 (1) To apply for accreditation, a reinsurer shall file with the superintendent a
17 written application on a form prescribed by the superintendent, accompanied by
18 the fee prescribed in section 601, subsection 26 and an agreement to submit to the
19 jurisdiction of the courts of this State and to the authority of the superintendent to
20 examine the reinsurer's books and records.

21 (2) An accredited reinsurer must be licensed to transact insurance or reinsurance
22 in at least one state, or in the case of a United States branch of an alien reinsurer,
23 that reinsurer must be entered through and licensed to transact insurance or
24 reinsurance in at least one state.

25 (3) An accredited reinsurer shall file with the superintendent, as part of its
26 application and annually thereafter, a copy of its annual statement filed with the
27 insurance department of its state of domicile or United States port of entry and a
28 copy of its most recent audited financial statement.

29 (4) A reinsurer applying for accreditation that maintains a surplus as regards to
30 policyholders in an amount not less than \$20,000,000 is deemed to be accredited
31 if the reinsurer's application is not denied by the superintendent within 90 days
32 after submission of the application. The superintendent has the discretion to
33 grant accreditation to an applicant with a surplus less than \$20,000,000 subject to
34 such terms and conditions as the superintendent determines to be necessary and
35 appropriate for the protection of domestic ceding insurers and their policyholders.

36 ~~The superintendent may deny, suspend, revoke or place restrictions upon a reinsurer's~~
37 ~~accreditation, after notice and opportunity for hearing, for failure to comply with the~~
38 ~~requirements of this paragraph or for any grounds that would warrant similar action~~
39 ~~against the certificate of authority of an authorized insurer.~~

1 **Sec. B-4. 24-A MRSA §731-B, sub-§1, ¶B-2** is enacted to read:

2 B-2. Is certified as a reinsurer in this State and secures its obligations in accordance
3 with this paragraph.

4 (1) To be eligible for certification, the assuming insurer must meet the following
5 requirements:

6 (a) The assuming insurer must be domiciled and licensed to transact
7 insurance or reinsurance in a jurisdiction determined by the superintendent to
8 be a qualified jurisdiction pursuant to subparagraph (3);

9 (b) The assuming insurer must maintain minimum capital and surplus, or its
10 equivalent, in an amount to be determined by the superintendent pursuant to
11 rules adopted under subsection 7;

12 (c) The assuming insurer must maintain financial strength ratings from 2 or
13 more rating agencies determined by the superintendent to be acceptable
14 pursuant to rules adopted under subsection 7;

15 (d) The assuming insurer must agree to submit to the jurisdiction of this
16 State and to appoint an agent for service of process in the same manner as
17 provided for authorized insurers under section 421 and agree to provide
18 security for 100% of the assuming insurer's liabilities attributable to
19 reinsurance ceded by United States ceding insurers if the assuming insurer
20 resists enforcement of a final United States judgment;

21 (e) The assuming insurer must agree to meet applicable information filing
22 requirements as determined by the superintendent, both with respect to an
23 initial application for certification and on an ongoing basis;

24 (f) The assuming insurer must pay the application fee prescribed in section
25 601, subsection 26-A and, to the extent provided in rules adopted under
26 subsection 7, must agree to pay reasonable costs of review; and

27 (g) The assuming insurer must satisfy any other requirements for
28 certification established by the superintendent.

29 (2) An association including incorporated and individual unincorporated
30 underwriters may be a certified reinsurer. In order to be eligible for certification,
31 in addition to satisfying the requirements of subparagraph (1):

32 (a) The association may satisfy its minimum capital and surplus
33 requirements through the capital and surplus equivalents, net of liabilities, of
34 the association and its members, which must include a joint central fund that
35 may be applied to any unsatisfied obligation of the association or any of its
36 members, in an amount determined by the superintendent to provide adequate
37 protection;

38 (b) The incorporated members of the association may not be engaged in any
39 business other than underwriting as a member of the association and must be
40 subject to the same level of regulation and solvency control by the
41 association's domiciliary regulator as are the unincorporated members; and

1 (c) Within 90 days after its financial statements are due to be filed with the
2 association's domiciliary regulator, the association shall provide to the
3 superintendent an annual certification by the association's domiciliary
4 regulator of the solvency of each underwriter member of the association or, if
5 a certification is unavailable, financial statements, prepared by independent
6 public accountants, of each underwriter member of the association.

7 (3) The superintendent shall create and publish a list of qualified jurisdictions
8 that are eligible to serve as the domiciliary regulators of certified reinsurers.

9 (a) In order to determine whether the domiciliary jurisdiction of an alien
10 assuming insurer is eligible to be recognized as a qualified jurisdiction, the
11 superintendent shall evaluate the appropriateness and effectiveness of the
12 reinsurance supervisory system of the jurisdiction, both initially and on an
13 ongoing basis, and consider the rights, benefits and the extent of reciprocal
14 recognition afforded by the jurisdiction to reinsurers licensed and domiciled
15 in the United States. To be recognized as qualified, a jurisdiction must agree
16 to share information and cooperate with the superintendent with respect to all
17 certified reinsurers domiciled within that jurisdiction. A jurisdiction may not
18 be recognized as a qualified jurisdiction if the superintendent has determined
19 that the jurisdiction does not adequately and promptly enforce final United
20 States judgments and arbitration awards. The superintendent may consider
21 additional factors.

22 (b) If the National Association of Insurance Commissioners has published a
23 list of recommended qualified jurisdictions, the superintendent shall consider
24 that list in determining qualified jurisdictions. If the superintendent
25 recognizes a jurisdiction as qualified that does not appear on the list
26 published by the National Association of Insurance Commissioners, the
27 superintendent shall make detailed findings of fact supporting the recognition
28 in accordance with criteria to be developed in rules adopted under subsection
29 7.

30 (c) United States jurisdictions that are accredited by the National Association
31 of Insurance Commissioners must be recognized as qualified jurisdictions.

32 (d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified
33 jurisdiction, the superintendent may suspend the reinsurer's certification
34 indefinitely, in lieu of revocation.

35 (4) The superintendent shall assign a rating to each certified reinsurer, giving due
36 consideration to the financial strength ratings that have been assigned by rating
37 agencies determined to be acceptable pursuant to rules adopted under subsection
38 7. The superintendent shall publish a list of all certified reinsurers and their
39 ratings.

40 (5) A certified reinsurer shall secure all obligations assumed from United States
41 ceding insurers under this subsection, and under comparable laws of other states,
42 at a level consistent with its rating and in a form acceptable to the superintendent,
43 in compliance with rules adopted under subsection 7.

1 (a) If the security is insufficient, the superintendent shall reduce the
2 allowable credit by an amount proportionate to the deficiency and may
3 impose further reductions in allowable credit upon finding that there is a
4 material risk that the certified reinsurer's obligations will not be paid in full
5 when due.

6 (b) The reinsurer may secure its obligations as a certified reinsurer through a
7 multibeneficiary trust that meets the requirements of paragraph C and
8 subsection 2-A, with the following modifications.

9 (i) The maximum credit allowable may exceed the value of the
10 qualifying security to the extent provided in this subparagraph.

11 (ii) The minimum trusteed surplus is \$10,000,000, rather than the
12 amount specified in paragraph C.

13 (iii) If the certified reinsurer also maintains a multibeneficiary trust for
14 obligations required to be fully secured under paragraph C or comparable
15 laws of other states, the certified reinsurer shall maintain separate trust
16 accounts for its obligations incurred under reinsurance agreements issued
17 or renewed as a certified reinsurer with reduced security and for its
18 obligations that are required to be fully secured. The trust accounts may
19 not be approved as qualifying security unless the reinsurer has bound
20 itself, by the language of the trust and by agreement with the insurance
21 regulator with principal oversight of each such trust account, to apply,
22 upon termination of any such trust account, the remaining surplus of that
23 trust to the extent necessary to fund any deficiency of any other such
24 trust account.

25 (c) If a certified reinsurer does not secure its obligations through a qualifying
26 multibeneficiary trust, it must secure its obligations to the ceding insurer
27 consistent with the requirements of subsection 3, except that the maximum
28 credit allowable may exceed the value of the qualifying security to the extent
29 provided in this subparagraph.

30 (d) For purposes of this subparagraph, a certified reinsurer whose
31 certification has been terminated for any reason must be treated as a certified
32 reinsurer required to secure 100% of its obligations, unless the superintendent
33 has continued to assign a higher rating, as permitted by other provisions of
34 this section, to a certified reinsurer in inactive status or to a reinsurer whose
35 certification has been suspended.

36 (6) If an applicant for certification has been certified as a reinsurer in a
37 jurisdiction accredited by the National Association of Insurance Commissioners,
38 the superintendent may defer to that jurisdiction's certification to grant
39 certification in this State and may defer to the rating assigned by that jurisdiction.

40 (7) A certified reinsurer that ceases to assume new business in this State may
41 request to maintain its certification in inactive status in order to continue to
42 qualify for a reduction in security for its in-force business. An inactive certified
43 reinsurer shall continue to comply with all applicable requirements of this

1 subsection, and the superintendent shall assign a rating that takes into account, if
2 relevant, the reasons why the reinsurer is not assuming new business.

3 **Sec. B-5. 24-A MRSA §731-B, sub-§1, ¶C**, as amended by PL 2001, c. 47, §3,
4 is further amended to read:

5 C. Maintains a trust fund in a qualified United States financial institution for the
6 payment of the valid claims of its United States ceding insurers, their assigns and
7 successors in interest.

8 (1) The assuming insurer shall report annually to the superintendent information
9 substantially the same as that required to be reported on the National Association
10 of Insurance Commissioners Annual Statement form by licensed insurers to
11 enable the superintendent to determine the sufficiency of the trust fund.

12 (2) In the case of a single assuming insurer, the trust must consist of a trustee
13 account representing the assuming insurer's liabilities attributable to reinsurance
14 ceded by United States ceding insurers and, in addition, unless the assuming
15 insurer has permanently discontinued underwriting new business secured by the
16 trust for at least 3 full years, must include a trustee surplus of at least
17 \$20,000,000. The trust must provide that after the assuming insurer has
18 permanently discontinued underwriting new business secured by the trust for at
19 least 3 full years, the insurance regulator with principal oversight of the trust may
20 authorize a reduction in the required trustee surplus, but only after a finding,
21 based on an assessment of the risk, that the new required surplus level is adequate
22 for the protection of United States ceding insurers, policyholders and claimants in
23 light of reasonably foreseeable adverse loss development. The risk assessment
24 may involve an actuarial review, including an independent analysis of reserves
25 and cash flows, and must consider all material risk factors, including when
26 applicable the lines of business involved, the stability of the incurred loss
27 estimates and the effect of the surplus requirements on the assuming insurer's
28 liquidity or solvency. The minimum required trustee surplus may not be
29 reduced to an amount less than 30% of the assuming insurer's liabilities
30 attributable to reinsurance ceded by United States ceding insurers covered by the
31 trust.

32 (3-A) A group including incorporated and individual unincorporated
33 underwriters may secure its obligations with funds held in trust in compliance
34 with the following standards.

35 (a) For reinsurance ceded under reinsurance agreements with an inception,
36 amendment or renewal date on or after ~~August 1, 1995~~ January 1, 1993, the
37 trust must consist of a trustee account in an amount at least equal to the
38 ~~group's~~ group's ~~respective underwriters'~~ several liabilities attributable to reinsurance
39 ceded by United States domiciled ceding insurers to any ~~member~~ member underwriter
40 of the group.

41 (b) Notwithstanding the other provisions of this section, for reinsurance
42 ceded under reinsurance agreements with an inception date on or before ~~July~~
43 ~~31, 1995~~ December 31, 1992 and not amended or renewed after that date, the
44 trust must consist of a trustee account in an amount not less than the ~~group's~~

1 respective underwriters' several insurance and reinsurance liabilities
2 attributable to business written in the United States.

3 (c) In addition, the group shall maintain a trusteed surplus of at least
4 \$100,000,000 held jointly for the benefit of the United States domiciled
5 ceding insurers of any member of the group for all years of account.

6 An incorporated member of the group may not be engaged in any business other
7 than underwriting as a member of the group and is subject to the same level of
8 solvency regulation and control by the group's domiciliary regulator as are the
9 unincorporated members. Within 90 days after its financial statements are due to
10 be filed with the group's domiciliary regulator, the group shall provide to the
11 superintendent an annual certification by the group's domiciliary regulator of the
12 solvency of each underwriter member of the group or, if a certification is
13 unavailable, financial statements prepared by independent public accountants.

14 (4-A) The superintendent in rules adopted pursuant to subsection 7 may establish
15 alternative criteria for approval of a reinsurance trust if the superintendent
16 determines that the criteria provide adequate protection to policyholders of
17 United States ceding insurers and are in substantial conformance with standards
18 approved by the National Association of Insurance Commissioners.

19 (5) The trust must be established in a form approved by the superintendent and
20 consistent with any rules adopted by the superintendent pursuant to this section.
21 The form of the trust and any amendments to the trust must also have been
22 approved by the insurance regulatory official of the state where the trust is
23 domiciled or of another state that, pursuant to the terms of the trust instrument,
24 has accepted principal regulatory oversight of the trust. The trust instrument
25 must provide that contested claims are valid and enforceable upon the final order
26 of any court of competent jurisdiction in the United States. The trust must vest
27 legal title to its assets in the trustees of the trust for the benefit of the assuming
28 insurer's United States ceding insurers, their assigns and successors in interest.
29 The trust and the assuming insurer are subject to examination, as determined by
30 the superintendent, at the assuming insurer's expense. The trust must remain in
31 effect for as long as the assuming insurer has outstanding obligations due under
32 the reinsurance agreements subject to the trust.

33 (6) The trustees of the trust shall report to the superintendent in writing by
34 February 28th of each year, setting forth the balance of the trust and listing the
35 trust's investments at the end of the preceding year and certifying the date of
36 termination of the trust, if so planned, or certifying that the trust does not expire
37 before December 31st of the current year.

38 (7) The corpus of the trust is to be valued as any other admitted asset or assets;

39 **Sec. B-6. 24-A MRSA §731-B, sub-§1, ¶D**, as amended by PL 2001, c. 47, §4,
40 is further amended to read:

41 D. Does not meet the requirements of paragraph A, B, B-1, B-2 or C, but only with
42 respect to risks located in a jurisdiction where that reinsurance is required by law.

1 The superintendent for good cause after notice and opportunity for hearing may
2 disallow or reduce the credit otherwise permitted under this paragraph.

3 **Sec. B-7. 24-A MRSA §731-B, sub-§1-A** is enacted to read:

4 1-A. The superintendent may suspend or revoke a reinsurer's accreditation or
5 certification under subsection 1, after notice and opportunity for hearing, for failure to
6 meet the applicable requirements of subsection 1 or on any ground that would warrant
7 similar action against the certificate of authority of an authorized insurer.

8 A. A suspension or revocation under this subsection may not take effect until after
9 the superintendent's order following a hearing, unless:

10 (1) The reinsurer waives its right to a hearing;

11 (2) The superintendent's order is based on regulatory action by the reinsurer's
12 domiciliary jurisdiction or the voluntary surrender or termination of the
13 reinsurer's eligibility to transact insurance or reinsurance business in its
14 domiciliary jurisdiction or in the primary certifying state of the reinsurer under
15 subsection 1, paragraph B-2, subparagraph (6); or

16 (3) The superintendent finds that an emergency requires immediate action and a
17 court of competent jurisdiction has not stayed the superintendent's action.

18 B. While a reinsurer's accreditation or certification is suspended pursuant to this
19 subsection, no reinsurance contract issued or renewed after the effective date of the
20 suspension qualifies for credit under subsection 1 except to the extent that the
21 reinsurer's obligations under the contract are secured in accordance with subsection 3.
22 If a reinsurer's accreditation or certification is revoked pursuant to this subsection, no
23 credit for reinsurance may be granted after the effective date of the revocation except
24 to the extent that the reinsurer's obligations under the contract are secured in
25 accordance with subsection 1, paragraph B-2, subparagraph (5) or subsection 3.

26 C. The superintendent may deny an application for accreditation or certification
27 under subsection 1, or may impose conditions or restrictions on a reinsurer's
28 accreditation or certification, on any ground for which accreditation or certification
29 may be suspended or revoked.

30 **Sec. B-8. 24-A MRSA §731-B, sub-§3, ¶B,** as enacted by PL 1989, c. 846, Pt.
31 E, §2 and affected by §4, is amended to read:

32 B. Securities listed by the Securities Valuation Office of the National Association of
33 Insurance Commissioners, including those designated as exempt from filing in the
34 purposes and procedures manual of the Securities Valuation Office, and qualifying as
35 admitted assets; or

36 **Sec. B-9. 24-A MRSA §731-D,** as enacted by PL 1989, c. 846, Pt. E, §2 and
37 affected by §4, is amended to read:

1 **2. NAIC.** "NAIC" means the National Association of Insurance Commissioners or
2 its successor organization.

3 **3. Operative date.** "Operative date," with respect to the initial adoption of the
4 valuation manual, means January 1st of the first calendar year beginning at least 6 months
5 after all of the following events have occurred:

6 A. The valuation manual has been adopted by the NAIC by an affirmative vote of at
7 least 42 members or 3/4 of the members voting, whichever is greater;

8 B. The NAIC's model standard valuation law, as amended by the NAIC in 2009, or
9 legislation including substantially similar terms and provisions has been enacted by
10 states representing greater than 75% of the direct premiums written as reported in the
11 following annual statements submitted for 2008: life, accident and health annual
12 statements; health annual statements; or fraternal annual statements; and

13 C. The NAIC's model standard valuation law, as amended by the NAIC in 2009, or
14 legislation including substantially similar terms and provisions has been enacted by at
15 least 42 of the following 55 jurisdictions: the 50 states of the United States, American
16 Samoa, the District of Columbia, Guam, the Commonwealth of Puerto Rico and the
17 United States Virgin Islands.

18 **4. Policyholder behavior.** "Policyholder behavior" means any action a
19 policyholder, contract holder or any other person with the right to elect options, such as a
20 certificate holder, may take under a policy or contract subject to this subchapter,
21 including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan,
22 annuitization or benefit elections prescribed by the policy or contract, but excluding
23 events of mortality or morbidity that result in benefits prescribed in their essential aspects
24 by the terms of the policy or contract.

25 **5. Principle-based valuation.** "Principle-based valuation" means a reserve
26 valuation that uses one or more methods or one or more assumptions determined by the
27 insurer and is subject to section 960.

28 **6. Qualified actuary.** "Qualified actuary" means an individual who is qualified to
29 sign the applicable statement of actuarial opinion in accordance with the American
30 Academy of Actuaries qualification standards for actuaries signing such statements and
31 who meets all applicable requirements specified in the valuation manual or by rule
32 adopted by the superintendent.

33 **7. Subject lines of insurance.** "Subject lines of insurance" means life insurance,
34 accident and health insurance and deposit-type contracts, as those terms are defined in the
35 valuation manual.

36 **8. Tail risk.** "Tail risk" means a risk for which the frequency of low-probability
37 events is higher than expected under a normal probability distribution or the risk of events
38 of very significant magnitude.

39 **9. Valuation manual.** "Valuation manual" means the manual of valuation
40 instructions adopted by the NAIC as specified in section 959.

1 **Sec. C-3. 24-A MRSA §952, sub-§1**, as amended by PL 1973, c. 585, §12, is
2 further amended to read:

3 **1.** The superintendent shall annually value, or cause to be valued, the reserve
4 liabilities, hereinafter called reserves, for all outstanding life insurance policies and
5 annuity and pure endowment contracts of every life insurer transacting business in this
6 State in accordance with this subchapter, except that in the case of an alien insurer, such
7 valuation ~~shall~~ must be limited to its United States business; and may certify the amount
8 of any such reserves, ~~specifying~~ consistent when applicable with the valuation manual.
9 For policies and contracts issued before the operative date of the valuation manual, the
10 superintendent shall specify the mortality table or tables, rate or rates of interest and
11 methods, net level premium method or other, used in the calculation of such reserves. In
12 calculating such reserves, ~~he~~ the superintendent may use group methods and approximate
13 averages for fractions of a year or otherwise. In lieu of the valuation of the reserves
14 required of any foreign or alien insurer, ~~he~~ the superintendent may accept any valuation
15 made, or caused to be made, by the insurance supervisory official of any state or other
16 jurisdiction when such valuation complies with the minimum standard herein provided
17 ~~and if the official of such state or jurisdiction accepts as sufficient and valid for all legal~~
18 ~~purposes the certificate of valuation of the superintendent when such certificate states the~~
19 ~~valuation to have been made in a specified manner according to which the aggregate~~
20 ~~reserves would be at least as large as if they had been computed in the manner prescribed~~
21 ~~by law of that state or jurisdiction.~~

22 **Sec. C-4. 24-A MRSA §952, sub-§3** is enacted to read:

23 **3.** Beginning on the operative date of the valuation manual, a life or health insurer
24 and a casualty or multiple lines insurer transacting health insurance shall comply with the
25 applicable requirements of this subchapter if the insurer is required to hold a certificate of
26 authority to write one or more subject lines of insurance in this State or if the insurer has
27 written, issued or reinsured contracts of one or more subject lines of insurance in this
28 State and has at least one such policy in force or on claim.

29 **Sec. C-5. 24-A MRSA §952-A**, as amended by PL 2011, c. 320, Pt. A, §6, is
30 further amended to read:

31 **§952-A. Actuarial opinion of reserves**

32 **1. General.** ~~A life~~ An insurer doing business in this State subject to this subchapter
33 shall annually appoint a qualified actuary, in accordance with any applicable
34 requirements of the valuation manual or rules adopted by the superintendent, and submit
35 the opinion of a ~~qualified~~ the appointed actuary as to whether the reserves and related
36 actuarial items of that ~~life~~ insurer held in support of the policies and contracts specified
37 by the superintendent by rule are computed appropriately, are based on assumptions that
38 satisfy contractual provisions, are consistent with prior reported amounts and comply
39 with applicable laws of this State. ~~The~~ On and after the operative date of the valuation
40 manual, if the valuation manual has prescribed specific requirements applicable to the
41 opinion, the opinion must comply with those requirements. In all other cases, the
42 superintendent by rule shall define the specifics of ~~this~~ the opinion and. The

1 superintendent by rule may add any other items considered necessary to its the scope of
2 the opinion.

3 **2. Actuarial analysis of reserves and assets supporting those reserves.** ~~A life~~
4 ~~Except as otherwise authorized or required in accordance with rules adopted by the~~
5 ~~superintendent or applicable provisions of the valuation manual, an insurer, except as~~
6 ~~exempted by or pursuant to rule, subject to this subchapter shall include in the opinion~~
7 ~~required by subsection 1 an opinion of the same qualified appointed~~ actuary as to whether
8 the reserves and related actuarial items held in support of the policies and contracts
9 specified by the superintendent by rule, when considered in light of the assets held by the
10 insurer with respect to the reserves and related actuarial items, including, but not limited
11 to, the investment earnings on the assets and the considerations anticipated to be received
12 and retained under the policies and contracts, adequately provide for the insurer's
13 obligations under the policies and contracts, including, but not limited to, the benefits
14 under and expenses associated with the policies and contracts.

15 ~~The superintendent may provide by rule for a transition period for establishing any higher~~
16 ~~reserves that the qualified actuary may consider necessary in the opinion required by this~~
17 ~~subsection.~~

18 **3. Requirement for opinion under subsection 2.** An opinion required by
19 subsection 2 is governed by the following provisions.

20 A. A memorandum, in form and substance acceptable to the superintendent as
21 specified in the valuation manual or by rule, must be prepared to support the actuarial
22 opinion.

23 B. If the insurer fails to provide a supporting memorandum at the request of the
24 superintendent within a period specified in the valuation manual or by rule or the
25 superintendent determines that the supporting memorandum provided by the insurer
26 fails to meet the prescribed standards ~~prescribed by the rules~~ or is otherwise
27 unacceptable to the superintendent, the superintendent may engage a qualified
28 actuary at the expense of the insurer to review the opinion and the basis for the
29 opinion and prepare a supporting memorandum as required by the superintendent.

30 **4. Requirement for all opinions.** An opinion required pursuant to subsection 1 or 2
31 is governed by the following provisions.

32 A. The opinion must be submitted with the annual statement reflecting the valuation
33 of reserve liabilities for each year ending on or after December 31, 1995.

34 B. The opinion must apply to all business in force, including individual and group
35 health insurance plans, in a form and substance acceptable to the superintendent ~~as~~
36 ~~specified by rule.~~

37 B-1. The opinion must comply with the requirements of any applicable rules and, on
38 and after the operative date of the valuation manual, must comply with all applicable
39 requirements of the valuation manual.

40 C. The opinion must be based on standards adopted by the ~~actuarial standards board~~
41 Actuarial Standards Board or its successor and, to the extent applicable, on those any

1 additional standards as prescribed by the valuation manual or prescribed by the
2 superintendent by rule ~~prescribes~~.

3 D. In the case of an opinion required to be submitted by a foreign or alien insurer,
4 the superintendent may accept the opinion filed by that insurer with the insurance
5 supervisory official of another state if the superintendent determines that the opinion
6 reasonably meets the requirements applicable to an insurer domiciled in this State.

7 ~~E. For the purposes of this section, "qualified actuary" means a member in good~~
8 ~~standing of the American Academy of Actuaries who meets the requirements set~~
9 ~~forth in the rules of the American Academy of Actuaries.~~

10 F. Except in cases of fraud or willful misconduct, ~~a qualified~~ the appointed actuary is
11 not liable for damages to any person, other than the insurer and the superintendent,
12 for any act, error, omission, decision or conduct with respect to the ~~qualified~~
13 appointed actuary's opinion.

14 G. ~~Disciplinary action by the~~ The superintendent may take disciplinary action against
15 the insurer or the ~~qualified~~ appointed actuary ~~must be defined in rules established by~~
16 ~~the superintendent pursuant to section 12-A for knowing violations of this section and~~
17 may establish additional grounds for disciplinary action by rule.

18 ~~H. Except as provided in paragraphs K, L and M, any memorandum in support of the~~
19 ~~opinion and any other documents, materials or other information provided by the~~
20 ~~insurer to the superintendent in connection with the memorandum are confidential,~~
21 ~~must be kept confidential by the superintendent and are not subject to subpoena or~~
22 ~~discovery, nor admissible in evidence in any private civil action. The superintendent~~
23 ~~is authorized to use the documents, materials or other information in the furtherance~~
24 ~~of any regulatory or legal action brought as a part of the superintendent's official~~
25 ~~duties.~~

26 ~~I. Neither the superintendent nor any person who received documents, materials or~~
27 ~~other information while acting under the authority of the superintendent is permitted~~
28 ~~or required to testify in any private civil action concerning any confidential~~
29 ~~documents, materials or information pursuant to paragraph H.~~

30 ~~J. Disclosure to the superintendent under this section or as a result of sharing of~~
31 ~~documents, materials or other information pursuant to section 216 does not constitute~~
32 ~~a waiver of any applicable privileges or claim of confidentiality in the documents,~~
33 ~~materials or other information.~~

34 ~~K. A memorandum in support of the opinion, and any other documents, materials or~~
35 ~~other information provided by the life insurer to the superintendent in connection~~
36 ~~with the memorandum, may be subject to subpoena for the purpose of defending an~~
37 ~~action seeking damages from the actuary submitting the memorandum by reason of~~
38 ~~an action pursuant to this section or by rule adopted pursuant to this section.~~

39 ~~L. The memorandum or other documents, materials or other information may~~
40 ~~otherwise be released by the superintendent with the written consent of the life~~
41 ~~insurer or upon a written request by the American Academy of Actuaries stating that~~
42 ~~the memorandum or other documents, materials or other information is required for~~
43 ~~the purpose of professional disciplinary proceedings and setting forth procedures~~

1 satisfactory to the superintendent for preserving the confidentiality of the
2 memorandum or other documents, materials or other information.

3 ~~M. Once any portion of a memorandum is cited by the life insurer in its marketing or~~
4 ~~is cited by the life insurer before a governmental agency other than a state insurance~~
5 ~~agency or is released by the life insurer to the news media, all portions of the~~
6 ~~memorandum become public records.~~

7 **5. Applicability to health carriers.** A health carrier not otherwise subject to this
8 section or section 993 shall file an actuarial opinion in accordance with the applicable
9 National Association of Insurance Commissioners annual statement instructions. For
10 purposes of this section, "health carrier" means an insurer, health maintenance
11 organization, nonprofit corporation subject to Title 24 or fraternal benefit society that
12 provides health insurance or comparable health benefits. This section and rules adopted
13 pursuant to this section apply to health carriers to the extent provided in the valuation
14 manual. Before the operative date of the valuation manual, this section and rules adopted
15 pursuant to this section apply to health carriers to the extent that they specifically refer to
16 health carriers or impose requirements that are consistent with and no more stringent than
17 the annual statement instructions.

18 **Sec. C-6. 24-A MRSA §952-B** is enacted to read:

19 **§952-B. Applicability of reserving methodologies**

20 Sections 953 to 958-A do not apply to a policy or contract that is issued on or after
21 the operative date of the valuation manual and is subject to section 959, unless those
22 sections are made applicable by reference in whole or part in the valuation manual.

23 **Sec. C-7. 24-A MRSA §955, sub-§2,** as enacted by PL 1993, c. 634, Pt. B, §2, is
24 amended to read:

25 **2. Minimum aggregate reserves for all policies.** The aggregate reserves for all
26 policies, contracts and benefits may not be less than the aggregate reserves determined
27 necessary by the ~~qualified~~ appointed actuary in the opinion required by section 952-A.

28 **Sec. C-8. 24-A MRSA §956, sub-§2,** as enacted by PL 1993, c. 634, Pt. B, §3, is
29 amended to read:

30 **2. Lower standard of valuation.** Any insurer that adopts any standard of valuation
31 producing greater aggregate reserves than those calculated according to the minimum
32 standard provided in section 955 may adopt, with the approval of the superintendent, any
33 lower standards of valuation, but not lower than the minimum required, ~~provided,~~
34 ~~however,~~ except that for the purposes of this section the holding of additional reserves
35 previously determined necessary by ~~a qualified~~ the appointed actuary in the opinion
36 required by section 952-A may not be determined to be the adoption of a higher standard
37 of valuation.

38 **Sec. C-9. 24-A MRSA §§959 to 962** are enacted to read:

1 **§959. Reserves subject to valuation manual**

2 **1. General requirement.** On and after the operative date of a valuation manual that
3 the superintendent has determined meets the requirements of this section, reserves on
4 policies and contracts of subject lines of insurance must be valued as follows, except as
5 otherwise specifically provided in this section or in rules adopted by the superintendent:

6 A. For policies and contracts issued on and after the operative date of the valuation
7 manual, in accordance with the valuation manual;

8 B. For policies and contracts described in sections 953 to 958-A and issued before
9 the operative date of the valuation manual, in accordance with those sections; and

10 C. For health insurance policies and contracts issued before the operative date of the
11 valuation manual, and any other policies and contracts outside the scope of
12 paragraphs A and B, in accordance with rules adopted by the superintendent.

13 **2. Necessary provisions.** The valuation manual must specify all of the following:

14 A. Definitions of the policies and contracts subject to this section;

15 B. The following minimum valuation standards for all policies and contracts subject
16 to this section:

17 (1) The commissioners reserve valuation method for life insurance contracts,
18 other than annuity contracts;

19 (2) The commissioners annuity reserve valuation method for annuity contracts;
20 and

21 (3) Minimum reserves for all other policies or contracts;

22 C. Provisions specifying which policies and contracts or types of policies and
23 contracts are subject to section 960 and specifying the minimum valuation standards
24 consistent with those provisions;

25 D. For policies and contracts subject to section 960:

26 (1) Requirements for the format of reports to the superintendent under section
27 960, subsection 3, paragraph C, which must include information necessary to
28 determine whether the valuation is appropriate and in compliance with this
29 subchapter;

30 (2) Assumptions to be prescribed for risks over which the insurer does not have
31 significant control or influence; and

32 (3) Procedures for corporate governance and oversight of the actuarial function
33 and a process for appropriate waiver or modification of such procedures;

34 E. For policies and contracts not subject to section 960, a minimum valuation
35 standard that either:

36 (1) Is consistent with the minimum standard of valuation for policies and
37 contracts issued before the operative date of the valuation manual; or

1 (2) Develops reserves that quantify the benefits and guarantees, and the funding,
2 associated with the policies and contracts and their risks at a level of
3 conservatism that reflects conditions that include unfavorable events that have a
4 reasonable probability of occurring;

5 F. Other requirements, including, but not limited to, those relating to reserve
6 methods, models for measuring risk, generation of economic scenarios, assumptions,
7 margins, use of insurer experience, risk measurement, disclosure, certifications,
8 reports, actuarial opinions and memoranda, transition rules and internal controls; and

9 G. The data and form of the data required under section 961. The requirements must
10 specify to whom the data must be submitted and may specify other requirements,
11 including requirements with respect to data analyses and reporting of analyses.

12 **3. Supplementation and resolution of conflicts.** In the absence of a specific
13 valuation requirement or if the superintendent determines that a specific valuation
14 requirement in the valuation manual is not consistent with the requirements or purposes
15 of this subchapter, an insurer shall comply with minimum valuation standards prescribed
16 by the superintendent by rule or order.

17 **4. Examination.** For an insurer subject to this section, the superintendent may hire,
18 contract with or otherwise engage a qualified actuary, at the insurer's expense, to perform
19 an actuarial examination of the insurer and provide an opinion on the appropriateness of
20 any reserve assumption or method used by the insurer or to review and provide an
21 opinion on the insurer's compliance with any requirement of this subchapter. The
22 superintendent may rely on any actuarial opinion issued on behalf of another insurance
23 regulator in the United States that is relevant to an insurer's compliance with this
24 subchapter.

25 **5. Corrections.** The superintendent may require an insurer to change any
26 assumption or method as determined necessary by the superintendent to comply with the
27 requirements of the valuation manual or this subchapter, and the insurer shall adjust the
28 reserves as required by the superintendent.

29 **6. Violations.** Violations of this subchapter are subject to all remedies specified in
30 section 12-A or otherwise available by law.

31 **7. Changes to valuation manual.** Unless a later effective date is specified or the
32 superintendent has disapproved the change, a change to the valuation manual is effective
33 on January 1st following the adoption of the change by an affirmative vote of the NAIC
34 representing:

35 A. At least 3/4 of the NAIC members voting;

36 B. At least a majority of the total NAIC membership; and

37 C. Jurisdictions totaling greater than 75% of the aggregate written direct premiums
38 reported in the most recently available life, accident and health annual statements;
39 health annual statements; and fraternal annual statements.

1 **§960. Requirements for principle-based reserves**

2 **1. Scope.** This section applies to all policies and contracts for which principle-based
3 reserving is required by the valuation manual, unless exempted by the superintendent in
4 accordance with the following standards:

5 A. An exemption under this subsection may not be granted unless the insurer is
6 licensed and doing business exclusively in this State;

7 B. The exemption must be in writing;

8 C. The superintendent may rescind or modify the exemption in writing at any time,
9 with reasonable notice to the insurer;

10 D. The exemption may apply to all business written by the insurer or to specific
11 policy or contract forms or product lines; and

12 E. An insurer granted an exemption under this subsection shall value its reserves
13 using the assumptions and methods used before the operative date of the valuation
14 manual, in addition to any requirements established by the superintendent by rule or
15 by the terms of the order granting the exemption.

16 **2. Standards.** An insurer shall establish reserves for policies and contracts subject
17 to this section using a valuation methodology that meets all applicable requirements of
18 the valuation manual and that:

19 A. Quantifies the benefits and guarantees, and the funding, associated with the
20 policies and contracts and their risks at a level of conservatism that reflects conditions
21 that include unfavorable events that have a reasonable probability of occurring during
22 the lifetime of the policies and contracts. For policies and contracts with significant
23 tail risk, the methodology must reflect conditions appropriately adverse to quantify
24 the tail risk;

25 B. Incorporates assumptions, risk analysis methods and financial models and
26 management techniques that are consistent with, but not necessarily identical to,
27 those used within the insurer's overall risk assessment process, while recognizing
28 potential differences in financial reporting structures and any prescribed assumptions
29 or methods;

30 C. Incorporates assumptions that are derived in one of the following manners:

31 (1) The assumption is prescribed in the valuation manual; or

32 (2) For assumptions that are not prescribed in the valuation manual, the
33 assumptions are:

34 (a) Established using the insurer's available experience, to the extent that it is
35 relevant and statistically credible; or

36 (b) To the extent that insurer-specific data is not available, relevant or
37 statistically credible, established using other relevant, statistically credible
38 experience; and

39 D. Provides margins for uncertainty including adverse deviation and estimation
40 error, such that the greater the uncertainty the larger the margin and resulting reserve.

1 **3. Oversight and controls.** An insurer using a principle-based valuation for one or
2 more policies or contracts subject to this section as specified in the valuation manual
3 shall:

4 A. Establish procedures for corporate governance and oversight of the actuarial
5 valuation function consistent with those described in the valuation manual;

6 B. Provide to the superintendent and the insurer's board of directors an annual
7 certification of the effectiveness of the internal controls with respect to the principle-
8 based valuation. Such controls must be designed to ensure that all material risks
9 inherent in the liabilities and associated assets subject to principle-based valuation are
10 included in the valuation and that valuations are made in accordance with the
11 valuation manual. The certification must be based on the controls in place as of the
12 end of the preceding calendar year; and

13 C. Develop, and file with the superintendent upon request, a principle-based
14 valuation report that complies with standards prescribed in the valuation manual.

15 **4. Formulaic components.** A principle-based valuation may include a formulaic
16 reserve component and must do so when prescribed by the valuation manual or required
17 by the superintendent.

18 **§961. Experience reporting**

19 For all policies and contracts in force on or after the operative date of the valuation
20 manual, an insurer shall submit mortality, morbidity, policyholder behavior and expense
21 experience data, as applicable, and other data as prescribed in the valuation manual.

22 **§962. Confidentiality**

23 **1. Information subject to this section.** For purposes of this section, "protected
24 valuation information" means:

25 A. A memorandum in support of an opinion submitted under section 952-A and any
26 other documents, materials and other information, including, but not limited to, all
27 working papers, and copies thereof, created, produced or obtained by or disclosed to
28 the superintendent or any other person in connection with the memorandum;

29 B. All documents, materials and other information, including, but not limited to, all
30 working papers, and copies thereof, created, produced or obtained by or disclosed to
31 the superintendent or any other person in the course of an examination made under
32 section 959, subsection 4 that would be confidential under section 225, subsection 3
33 if they had been prepared or obtained under section 221;

34 C. Any reports, documents, materials and other information developed by an insurer
35 in support of, or in connection with, an annual certification of internal controls under
36 section 960, subsection 3, paragraph B and any other documents, materials and other
37 information, including, but not limited to, all working papers, and copies thereof,
38 created, produced or obtained by or disclosed to the superintendent or any other
39 person in connection with such reports, documents, materials and other information;

1 D. Any principle-based valuation report developed under section 960, subsection 3,
2 paragraph C and any other documents, materials and other information, including, but
3 not limited to, all working papers, and copies thereof, created, produced or obtained
4 by or disclosed to the superintendent or any other person in connection with such a
5 report;

6 E. Any documents, materials, data and other information submitted by an insurer
7 under section 961, referred to in this paragraph as "experience data," and any other
8 documents, materials, data and other information, including, but not limited to, all
9 working papers, and copies thereof, created or produced in connection with such
10 experience data that include any potentially insurer-identifying or personally
11 identifiable information and that are provided to or obtained by the superintendent or
12 any other person and any other documents, materials, data and other information,
13 including, but not limited to, all working papers, and copies thereof, created,
14 produced or obtained by or disclosed to the superintendent or any other person in
15 connection with such experience data and materials; and

16 F. Any information received by the superintendent from the Actuarial Board for
17 Counseling and Discipline or its successor related to a memorandum or report
18 described in paragraph A or D, if the information has been provided with notice or
19 the understanding that it is confidential or privileged under applicable law.

20 **2. Confidentiality of information subject to this section.** Except as provided in
21 this subsection, all protected valuation information is confidential, must be kept
22 confidential by the superintendent and is not subject to subpoena or discovery or
23 admissible in evidence in any private civil action. The superintendent may use the
24 documents, materials or other information in the furtherance of any regulatory or legal
25 action brought as a part of the superintendent's official duties.

26 A. Neither the superintendent nor any person who receives documents, materials or
27 other information while acting under the authority of the superintendent is permitted
28 or required to testify in any private civil action concerning any protected valuation
29 information.

30 B. Disclosure to the superintendent under this section or as a result of sharing of
31 documents, materials or other information pursuant to section 216 does not constitute
32 a waiver of any applicable privilege or claim of confidentiality with regard to the
33 documents, materials or other information.

34 C. The superintendent may share protected valuation information described in
35 subsection 1, paragraphs A and D with the Actuarial Board for Counseling and
36 Discipline or its successor upon a request stating that the information is required for
37 the purpose of professional disciplinary proceedings and that the disciplinary entity
38 agrees, and has the legal authority to agree, to maintain the confidentiality and
39 privileged status of the information in the same manner and to the same extent as
40 required for the superintendent. The superintendent may request and receive
41 confidential information described in subsection 1, paragraph F from the Actuarial
42 Board for Counseling and Discipline or its successor. The superintendent may enter
43 into information-sharing agreements to facilitate the exchange of information under
44 this paragraph.

1 D. For protected valuation information described in subsection 1, paragraphs A and
2 D, the confidentiality provided by this subsection may be limited or terminated as
3 follows:

4 (1) The information may be subject to subpoena for the purpose of defending an
5 action seeking damages from the appointed actuary submitting the actuarial
6 memorandum or principle-based valuation report;

7 (2) The information may be released with the written consent of the insurer; and

8 (3) If any portion of an actuarial memorandum or principle-based valuation
9 report is cited by the insurer in its marketing or is publicly volunteered by the
10 insurer before a governmental agency other than a state insurance agency or is
11 released by the insurer to the news media, all portions of the memorandum or
12 report become public records.

13 **Sec. C-10. 24-A MRSA §992, sub-§1**, as enacted by PL 2007, c. 281, §2 and
14 affected by §3, is repealed and the following enacted in its place:

15 **1. Covered kinds of insurance.** "Covered kinds of insurance" means property
16 insurance as defined in section 705 and casualty insurance as defined in section 707 and
17 does not include health insurance as defined in section 704, unless required by the
18 applicable NAIC annual statement instructions to be included in the property and casualty
19 actuarial opinion of a casualty insurer or multiple lines insurer, or property insurance
20 written by domestic mutual assessment insurers pursuant to chapter 51.

21 **Sec. C-11. 24-A MRSA §2532-A, sub-§8, ¶¶F and G**, as enacted by PL 1983,
22 c. 346, §13, are amended to read:

23 F. Any approved commissioners standard ordinary mortality tables, adopted after
24 1980 by the National Association of Insurance Commissioners, that are approved by
25 regulation promulgated by the superintendent for use in determining the minimum
26 nonforfeiture standard in accordance with paragraph H, may be substituted for the
27 Commissioners 1980 Standard Ordinary Mortality Table with or without 10-year
28 select mortality factors or for the Commissioners 1980 Extended Term Insurance
29 Table; and

30 G. Any approved commissioners standard industrial mortality tables, adopted after
31 1980 by the National Association of Insurance Commissioners, that are approved by
32 regulation promulgated by the superintendent for use in determining the minimum
33 nonforfeiture standard in accordance with paragraph H, may be substituted for the
34 Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961
35 Industrial Extended Term Insurance Table; and

36 **Sec. C-12. 24-A MRSA §2532-A, sub-§8, ¶H** is enacted to read:

37 H. For policies issued before the operative date of the valuation manual, as defined
38 in section 951-A, subsection 3, the superintendent may adopt rules approving
39 commissioners standard mortality tables for use in determining the minimum
40 nonforfeiture standard. Rules adopted pursuant to this paragraph are routine
41 technical rules as defined in Title 5, chapter 375, subchapter 2-A. For policies issued

1 on or after the operative date of the valuation manual, the applicable commissioners
2 standard mortality tables specified in the valuation manual are approved for use in
3 determining the minimum nonforfeiture standard unless superseded by rule adopted
4 by the superintendent.

5 **Sec. C-13. 24-A MRSA §2532-A, sub-§9**, as enacted by PL 1983, c. 346, §13, is
6 amended to read:

7 **9.** The nonforfeiture interest rate per annum for any policy issued in a particular
8 calendar year ~~shall~~ must be equal to 125% of the calendar year statutory valuation interest
9 rate for that policy as defined in the Standard Valuation Law, rounded to the nearer 1/4 of
10 1%, except as otherwise provided in the valuation manual for policies issued on and after
11 the operative date of the valuation manual, as defined in section 951-A, subsection 3.

12 **PART D**

13 **Sec. D-1. 24-A MRSA §6451, sub-§6**, as amended by PL 1997, c. 81, §3, is
14 repealed and the following enacted in its place:

15 **6. Negative trend.** "Negative trend" means:

16 A. With respect to a life or health insurer, a negative trend over a period of time, as
17 determined in accordance with the trend test calculation included in the risk-based
18 capital instructions; and

19 B. With respect to a property and casualty insurer, a trend that meets the triggering
20 criteria, as determined in accordance with the trend test calculation included in the
21 risk-based capital instructions.

22 **Sec. D-2. 24-A MRSA §6453, sub-§1, ¶A**, as amended by PL 2009, c. 511, Pt.
23 E, §2, is further amended to read:

24 A. The filing of a risk-based capital report by an insurer that indicates that:

25 (1) The insurer's total adjusted capital is greater than or equal to its regulatory
26 action level risk-based capital but less than its company action level risk-based
27 capital; or

28 (2) The insurer has total adjusted capital that is greater than or equal to its
29 company action level risk-based capital but has a negative trend, if its total
30 adjusted capital is less than the product of its authorized control level risk-based
31 capital and: 3.0.

32 ~~(a) If the insurer is a life or health insurer, 2.5; or~~

33 ~~(b) If the insurer is a health organization as described in section 6451-A,~~
34 ~~subsection 2, 3.0;~~

35 **PART E**

36 **Sec. E-1. 24-A MRSA §421, sub-§7**, as enacted by PL 1999, c. 113, §18, is
37 amended to read:

1 7. Any person or entity required by Title 24 or this Title to appoint an agent for
2 service of process who does not have a valid appointment on file with the superintendent
3 or required by applicable law to appoint the superintendent as agent for service of process
4 is deemed to have appointed the superintendent as agent for service of process, and
5 process may be served within this State in the same manner as provided in section 2105.
6 This subsection does not relieve that person or entity from ~~the~~ any requirement to appoint
7 an agent for service of process or from the applicable penalties for failure to comply with
8 that requirement.

9 **Sec. E-2. 24-A MRSA §4435, sub-§6**, as amended by PL 1989, c. 67, §2, is
10 further amended to read:

11 **6. Member insurer.** "Member insurer" means any authorized insurer ~~which~~ that
12 writes any kind of insurance to which this subchapter applies and that is not a risk
13 retention group as defined in section 6093, subsection 13. If an insurer is authorized at
14 the time of an insolvency and subsequently is approved to withdraw its license authority
15 for the kinds of insurance covered by any account to which claims relating to the
16 insolvency are allocated, the withdrawn insurer shall continue to be a member of each
17 account solely for purposes of assessments relating to claims resulting from the
18 insolvency until these claims are paid or otherwise extinguished.

19 **Sec. E-3. 24-A MRSA §6095, sub-§1, ¶C**, as amended by PL 1997, c. 592, §73,
20 is further amended to read:

21 C. A designation of an agent for the purpose of receiving service of legal documents
22 or process. That designation is subject to the provisions of section 421, except that
23 the appointment of a private agent is optional. A risk retention group that does not
24 elect to designate an agent in accordance with section 421, subsection 1 shall appoint
25 the superintendent as its agent.

26 **Sec. E-4. 24-A MRSA §6098, sub-§2**, as amended by PL 1997, c. 592, §74, is
27 further amended to read:

28 **2. Registration.** The purchasing group shall register with the superintendent and
29 designate ~~an~~ the superintendent as its agent solely for the purpose of receiving service of
30 legal documents or process, except that the requirements do not apply in the case of a
31 purchasing group:

32 A. That in any state of the United States:

33 (1) Was domiciled before April 2, 1986; and

34 (2) Is domiciled on and after October 27, 1986;

35 B. That:

36 (1) Before October 27, 1986, purchased insurance from an insurance carrier
37 licensed in any state; and

38 (2) Since October 27, 1986, purchased its insurance from an insurance carrier
39 licensed in any state;

1 C. That was a purchasing group under the requirements of the Product Liability
2 Retention Act of 1981 before October 27, 1986; and

3 D. That does not purchase insurance that was not authorized for purposes of an
4 exemption under that Act, as in effect before October 27, 1986. That designation
5 shall be subject to section 421.

6 **Sec. E-5. 24-A MRSA §6718**, as amended by PL 2011, c. 90, Pt. I, §7, is repealed
7 and the following enacted in its place:

8 **§6718. Rules**

9 **1. Authority.** The superintendent may adopt rules to implement this chapter. Rules
10 adopted pursuant to this subsection are major substantive rules as defined in Title 5,
11 chapter 375, subchapter 2-A.

12 **2. Risk retention groups.** Notwithstanding section 6719, the superintendent shall
13 adopt rules establishing financial standards and corporate governance standards for
14 captive insurance companies that are risk retention groups as defined in section 6093,
15 subsection 13. Such rules may include, but are not limited to, rules making specified
16 provisions of this Title applicable to captive insurance companies that are risk retention
17 groups, subject to any modifications that the superintendent determines to be appropriate
18 to the nature of a risk retention group's business. Rules adopted pursuant to this
19 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

20 **SUMMARY**

21 This bill amends several provisions of the Maine Insurance Code to incorporate
22 recent amendments to model laws adopted by the National Association of Insurance
23 Commissioners, or NAIC, and to make related technical changes. These amendments
24 maintain the State's compliance with uniform financial solvency standards and with the
25 NAIC's accreditation requirements for state insurance regulators.

26 Part A amends the insurance holding company laws to conform them to the current
27 version of the relevant NAIC Model Act. It reorganizes provisions governing
28 examinations, confidentiality and proposed change-of-control transactions, incorporating
29 additional disclosure requirements and specific provisions on divestitures of controlling
30 interests. It establishes new reporting requirements, including an enterprise risk report
31 requirement and an own risk and solvency assessment requirement, and amends the
32 review process with respect to disclaimers of affiliation and makes the process applicable
33 to proposed acquisitions of presumptive control. It allows the Superintendent of
34 Insurance to participate in consolidated approval proceedings for multistate transactions
35 and in supervisory colleges, which are temporary or permanent forums for
36 communication and cooperation among the regulators supervising an international
37 insurance holding company system.

38 Part B amends the reinsurance laws to conform them to the current version of the
39 NAIC's Credit for Reinsurance Model Act. It makes financially strong reinsurers
40 domiciled in qualifying jurisdictions outside the United States eligible to apply for

1 approval as certified reinsurers, with lower collateral requirements commensurate with
2 their financial strength and domiciliary oversight.

3 Part C amends Maine's Standard Valuation Law to conform it to the current version
4 of the relevant NAIC Model Act, incorporating the new principle-based reserving
5 requirements that will become effective when adopted by a supermajority of states.

6 Part D amends the risk-based capital laws to strengthen the NAIC trend test and to
7 make it applicable to companies transacting all types of insurance.

8 Part E gives the superintendent rule-making authority to establish financial standards
9 and corporate governance standards for captive insurance companies that are risk
10 retention groups, to maintain compliance with NAIC accreditation requirements. It also
11 makes various technical corrections to the laws governing risk retention groups for
12 internal consistency and consistency with federal law.