

# MAINE STATE LEGISLATURE

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# ACTS AND RESOLVES

AS PASSED BY THE

## One Hundred and Fourth Legislature

OF THE

# STATE OF MAINE

Published by the Director of Legislative Research in accordance with  
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THE KNOWLTON AND MCLEARY COMPANY  
FARMINGTON, MAINE  
1969

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PUBLIC LAWS  
OF THE  
STATE OF MAINE  
AS PASSED BY THE  
ONE HUNDRED AND FOURTH LEGISLATURE  
1969

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## Chapter 132

### AN ACT Providing the Maine Insurance Code.

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

Sec. 1. R. S., T. 24-A, additional. The Revised Statutes are amended by adding a new Title, to be numbered 24-A, to read as follows:

#### TITLE 24-A.

#### MAINE INSURANCE CODE

#### CHAPTER 1

#### GENERAL DEFINITIONS AND PROVISIONS

##### § 1. Short title

This Title shall be known and be cited as the Maine Insurance Code.

##### § 2. "Person" defined

"Person" includes an individual, firm, partnership, corporation, association, syndicate, organization, society, business trust, attorney-in-fact and every natural or artificial legal entity.

##### § 3. "Insurance" defined

"Insurance" is a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies, or to act as surety.

##### § 4. "Insurer" defined

"Insurer" includes every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance.

##### § 5. "Commissioner;" "department" defined

1. Commissioner. "Commissioner" means the Insurance Commissioner of this State.

2. Department. "Department" means the Insurance Department of this State.

##### § 6. "Domestic," "foreign," "alien" insurer defined

1. Domestic insurer. A "domestic" insurer is one formed under the laws of this State;

2. Foreign insurer. A "foreign" insurer is one formed under the laws of any jurisdiction other than this State;

3. Alien insurer. An "alien" insurer is a foreign insurer formed under the laws of any country other than the United States of America, its states, districts, commonwealths and possessions.

§ 7. "State" defined

When in context signifying other than this State, "state" means any state, district, territory, commonwealth or possession of the United States of America, and the Panama Canal Zone.

§ 8. "Authorized," "unauthorized" insurer defined

1. Authorized insurer. An "authorized" insurer is one duly authorized to transact insurance in this State by a subsisting certificate of authority issued by the commissioner.

2. Unauthorized insurer. An "unauthorized" insurer is one not so authorized.

§ 9. "Transacting insurance" defined

In addition to other aspects of insurance operations to which provisions of this Title by their terms apply, "transact" with respect to a business of insurance includes any of the following, whether by mail or any other means:

1. Solicitation or inducement.
2. Negotiations.
3. Effectuation of a contract of insurance.
4. Transaction of matters subsequent to effectuation and arising out of such a contract.

§ 10. Application of code as to particular types of insurers

No provision of this Title shall apply with respect to:

1. Domestic mutual insurers, as identified in chapter 51, except as stated in such chapter.
2. Fraternal benefit societies, except as stated in chapter 55.
3. Road or tourist service companies, except as stated in chapter 63.
4. A domestic insurer heretofore formed under a special Act of the Legislature, where inconsistent with such special Act as heretofore amended.

§ 11. Particular provisions prevail

Provisions of this Title as to a particular kind of insurance, type of insurer, or matter shall prevail over provisions relating to insurance, insurers or matters in general.

§ 12. General penalty

1. Each violation of this Title for which a different penalty consisting of fine or imprisonment, or both, is not provided by a provision of this Title or other applicable laws of this State, shall subject the violator to a fine of not more than \$1,000 or imprisonment for less than one year, or both such fine and imprisonment.

2. Except, that if the violator is a corporation or entity other than an individual, the fine shall be not more than \$3,000 for each violation. Any director, officer, manager, employee or representative of a violator corporation or other violator entity shall be subject to fine and imprisonment as provided in subsection 1 for authorizing or knowingly participating in any such violation.

CHAPTER 3  
THE INSURANCE COMMISSIONER

§ 200. Department continued

There is continued a department of state government known as the Insurance Department.

§ 201. Insurance Commissioner; appointment, term

1. The Insurance Commissioner is the head of the Insurance Department.
2. The commissioner shall be appointed by the Governor with the advice and consent of the Council.
3. The commissioner shall hold office for 4 years and until his successor has been appointed and has qualified.

§ 202. Seal

The commissioner shall have a seal of office of a suitable design, bearing the words "Insurance Commissioner of the State of Maine." The commissioner shall file an impression of the seal, duly certified by him under oath, with the Secretary of State.

§ 203. Compensation

The State shall pay the commissioner an annual salary in amount as provided by law as full compensation for all duties required of him as commissioner.

§ 204. Principal office

The commissioner's principal office shall be at the State Capitol.

§ 205. Departmental organization

Within the department there shall be such divisions, not expressly provided for or prohibited by law, as the commissioner deems advisable for the discharge of his duties.

§ 206. Deputy commissioners

1. Subject to the Personnel Law, the commissioner may appoint a first deputy commissioner, and may appoint one or more additional deputies.

2. The deputies shall perform such duties and exercise such powers of the commissioner as the commissioner may from time to time authorize. The first deputy shall be acting commissioner during a vacancy in the office of Insurance Commissioner or during the incapacity of the commissioner.

§ 207. Staff

Subject to the Personnel Law, the commissioner may appoint and dismiss for cause such personnel as conduct of his office may require.

§ 208. Independent technical, professional services

The commissioner may from time to time contract for such additional actuarial, examination, rating and other technical and professional services as he may require for discharge of his duties.

§ 209. Prohibited interests, rewards

1. The commissioner, or his deputy, or any examiner or employee of the department shall not be connected with the management or be holder of a material number of shares of any insurer, insurance holding company, insurance agency or broker, or be pecuniarily interested in any insurance transaction except as a policyholder or claimant under a policy; except, that as to matters wherein a conflict of interests does not exist on the part of any such individual, the commissioner may employ and retain from time to time insurance actuaries, examiners, accountants, and other technicians who are independently practicing their professions even though from time to time similarly employed or retained by insurers or others.

2. Subsection 1 above shall not be deemed to prohibit:

A. Receipt by any such individual of fully vested commissions or fully vested retirement benefits to which he is entitled by reason of services performed prior to becoming commissioner or prior to employment in the department;

B. Investment in shares of regulated diversified investment companies; or

C. Mortgage loans made under customary terms and in ordinary course of business.

3. The commissioner, or his deputy, or any employee or technician employed or retained by the department, shall not be given or receive, directly or indirectly, any fee, compensation, loan, gift or other thing of value in addition to the compensation and expense allowance provided by or pursuant to the law of this State, or by contract with the commissioner, for any service rendered or to be rendered as such commissioner, deputy, assistant, employee or technician, or in connection therewith.

§ 210. Delegation of powers

1. The commissioner may delegate to his deputy, examiner or an employee of the department the exercise or discharge in the commissioner's name of any power, duty or function, whether ministerial, discretionary or of whatever character, vested in or imposed upon the commissioner.

2. The official act of any such person acting in the commissioner's name and by his authority shall be deemed an official act of the commissioner.

§ 211. General powers, duties

1. The commissioner shall enforce the provisions of, and execute the duties imposed upon him by, this Title.

2. The commissioner shall have the powers and authority expressly vested in him by or reasonably implied from the provisions of this Title.

3. The commissioner shall have such additional rights, powers and duties as may be provided by other laws.

§ 212. Rules and regulations

Subject to the applicable requirements and procedures of Title 5, sections 2301 to 2354, the commissioner may make, promulgate, amend and rescind reasonable rules and regulations to aid the administration or effectuation of any provisions of this Title. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof.

§ 213. Orders, notices in general

1. Orders and notices of the commissioner shall be effective only when in writing signed by him or by his authority.

2. Every order of the commissioner shall state its effective date, and shall concisely state:

A. Its intent or purpose;

B. The grounds on which based; and

C. The provisions of this Title pursuant to which action is taken or proposed to be taken; but failure to so designate a particular provision shall not deprive the commissioner of the right to rely thereon.

3. An order or notice may be given by delivery to the person to be ordered or notified, or by mailing it, postage prepaid, addressed to such person at his principal place of business or residence as last of record in the department. The order or notice shall be deemed to have been given when deposited in a mail depository of the United States post office, and of which the affidavit of the individual who so mailed the order or notice shall be prima facie evidence.

#### § 214. Enforcement

1. The commissioner may, through the Attorney General of this State, invoke the aid of the Superior Court through proceedings instituted in any county of this State to enforce any lawful order made or action taken by him. In such proceedings the Superior Court may make such orders, either preliminary or final, as it deems proper under the facts established before it.

2. If the commissioner has reason to believe that any person has violated any provision of this Title, or of other law as applicable to insurance operations, for which criminal prosecution is provided and would be in order, he shall give the information relative thereto to the Attorney General. The Attorney General shall promptly institute such action or proceedings against such person as in his opinion the information may require or justify.

3. The Attorney General upon request of the commissioner is authorized to proceed in the courts of any other state or in any federal court or agency to enforce an order or decision of any court proceeding or in any administrative proceeding before the commissioner.

#### § 215. Violation of rules, regulations, orders; penalty

Any person who knowingly violates any rule, regulation or order of the commissioner shall be subject to such suspension or revocation of certificate of authority or license as may be applicable under this Title for violation of the provision to which such rule, regulation or order relates.

#### § 216. Records; inspection; destruction

1. The commissioner shall carefully preserve in the department and in permanent form, a correct account of all his transactions and of all fees and moneys received by him by virtue of his office, together with all financial statements, examination reports, correspondence, filings and documents duly received by the department. The commissioner shall hand the same over to his successor in office.

2. All records of the department shall be subject to public inspection except as otherwise expressly provided by law as to particular matters; and except that records, correspondence and reports of investigation in connection with actual or claimed violations of this Title or prosecution or disciplinary action therefor shall be confidential. The confidential nature of any such record, correspondence or report shall not, however, limit or affect use of the same by the commissioner in any such prosecution or action.

3. All records and documents of the department are subject to subpoena

by a court of competent jurisdiction.

4. The commissioner may destroy unneeded or obsolete records and filings in the department in accordance with provisions and procedures applicable to administrative agencies of the State in general.

§ 217. Annual report

1. As soon as practical after the annual financial statements have been received from the authorized insurers, the commissioner may make a written report to the Governor and Council showing with respect to the preceding calendar year:

- A. The receipts and expenses of the department for the year;
- B. A summary of the insurance business transacted in this State;
- C. A summary of the financial condition of each authorized insurer, as shown by its most recent financial statement on file with the commissioner;
- D. Such recommendations as he deems advisable relative to amendment or supplementation of the insurance laws; and
- E. Such other information and matters as he deems to be in the public interest relative to the insurance business in this State.

2. If the report is printed the commissioner shall furnish a copy upon request thereby to the insurance supervisory official of other states and to authorized insurers; and, if copies are available for the purpose, to other persons who so request and upon payment by such persons of such reasonable charge therefor as may be fixed by the commissioner.

§ 218. Publications; price

The commissioner may have the directory of authorized insurers, of licensed insurance representatives, license examination material, insurance laws and related laws and regulations under his administration published in pamphlet form from time to time, and may fix a price for each copy to cover cost of printing and mailing.

§ 219. Interstate cooperation

The commissioner may communicate on request of the insurance supervisory official of any state, province or country, any information which it is his duty by law to ascertain respecting authorized insurers.

§ 220. Investigations authorized

In addition to examinations and investigations expressly authorized, the commissioner may conduct such investigations of insurance matters as he may deem proper upon reasonable cause to determine whether any person has violated any provision of this Title or to secure information useful in the lawful administration of any such provision. The cost of such investigations shall be borne by the State.

## § 221. Examination of insurers

1. For the purpose of determining its financial condition, fulfillment of its contractual obligations and compliance with the law, the commissioner shall examine the affairs, transactions, accounts, record and assets of each authorized insurer, and of any person as to any matter relevant to the financial affairs of the insurer or to the examination, as often as he deems advisable. Except as otherwise expressly provided, he shall so examine each domestic insurer not less frequently than every 5 years. Examination of an alien insurer shall be limited to its insurance transactions, assets, trust deposits and affairs in the United States except as otherwise required by the commissioner.

2. The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this State.

3. In lieu of making his own examination, the commissioner may, in his discretion, accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state.

4. As far as practical the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officials of other states in which the insurer transacts business.

## § 222. Examination of holding companies, subsidiaries, agents, promoters and others

For the purpose of ascertaining compliance with law, or relationships and transactions between any such person and any insurer or proposed insurer, the commissioner may as often as he deems advisable examine the accounts, records, documents and transactions pertaining to or affecting the insurance affairs or proposed insurance affairs and transactions of:

1. Any insurance holding company; or person holding the shares of voting stock or policyholder proxies of an insurer as voting trustee or otherwise, for the purpose of controlling the management thereof.

2. Any insurance agent, broker, general agent, surplus lines broker, adjuster, consultant, insurer representative or any person holding himself out as any of the foregoing.

3. Any person having a contract under which he enjoys by terms or in fact the exclusive or dominant right to manage or control the insurer.

4. Any person in this State engaged in, or proposing to be engaged in this State in, or holding himself out in this State as so engaging or proposing, or in this State assisting in, the promotion, formation, or financing of an insurer or insurance holding corporation, or corporation or other group to finance an insurer or the production of its business.

## § 223. Conduct of examination; access to records; correction

1. Whenever the commissioner determines to examine the affairs of any person, he shall designate one or more examiners and instruct them as to the scope of the examination. The examiner shall, upon demand, exhibit his official credentials to the person under examination.

2. The commissioner shall conduct each examination in an expeditious, fair and impartial manner.

3. Upon any such examination the commissioner, or the examiner if specifically so authorized in writing by the commissioner, shall have power to administer oaths, and to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.

4. Every person being examined, its officers, attorneys, employees, agents and representatives shall make freely available to the commissioner or his examiners the accounts, records, documents, files, information, assets and matters of such person in his possession or control relating to the subject of the examination and shall facilitate the examination.

5. If the commissioner or examiner finds any accounts or records to be inadequate, or inadequately kept or posted, the commissioner may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the commissioner or examiner has given him written notice and a reasonable opportunity to do so.

6. Neither the commissioner nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices or place of such person except with the written consent of such person in advance of such removal or pursuant to an order of court duly obtained. This provision shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document, or file.

7. Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section shall, upon conviction thereof, be subject to a fine of not more than \$2,500, or imprisonment for less than a year, or by both such fine and imprisonment.

#### § 224. Appraisal of asset

1. If the commissioner deems it necessary to value any asset involved in such an examination, he may make written request of the person being examined to appoint one or more appraisers who by reason of education, experience or special training, and disinterest, are competent to appraise the asset. Selection of any such appraiser shall be subject to the written approval of the commissioner. If no such appointment is made within 20 days after the request therefor was delivered to such person, the commissioner may appoint the appraiser or appraisers.

2. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the commissioner and to the person being examined.

3. The reasonable expense of the appraisal shall be borne by the person

being examined.

§ 225. Examination report; contents; prima facie evidence in certain proceedings

1. Upon completion of an examination, the examiner in charge shall make a true report thereof which shall comprise only facts appearing upon the books, records or other documents of the person examined, or from an appraisal of assets, or as ascertained from the sworn testimony of its officers or agents or other individuals examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts. The report of examination shall be verified by the oath of the examiner in charge thereof.

2. Such a report of examination of an insurer so verified shall be prima facie evidence in any delinquency proceeding against the insurer, its officers, employees, or agents upon the facts stated therein, and whether or not the report has then been filed in the department as provided in section 226.

§ 226. Examination reports; distribution, hearing; as evidence

1. The commissioner shall deliver a copy of the examination report to the person examined, together with a notice affording such person 20 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report and recommend changes therein.

2. If so requested by the person examined, within the period allowed under subsection 1, or if deemed advisable by the commissioner without such request, the commissioner shall hold a hearing relative to the report and shall not file the report in the department until after such hearing and his order thereon; except, that the commissioner may furnish a copy of the report to the Governor, Attorney General or Treasurer of State pending final decision thereon, subject to section 227 as to the confidential nature of the report.

3. If no such hearing has been requested or held, the examination report, with such modifications, if any, thereof as the commissioner deems proper, shall be accepted by the commissioner and filed in the department upon expiration of the review period provided for in subsection 1 above. The report shall in any event be so accepted and filed within 6 months after final hearing thereon.

4. The commissioner shall forward to the person examined a copy of the examination report as filed, together with any recommendations or statements relating thereto which he deems proper.

5. If the report is as to examination of a domestic insurer, a copy of the report, or a summary thereof approved by the commissioner, when filed in the department, together with the recommendations or statements of the commissioner or his examiner, shall be presented by the insurer's chief executive officer to the insurer's board of directors or similar governing body at a meeting thereof which shall be held within 30 days next following receipt of the report in final form by the insurer. A copy of the report shall also be furnished by the secretary of the insurer, if incorporated, or by the attorney-in-fact if a reciprocal insurer, to each member of the insurer's board of directors

or board of governors, if a reciprocal insurer, and the certificate of the secretary or attorney-in-fact that a copy of the examination report has been so furnished shall be deemed to constitute knowledge of the contents of the report by each such member.

6. The report when so filed in the department shall be admissible in evidence in any action or proceeding brought by the commissioner against the person examined, or against its officers, employees or agents. In any such action or proceeding, the commissioner or his examiners may, however, at any time testify and offer proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished or filed in the department.

§ 227. Examination report; confidential nature

The report of examination of a domestic insurer, although filed in the department as provided in section 226, shall nevertheless not be for public inspection except as to those portions of the report showing the insurer's current financial condition and except as provided in section 219. The comments and recommendations of the examiner shall be deemed confidential information and shall not be available for public inspection.

§ 228. Examination expense

1. The expense of examination of an insurer, or of any person referred to in subsection 1 (holding companies and persons holding voting stock or policyholder proxies), or 3 (management or control of the insurer under contract), or 4 (promoters, etc.) of section 222, shall be borne by the person examined. Such expense shall include only the reasonable and proper hotel and travel expenses of the commissioner and his examiners and assistants, including expert assistance, and examiners furnished for the purpose by other states in which the insurer is authorized to transact insurance, reasonable compensation as to such examiners and assistants and incidental expenses as necessarily incurred in the examination. As to expense and compensation involved in any such examination the commissioner may give due consideration to scales and limitations recommended by the National Association of Insurance Commissioners and outlined in the examination manual sponsored by that association.

2. Such person examined shall promptly pay to the commissioner the expenses of the examination upon presentation by him of a reasonably detailed written statement thereof.

3. Except, that in lieu of payment of examination expense as above required, a domestic insurer shall have the right, at its option, of making an annual payment to the commissioner of an examination expense allotment in an amount equal to .00033% of its total admitted assets as of the end of the preceding calendar year, and which payment shall be made on March 1st with the filing of the insurer's annual statement with the commissioner; or, if the insurer's admitted assets exceed \$10,000,000, the insurer shall have the right, at its further option, to pay to the commissioner with respect to any examination the lesser of:

A. The expense of the examination as determined pursuant to subsections

1 and 2 above; or

B. An amount equal to .001% of the first \$10,000,000 of the insurer's admitted assets plus .0001% of the remainder of such assets, as such assets are shown by the insurer's financial statement filed with the commissioner for the year-end next preceding the commencement of the examination.

§ 229. Administrative procedures; hearings in general

1. The commissioner may hold a hearing without request of others for any purpose within the scope of this Title.

2. The commissioner shall hold a hearing:

A. If required by any provision of this Title, or

B. Upon written application for a hearing by a person aggrieved by any act or impending act, or by any report, rule, regulation or order of the commissioner, other than an order for the holding of a hearing, or order on a hearing, or pursuant to such order, of which hearing such person had notice.

3. Any such application must be filed with the commissioner within 90 days after such person knew or reasonably should have known of such act, impending act, failure, report, rule, regulation or order, unless a different period is provided for by other applicable law, and in which case such other law shall govern. The application shall briefly state the respects in which the applicant is so aggrieved, together with the ground to be relied upon for the relief to be demanded at the hearing. The commissioner may require that the application be signed and sworn to.

4. If the commissioner finds that the application is timely and made in good faith, that the applicant would be so aggrieved if his grounds are established and that such grounds otherwise justify the hearing, he shall hold the hearing within 30 days after filing of the application, or within 30 days after the application has been sworn to, whichever is the later date, unless in either case the hearing is postponed by mutual consent.

5. Failure to hold the hearing upon application therefor of a person entitled thereto as hereinabove provided shall constitute a denial of the relief sought, and shall be the equivalent of a final order of the commissioner on hearing for the purpose of an appeal under section 236.

6. Pending the hearing and decision thereon, the commissioner may suspend or postpone the effective date of his previous action.

§ 230. Notice of hearing

1. Except where a different period is expressly provided in this Title, the commissioner shall give written notice of the hearing not less than 14 days in advance. The notice shall state the date, time and place of the hearing and specify the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons whose pecuniary

interest, to the commissioner's knowledge or belief, are to be directly and immediately affected by the hearing. Notice of hearing may be waived, and the hearing held at a time mutually fixed by the commissioner and the parties.

2. If any person is entitled to a hearing by any provision of this Title before any proposed action is taken, the notice of the hearing may be in the form of a notice to show cause, stating that the proposed action may be taken unless such person shows cause at a hearing to be held as specified in the notice why the proposed action should not be taken, and stating the basis of the proposed action.

3. If any such hearing is to be held for consideration of rules and regulations of the commissioner, or of other matters which, under subsection 1, would otherwise require separate notices to more than 30 persons, in lieu of other notice the commissioner may give notice of the hearing by publication thereof in a newspaper of general circulation in this State, at least once each week during the 4 weeks immediately preceding the week in which the hearing is to be held; except, that the commissioner shall mail such notice to all persons who have requested the same in writing in advance and have paid to the commissioner the reasonable amount fixed by him to cover the cost thereof.

4. All such notices, other than published notices, shall be given as provided in section 213.

#### § 231. Conduct of hearing

1. The commissioner may hold a hearing in Augusta or any other place of convenience to parties and witnesses, as the commissioner determines. The commissioner or his designee shall preside at the hearing, and shall expedite the hearing and all procedures involved therein.

2. Any party to the hearing shall have the right to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary and other evidence and to exam-

ine and cross-examine witnesses, to present evidence in support of his interest and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf. Testimony may be taken orally or by deposition, and any party shall have such right of introducing evidence by interrogatories or deposition as may obtain in a Superior Court.

3. Upon good cause shown the commissioner shall permit to become a party to the hearing by intervention, if timely, only such persons, not original parties thereto, whose pecuniary interests are to be directly and immediately affected by the commissioner's order made upon the hearing.

4. Formal rules of pleading or of evidence need not be observed at any hearing, except that formal rules of evidence shall be followed at the election of any party who communicates notice of such election to all other parties not less than 5 days prior to the date of the hearing.

5. The hearing shall be public, unless the commissioner or hearing officer determines that a private hearing would be in the public interest, in which

case and only with the consent of all parties to the hearing, the hearing shall be private.

6. The commissioner or his hearing officer shall cause a complete record to be made of the hearing proceedings by a competent reporter, and if transcribed such record shall be made a part of the commissioner's record of the hearing. The record shall be transcribed at the request and expense of any party desiring the same, and a copy of such transcription shall be furnished to any other party upon the written request and at the expense of such other party. If the record is not transcribed, the commissioner or his hearing officer shall prepare a summary record of the proceedings and evidence.

7. The validity of any hearing held in accordance with the notice thereof, or waiver of notice, shall not be affected by the failure of any person to attend or remain in attendance.

#### § 232. Witnesses and documentary evidence

1. As to the subject of any examination, investigation or hearing being conducted by him, the commissioner may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, or take depositions; and by subpoena duces tecum may require the production of documentary and other evidence. Any delegation by the commissioner of power of subpoena shall be in writing.

2. Every person subpoenaed to appear at any such hearing, examination or investigation shall obey the subpoena, testify truthfully, conduct himself with decorum and in no way obstruct the proceeding or purpose thereof.

3. Witnesses shall be entitled to the same fees and allowances as witnesses in Superior Court; except that no insurer, agent, broker or other person subject to this Title who is a subject of such proceeding, and no officer, director or employee of any of the foregoing, shall be entitled to witness or mileage fees. No person shall be excused from attending and testifying in obedience to a subpoena on the ground that the proper witness fee was not tendered or paid, unless the witness shall have demanded such payment as a condition precedent to attending the hearing, examination or investigation and unless such demand shall not have been complied with.

4. Any individual knowingly testifying falsely under oath or making a false affirmation, as to any matter material to any such examination, investigation or hearing, shall upon conviction thereof be guilty of perjury.

#### § 233. Witnesses; disciplinary proceedings

1. If any individual without reasonable cause fails to appear when summoned as a witness, or refuses to answer a lawful and pertinent question, or refuses to produce documentary evidence when directed to do so by the commissioner or deports himself in a disrespectful or disorderly manner at the inquiry, or obstructs the proceedings by any means, whether or not in the presence of the commissioner or his designee, he is guilty of contempt and may be dealt with as provided in subsection 2.

2. The commissioner or his designee, as the case may be, may file a complaint in the Superior Court, setting forth under oath the facts constituting the contempt and requesting an order returnable in not less than 2 nor more than 5 days, directing the alleged contemner to show cause before the court, why he should not be punished for contempt. Upon the return of such order, the court shall examine the alleged contemner under oath, and the alleged contemner shall have an opportunity to be heard. If the court determines that the respondent has committed any alleged contempt, the court shall punish the offender as if the contempt had occurred in an action arising in or pending in such court.

§ 234. Witnesses; immunity from prosecution

1. If any individual asks to be excused from attending or testifying or from producing any books, papers, records, contracts, correspondence or other documents in connection with any examination, hearing or investigating being conducted by the commissioner on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall, by the Attorney General, be directed to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; except, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury; nor shall such individual be exempt from the refusal, suspension or revocation of any license, permission or authority conferred, or to be conferred, pursuant to this Title.

2. Any such individual may execute, acknowledge and file in the office of the commissioner and of the Attorney General a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

§ 235. Order on hearing

1. In the conduct of hearings under this Title and making his order thereon, the commissioner shall act in a quasi-judicial capacity.

2. Within 30 days after termination of a hearing, or of any rehearing thereof or reargument thereon, or within such other period as may be specified in this Title as to particular proceedings, or within such further reasonable period as the commissioner for good cause may require, the commissioner shall make his order on hearing covering matters involved in such hearing, and give a copy of the order to each party to the hearing in the same manner as notice of the hearing was given to such party; except, that as to hearings held with respect to merger, consolidation, bulk reinsurance, conversion, affli-

ation or change of control of a domestic insurer as provided in chapter 47 (organization and corporate procedures of domestic stock and mutual insurers), where notice of the hearing was given to all stockholders and/or policyholders of an insurer involved, the commissioner is required to give a copy of the order on hearing to the corporation and insurer parties, to intervening parties, to a reasonable number of such stockholders or policyholders as representative of the class, and to other parties only upon written request of such parties.

3. The order shall contain:

A. A concise statement of facts found by the commissioner upon the evidence adduced at the hearing;

B. A concise statement of the commissioner's conclusions from the facts so found;

C. His order, and the effective date thereof; and

D. Citation of the provisions of this Title upon which the order is based; but failure to so designate a particular provision shall not deprive the commissioner of the right thereafter to rely thereon.

4. The order may affirm, modify or rescind action theretofore taken or may constitute taking of new action within the scope of the notice of the hearing.

§ 236. Appeal from the commissioner

1. An appeal from the commissioner shall be taken only from an order on hearing, or as to a matter on which the commissioner has refused or failed to hold a hearing after application therefor under section 229, or as to a matter as to which the commissioner has failed to make his order on hearing as required by section 235.

2. Any person who was a party to such a hearing or whose pecuniary interests are directly and immediately affected by any such refusal or failure, and who is aggrieved by such order, refusal, or failure, may appeal from such order or as to any such matter within 30 days after:

A. The order on hearing has been mailed or delivered to the persons entitled to receive the same, or given by last publication thereof where delivery by publication is permitted; or

B. The commissioner has refused or failed to grant or hold a hearing as required under section 229; or

C. The commissioner has refused or failed to make his order on hearing as required under section 235.

3. The appeal shall be granted as a matter of right, and shall be taken to the Superior Court of Kennebec County or in any county of this State in

which the appellant resides or has his principal place of business.

4. The appeal shall be taken by filing in the court a complaint setting forth the grounds for appeal, and by serving a copy of the complaint on the commissioner. If the appeal is from the commissioner's order on hearing, the petitioner shall also deliver to the commissioner a sufficient number of copies of the complaint and the commissioner shall mail or otherwise furnish a copy thereof to the other parties to the hearing to the same extent as a copy of the commissioner's order is required to be furnished to the hearing parties under section 235.

5. Upon receiving the complaint on appeal, the commissioner shall forthwith prepare an official record certified by him which shall contain a copy of all proceedings and orders of the commissioner appealed from and the transcript of testimony and evidence or summary record thereof made as provided in section 231. Within 30 days after the complaint was served upon him the commissioner shall file such official record with the court.

6. Upon filing of the complaint on appeal the court shall have full jurisdiction of the proceeding. Such filing shall not stay the enforcement of the commissioner's order or action appealed from unless so stayed by order of the court.

7. If the appeal is from the commissioner's order on hearing the review of the court shall be limited to matters shown by the commissioner's official record; otherwise, the review shall be de novo. The court shall have power, by preliminary order, to settle questions concerning the completeness and accuracy of the commissioner's official record.

8. In its discretion the court may remand the case to the commissioner for further proceedings in accordance with the court's directions; or, in advance of judgment and upon a sufficient showing, the court may remand the case to the commissioner for the purpose of taking additional testimony or other proceedings.

9. From the judgment of the Superior Court the commissioner or other party to the appeal may appeal to the Supreme Judicial Court of the State of Maine in the same manner as provided in civil cases.

## CHAPTER 5

### AUTHORIZATION OF INSURERS

### AND GENERAL REQUIREMENTS

#### SUBCHAPTER I

### AUTHORIZATION OF INSURERS AND GENERAL

### REQUIREMENTS

§ 400. "Stock" insurer defined

A "stock" insurer is an incorporated insurer with its capital divided into shares and owned by its stockholders.

§ 401. "Mutual" insurer defined

A "mutual" insurer is an incorporated insurer without permanent capital stock, and the governing body of which is elected by its policyholders or those policyholders specified in its charter, or by any reasonable combination of its policyholders, guaranty fund stockholders, or guaranty fund certificate holders, or by other reasonable method.

§ 402. "Reciprocal" insurer defined

A "reciprocal" insurer is an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact common to all such persons to provide reciprocal insurance among themselves.

§ 403. "Charter" defined

Except where context requires otherwise, "charter" means certificate of organization, certificate of incorporation, articles of incorporation, articles of agreement, articles of association, corporate charter granted by legislative act, or other basic constituent document of a corporation, or the power of attorney of the attorney-in-fact of a reciprocal insurer.

§ 404. Certificate of authority required; enforcement; penalty

1. No person shall act as an insurer and no insurer shall transact insurance in this State by mail or otherwise, unless as authorized by a certificate of authority issued by the commissioner pursuant to this Title and then in full force and effect, except as to such transactions as are expressly otherwise provided in this Title.

2. No insurer formed under the laws of this State, and no foreign insurer from offices or by personnel or facilities located in this State, shall solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting certificate of authority granted to it by the commissioner authorizing it to transact the same kind or kinds of insurance in this State.

3. The commissioner shall enforce this section through any and all available and lawful means, including, but not limited to, the enjoining of any violation or threatened violation.

4. Any insurer and any officer, director, agent, representative or employee of any insurer, who willfully authorizes, negotiates, makes or issues any insurance contract in violation of this section shall upon conviction thereof be subject to a fine of not to exceed \$5,000, or imprisonment for not over 2 years, or to both such fine and imprisonment.

§405. Exceptions to certificate of authority requirement

A certificate of authority shall not be required of an insurer with respect to any of the following :

1. Investigation, settlement or litigation of claims under its policies lawfully written in this State, or liquidation of assets and liabilities of the insurer, other than collection of new premiums, all as resulting from its former authorized operations in this State.

2. Except as provided in section 404, subsection 2, transactions thereunder subsequent to issuance of a policy covering only subjects of insurance not resident, located or expressly to be performed in this State at time of issuance, and lawfully solicited, written and delivered outside this State.

3. Transactions pursuant to surplus lines coverages lawfully written under chapter 19.

4. Reinsurance, except as to domestic reinsurers.

5. Transactions relative to its investments in this State.

6. Any suit or action by the duly constituted receiver, rehabilitator or liquidator of the insurer, or of the insurer's assignee or successor, under laws similar to those contained in chapter 57 (delinquency proceedings; rehabilitation and liquidation).

#### § 406. General eligibility for certificate of authority

To qualify for and hold authority to transact insurance in this State, an insurer must be otherwise in compliance with this Title and with its charter powers, and must be an incorporated stock or mutual insurer, or a reciprocal or Lloyd's insurer; of the same general type as may be formed as a domestic insurer under this Title; except that:

1. No foreign insurer shall be authorized to transact insurance in this State unless as to insurance written in this State it maintains reserve as required by chapter 11 (assets and liabilities); or which, if other than a property or casualty insurer, transacts business anywhere in the United States on the assessment plan, or stipulated premium plan, or any similar plan.

2. No insurer shall be authorized to transact a kind of insurance in this State unless duly authorized or qualified to transact such insurance in the state or country of its domicile.

3. No insurer shall be authorized to transact in this State any kind of insurance which is not within the definitions as set forth in chapter 9 (kinds of insurance).

4. No such authority shall be granted or continued as to any insurer while in arrears to the State for fees, licenses, taxes, assessments, fines or penalties accrued on business previously transacted in this State.

5. A Lloyd's insurer shall be treated as a stock insurer for the purposes of this Title, with net assets over all liabilities to be not less than the capital funds required of a foreign stock insurer transacting the same kinds of insurance.

§ 407. Same; ownership, management

1. No foreign insurer which is directly or indirectly owned or controlled in whole or substantial part by any government or governmental agency, other than of the government of the United States of America, shall be authorized to transact insurance in Maine. Membership in a mutual insurer, or subscribership in a reciprocal insurer, or ownership of stock of an insurer by the alien property custodian or similar official of the United States, or ownership of stock or other security which does not have voting rights with respect to the management of the insurer, or supervision of an insurer by public authority, shall not be deemed to be an ownership or control of the insurer for the purposes of this provision.

2. The commissioner shall not grant or continue authority to transact insurance in this State as to any insurer or proposed insurer, any director, officer or other individual materially part of the management of which is found by him after investigation or upon reliable information to be incompetent, or dishonest, or untrustworthy, or of unfavorable business repute, or the managers of which are so lacking in insurance company managerial experience in operations of the kind proposed in this State as to make such operation, currently or prospectively, hazardous to, or contrary to the best interests of, the insurance-buying or investing public of this State; or which he has good reason to believe is affiliated directly or indirectly through ownership, control, management, reinsurance transactions or other business relations, with any person or persons of unfavorable business repute, or whose business operations in this State or elsewhere are or have been marked, to the injury of insurers, stockholders, policyholders, creditors or the public, by illegality, or by manipulation of assets, or of accounts, or of reinsurance or by bad faith.

§ 408. Name of insurer

1. No insurer shall be formed or authorized to transact insurance in this State which has or uses a name which is the same as or deceptively similar to that of another insurer already so authorized.

2. No life insurer shall be so authorized which has or uses a name deceptively similar to that of another insurer, other than a predecessor in interest, authorized to transact insurance in this State within the preceding 10 years if life insurance policies originally issued by such other insurer are still outstanding in this State.

3. No insurer shall be formed or authorized to transact insurance which has or uses a name the same as or deceptively similar to that of any foreign insurer not so authorized if such foreign insurer has within the next preceding 12 months signified its intention to secure an incorporation in this State under such name, or to do business as a foreign insurer in this State under such name, by filing notice of such intention with the commissioner, unless the written consent to the use of such name or deceptively similar name has been given by such foreign insurer.

4. No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

5. In case of conflict of names between 2 insurers, or a conflict otherwise prohibited under this section, the commissioner may permit, or shall require as a condition to the issuance of an original certificate of authority to an

applicant insurer, the insurer to use in this State such supplementation or modification of its name or such business name as may reasonably be necessary to avoid the conflict.

6. Except as provided in subsection 5, an insurer shall conduct its business in this State in its own corporate, if incorporated, or proper, if a reciprocal, name.

§ 409. Combinations of insuring powers

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

§ 410. Capital funds required

1. To qualify for authority to transact any one kind of insurance, as defined in chapter 9, or combination of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or foreign reciprocal insurer, and when first so authorized shall possess initial free surplus, all in amounts not less than as determined from the following table:

| Kind or<br>Kinds of<br>Insurance   | Stock Insurers                          |                            | Foreign mutual,<br>Reciprocal Insurers  |                            |
|--|---|----------------------------|---|----------------------------|
|  | Minimum<br>Required<br>Capital<br>Stock | Initial<br>Free<br>Surplus | Minimum<br>Required<br>Basic<br>Surplus | Initial<br>Free<br>Surplus |
| Life   | \$1,000,000                             | \$1,000,000                | \$1,000,000*                            | \$1,000,000*               |
| Health   | 250,000                                 | 250,000                    | 250,000                                 | 250,000                    |
| Life and Health  | 1,000,000                               | 1,000,000                  | 1,000,000*                              | 1,000,000*                 |
| Casualty   | 500,000                                 | 500,000                    | 500,000                                 | 500,000                    |
| Marine and<br>Transportation   | 500,000                                 | 500,000                    | 500,000                                 | 500,000                    |
| Property   | 500,000                                 | 500,000                    | 500,000                                 | 500,000                    |
| Surety   | 500,000                                 | 500,000                    | 500,000                                 | 500,000                    |
| Title  | 150,000                                 | 150,000                    | 150,000                                 | 150,000                    |
| Multiple line<br>(as defined<br>in section 710)  | 1,000,000                               | 1,000,000                  | 1,000,000                               | 1,000,000                  |
| Life, and any one<br>or more of Prop-<br>erty, Casualty,<br>Surety, Marine and<br>Transportation | 2,000,000                               | 2,000,000                  | 2,000,000*                              | 2,000,000*                 |

\* Does not apply as to a reciprocal insurer.

Except:

A. An insurer holding a valid certificate of authority to transact insurance in this State on the effective date of this Act may, if otherwise qualified therefor, continue to be so authorized while possessing paid-in capital stock, if a stock insurer, or surplus, if a mutual or reciprocal insurer, as required for such authority immediately prior to such effective date. The commissioner shall not authorize such an insurer to transact any other kinds of

insurance unless it then complies with the requirements as to capital stock, if a stock insurer, or surplus, if a mutual or reciprocal insurer, as applied to all kinds of insurance it then proposes to transact, as provided by this Title as to foreign insurers applying for original certificates of authority under this Title. Except, that a domestic mutual insurer formed prior to January 1, 1968, and while possessing surplus of not less than \$200,000, may be authorized to transact additional kinds of insurance authorized by its charter; subject, however, to the same minimum required basic surplus amount as is applicable as to foreign mutual insurers under the table in subsection 1, above, if the insurer is to transact life insurance together with any one or more of property, casualty, surety, or marine and transportation insurances.

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

2. Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in any and all areas in which it operates or proposes to operate, whether or not only a portion of such kinds are to be transacted in this State.

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

#### § 411. Insuring combinations without additional capital funds

Without additional paid-in capital stock or additional surplus, an authorized insurer may also be authorized:

1. If a life insurer, to grant annuities.
2. If a health insurer, to insure against congenital defects, as defined in section 707.
3. If a casualty insurer or multiple line insurer, to transact health insurance. Except, that this provision shall not apply to a domestic insurer authorized to transact casualty insurance only, pursuant to section 410, subsection 1, paragraph A.

#### § 412. Deposit requirement, alien insurers

1. The commissioner shall not authorize an alien insurer to transact insurance in this State unless it makes in this State through the commissioner

and thereafter continuously maintains a deposit, representing funds in excess of all the insurer's liabilities under insurance contracts in force in the United States of America, of a fair market value in amount not less than the minimum paid-in capital stock required under this Title of a foreign stock insurer authorized to transact like kinds of insurance in this State. The deposit shall be held in trust for the exclusive benefit of the insurer's policyholders and creditors in the United States of America.

2. In lieu of such a deposit made or maintained in this State, the commissioner shall accept the certificate in proper form of the public official having general supervision of insurers in any other state to the effect that a deposit of like quality and amount, or part thereof, by such insurer is being maintained for like purposes in public custody or control pursuant to the laws of such state.

3. All such deposits in this State are subject to the applicable provisions of chapter 15 (administration of deposits).

#### § 413. Application for certificate of authority

To apply for an original certificate of authority an insurer shall file with the commissioner its written application therefor on forms as prescribed and furnished by the commissioner, accompanied by the applicable fees specified in section 601 (fee schedule), stating under the oath of the president or vice-president or other chief officer and the secretary of the insurer, or of the attorney-in-fact, if a reciprocal insurer, the insurer's name, location of its home office or principal office in the United States, if an alien insurer, the kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the commissioner may reasonably require, together with the following documents, as applicable:

1. If a corporation, a copy of its charter, together with all amendments thereto, or as restated and amended under the laws of its state or country of domicile, currently certified by the public official with whom the originals are on file in such state or country.

2. If a domestic incorporated insurer or a mutual insurer, a copy of its bylaws, certified by the insurer's corporate secretary.

3. If a reciprocal insurer, a copy of the power of attorney of its attorney-in-fact, certified by the attorney-in-fact; and if a domestic reciprocal insurer, the declaration provided for in section 3856.

4. A complete copy of its financial statement as of not earlier than the December 31st next preceding in form as customarily used in the United States by like insurers, sworn to by at least 2 executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state of domicile, or of entry into the United States, if an alien insurer.

5. A copy of the report of last examination of the insurer completed within the 12 months immediately prior to the filing of the application, certified by

the public insurance supervisory official of the insurer's state of domicile, or of entry into the United States, if an alien insurer.

6. Appointment of the commissioner pursuant to section 421 as its attorney to receive service of legal process.

7. If a foreign or alien insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized or qualified for authority to transact in such state or country the kinds of insurance proposed to be transacted in this State.

8. If an alien insurer, certificate as to deposit if to be tendered pursuant to section 412, and a copy of the trust deed pertaining to such deposit, certified by the trustee.

9. If a life or health insurer, a copy of the insurer's rate book and of each form of policy currently proposed to be issued in this State, and of the form of application therefor.

10. If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.

11. Designation by the insurer of its officer or representative authorized to appoint and remove its agents in this State.

12. If to transact surety insurance, the names and addresses of all its attorneys-in-fact within this State together with the scope of authority of each such attorney-in-fact.

#### § 414. Issuance, refusal of authority, ownership of certificate

1. If upon completion of its application the commissioner finds that the insurer has met the requirements therefor under this Title, and that the insurer has furnished evidence satisfactory to him that its methods of operation are not such as would render its proposed operation hazardous to the public or its policyholders in this State, the commissioner shall issue to the insurer a proper certificate of authority; otherwise, the commissioner shall issue his order refusing such certificate.

2. The certificate of authority, if issued, shall state the insurer's name, home office address, state or country of organization, and the kinds of insurance the insurer is authorized to transact throughout this State. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or coverages within a kind of insurance as defined in chapter 9.

3. Although issued and delivered to the insurer, the certificate of authority at all times shall be the property of the State of Maine. Upon any expiration, suspension or termination thereof the insurer shall promptly deliver the certificate to the commissioner.

#### § 415. Continuance, expiration, reinstatement of certificate of authority

1. A certificate of authority shall continue in force as long as the insurer is entitled thereto under this Title, and until suspended or revoked by the commissioner or terminated at the insurer's request; subject, however, to continuance of the certificate by the insurer each year by:

A. Payment on or before March 1st of the continuation fee provided in section 601 (fee schedule);

B. Due filing by the insurer of its annual statement for the next preceding calendar year as required by section 423; and

C. Payment by the insurer of premium taxes with respect to the preceding calendar year.

2. If not so continued by the insurer, its certificate of authority shall expire as at midnight on the June 30th next following such failure of the insurer to continue it in force, unless earlier revoked for failure to pay taxes as provided in section 416. The commissioner shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.

3. The commissioner may, in his discretion, upon the insurer's request made within 3 months after expiration, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration, and upon payment by the insurer of the fee for reinstatement specified in section 601 (fee schedule). Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this State.

§ 416. Suspension or revocation of certificate of authority; mandatory grounds

1. The commissioner shall refuse to continue or shall suspend or revoke an insurer's certificate of authority:

A. If such action is required by any provision of this Title; or

B. If a foreign insurer and it no longer meets the requirements for a certificate of authority, on account of deficiency of capital or surplus or otherwise; or

C. If a domestic insurer and it has failed to cure an impairment of capital or surplus within the time allowed therefor by the commissioner under this Title or is otherwise no longer qualified for the certificate of authority; or

D. If the insurer's certificate of authority to transact insurance therein is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer; or

E. For failure of the insurer to pay taxes on its premiums as required by law.

2. Except in case of insolvency or impairment of required capital or sur-

plus, or suspension or revocation by another state as referred to in paragraph D, the commissioner shall give the insurer at least 20 days' notice in advance of any such refusal, suspension or revocation under this section, and of the particulars of the reasons therefor. If the insurer requests a hearing thereon within such 20 days, such request shall automatically stay the commissioner's proposed action until his order is made on such hearing.

§ 417. Suspension or revocation of certificate of authority; discretionary and special grounds

1. The commissioner may, in his discretion, refuse to continue or may suspend or revoke an insurer's certificate of authority if he finds after a hearing thereon, or upon waiver of hearing by the insurer, that the insurer has violated or failed to comply with any lawful order of the commissioner, or has willfully violated or willfully failed to comply with any lawful regulation of the commissioner, or has violated any provision of this Title other than those for violation of which suspension or revocation is mandatory.

2. The commissioner shall suspend or revoke an insurer's certificate of authority on any of the following grounds, if he finds after a hearing thereon that the insurer:

A. Is in unsound condition, or is being fraudulently conducted, or is in such condition or using such methods and practices in the conduct of its business as to render its further transaction of insurance in this State currently or prospectively hazardous or injurious to policyholders or to the public; or

B. With such frequency as to indicate its general business practice in this State, has without just cause failed to pay, or delayed payment of, claims arising under its policies, whether the claim is in favor of an insured or is in favor of a third person; or, with like frequency, without just cause compels insureds or claimants to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or an insured to secure full payment or settlement of such claims; or

C. Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination; or

D. Has failed to pay any final judgment rendered against it in this State upon any policy, bond, recognizance or undertaking as issued or guaranteed by it, within 30 days after the judgment became final or within 30 days after dismissal of an appeal before final determination, whichever date is the later.

3. The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation or other delinquency proceedings, have been commenced in any state by the public insurance supervisory official of such state.

§ 418. Order, notice of suspension or revocation; publication; effect upon

## agents' authority

1. All suspensions or revocations of, or refusal to continue, an insurer's certificate of authority shall be by the commissioner's order given to the insurer.

2. Upon issuance of the order, the commissioner shall forthwith give notice thereof to the insurer's agents in this State of record in the department, and shall likewise suspend or revoke the authority of such agents to represent the insurer.

§ 419. Duration of suspension; insurer's obligation during suspension period; reinstatement

1. Suspension of an insurer's certificate of authority shall be for such period as the commissioner specifies in the order of suspension, but not to exceed one year. During the suspension period the commissioner may rescind or shorten the suspension by his further order.

2. During the suspension period the insurer shall not solicit or write any new business in this State, but shall file its annual statement, pay fees, licenses and taxes as required under this Title, and may service its business already in force in this State, as if the certificate of authority had continued in full force.

3. Upon expiration of the suspension period, if within such period the certificate of authority has not terminated, the insurer's certificate of authority shall automatically reinstate unless the commissioner finds that the causes of the suspension, being other than a past event, are continuing, or that the insurer is otherwise not in compliance with the requirements of this Title, and of which the commissioner shall give the insurer notice not less than 30 days in advance of expiration of the suspension period.

4. Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this State to represent the insurer shall likewise reinstate. The commissioner shall promptly notify the insurer and its agents in this State, of record in the department, of such reinstatement.

§ 420. General corporation laws inapplicable to foreign insurers

The general corporation laws of this State shall not apply as to foreign insurers holding certificates of authority to transact insurance in this State.

§ 421. Commissioner process agent for insurers

1. Before the commissioner shall authorize it to transact insurance in this State, each insurer shall appoint the commissioner, and his successors in office, as its agent to receive service of legal process issued against the insurer in this State. The appointment shall be made on a form as designated and furnished by the commissioner, and shall be accompanied by a copy of a resolution of the board of directors or like governing body of the insurer, if an incorporated insurer, showing that those officers who executed the appointment were duly authorized to do so on behalf of the insurer.

2. The appointment shall be irrevocable, shall bind the insurer and any

successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force any contract of the insurer in this State or any obligation of the insurer arising out of its transactions in this State.

3. Service of such process against a foreign or alien insurer shall be made only by service thereof upon the commissioner.

4. Service of such process against a domestic insurer may be made as provided hereunder, or in any other manner provided by law.

5. At the time of application for a certificate of authority the insurer shall file the appointment with the commissioner, together with designation of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

6. A copy of such appointment, certified by the commissioner, shall be received in evidence in all courts of this State.

#### § 422. Serving process

1. Service of process against an insurer for whom the commissioner is agent to receive service shall be made by delivering to and leaving with the commissioner, his deputy or a person in apparent charge of his office during the commissioner's absence, 2 copies of the process, together with fee therefor as specified in section 601 (fee schedule), taxable as costs in the action.

2. Upon such service the commissioner shall forthwith mail by certified mail one of the copies of such process with the date and time of service of same on the commissioner noted thereon, to the person currently designated by the insurer to receive the same as provided in section 421.

3. Process served in the manner provided by this section shall for all purposes constitute valid and binding personal service upon the insurer within this State.

4. The commissioner shall keep a record of the day of service upon him of all legal process.

#### § 423. Annual statement

1. Each authorized insurer shall annually on or before March 1st, or within any reasonable extension of time therefor which the commissioner for good cause may have granted on or before such March 1st, file with the commissioner a full and true statement of its financial condition, transactions and affairs as of December 31st preceding. The statement shall be in the general form and context of, and require information as called for by, the form of annual statement as currently in general and customary use in the United States for the type of insurer and kinds of insurance to be reported upon, with any useful or necessary modification or adaptation thereof and as supplemented by additional information required by the commissioner. The statement shall be verified by the oath of the insurer's president or vice-president, and secretary or actuary as applicable, or in the absence of the foregoing, by 2 other principal officers; or if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation.

2. The statement of an alien insurer shall be verified by its United States manager or other officer duly authorized, and shall relate only to the insurer's transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to such an insurer's affairs throughout the world, the insurer shall file such statement with the commissioner as soon as reasonably possible.

3. The commissioner may refuse to continue, or may suspend or revoke, the certificate of authority of any insurer failing to file its annual statement when due.

4. At time of filing, the insurer shall pay the fee for filing its annual statement as prescribed by section 601 (fee schedule).

§ 424. Same—Penalty for late or false statement

1. An insurer failing, without just cause beyond the reasonable control of the insurer, to file its annual statement as required in section 423 shall forfeit to the State \$25 for each day of delinquency, to be collected if necessary, by civil action against the insurer in the District Court, Southern Kennebec division.

2. Any director, officer, agent or employee of any insurer who subscribes to, makes or concurs in making or publishing, any annual or other statement required by law, knowing the same to contain any material statement which is false, shall be punished by a fine of not more than \$5,000, or by imprisonment for not less than one year, or both such fine and imprisonment.

§ 425. Transactions with parent corporation, subsidiaries, and affiliates

1. No insurer shall engage directly or indirectly in any transaction or agreement with its parent corporation, or with any subsidiary or affiliated person which shall result or tend to result in:

A. Substitution through any method of any asset of the insurer with an asset or assets of inferior quality or lower fair market value; or

B. Deception as to the true operating results of the insurer; or

C. Deception as to the true financial condition of the insurer; or

D. Allocation to the insurer of a proportion of the expense of combined facilities or operations which is unfair and unfavorable to the insurer; or

E. Unfair, unnecessary or excessive charges against the insurer for services, or facilities, or supplies or reinsurance; or

F. Unfair and inadequate charges by the insurer for reinsurance, services, facilities or supplies furnished by the insurer to others; or

G. Payment by the insurer for services, facilities, supplies or reinsurance not reasonably needed by the insurer.

2. In all transactions between the insurer and its parent corporation, or involving the insurer and any subsidiary or affiliated person, full recognition shall be given to the paramount duty and obligation of the insurer to protect the interests of policyholders, both existing and future.

3. For the purposes of this section a "subsidiary" is a person of which either the insurer or the parent corporation, or both, holds practical control, and an "affiliated person" is a person controlled by any combination of the insurer, the parent corporation, a subsidiary, or the principal stockholders or officers or directors of any of the foregoing.

#### § 426. Resident agent; countersignature law

1. Except as provided in section 427, a foreign authorized insurer shall not effect an insurance contract covering a resident of this State, property situated in this State, a risk incident to the performance or nonperformance of any obligation to be performed in this State, or a risk incident to any obligation which is governed by the laws of this State though actually to be performed elsewhere, unless it is issued or countersigned by a duly licensed agent of the insurer resident in this State.

2. The countersignature shall be in the manner provided by section 1611 (signature, countersignature of policies).

3. A nonresident agent or nonresident broker shall pay the countersigning agent countersignature fee as provided by section 1612 (countersignature fee).

#### § 427. Same—Exceptions

Section 426 shall not apply as to any of the following:

1. Life insurance or annuity contracts, or supplemental contracts against accidental death or permanent and total disability made in connection therewith;

2. Insurance covering the rolling stock of a railroad or any vessel, aircraft or motor carrier used in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance or operation of them;

3. Insurance covering any property in interstate or foreign commerce, or any liability or risk incidental to it;

4. Reinsurance;

5. Bid bonds issued in connection with any public or private contract;

6. Group insurance of a type permitted by this Title issued to a non-resident policyholder, and any insurance certificate applicable to it.

#### § 428. Retaliatory provision

1. When by or pursuant to the laws of any other state or foreign country

or province any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material requirements, obligations, prohibitions or restrictions are or would be imposed upon Maine insurers doing business or that might seek to do business in such state, country or province, or upon the agents or representatives of such insurers or upon brokers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or obligations, prohibitions or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, or upon brokers, of such other state, country or province under the statutes of this State, so long as such laws of such other state, country or province continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material requirements, obligations, prohibitions or restrictions of whatever kind shall be imposed by the commissioner upon the insurer, or upon the agents or representatives of such insurers, or upon brokers, of such other state, country or province doing business or seeking to do business in Maine. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state, country or province on Maine insurers or their agents or representatives or upon Maine brokers shall be deemed to be imposed by such state, country or province within the meaning of this section.

2. This section shall not apply as to personal income taxes, or as to ad valorem taxes on real or personal property, or as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

3. For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada or a province thereof, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this State or within 6 months after the effective date of this Act, whichever date is the later, and may be any one of the following states:

- A. That in which the insurer was first authorized to transact insurance;
- B. That in which is located the insurer's principal place of business in the United States; or
- C. That in which is held the largest deposit of trustee assets of the insurer for the protection of its policyholders in the United States.

If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

4. The domicile of an insurer formed under the laws of Canada or a province thereof shall be that province of Canada in which its head office is located.

SUBCHAPTER II  
INSURANCE EMERGENCIES

§ 471. Proclamation by Governor

Whenever it appears to the Governor that the welfare of the State or any section thereof, or the welfare and security of insurers under the supervision of the commissioner or their insureds or beneficiaries require, the Governor may proclaim that an insurance emergency exists and this subchapter shall thereupon become effective.

§ 472. Rules and regulations

During the period of any insurance emergency described in section 471, the commissioner shall have power to make, amend or rescind such rules and regulations governing the business of any insurers as he deems expedient in order to adopt and maintain sound methods of protecting the interests of insurer, insureds, beneficiaries or the public.

§ 473. Insurers regulated; suspended

During any insurance emergency period as described in sections 471 and 472, the commissioner is empowered to suspend for such time or times as he may determine the transaction of insurance functions of any authorized insurer, whether domestic or foreign, solvent or otherwise, and to limit its insurance business in volume or character to such particular amounts or classifications and for such time or times as he may deem advisable.

§ 474. Payments deferred

During any insurance emergency period as described in sections 471 and 472, the commissioner shall have authority to postpone or defer, by rules or orders made and issued by him, for such time or times as he may determine, the payment of any amount payable under the terms of any policy of insurance, annuity or pure endowment contract, and the payment of judgments, notes, drafts, checks, bills of exchange or other forms of payment of claims due from insurers to any person, firm or corporation, whether such claim is liquidated or unliquidated, due or to become due at a day certain, and defer the payment of premiums on policies affected by such postponements or suspensions and may direct payment in full or in part whenever in his discretion such payment may be safely consummated.

§ 475. "Insurer" defined

The words "insurer" or "insurers" as used in this subchapter shall include corporations, interinsurers, associations, societies and orders as well as partnerships and individual agents representing such organizations.

§ 476. Personal responsibility of the commissioner limited

The commissioner shall not be held legally responsible for any act or failure to act in the premises when such act or failure to act shall have been shown to be the result of good faith.

§ 477. Duration at will of Governor

The authority and power given the commissioner under this subchapter shall terminate and be of no effect when the Governor proclaims that any insurance emergency has ceased to exist.

§ 478. Jurisdiction of courts

During any emergency insurance period as described in sections 471 and 472, the commissioner is authorized to issue such directions, rules or orders as in his discretion the circumstances may warrant, and any Justice of the Supreme Judicial or Superior Courts shall have full jurisdiction to enforce this chapter by appropriate decrees.

§ 479. Penalties

Any violation of any order issued by virtue of this subchapter or any rule or regulatory provision made by the commissioner pursuant thereto shall be punishable by a fine of not more than \$1,000 or by imprisonment for less than one year, or by both.

CHAPTER 7  
FEES AND TAXES

§ 601. Fee schedule

The commissioner shall collect in advance, and persons so served shall pay to the commissioner, fees, licenses and miscellaneous charges as follows:

1. Insurer's certificate of authority
  - A. For filing application for initial certificate of authority, including all documents submitted as part of such application \$300.00
  - B. Issuance, and each annual continuation 100.00
  - C. Reinstatement (section 415), annual continuation fee plus 50% thereof
2. Charter documents, other than those filed with application for certificate of authority. Filing amendments to certificate of organization, articles or certificate of incorporation, charter, bylaws, power of attorney, as to reciprocal insurers, and other constituent documents of the insurer, each document 5.00
3. Annual statement of insurer, filing 50.00
4. Service of process  
Acceptance of service of process 5.00
5. Agents' licenses and appointments
  - A. Application for original resident agent license and issuance, if issued 5.00
  - B. Appointment of resident agent, each insurer 5.00

|   |       |
|---|-------|
| Annual continuation of appointment, per year  |       |
| Each domestic mutual nonlife insurer  | 3.00  |
| Each other insurer  | 5.00  |
|   |       |
| C. Temporary license  | 5.00  |
|   |       |
| D. Limited license (section 1531)   | 5.00  |
|   |       |
| E. Nonresident agent license, application and issuance, if issued                               | 15.00 |
| Appointment of such agent, each insurer   | 10.00 |
| Annual continuation of appointment, each insurer, per year                                      | 10.00 |
|   |       |
| 6. Broker licenses  |       |
|   |       |
| A. Resident broker, application for original license and issuance, if issued                    | 25.00 |
| Annual continuation   | 25.00 |
|   |       |
| B. Nonresident broker, application for original license and issuance, if issued                 | 50.00 |
| Annual continuation   | 50.00 |
|   |       |
| C. Surplus lines broker, application for original license and issuance, if issued               | 25.00 |
| Annual continuation   | 25.00 |
|   |       |
| 7. Consultant license   |       |
| Application for original license and issuance, if issued  | 25.00 |
| Annual continuation   | 25.00 |
|   |       |
| 8. Adjuster license   |       |
| Application for original license and issuance, if issued  | 5.00  |
| Annual continuation   | 5.00  |
|   |       |
| 9. Examination for license  |       |
| Filing application for each examination, other than consultants                                 | 15.00 |
| Consultants, filing application, each examination   | 25.00 |
|   |       |
| 10. Insurance vending machines  |       |
| Filing application for license and issuance, if issued, each machine                            | 50.00 |
| Annual continuation of license, each machine  | 50.00 |
|   |       |
| 11. Rating organizations  |       |
| License fee   | 50.00 |
| Annual renewal of license   | 50.00 |
|   |       |
| 12. Road or tourist service license, annually   | 20.00 |
| Agent license, annually   | 2.00  |
|   |       |
| 13. Certified copy of insurer certificate of authority or other license issued under this Title | 2.00  |

14. Copies of other documents on file in the department:  
Reasonable charge as fixed by the commissioner; and for certifying and fixing official seal 1.00

§ 602. Tax on premiums and annuity considerations

As to returns and taxes on premiums and annuity considerations refer to Title 36, section 2511 et seq.

§ 603. Record, remittance of fees

The commissioner shall keep a correct account of all fees and moneys received by him by virtue of his office, and shall pay the same over to the Treasurer of State forthwith.

§ 604. Insurance Regulatory Fund

1. There is created in the State Treasury a dedicated account to be designated the "Insurance Regulatory Fund," the funds of which are hereby appropriated for the partial support and maintenance of the Insurance Department.

2. The Treasurer of State shall credit the following funds to the Insurance Regulatory Fund:

A. The balance, if any, remaining on the effective date of this Act of funds allocated to the department pursuant to Title 24, section 372;

B. Fees, licenses and other charges collected and remitted by the commissioner under section 601 (fee schedule), or as increased pursuant to section 428 (retaliatory provision); and

C. Amounts collected for investigation reports under section 1519.

3. Expenditures by the department from the insurance regulatory fund shall be subject to budget control in the same manner as applies to departments of State in general.

§ 605. In lieu, pre-emption provision

1. Payment by the insurer of the taxes as required by Title 36 section 2511 et seq. shall be in lieu of all taxes imposed by the State upon premiums or upon income, and of any franchise, privilege or other taxes measured by income of the insurer.

2. The State hereby preempts the field of regulating, or of imposing excise, privilege, franchise, income, license, permit, registration and similar taxes, licenses and fees upon, insurers and their general agents, agents and other representatives as such; and on the intangible property of insurers or such representatives; and all political subdivisions or agencies thereof in this State are prohibited from regulating insurers or their general agents, agents and other representatives as such, and from imposing upon them any

such tax, license, or fee. Except, that this provision shall not prohibit the imposition by political subdivisions of taxes upon real and tangible personal property.

3. This section shall not be modified or repealed by any law of general application hereafter enacted unless expressly referred to or expressly repealed therein.

## CHAPTER 9

### KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE

#### SUBCHAPTER I

#### KINDS OF INSURANCE

##### § 701. Definitions not mutually exclusive

It is intended that certain insurance coverages may come within the definitions of 2 or more kinds of insurance as defined in this chapter, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage is likewise reasonably includable.

##### § 702. "Life insurance" defined

Life insurance is insurance on human lives. The transaction of life insurance includes also the granting endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance.

##### § 703. "Annuity" defined

For the purposes of this Title an "annuity" is a contract under which obligations are assumed with respect to periodic payments for a specific term or terms or where the making or continuance of all or of some of such payments, or the amount of any such payment, is dependent upon the continuance of human life, except payments made pursuant to optional modes of settlement under the authority of section 702 ("life insurance" defined). Such a contract which includes extra benefits of the kinds set forth in sections 702 (life insurance defined) and 704 (health insurance defined) shall nevertheless be deemed to be an annuity if such extra benefits constitute a subsidiary or incidental part of the entire contract.

##### § 704. "Health insurance" defined

Health insurance is insurance of human beings against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto.

§ 705. "Property insurance" defined

Property insurance is insurance on real or personal property of every kind and of every interest therein against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage. Property insurance does not include title insurance, as defined in section 709.

§ 706. "Surety insurance" defined

Surety insurance includes:

1. Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

2. Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

3. Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, gems, precious and semi-precious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

§ 707. "Casualty insurance" defined

1. Casualty insurance includes:

A. Vehicle insurance. Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incidental to ownership, maintenance or use of any such vehicle, aircraft or animal; together with insurance against accidental injury to individuals, irrespective of legal liability of the insured, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking or caused by being struck by a vehicle, aircraft or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft or draft or riding animal.

B. Liability insurance. Insurance against legal liability for the death, injury or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.

- C. Workmen's compensation and employer's liability. Insurance of the obligations accepted by, imposed upon or assumed by employers under law for death, disablement or injury of employees.
- D. Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers and documents, resulting from any cause.
- E. Personal property floater. Insurance upon personal effects against loss or damage from any cause.
- F. Glass. Insurance against loss or damage to glass, including its lettering, ornamentation and fittings.
- G. Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured.
- H. Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus.
- I. Credit. Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured.
- J. Malpractice. Insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, and including medical hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary or professional service.
- K. Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection upon, elevators.
- L. Congenital defects. Insurance against congenital defects in human beings.
- M. Livestock. Insurance against loss or damage to livestock, and services of a veterinary for such animals.

N. Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury or sickness of performers, participants, directors or other principals.

O. Miscellaneous. Insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this subchapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

2. Provision of medical, hospital, surgical and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under subsection 1, paragraphs A (vehicle), B (liability), D (burglary), G (boiler and machinery), J (malpractice) and K (elevator) shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this Title applicable to life and health insurances.

§ 708. Marine and transportation, "wet marine" insurance defined

1. "Marine and transportation insurance" includes:

A. Insurance against any kinds of loss or damage to:

(1) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to, or in connection with any and all risks, or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and

(2) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance, but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles, and

(3) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and

(4) Bridges, tunnels and other instrumentalities of transportation and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion are the only

hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks.

B. "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

2. For the purposes of this Title, "wet marine and transportation" insurance is that part of "marine and transportation" insurance which includes only:

A. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto:

B. Insurance of marine builders' risks, marine war risks and contracts of marine protection and indemnity insurance;

C. Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition; and

D. Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto.

#### § 709. "Title insurance" defined

Title insurance is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title.

#### § 710. "Multiple line" insurers

A multiple line insurer may transact any 2 or more kinds of insurance, as defined in sections 704 to 709 (health, property, surety, casualty, marine and transportation and title insurance). This provision shall not be deemed to prohibit such an insurer from transacting also life insurance and annuity business if otherwise qualified therefor under this Title.

### SUBCHAPTER II

### LIMITS OF RISK

#### § 721. Limits of risk

1. No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in this State or elsewhere, in an amount exceeding 10% of its surplus to policyholders.

2. A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake and other catastrophic hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of any other hazard insured against.

3. Reinsurance ceded as authorized by section 731 shall be deducted in determining risk retained. As to surety risks, deduction shall be made of the amount assumed by any authorized co-surety and the value of any security deposited, pledged or held subject to the surety's consent and for the surety's protection.

4. As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

5. "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the commissioner, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

6. This section shall not apply to life or health insurance, annuities, title insurance, insurance of wet marine and transportation risks, workmen's compensation insurance, employers' liability coverages, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

7. Limits of risk as to newly formed domestic mutual insurers shall be as provided in section 3352.

### SUBCHAPTER III REINSURANCE

#### § 731. Reinsurance

1. An insurer may accept reinsurance only of such kinds of risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

2. An insurer may reinsure all or part of any particular risk with any solvent insurer authorized to transact insurance in one or more states and having surplus to policyholders in amount not less than the paid-in capital stock required of an authorized foreign stock insurer transacting like kinds of insurance. Cession of bulk reinsurance by a domestic insurer is subject to section 3483 (bulk reinsurance).

3. No credit shall be allowed to an insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer unless such alien insurer has surplus to policyholders in amount not less than the paid-in capital

stock required of an authorized foreign stock insurer transacting like kinds of insurance and is authorized to transact insurance in at least one state of the United States; or, in the case of a group of individual, unincorporated alien insurers, has assets held in trust for the benefit of its United States policyholders in a sum not less than \$50,000,000, and is authorized to transact insurance in at least one state.

4. Credit shall be allowed as an asset or as a deduction from liability, to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under subsection 3, except that no such credit shall be allowed unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

5. Upon request of the commissioner an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

6. This section shall not apply to wet marine and transportation insurance.

CHAPTER 11  
ASSETS AND LIABILITIES  
SUBCHAPTER I  
ASSETS

§ 901. "Assets" defined

In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

1. Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.

2. Investments, securities, properties and loans acquired or held in accordance with this Title, and in connection therewith the following items:

A. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

B. Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.

C. Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

D. Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset.

E. Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the prop-

erty less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 18 months be allowed as an asset.

F. Rent due or accrued on real property if such rent is not in arrears for more than 3 months, and rent more than 3 months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

G. The unaccrued portion of taxes paid prior to the due date on real property.

3. Premium notes, policy loans and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

4. The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

5. Premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States Government or by any of its instrumentalities.

6. Installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply.

7. Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon.

8. The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under section 731.

9. Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

10. Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him.

11. All assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein.

12. As to a title insurer, its title plant and equipment reasonably necessary for conduct of its abstract or title insurance business, at not to exceed the cost thereof.

13. Electronic and mechanical machines and related equipment constituting a data processing, recordkeeping or accounting system or systems if the cost

of each such system is at least \$25,000, which cost shall be amortized in full over a period not to exceed 10 years. The aggregate amount invested in all such systems shall not exceed 5% of the insurer's assets.

14. Other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

#### § 902. Assets not allowed

In addition to assets impliedly excluded by the provisions of section 901, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

1. Good will, trade names and other like intangible assets.
2. Advances to officers, other than policy loans, whether secured or not, and advances to employees, agents and other persons on personal security only.
3. Stock of such insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation or business unit.
4. Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies, other than data processing, recordkeeping and accounting systems authorized under section 901, subsection 13, except in the case of title insurers such materials and plants as the insurer is expressly authorized to invest in under section 1129 and except, in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to chapter 13, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.
5. The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this Title.

### SUBCHAPTER II

#### LIABILITIES

#### § 921. Liabilities, in general

In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

1. The amount of its capital stock outstanding, if any.
2. The amount, estimated consistent with the provisions of this Title, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.

3. With reference to life insurance policies and annuity contracts, and disability and accidental death benefits in or supplemental thereto:

A. The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest and methods adopted pursuant to this Title which are applicable thereto.

B. Reserves for disability benefits, for both active and disabled lives.

C. Reserves for accidental death benefits.

D. Any additional reserves which may be required by the commissioner consistent with applicable customary and general practice in insurance accounting.

4. As to health insurance policies, the reserve required under section 925.

5. With reference to insurance other than specified in subsections 3 and 4, and other than title insurance, the amount of the unearned premium reserves computed in accordance with this subchapter.

#### § 922. Disallowance of "wash" transactions

1. The commissioner shall disallow as an asset or as a credit against liabilities any reinsurance found by him after a hearing thereon to have been arranged for the purpose principally of deception as to the ceding insurer's financial condition as at the date of any financial statement of the insurer. Without limiting the general purport of the foregoing provision, reinsurance of any substantial part of the insurer's outstanding risks contracted for in fact within 4 months prior to the date of any such financial statement and cancelled in fact within 4 months after the date of such statement, or reinsurance under which the reinsurer bears no substantial insurance risk or chance of net loss to itself, shall prima facie be deemed to have been arranged principally for the purpose of deception.

2. The commissioner shall disallow as an asset any deposit, funds or other assets of the insurer found by him after a hearing thereon:

A. Not to be in good faith the property of the insurer, and

B. Not freely subject to withdrawal or liquidation by the insurer at any time for the payment or discharge of claims or other obligations arising under its policies, except as to statutory deposits of the insurer, and

C. To be resulting from arrangements made principally for the purpose of deception as to the insurer's financial condition as at the date of any financial statement of the insurer.

3. The commissioner may suspend or revoke the certificate of authority of any insurer which has knowingly been a party to any such deception or attempt thereat.

### § 923. Unearned premium reserve

1. As to property, casualty and surety insurance the insurer shall maintain an unearned premium reserve on all policies in force.

2. Except as provided in section 924 as to marine and transportation risks, the unearned premium reserve shall be computed, after deduction of applicable reinsurance in solvent insurers, at the insurer's election either

A. As equal to not less than 50% of premiums in force, or

B. On a monthly or more frequent pro rata basis as to all such reserves. After adopting a method for computing such reserve, an insurer shall not change methods without approval of the insurance supervisory official of the insurer's domicile.

### § 924. Unearned premium reserve for marine and transportation insurance

As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned; and the commissioner may require the insurer to carry a reserve equal to 100% of premiums on trip risks written during the month ended as of the date of statement.

### § 925. Health insurance policy reserves

For all health insurance policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies.

### § 926. Title insurance reserves

In addition to an adequate reserve as to outstanding losses as required under section 921, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

1. Ten percent of the total amount of the risk portion of premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

2. During each of the 20 years next following the year in which the title insurance contract was issued, the reserve applicable to the contract may be reduced by 5% of the original amount of such reserve.

### § 927. Mortgage guaranty contingency reserve

1. Casualty or surety insurers insuring real property mortgage lenders against loss by reason of nonpayment of the mortgage indebtedness by the borrower, shall maintain a contingency reserve for the protection of policyholders against the effects of adverse economic cycles.

2. The insurer shall contribute to such contingency reserve 50% of the net premiums, gross premiums less premiums returned to policyholders, written on such insurance remaining after establishment of the unearned premium reserve.

3. Subject to the commissioner's approval, the contingency reserve shall be available for payment of losses only when the insurer's incurred losses in any one calendar year exceed the rate formula expected losses by 10% of the related earned premiums.

### SUBCHAPTER III LIFE INSURANCE RESERVES

#### § 951. Short title

Sections 951 to 957 shall be known as the "Standard Valuation Law."

#### § 952. Calculation of reserve liabilities

1. The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting business in this State, except that in the case of an alien insurer, such valuation shall be limited to its United States business; and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods, net level premium method or other, used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of any foreign or alien insurer, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by law of that state or jurisdiction.

2. Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

#### § 953. Minimum standards

1. This subsection applies only to policies and contracts issued prior to January 1, 1948, or such earlier date after July 21, 1945, as shall have been elected by an insurer as the date on and after which it would comply with the standard nonforfeiture law.

The legal minimum standard of value for such life insurance policies issued on or after the first day of September, 1931, by any life insurer chartered by this State, shall be the American Experience Table of Mortality with interest

at  $3\frac{1}{2}\%$  per year. Any such life insurer may, at its option, value its insurance policies issued on and after such day, in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with interest not higher than  $3\frac{1}{2}\%$  per year by the net level premium method. Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

2. This subsection applies only to policies and contracts issued on and after January 1, 1948, or such earlier date after July 21, 1945, as shall have been elected by an insurer as the date on and after which it would comply with the standard nonforfeiture law.

The minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation method defined in section 954,  $3\frac{1}{2}\%$  interest, and the following tables :

A. Standard Ordinary Mortality Table. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, — the Commissioners 1941 Standard Ordinary Mortality Table; provided, however, that the Commissioners 1958 Standard Ordinary Mortality Table shall be the table for such minimum standard for such policies issued on and after January 1, 1966, or such earlier date after September 12, 1959, as shall have been elected by an insurer as the date on and after which it would use such table as the basis for minimum cash surrender values and nonforfeiture benefits under the standard nonforfeiture law; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in sections 951 to 957 may be calculated according to an age not more than 3 years younger than the actual age of the insured.

B. Standard Industrial Mortality Table. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, — the 1941 Standard Industrial Mortality Table; provided, however, that the Commissioners 1961 Standard Industrial Mortality Table shall be the table for such minimum standard for such policies issued on and after January 1, 1968, or such earlier date after September 1, 1963, as shall have been elected by the insurer as the date on and after which it would use such table as the basis for minimum cash surrender values and nonforfeiture benefits under the standard nonforfeiture law.

C. Standard Annuity Mortality Table or Annuity Mortality Table. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

D. Group Annuity Mortality Table. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual

annuity and pure endowment contracts.

E. Class (3) Disability Table. For total and permanent disability benefits in or supplementary to ordinary policies or contracts — for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966, either such tables or, at the option of the insurer, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

F. Inter-Company Double Indemnity Mortality Table. For accidental death benefits in or supplementary to policies — for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961 and prior to January 1, 1966, either such table or, at the option of the insurer, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

G. Group Life Insurance Tables. For group life insurance, life insurance issued on the substandard basis and other special benefits — such table as may be approved by the commissioner.

§ 954. Commissioners reserve valuation method defined

Reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of 1 over 2, as follows:

1. Net level annual premium. A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due. Such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

2. Net one-year term premium. A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the commissioners reserve valuation method for:

- A. Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums,
- B. Annuity and pure endowment contracts,
- C. Disability and accidental death benefits in all policies and contracts, and
- D. All other benefits, except life insurance and endowment benefits in life insurance policies,

shall be calculated by a method consistent with the principles of the preceding provisions, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

#### § 955. Amount of aggregate reserves

In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, which are subject to section 953, subsection 2, be less than the aggregate reserves calculated in accordance with the method set forth in section 954 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

#### § 956. Calculation of reserves

Reserves for any category of policies, contracts or benefits as established by the commissioner, which are subject to section 953, subsection 2, may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Reserves for participating life insurance policies, which are subject to section 953, subsection 2, may, with the consent of the commissioner, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than  $\frac{1}{2}\%$  the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

#### § 957. Deficiency reserve

If the gross premium charged by any life insurer on any policy or contract which is subject to section 953, subsection 2, is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

SUBCHAPTER IV  
VALUATION OF ASSETS

§ 981. Valuation of bonds

1. All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

A. If purchased at par, at the par value.

B. If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

C. Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such securities.

D. Unless otherwise provided by valuation established or approved by the commissioner, no such security shall be carried at above the call price for the entire issue during any period within which the security may be so called.

2. The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section.

§ 982. Valuation of other securities

1. Securities, other than those referred to in section 981, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by him as representing their fair market value.

2. Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

3. The stock of a subsidiary of an insurer shall not be valued on a basis in excess of the value of such of the assets only of such subsidiary as would constitute lawful investments of the insurer if acquired or held directly by the insurer.

§ 983. Valuation of property

1. Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and

the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

2. Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If valuation is based on an appraisal more than 3 years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.

#### § 984. Valuation of purchase money mortgages

Purchase money mortgages on real property referred to in section 983, subsection 1, shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or 90% of the fair value of such real property, whichever is less.

### CHAPTER 13

#### INVESTMENTS

##### § 1101. Scope of chapter

Except as provided in section 1137, this chapter applies to domestic insurers only.

##### § 1102. Eligible investments

1. Insurers shall hereafter invest in or lend their funds on the security of, and shall hold as invested assets, eligible investments only those as prescribed in this chapter.

2. Any particular investment held by an insurer on the effective date of this Act, which was a legal investment at the time it was made, and which the insurer was legally entitled to possess immediately prior to such effective date, shall be deemed to be an eligible investment.

3. Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection 2.

4. Any investment limitation or diversification requirement based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31st next preceding date of acquisition of the investment by the insurer, or as shown by a current applicable financial statement resulting from merger of another insurer, bulk reinsurance, or change in capitalization.

5. Nothing in this chapter shall be deemed to prohibit an insurer from advancing funds to another insurer upon the type of agreement provided for in section 3415 (borrowed capital funds), and subject to the terms of such section 3415.

##### § 1103. General qualifications

1. No security or investment, other than real and personal property ac-

quired under section 1125 (real estate), shall be eligible for acquisition unless it is interest bearing or interest accruing or entitled to dividends, if declared, or is otherwise income-entitled, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

2. No provision of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or upon a debt or judgment, or under a lawful and bona fide agreement of bulk reinsurance, merger or consolidation. Any security or property so acquired which is not otherwise an eligible investment under this chapter shall be disposed of pursuant to section 1133 if real estate, or pursuant to section 1134 if personal property or securities.

#### § 1104. Authorization, record of investments

1. An insurer shall not make any investment or loan, other than policy loans or annuity contract loans of a life insurer, unless the same is authorized or approved by the insurer's board of directors or by a committee thereof charged with supervision of investments and loans.

2. The insurer shall maintain a full record of each investment, showing, among other pertinent information, the name of any officer, director or principal stockholder of the insurer having any direct, indirect or contingent interest in the securities, loan or property constituting the investment, or in the person in whose behalf the investment is made, and the nature of such interest.

#### § 1105. Diversification — Life, life/health insurers

Investments of an insurer transacting life or health insurances or both shall as to such insurances be subject to the following diversification requirements and limitations:

1. Not less than 60% of the insurer's assets in aggregate amount shall consist of cash funds and investments eligible under the following sections:

- A. 1107 (public obligations);
- B. 1108 (obligations, stock of certain federal and international agencies);
- C. 1109 (corporate obligations);
- D. 1112 (preferred or guaranteed stocks);
- E. 1116 (trustees' or receivers' obligations);
- F. 1117 (equipment trust certificates);
- G. 1118 (acceptances, bills of exchange);
- H. 1119 (savings institutions);
- I. 1120, subsection 1 (bank's common trust fund);

- J. 1121 (hydrocarbon production payments);
- K. 1122 (policy loans);
- L. 1124 (mortgage loans);
- M. 1126 (housing developments); and
- N. 1130 (investments in foreign countries).

2. The insurer shall not invest in aggregate amount over 20% of its assets in all investments eligible under the following sections of this chapter:

- A. 1113 (common stocks);
- B. 1114 (insurance stocks);
- C. 1115 (stocks of subsidiaries) as to subsidiary insurance corporations; and
- D. 1120, subsection 2 (mutual funds).

3. The insurer shall not invest in aggregate amount over 15% of its assets in all investments in real estate eligible under sections 1125 (real estate) and 1127 (leased property).

4. The insurer shall not invest over 10% of its assets in investments eligible under section 1127 (leased property).

5. Notwithstanding any other provision an insurer may invest in the aggregate an amount not in excess of 35% of its surplus as to policyholders in all investments eligible under the section 1115 (stocks of subsidiaries).

6. Except as otherwise expressly provided an insurer shall not invest more than 10% of its assets in the securities of any one person, other than investments eligible under the following sections:

- A. 1107 (public obligations);
- B. 1108 (obligations, stock of certain federal and international agencies); and
- C. 1122 (policy loans).

7. Other investment limitations shall be as provided in particular sections of this chapter.

§ 1106. Diversification; property, casualty and other nonlife insurers

Investments of an insurer transacting property, casualty, surety and other such insurances other than life insurance and annuity business, and including health insurance when transacted by an insurer also transacting casualty insurance, shall as to such insurances be subject to the following diversification

requirements and limitations:

1. Not less than 30% of the insurer's assets in aggregate amount shall consist of cash funds, agents' balances less than 90 days past due, and investments eligible under the following sections:

- A. 1107 (public obligations);
- B. 1108 (obligations, stock of certain federal and international agencies);
- C. 1109 (corporate obligations);
- D. 1112 (preferred or guaranteed stocks);
- E. 1116 (trustees' or receivers' obligations);
- F. 1117 (equipment trust certificates);
- G. 1118 (acceptances, bills of exchange);
- H. 1119 (savings institutions);
- I. 1120 (common trust funds, mutual funds);
- J. 1124 (mortgage loans); and
- K. 1126 (housing developments).

2. The insurer shall not invest in aggregate amount in excess of its surplus as to policyholders in all investments eligible under the following sections of this chapter:

- A. 1113 (common stocks);
- B. 1114 (insurance stocks);
- C. 1115 (stocks of subsidiaries); and
- D. 1120, subsection 2 (mutual funds).

3. The insurer shall not invest in aggregate amount over 20% of its assets in all investments in real estate eligible under sections 1125 (real estate) and 1127 (leased property).

4. Except as otherwise expressly provided an insurer shall not invest more than 10% of its assets in the securities of any one person, other than investments eligible under the following sections of this chapter:

- A. 1107 (public obligations); and
- B. 1108 (obligations, stock of certain federal and international agencies).

## § 1107. Public obligations

An insurer may invest in bonds or other evidences of indebtedness, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States or by any state thereof, or by Canada or any of the provinces thereof, or by any county, city, town, village, municipality or district therein or by any political subdivision thereof or by a public instrumentality of one or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, from:

1. Taxes levied or by law required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit, or from

2. Adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of such payment; but not including any obligation payable solely out of special assessments on properties benefited by local improvements unless adequate security is evidenced by the ratio of assessment to the value of the property or the obligation is additionally secured by an adequate guaranty fund required by law.

## § 1108. Obligations, stock of certain federal and international agencies

An insurer may invest in the obligations, or stock where stated, issued, assumed or guaranteed by the following agencies of the government of the United States of America, or in which such government is a participant, whether or not such obligations are guaranteed by such government:

1. Farm Loan Bank.
2. Commodity Credit Corporation.
3. Federal Intermediate Credit Banks.
4. Federal Land Banks.
5. Central Bank for Cooperatives.
6. Federal Home Loan Banks, and stock thereof.
7. Federal National Mortgage Association, and stock thereof when acquired in connection with sale of mortgage loans to such association.
8. International Bank for Reconstruction and Development.
9. Inter-American Development Bank.
10. Asian Development Bank.
11. Any other similar agency of, or participated in by, the government of the United States of America and of similar financial quality.

§ 1109. Corporate obligations

An insurer may invest in obligations, other than those eligible for investment under section 1124 (mortgage loans), issued, assumed or guaranteed by any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, which are not in default as to principal or interest and which are qualified under any of the following:

1. Obligations secured by adequate collateral security and bearing fixed interest and if during each of any 3, including either of the last 2, fiscal years of a period of not less than 3 nor more than 5 fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as defined in section 1110, shall have been not less than  $1\frac{1}{4}$  times the total of its fixed charges for such year, or obligations which, at the date of acquisition by the insurer, are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant. In determining the adequacy of collateral security, not more than  $\frac{1}{3}$  of the total value of such required collateral shall consist of stock other than stock meeting the requirements of section 1112 (preferred or guaranteed stock).

2. Obligations secured by one or more leases, whether or not additionally secured by one or more mortgages, provided the following conditions are met:

A. The leases are assigned directly to the insurer and are noncancellable by either party except under provisions specified in the leases and designed to give adequate protection to the insurer's investment.

B. The aggregate rentals due under all such leases are sufficient to provide

(1) For all expenses (including taxes other than the borrower's income tax) of operation of the leased property during the initial term of such leases and

(2) For amortization during the initial term of such leases of not less than 90% of the investment (or 100% thereof if the investment is not also secured by a mortgage) with interest thereon.

C. The leases make suitable provisions for continuation of adequate payments throughout the life of the investment.

D. The lessees under such leases, or any corporation or instrumentality of government which has assumed or guaranteed the lessees' performance thereunder is such that its obligations would be eligible for investment by an insurer in accordance with the provisions of section 1107 or the aggregate net earnings of such lessees available for fixed charges, as defined in section 1110, is at least equal to that required by subsection 1.

3. Fixed interest bearing obligations, other than those described in subsection 1, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than  $1\frac{1}{2}$  times its annual fixed charges applicable to such period and if during either of the last 2 years of such period such net earnings have been

not less than  $1\frac{1}{2}$  times its fixed charges for such year.

4. Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than  $1\frac{1}{2}$  times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during either of the last 2 years of such period such net earnings have been not less than  $1\frac{1}{2}$  times the sum of its fixed charges and maximum contingent interest for such year.

5. Fixed interest bearing obligations, other than those described in subsections 1 and 3, if:

A. Net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than  $1\frac{1}{4}$  times its average annual fixed charges applicable to such period and if during each of any 4 fiscal years of such period such net earnings have been not less than  $1\frac{1}{4}$  times its fixed charges for such year;

B. The net earnings of such institution available for its fixed charges during a period of not less than 7 nor more than 10 fiscal years next preceding the date of acquisition by the insurer have been such that for each of any 7 fiscal years of such period such net earnings have been not less than  $1\frac{1}{4}$  times its fixed charges for such year; and

C. The liquid assets of such institution have been not less than 105% of its liabilities, other than capital stock and surplus. For the purposes of this subsection, "liquid assets" and "liabilities" shall be determined in reliance upon the latest regular financial statement of the issuing, assuming or guaranteeing institution prepared as of a date not more than 15 months prior to the date of acquisition by the insurer; if net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, "liquid assets" and "liabilities" shall be determined in reliance upon a consolidated financial statement of parent and subsidiary institutions after treating any minority stock interest in such subsidiary institutions as a liability; and the term "liquid assets" shall mean the sum of cash, receivables or portions thereof, as the case may be, payable on demand or not more than 10 years after the date as of which the determination thereof is made for the purposes of this subsection, and readily marketable securities, in each case less applicable reserves and unearned income.

#### § 1110. Same—Certain terms defined; net earnings

1. Certain terms used are defined for the purposes of this chapter as follows:

A. "Obligations" includes bonds, debentures, notes or other evidences of indebtedness.

B. "Institution" includes a corporation, a joint-stock association and a business trust.

C. "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal, state and other income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the issuing, assuming or guaranteeing institutions.

D. "Fixed charges" includes interest on funded and unfunded debt, and amortization of debt discount.

2. If net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, such net earnings shall be determined after provisions for income taxes of only those subsidiaries in which the parent institution owns directly or indirectly less than 90% of all classes of voting stock, and after proper allowance for minority stock interest, if any; and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries, except that if the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations prescribed by the commissioner.

### § IIII. Same—Application of earnings test

In applying the earnings tests under this chapter to any institution for any period, whether or not in legal existence at the beginning of such period:

1. Earnings from the beginning of such period may include, as determined in accordance with adjusted or pro forma consolidated earnings statements, earnings of any other institution the assets of which have been acquired substantially as an entirety by purchase, merger, consolidation or otherwise after the beginning of such period. If less than substantially all the assets of another institution have been so acquired, and such assets constitute either substantially all the assets of the acquiring institution immediately after such acquisition or substantially all the assets theretofore employed by such other institution in a divisional, branch or other unit operation, the earnings determined to be properly attributable to the assets so acquired may be so included, if certified by an independent accountant approved by the insurer to be earnings so attributable. If any such acquisition of assets has been made from a business enterprise other than an institution, the earnings determined to be attributable to the assets so acquired may likewise be so included if so certified. In the case of any such inclusion of earnings of assets so acquired, fixed charges, contingent interest or dividends for the period of such inclusion shall be either

A. The fixed charges, contingent interest or dividends for such period determined in accordance with adjusted or pro forma consolidated statements for such period giving effect to any additional fixed charges or contingent interest existing or dividends on stock or shares outstanding, immediately after such acquisition, properly attributable to such acquisition, as certified by an independent accountant approved by the insurer to be such fixed charges, contingent interest or dividends so determined, or

B. The fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such acquisition.

2. If any institution has been reorganized pursuant to the bankruptcy law after the beginning of such period, earnings prior to such reorganization of the institution so reorganized may be so included. In the case of the inclusion of earnings prior to such a reorganization, fixed charges, contingent interest or dividends for the period of such inclusion shall be fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such reorganization.

3. If earnings are determined in reliance on consolidated earnings statement of parent and subsidiary institutions,

A. The provisions of this section may also be applied in determining earnings of any subsidiary institution and

B. Any institution which has become a subsidiary institution after the beginning of such period may be included as a subsidiary institution from the beginning of such period.

In the case of any such inclusion of a subsidiary institution, fixed charges, contingent interest or dividends for the period of such inclusion shall be either

A. The fixed charges, contingent interest or dividends for such period determined in accordance with adjusted or pro forma consolidated statements for such period which give effect to any additional fixed charges or contingent interest existing or dividends on stock or shares outstanding, immediately after such subsidiary institution shall have become a subsidiary, properly attributable to the acquisition of stock or shares of such subsidiary institution, during such period and before it became a subsidiary, as certified by an independent accountant approved by the insurer to be such fixed charges, contingent interest or dividends so determined, or

B. The fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such subsidiary institution became a subsidiary.

#### § 1112. Preferred or guaranteed stocks

An insurer may invest in the preferred or guaranteed stocks or shares of any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition by the insurer are eligible as investments under this chapter; and if qualified under subsection 1 or subsection 2 following:

1. Preferred stocks or shares shall be deemed qualified if both of the following requirements are met:

A. The earnings of such institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer shall have averaged per year not less than  $1\frac{1}{2}$  times the sum of its

average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to such period; and

B. During either of the last 2 years of such period such net earnings shall have been not less than  $1\frac{1}{2}$  times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. The term "preferred dividend requirements" shall be deemed to mean cumulative or non-cumulative dividends whether paid or not.

2. Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of section 1109, subsection 3, (corporate obligations), construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.

#### § 1113. Common stocks

An insurer may invest in nonassessable, except as to bank or trust company stocks, and except for taxes, common stocks, other than insurance stocks, of any solvent corporation organized and existing under the laws of the United States or Canada, or of any state or province thereof, if such corporation has had net earnings available for dividends on such stock in at least 5 of the 7 fiscal years next preceding acquisition by the insurer. If the issuing corporation has not been in legal existence for the whole of such 7 fiscal years but was formed as a consolidation or merger of 2 or more businesses of which at least one was in operation on a date 7 years prior to the investment, eligibility of its common stock under this section shall be based upon consolidated pro-forma statements of the predecessor or constituent institutions.

#### § 1114. Insurance stocks

1. An insurer may invest in the stocks of other solvent insurers formed under the laws of this or another state, which stocks meet the applicable requirements of section 1112 (preferred or guaranteed stocks) or 1113 (common stocks).

2. With the commissioner's advance written consent an insurer may acquire and hold the controlling interest in the outstanding voting stock of a stock insurer formed under the laws of this or another state. The commissioner shall not give his consent if he finds that such acquisition would not be in the best interests of the insurers involved, or of their respective policyholders or stockholders, or that it would materially tend to lessen competition or to result in any monopoly in the insurance business.

#### § 1115. Stocks of subsidiaries

1. An insurer may invest in the stock of its subsidiary insurance corporation formed or acquired by it; or in the stock of its subsidiary business corporation or corporations formed and engaged solely in any one or more of the following businesses:

A. In any business necessary and incidental to the convenient operation of the insurer's insurance business, or to the administration of any of its

lawful affairs, or to the service or benefit of its policyholders;

B. Providing any of actuarial, computer, data processing, accounting, claims, appraisal, collection, loss prevention or safety engineering and similar services;

C. Real estate management and development;

D. Premium financing;

E. Financing of agents of the insurer;

F. Acting as investment adviser or principal underwriter of an investment company or companies, registered as such under the Investment Companies Act of 1940;

G. Financial and investment counseling services;

H. Administration of self-insurance plans;

I. Administration of self-insured pension and similar plans, or the self-insured portions of such plans;

J. Acting as administrative agent for a government instrumentality which is performing an insurance function;

K. Securities broker-dealer;

L. Escrow services;

M. Trust services with respect to funds payable or paid by it under its insurance contracts.

2. For the purposes of this section a "subsidiary" is a corporation of which the insurer owns sufficient stock to give it effective control.

#### § 1116. Trustees' or receivers' obligations

An insurer may invest in certificates, notes or other obligations issued by trustees or receivers of any institution created or existing under the laws of the United States or of any state, district or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction, if such obligation is adequately secured as to principal and interest.

#### § 1117. Equipment trust certificates

An insurer may invest in equipment trust obligations or certificates which are adequately secured, or in other adequately secured instruments evidencing an interest in transportation equipment wholly or in part within the United States of America and a right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such transportation equipment.

§ 1118. Acceptances, bills of exchange

An insurer may invest in bank and bankers' acceptances and other bills of exchange of the kind and maturities made eligible, pursuant to law, for purchase in the open market by federal reserve banks.

§ 1119. Savings institutions

An insurer may invest in the shares of savings and loan or buildings and loan associations or in the savings accounts of federal savings and loan associations, to the extent that the investment or account is insured by the Federal Savings and Loan Insurance Corporation pursuant to the National Housing Act of 1934, as amended.

§ 1120. Common trust funds, mutual funds

An insurer may invest in:

1. A bank's common trust fund as defined in section 584 of the United States Internal Revenue Code of 1954; and

2. The securities of any open-end management type investment company or investment trust registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940 as from time to time amended, if such investment company or trust, other than one of which a subsidiary of the insurer is investment adviser or principal underwriter, has a net asset value of not less than \$25,000,000 as at the date of investment by the insurer.

§ 1121. Hydrocarbon production payments

An insurer may invest in production payments, or interests therein evidenced by trust certificates or other instruments, payable from oil, gas or other hydrocarbons in producing properties located in the United States or the adjacent continental shelf if an obligation secured by and payable from such production payment or interest therein would qualify for investment under section 1109, subsection 1, (corporate obligations) as an obligation which is adequately secured and has investment qualities and characteristics wherein the speculative elements are not predominant. "Production payments" means rights to oil, gas or other hydrocarbons in place or as produced which entitle the owner thereof to a specified fraction or percentage of production until a specified sum of money has been received.

§ 1122. Policy loans

A life insurer may lend to its policyholder upon pledge of the policy as collateral security, any sum not exceeding the cash surrender value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, so long as the loan is adequately secured by such pledge or assignment. Loans so made are eligible investments of the insurer.

§ 1123. Collateral loans

An insurer may lend and thereby invest its funds upon the pledge of securities eligible for investment under this chapter. As at date made, no such loan shall exceed in amount 90% of the market value of such collateral pledged. The amount so loaned shall be included pro rata in determining the maximum percentage of funds permitted under this chapter to be invested in the respective categories of securities so pledged.

§ 1124. Mortgage loans

1. An insurer may invest in bonds, notes or evidences of indebtedness other than those described in section 1109 (corporate obligations), which are secured by first mortgages, or deeds of trust upon improved real property located in the United States or Canada, including leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms which may be provided by enforceable options of renewal, if the underlying real property is not subject to any prior lien, and subject to the following requirements:

A. The security for the loan must be a first lien upon such real property; and

B. In the case of leaseholds, there must not be any condition or right of reentry or forfeiture not insured against under which the insurer is unable to continue the lease in force for the duration of the loan.

2. Nothing herein shall prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments or other similar charges not yet delinquent.

3. A mortgage shall nevertheless be deemed to be a first lien for the purposes of this section if, although junior in lien to a prior existing mortgage covering the same real property, the net amount actually advanced by the insurer under its mortgage plus the balance of principal and accrued interest then remaining unpaid under such prior mortgage does not exceed the amount which the insurer otherwise could have invested in such mortgage loan, and if the investing insurer administers the payments and other performance required under such prior mortgage.

4. Such a mortgage loan or loans made or acquired by an insurer on any one property shall not at time of investment by the insurer, be in amount in excess of 80% of the fair market value of the property or permit amortization over a period in excess of 40 years, or, in the case of leasehold interest, be in excess of 75% of the fair market value of such interest or permit amortization over a period exceeding 4/5 of the lease term remaining at the time of the loan. Prior to the investment the value of the property or of the leasehold interest shall be determined, for the purposes of the investment, by a competent appraiser.

5. In applying the limitations under subsection 4, there may be excluded from the amount invested that portion guaranteed by the Administrator of Veterans' Affairs pursuant to the Servicemen's Readjustment Act of 1944, as amended, or insured by the Federal Housing Administration under the National Housing Act, as amended, or by other United States or Canadian government agency.

6. An insurer may invest in purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to section 1125. Subsection 4 shall not apply as to such investments.

§ 1125. Real estate

1. Except as provided in section 1127 (leased property), a domestic insurer may invest in real estate only if used for the purposes or acquired in the manners, and within the limits, as follows:

A. The building in which it has its principal office, the land upon which the building stands, and such other real estate as may be requisite for the insurer's convenient accommodation in the transaction of its business. The amount so invested shall not aggregate more than 10% of the insurer's assets, if a life insurer, or more than 15% of the insurer's assets if a property or casualty or surety or other such nonlife insurer.

B. Real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees or debts previously owing to the insurer in the due course of its business.

C. Real estate acquired in part payment of the consideration on the sale of other real estate owned by it, if such transaction shall have effected a net reduction in the insurer's investments in real estate.

D. Real estate acquired by gift or devise, or through merger, consolidation or bulk reinsurance of another insurer under this Title.

E. The seller's interest in real estate subject to an agreement of purchase or sale, but the sum invested in any such interest shall not exceed 2/3 of the fair value of such parcel.

F. Additional real estate and equipment incident thereto, if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held under this section. Such real estate and equipment, together with the real estate for the enhancement of which it was acquired, shall be included, for the purpose of applicable investment limits, and shall be subject to disposal under section 1133 at the same time and under the same conditions as apply to such enhanced real estate.

G. Improved real estate, or any interest therein, acquired or held by purchase, lease or otherwise, acquired as an investment for production of income, or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. The insurer may hold, mortgage, improve, develop, maintain, manage, lease, sell, convey and otherwise dispose of real estate acquired by it under this provision.

2. For the purposes of section 1124 (mortgage loans) and this section, "improved" real property means:

A. Farmland used for tillage, crop or pasture;

B. Real estate on which permanent improvements, or improvements

under construction or in process of construction, suitable for residence, residential, recreational, institutional, commercial or industrial use, are situated; and

C. Real estate to be developed for the use or uses set forth in paragraph B, on which improvements, or improvements under construction or in process of construction, such as streets, sidewalks, sewers and utilities which will become an integral part of such development, are situated or abut.

#### § 1126. Housing developments

To the extent and upon such conditions as may be authorized by the commissioner, an insurer may invest in stock and evidences of indebtedness of any housing company or redevelopment company organized under the private housing finance law of this or any other state, or of any corporation organized for the purpose of owning and operating any housing project under laws expressly designed to promote the provision of housing for persons of low and moderate income, or in the securities of any corporation organized under the laws of this or any other state for the purpose of owning, acquiring or holding real property or any interest therein as an investment for the production of income or to be developed or improved for such investment purpose, if all of the stock other than directors' qualifying shares of such housing company, redevelopment company or corporation has been or is to be originally issued to one or more insurers, whether domestic or foreign.

#### § 1127. Leased property

An insurer may invest in personal or real property owned either by the insurer or by a trustee, while under lease to a lessee able to meet any one of the earnings tests provided by section 1109 (corporate obligations).

#### § 1128. Special investments; separate accounts

The amounts allocated to each separate account established by the insurer pursuant to section 2537 (separate accounts), together with accumulations thereon may be invested and reinvested in any class of investments which may be authorized in the written contract or agreement without regard to any requirements or limitations prescribed by this chapter; except, that to the extent that the insurer's reserve liability with regard to benefits guaranteed as to principal amount and duration, and funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the applicable provisions of this chapter. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the insurer.

#### § 1129. Special investments of title insurers

1. A title insurer may also have invested funds in an amount not exceeding 50% of its paid-in capital stock and its surplus, in its abstract plant and equipment and in stocks of abstract companies.

2. Investments authorized under subsection 1 shall not be credited against required reserves.

§ 1130. Investments in foreign countries

1. An insurer authorized to transact insurance in a foreign country, or which has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in a foreign country may invest in or otherwise acquire or loan upon securities and investments in such foreign country which are substantially of the same kinds, classes and investment grades as those eligible for investment under other sections of this chapter; but the aggregate amount of such investments in a foreign country and of cash in the currency of such country shall not, except as to Canadian investments otherwise authorized under this chapter, exceed  $1\frac{1}{2}$  times the amount of its reserves and other obligations under such contracts or the amount which the insurer is required by law to invest in such country, whichever is the greater.

2. In addition to the foreign investments otherwise permitted under this chapter, an insurer may invest in or otherwise acquire or loan upon securities and investments in foreign countries which are substantially of the same kinds, classes and investment grades as those otherwise eligible for investment under this chapter; but the aggregate amount of such investments under this subsection shall not exceed 1% of the insurer's assets.

§ 1131. Miscellaneous investments

1. An insurer may make loans or investments not otherwise expressly permitted under this chapter, in aggregate amount not over 5% of the insurer's assets if a life insurer, and in aggregate amount not over 10% of the insurer's assets if a property or casualty or surety or other such nonlife insurer, and not over 1% of such assets as to any one such loan or investment, if such loan or investment fulfills the requirements of section 1103 (general qualifications) and otherwise qualifies as a sound investment. No such loan or investment shall be represented by:

A. Any item described in section 902 (assets not allowed), or any loan or investment otherwise expressly prohibited.

B. Agent's balances, or amounts advanced to or owing by agents; except as to policy loans, mortgage loans and collateral loans otherwise authorized under this chapter.

C. Any category of loans or investments expressly eligible under any other provision of this chapter.

D. Any asset theretofore acquired or held by the insurer under any other category of loans or investments eligible under this chapter.

2. The insurer shall keep a separate record of all loans and investments made under this section.

§ 1132. Conversion and incidental rights

Nothing in this chapter shall be deemed to prohibit an insurer from making an investment otherwise authorized under this chapter, because the investment is convertible into other securities in which the insurer is not permitted to invest under this chapter, or because the insurer receives in connection with such investment stock warrants, whether or not detachable, stock options, stock, property interests or other assets of any kind. Anything so received by the insurer and in which the insurer is otherwise not authorized to invest shall be carried on its books at no value.

§ 1133. Time limit for disposal of real estate

1. Except as stated in subsection 2, or unless the insurer elects to hold the real estate as an investment under section 1125, subsection 1, paragraph G:

A. An insurer shall dispose of real estate acquired under section 1125, subsection 1, paragraph A, within 5 years after it has ceased to be necessary for the convenient accommodation of the insurer in the transaction of its business.

B. An insurer shall dispose of real estate acquired under section 1125, subsection 1, paragraphs B, C or E, within 5 years after the date of acquisition, unless used or to be used for the insurer's accommodation under section 1125, subsection 1, paragraph A.

2. Upon proof satisfactory to him that the interests of the insurer will suffer materially by the forced sale thereof, the commissioner may by order grant a reasonable extension of the period, as specified in such order, within which the insurer shall dispose of any particular parcel of such real estate.

§ 1134. Time limit for disposal of other ineligible property and securities

Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition, shall be disposed of within 3 years from date of acquisition unless within such period the security has attained to the standard of eligibility; except, that any security or personal property acquired under any agreement of bulk reinsurance, merger or consolidation, may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the commissioner under chapter 47. Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the commissioner may extend the disposal period for an additional reasonable time.

§ 1135. Failure to dispose of real estate or securities; effect, penalty

1. Any real estate, personal property or securities lawfully acquired, and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the commissioner as provided in sections 1133 and 1134 shall not be allowed as an asset of the insurer.

2. The insurer shall forthwith dispose of any ineligible investment unlawfully acquired by it, and the commissioner shall suspend or revoke the insurer's certificate of authority if the insurer fails to dispose of the invest-

ment within such reasonable time as the commissioner may, by his order, specify.

§ 1136. Prohibited investments and investment underwriting

1. In addition to investments excluded pursuant to other provisions of this Title, an insurer shall not invest in or lend its funds upon the security of:

A. Issued shares of its own capital stock, except:

(1) For the purpose of mutualization under chapter 47, or

(2) For retirement, or

(3) Pursuant to a plan for such investment or loan submitted in writing by the insurer to the commissioner in advance, and which the commissioner has not, within 20 days after such submission or within such additional reasonable period as the commissioner may request, disapproved as being unfair or inequitable to the insurer's policyholders or stockholders.

B. Securities issued by any corporation or enterprise the controlling interest of which is, or will after such acquisition by the insurer be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, subsidiaries, or controlling stockholders, and the spouses and children of any of the foregoing individuals. Investments in controlled insurance corporations or subsidiaries under sections 1114 and 1115 are not subject to this provision.

C. Any note or other evidence of indebtedness of any director, officer or controlling stockholder of the insurer or of the spouse or child of any of the foregoing except as to policy loans authorized under section 1122.

2. No insurer shall underwrite or participate in the underwriting of an offering of securities or property of any other person. This provision shall not be deemed to prohibit:

A. The acquisition and ownership by the insurer of its subsidiary corporation acting as investment adviser or principal underwriter of a management company or investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended.

B. The registration by the insurer, under the Securities Act of 1933 or other applicable law, of restricted or other securities acquired and owned by it in regular course of business.

3. No insurer shall enter into any agreement to withhold from sale any of its securities or property, and the disposition of its assets shall at all times be within the control of the insurer. This provision shall not be deemed to affect any right or obligation of the insurer under a contract or agreement referred to in section 2537 (separate accounts).

§ 1137. Investments of foreign insurers

The investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile if of a quality substantially equal to that required under this chapter for similar funds of like domestic insurers.

## CHAPTER 15

### ADMINISTRATION OF DEPOSITS

#### § 1251. Authorized deposits of insurers

The following deposits of insurers when made through the commissioner shall be accepted and held in trust, subject to the provisions of this chapter:

1. Deposits required under this Title for authority to transact insurance in this State.
2. Deposits of domestic insurers when made pursuant to its charter; or pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in such state, province or country.
3. Deposits in such additional amounts as are permitted to be made under section 1259.

#### § 1252. Purpose of deposit

1. Deposits made in this State under section 412 (deposit requirement) shall be held in trust for the respective purposes stated in that section.
2. A deposit made in this State by a domestic insurer transacting insurance in another state, province or country, and as required by the laws of such other state, province or country, shall be held for the protection of all the insurer's policyholders or all its policyholders and creditors or for such other purpose or purposes as may be specified pursuant to such laws.
3. Deposits required under the retaliatory law, section 428, shall be held for such purposes as is required by such law, and as specified by the commissioner's order requiring such deposit to be made.

#### § 1253. Securities eligible for deposit

1. All such deposits required under section 412 for authority to transact insurance in this State and hereafter made shall consist of securities in negotiable form of kinds eligible for investment of funds of domestic insurers under chapter 13, other than real estate mortgages, and approved by the commissioner for deposit. Deposits heretofore made shall consist of such assets as were then eligible for deposit.
2. All other deposits of a domestic insurer held in this State pursuant to the laws of another state, province or country shall be comprised of securities of the kinds described in subsection 1, and of such additional kind or kinds of securities required or permitted by the laws of such state, province or country.

3. Deposits of foreign insurers made in this State under the retaliatory law, section 428, shall consist of such assets as are required by the commissioner pursuant to such law.

§ 1254. Depositary; records

1. Deposits made in this State under this Title shall be made through the commissioner with the Treasurer of State.

2. The Treasurer of State shall furnish the commissioner, for delivery to the depositing insurer, his official certificate identifying the securities deposited, the amount and par value of each, and his opinion of their value.

3. The commissioner shall keep a record of the securities comprising the deposit of each insurer, showing as far as practical the amount and market value of each item, and all his transactions relative thereto.

§ 1255. Responsibility for safekeeping

The State shall be responsible for the safekeeping of all securities and receipts delivered to the commissioner under authority of this chapter.

§ 1256. Custodial arrangements

1. In lieu of deposit with the Treasurer of State as provided in section 1254, upon the insurer's written request and for its greater convenience, the commissioner may in his discretion permit the insurer to make and maintain the deposit under custodial arrangements with the trust department of an established bank located in Maine.

2. Where of convenience to the insurer in the buying, selling and exchange of securities comprising its deposit, and in the collection of accruals thereon, the insurer may, with the commissioner's advance written approval, deposit certain of its securities under custodial arrangements with an established bank or trust company located outside this State.

3. The insurer shall deposit with the Treasurer of State through the commissioner the original receipts issued by the custodian institution for all securities held under such custodial arrangements.

4. The form and terms of all such custodial arrangements shall be as prescribed or approved by the commissioner consistent with the applicable provisions of this Title.

5. The insurer shall bear the costs of custodial arrangements, and the State of Maine shall not be responsible for the safekeeping of securities so held.

§ 1257. Assignment, transfer of securities or assets

All assets deposited by an insurer and not negotiable by delivery shall be duly assigned or transferred to the commissioner and his successors in office. Upon release of any such security to the insurer, the commissioner shall reassign or transfer the same to the insurer.

### § 1258. Appraisal

The commissioner may, in his discretion, prior to acceptance for deposit of any particular security, or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable cost of any such appraisal or valuation shall be borne by the insurer.

### § 1259. Excess deposits

1. If securities deposited by an insurer under this chapter are subject to material fluctuations in market value, the commissioner may, in his discretion, require the insurer to deposit and maintain on deposit additional securities in amount reasonably necessary to assure that the deposit at all times has a market value of not less than the amount specified under the law by which the deposit is required.

2. An insurer may otherwise at its option deposit securities in amount exceeding its deposit required or otherwise permitted under this Title by not more than 20% of such required or permitted deposit, or \$20,000, whichever is the larger amount, for the purpose of absorbing fluctuations in the value of securities deposited and to facilitate exchange and substitution of such securities. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer, such excess deposit shall be released only as provided in section 1263, subsection 5.

### § 1260. Rights of insurer during solvency

So long as the insurer remains solvent and is in compliance with this Title it may:

1. Demand, receive, sue for and recover the income from the securities deposited;
2. Exchange and substitute for the deposited securities, eligible securities of equivalent or greater fair market value; and
3. At any reasonable time inspect any such deposit.

### § 1261. Levy upon deposit

No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets held in this State as a deposit for the protection of the insurer's policyholders or policyholders and creditors. As to deposits made pursuant to the retaliatory provision, section 428, levy thereupon shall be permitted if so provided in the commissioner's order under which the deposit is required.

### § 1262. Deficiency of deposit

If for any reason the market value of securities of an insurer held on deposit in this State as required under this Title falls below the required amount, the insurer shall promptly deposit other or additional assets eligible

for deposit sufficient to cure the deficiency. If the insurer has failed to cure the deficiency within 20 days after receipt of notice thereof by registered mail from the commissioner, the commissioner shall forthwith revoke the insurer's certificate of authority.

§ 1263. Duration and release of deposit, in general

1. Every deposit made in this State by an insurer pursuant to this Title shall be held as long as there is outstanding any liability of the insurer as to which the deposit was so required; or, if a deposit required under the retaliatory provision, section 428, the deposit shall be held for so long as the basis of such retaliation exists.

2. Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the securities so to be returned are subject to no liability and are not required to be longer held by any provision of law or the purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this State, and if so provided in the reinsurance agreement, the commissioner shall deliver such securities to such insurer or insurers so assuming such risks, upon proof to his satisfaction:

A. That the assuming insurer has assumed and agreed to discharge all liabilities of every kind due and to become due which the deposit was to secure,

B. That the assuming insurer has on deposit in this State or with a State official in the United States, securities in an amount and value not less than the deposit required of the reinsured insurer and which will subsist for the security of the obligations of the reinsured insurer so assumed, and

C. That such assets and securities have been duly assigned, transferred and set over to such assuming insurer or insurers.

3. The commissioner shall return to a foreign insurer any deposit made in this State by the insurer, when the insurer has ceased transacting insurance in this State, or in the United States, and the insurer is not subject to any liability in this State on account of which the deposit was held.

4. If the insurer is subject to delinquency proceedings as defined in section 4353 upon the order of a court of competent jurisdiction the commissioner shall yield the insurer's assets held on deposit to the receiver, conservator, rehabilitator or liquidator of the insurer, or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

5. No release of deposited assets shall be made except upon application to and the written order of the commissioner. The commissioner shall have no personal liability for any release of any such deposit or part thereof so made by him in good faith.

CHAPTER 17  
AGENTS, BROKERS, CONSULTANTS AND ADJUSTERS  
SUBCHAPTER I  
LICENSING PROCEDURES & GENERAL REQUIREMENTS

§ 1501. Scope of chapter

This chapter governs the qualifications, licensing and general requirements as to insurance agents, brokers, consultants and adjusters, as to any and all kinds of insurance and types of insurers; except that:

- 1. This chapter does not apply as to reinsurance; and
- 2. The application of this chapter as to domestic mutual assessment insurers is as provided in section 3628.

§ 1502. "Agent" defined, in general

As used in this Title, insurance "agent" means a general lines agent, or life agent, or health agent, as defined in this subchapter, or all such agents, as indicated by context.

§ 1503. "General lines agent" defined

A general lines agent is any person authorized or appointed by an insurer to solicit applications for insurance contracts or to negotiate for such contracts in its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts for one or more kinds of insurance as follows:

- 1. Casualty insurance;
- 2. Property insurance;
- 3. Marine and transportation insurance;
- 4. Surety insurance;
- 5. Health insurance, when transacted by an insurer also represented by the same agent as to property or casualty or surety insurance; and
- 6. Title insurance.

§ 1504. "Life agent" defined

A life agent is a person authorized or appointed by an insurer to solicit applications for, or negotiate the procurement of, life insurance contracts or annuity contracts on behalf of the insurer, including also the solicitation and negotiation of health insurance contracts where so authorized and transacted by the same insurer.

§ 1505. "Health agent" defined

A "health agent" is any person authorized or appointed by an insurer to solicit applications for, or negotiate the procurement of health insurance contracts on behalf of the insurer, other than an agent licensed as to health insurance under sections 1503 ("general lines agent" defined) or 1504 ("life agent" defined).

§ 1506. "Broker" defined

1. A "broker" is any person who, not being an agent of the insurer, as an independent contractor solicits, negotiates, or procures insurance or annuity contracts or the renewal or continuation thereof on behalf of insureds or prospective insureds other than himself.

2. A "general lines broker" is a broker so transacting one or more kinds of insurance as follows:

- A. Casualty insurance;
- B. Property insurance;
- C. Marine and transportation insurance;
- D. Surety insurance; and
- E. Title insurance.

3. A "life broker" is a broker licensed as to life insurance and annuity contracts, and as to health insurance contracts if so requested by the broker.

§ 1507. "Service representative" defined

1. A "service representative" is an individual regularly employed on salary by an insurer, group of insurers, or managing general agent to work in the field with licensed agents in soliciting, negotiating and effectuating insurance in such insurer, group or insurers represented by the managing general agent.

2. Service representatives are not required to be licensed as such, but shall qualify for and be licensed as an agent, resident or nonresident, as the case may be, as to the kinds of insurance to be transacted as a service representative.

3. This section does not apply as to life and health insurances and annuity contracts.

§ 1508. "Consultant" defined

1. A "consultant" is any individual who as an independent contractor in relation to his client for fee or compensation other than from the insurer in any manner advises, or offers or purports to advise, any person actually or prospectively insured, or named or to be named as beneficiary, or having

or to have any interest in or insured under, any insurance contract or annuity contract, existing or proposed, relative to coverage, advisability, rights or interests under such contract, or relative to the retention, exchange, surrender, exercise of rights or other disposition of such a contract or of rights thereunder. This subsection shall not apply as to:

- A. An attorney while licensed to practice and actively practicing law in this State; or
  - B. An insurance actuary, and as such a member or associate of the Society of Actuaries or Academy of Actuaries.
2. A "general lines consultant" is one licensed as a consultant as to any one or more of the following kinds of insurance:
- A. Casualty insurance;
  - B. Property insurance;
  - C. Surety insurance;
  - D. Marine and transportation insurance;
  - E. Title insurance.
3. A "life consultant" is one licensed as a consultant as to life insurance contracts, annuity contracts and health insurance contracts.

§ 1509. "Adjuster" defined

An adjuster is any person who for compensation as an independent contractor or for fee on behalf of the insurer investigates and settles, and reports to his principal relative to, claims arising under insurance contracts or annuity contracts. The definition of adjuster shall not be deemed to include and license as adjuster shall not be required of:

1. Attorneys at law admitted to practice in this State;
2. The salaried employee of the insurer, or of the managing general agent representing the insurer, as to whom the employer has filed with the commissioner in advance written notice of the employee's name and address and authority to adjust.

§ 1510. "Organization" defined

For the purposes of this chapter an "organization" is a partnership or a corporation.

§ 1511. "Resident," "nonresident" defined

1. For the purposes of this chapter a "resident" is an individual whose

domicile or principal place of business is located in this State, or an organization with an established place of business in this State.

2. A "nonresident" is other than a resident.

§ 1512. License required; liability; validity of contract; penalty

1. No person shall in this State be, act as or hold himself out to be, with respect to subjects of insurance resident, located, or to be performed in this State or elsewhere, an agent or broker or consultant unless then licensed as such under this Title. No person shall in this State be, act as, or hold himself out to be an adjuster unless then licensed as an adjuster under this Title, except as provided in section 1856 (nonresident adjusters of special, catastrophe losses).

2. No agent or broker shall take application for, procure or place for others, any kind of insurance as to which he is not then licensed under this Title. No consultant shall act as such with respect to any kind of insurance as to which he is not then licensed as consultant under this Title.

3. Except as provided in section 1677 (excess or rejected risks), no agent shall place any insurance with any insurer as to which he does not then hold a license and appointment as agent under this Title.

4. An agent is personally liable under any insurance contract made by or through him outside the scope of his licensed authority. An insurance contract issued on an application solicited, received or forwarded by an unlicensed person and otherwise valid, is not thereby rendered invalid.

5. In addition to or in lieu of any applicable denial, suspension or revocation of license, any person violating this section shall, upon conviction, be punished by a fine of not less than \$100 or more than \$1,000, or by imprisonment for less than one year, or by both such fine and imprisonment.

§ 1513. Exceptions to license requirement

In addition to persons otherwise excluded therefrom, the definitions of agent, broker, consultant or adjuster shall not be deemed to include, and no license shall be required as to:

1. Individuals performing only clerical or administrative services in the office of the employer; and including, if a salaried employee of a general lines agent or general lines broker, incidental taking of insurance applications in the office of the employer if the employee does not receive commission on such applications and his compensation is not varied thereby.

2. Salaried employees of insurers or of life agents or life brokers who do not solicit or accept from the public applications for life insurance.

3. Any regular salaried officer or employee of an authorized insurer rendering assistance to or on behalf of a licensed agent or broker, if such officer or employee devotes substantially all of his time to activities other than the solicitation of applications for insurance or annuity contracts, and receives no commission or other compensation directly dependent upon the

amount of business obtained; except that a service representative shall be licensed as an agent as required by section 1507.

§ 1514. Purpose of license; "controlled business"

1. The purpose of a license issued under this chapter to an agent or broker is to authorize and enable the licensee actively and in good faith to engage in the insurance business with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation upon insurance solicited or procured by or through him upon his own interests or upon those of other persons with whom he is closely associated in capacities other than as an insurance agent or broker.

2. The commissioner shall not grant, renew, continue or permit to exist any license as agent or broker as to any applicant therefor or licensee thereunder if he finds that the license is being or will probably be used by the applicant or licensee materially for the purpose of writing "controlled business," that is:

A. Insurance of his own interests or those of his family or of his employer; or

B. Insurance or annuity contracts covering himself or members of his family, or a corporation, association or partnership, or the officers, directors, stockholders, partners, employees or debtors of such a corporation, association or partnership, of which he or a member of his family is an officer, director, stockholder, partner, associate or employee.

3. Such a license shall be deemed to have been, or intended to be, used materially for the purpose of writing controlled business if the commissioner finds that during any 12 months' period the aggregate commissions earned from such controlled business have exceeded or probably will exceed 40% of the aggregate commissions earned or to be earned on all business written or probably to be written by such applicant or licensee during the same period.

4. This section shall not apply as to:

A. Insurance of the interest of a sales or financing agency in a motor vehicle sold or financed by it.

B. Insurance of the interest of a real property mortgagee in the mortgaged property.

C. Credit life and credit health insurance.

D. Any 12-month period during which the licensee was totally disabled for 6 months or more.

§ 1515. Licensing forms

The commissioner shall prescribe, consistent with the applicable require-

ments of this chapter, and furnish all printed forms required under this chapter in connection with application for and issuance of licenses, examinations for licenses, and for appointment and termination of appointments of agents.

§ 1516. License to be issued only on compliance

1. For the protection of the people of this State the commissioner shall not issue or continue or renew or permit to exist any license as agent, broker, consultant or adjuster except in compliance with the applicable provisions of this chapter.

2. The commissioner shall not issue, or continue, or renew, or permit to exist any such license as to any individual who has not established to the commissioner's satisfaction that he is qualified therefor in accordance with the applicable provisions of this chapter.

§ 1517. Licensing of organizations

1. A firm or corporation shall be licensed only as an agent or broker or adjuster. Each general partner of a firm, and each other individual to act for the firm or corporation under the license, shall be named in or registered with the commissioner as to the license, and shall qualify as though an individual licensee. Such an individual shall exercise the license powers only for and in the name of the organization, but this shall not prevent such individual from at the same time being separately licensed and acting in his own behalf and name. A full additional license fee shall be paid as to each respective individual in excess of one named in or registered as to the organization license.

2. The commissioner shall not license a firm or corporation unless the license is within purposes stated in the partnership agreement or certificate of organization.

3. The organization must establish and maintain a place of business in this State if to be licensed as a resident agent or broker.

4. All such licensees shall be subject to the applicable standards of section 407, subsection 2 (ownership, management).

5. The licensee shall promptly notify the commissioner of every change among its members, directors and officers, and of other individuals designated in or registered as to the license.

§ 1518. Application for license

1. Written application for an agent, broker, consultant or adjuster license shall be made to the commissioner by the applicant, accompanied by the applicable license application and examination application fees shown in section 601 (fee schedule), and the investigation cost, if applicable, referred to in section 1519. The application shall be signed and duly sworn to by the applicant.

2. The application form shall require full answers to questions reason-

ably necessary to determine the applicant's identity, age, residence, present occupation and occupations and business record over not less than the 5 years next preceding the date of the application, financial responsibility, insurance experience, special education or instruction in insurance and insurance laws of this State he has had or expects to receive, purpose for which the license is to be used, whether he will devote all or part of his efforts to transactions under the license and, if part only, how much time he will devote to such transactions and in what other business or businesses he is or will be engaged or employed, and such other facts as the commissioner may require relative to the applicant's qualifications for the license as such qualifications are stated in this chapter. The application shall be accompanied by an imprint of the applicant's fingerprints and applicant's recent photograph.

3. If for an agent, broker or consultant license the application shall state the kinds of insurance proposed to be transacted.

4. If for an agent license, the application shall be accompanied by written appointment by an authorized insurer of the applicant as agent for such kinds of insurance, subject to issuance of the license.

5. If the applicant is a firm or corporation, as provided in section 1517, the application shall show, in addition, the names and residence addresses of all members, officers and directors, and shall designate the name and residence address of each individual who is to exercise the license powers; and each such individual shall furnish information with respect to himself as though for an individual license.

6. The application shall show whether the applicant was ever previously licensed anywhere as to insurance; whether any such license was ever refused, suspended, revoked or renewal or continuance refused; whether any insurer, general agent, agent or broker claims applicant to be indebted to it, and if so, the details thereof and applicant's defense thereto; whether applicant has ever had an agency contract cancelled, and the facts thereof; and, if applicant is a married woman, like information with respect to her husband.

7. If the application is for license as an agent, it shall be accompanied by the insurer's certificate, on form furnished by the commissioner and signed by the insurer's duly authorized representative, that the insurer has investigated the applicant's character and background and is satisfied that he is trustworthy and qualified to act as its agent and will hold himself out in good faith to the general public as an agent.

8. No applicant for license under this chapter shall wilfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.

9. The commissioner shall withhold from public inspection information of a personal nature concerning applicants for license.

#### § 1519. Investigation

1. Upon completion of any application for license under this chapter the

commissioner shall make such investigation as he deems advisable of the applicant's character, financial responsibility, experience, background and fitness for the license applied for.

2. As to applicants not theretofore licensed under this Title or licensed as insurance agent, broker or adjuster in this State under laws heretofore in force, the commissioner shall secure, as soon as is reasonably possible after filing of the application, a credit and investigation report relative to the applicant from a recognized and established independent investigation and reporting agency; except, that in lieu of obtaining a special such report, the commissioner may, in his discretion, accept a similar report furnished by or on behalf of an insurer which proposes to appoint the applicant as its agent. The cost, if any, of such report, in a reasonable uniform flat amount as from time to time fixed by the commissioner, shall be paid by or on behalf of the applicant, and shall be deposited with the commissioner at the time of filing the application. The commissioner shall promptly deposit the payment with the Treasurer of State to the credit of the insurance regulatory fund. The commissioner shall keep confidential the contents of any such report.

§ 1520. Examination for license; application for examination

1. After completion and filing of application with the commissioner as required by section 1518 the commissioner shall subject each applicant for license as agent, broker, consultant or adjuster, unless exempted therefrom under section 1521, to a written examination as to his competence to act as such agent, broker, consultant or adjuster.

2. If the applicant is an organization, the examination shall be so taken by each individual who is to be named in or registered as to the license, as provided in section 1517.

3. As to life insurers authorized to issue variable annuities, applicants appointed by such insurers to solicit such annuity contracts in this State, in addition to completing examinations required for a life agent's license, shall take and pass successfully a separate examination covering the subject of variable annuities, in accordance with such reasonable rules and regulations as may be adopted by the commissioner, and pay a separate examination application fee therefor.

4. An applicant for license as both a life agent or broker and a general lines agent or broker shall be separately examined as to life insurance and as to such general lines, and shall pay a separate examination application fee as to each of such 2 examinations.

5. Nothing in subsection 3 or 4 shall be deemed to prohibit the giving of all required examinations as to a particular applicant on the same day.

6. Written application for the examination shall be filed with the commissioner by or on behalf of the applicant not less than 10 days prior to the date fixed for the examination, as provided in section 1523, and shall be accompanied by the fee for such application as specified in section 601 (fee schedule). This application fee is earned when paid, and is not subject to refund.

## § 1521. Exemption from examination

Section 1520 shall not apply and no such examination shall be required of:

1. An applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed under a similar license in this State, other than a temporary license or initial license as a life agent, within 2 years next preceding date of application for the license, unless such previous license was revoked or continuation thereof refused by the commissioner, and if the commissioner deems the applicant to be fully qualified for the license. For the purposes of this subsection an agent's license covering fire insurance and existing on the effective date of this Act shall be deemed to be the equivalent of a license covering "property" insurance as defined in this Title.

2. An applicant for an agent's license who is currently licensed as a broker or as a consultant as to the same kind or kinds of insurance, or has been so licensed within 12 months next preceding date of application for the license, unless such previous license was revoked or suspended or continuation thereof refused by the commissioner.

3. Applicants for limited license under section 1531, who represent public carriers and in the course of such representation solicit or sell insurance incidental to the transportation of persons or to the storage or transportation of property, and as to insurance so transacted.

4. Applicants for license as title insurance agent, who are attorneys at law duly licensed to practice law in this State.

## § 1522. Scope of examination; reference material

1. Each examination for license as agent, broker, consultant or adjuster shall reasonably test the applicant's competence and knowledge of the kinds of insurance, policies and transactions to be handled under the license applied for, of the duties and responsibilities of such a licensee, and of the pertinent laws of this State with which the applicant reasonably should be familiar.

2. The examination for a broker license shall be more difficult than that for an agent license; the examination for a consultant license shall be substantially more difficult than that for a broker license and shall be a thorough testing of the applicant's competence to provide expert advice within the field covered by the license applied for; and the examination for a life agent permanent license shall be substantially more difficult than the examination for initial license as a life agent as provided for in section 1674.

3. The commissioner shall prepare and make available to applicants printed information as to the general scope of, and particular subjects to be covered by, the examination for a particular license, together with information as to published books and other reference sources which may be studied by the applicant in preparation for the examination.

## § 1523. Conduct of examination

1. All examinations of license applicants shall be conducted by the commissioner, or his designee using examinations prepared by him.
2. The commissioner shall make examinations available to applicants at least biweekly at the commissioner's principal office; and at such other times and places in this State as the commissioner may deem advisable.
3. All the kinds of insurance and annuity business the applicant proposes to transact under the license applied for shall be included in the same examination, except as provided in section 1520, subsections 3 and 4, as to applicants for license as to both life insurance and general lines, and as to variable annuities.
4. The commissioner shall give, conduct and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.
5. The applicant must pass the examination with a grade indicating his ability to perform his duties in a satisfactory manner under the license for which he applies.
6. Within 30 days after the examination the commissioner shall inform the applicant and the appointing insurer as to whether or not he has passed.
7. The commissioner shall keep each examination paper on file for at least 6 months.

§ 1524. Failure to take examination; reexamination

1. An applicant who fails to take an examination within 90 days after filing application therefor shall forfeit both his application and the fee paid in connection therewith.
2. An applicant who has failed to pass the first examination for the license applied for may take a second examination after a one-week waiting period, and without paying a new examination application fee if the second examination is taken within 6 months after the first examination.
3. An applicant who has failed to pass the first 2 examinations for the license applied for shall not be permitted by the commissioner to take a 3rd or subsequent examination until expiration of 6 months after the last previous examination. Except as provided in subsection 2, the applicant shall pay a new examination application fee with respect to each examination after the first examination for the license applied for.
4. A different set of examination questions than any theretofore used as to the same applicant shall be used on each reexamination.

§ 1525. Examination advisory boards; designation, appointment

1. The commissioner shall continue to appoint 2 advisory boards to

make recommendations to him with respect to the scope, type and conduct of written examinations for license, the times and places within the State where examinations shall be held, and with respect to the other matters referred to in this section. He shall appoint one such board with respect to general lines agent licensing, to be referred to as the "general lines agent examination advisory board;" he shall appoint the other such board with respect to life agent licensing, to be referred to as the "life agent examination advisory board."

2. Each such board shall consist of 5 members, to be appointed by the commissioner for terms of 3 years each, on a staggered term system so as to prevent the terms of more than 2 members from expiring in any one year. No person shall be eligible for appointment to such a board unless he or she is active on a full-time basis in the general lines insurance business, as to the general lines advisory board, or in the life insurance business, as to the life advisory board, and is a resident of this State. No person may be reappointed to a board for more than one 3-year term.

3. In appointing members to the general lines advisory board, the commissioner so far as practicable shall appoint persons with prior experience in the education and training of fire, casualty or surety insurance agents or prospective agents; and so far as practicable the commissioner shall so constitute such board that it shall at all times include members who are experienced in the fire, casualty or surety insurance business, 2 of whom shall be representatives of general lines agents, one of whom shall be a representative of the domestic mutual insurers, other than life insurers, one of whom shall be the representative of other insurers authorized to do a property, casualty or surety insurance business in this State, and one of whom shall represent the public.

4. In appointing members to the life advisory board the commissioner so far as practicable shall appoint persons with prior experience in the education and training of life insurance agents or prospective agents; and so far as practicable the commissioner shall so constitute the board that it shall at all times include one general agent or manager of a life insurance agency within this State, and one salaried home office officer or employee of a domestic life insurer.

§ 1526. Same — Functions, reports, expenses

1. Each respective such advisory board shall meet with the commissioner twice during each calendar year at times and places to be designated by the commissioner, and on such other occasions as its members deem appropriate. The commissioner shall furnish to the board such information, not otherwise designated by law as confidential, as its members may reasonably require with respect to the conduct, scope and results of examinations of general lines agents, as to the general lines advisory board, or of life agents, as to the life advisory board.

2. Each such board shall make at least one written annual report to the commissioner with respect to the matters within its province. In the report, or in addition thereto, the board shall provide the commissioner with its specific recommendations from time to time as to changes in the scope, format and nature of examinations with which it is concerned, as appear to

its members desirable and in the best interest of the people of this State, and of the property, casualty or surety insurance business, as to the general lines advisory board, or the life insurance business, as to the life advisory board, as conducted in this State.

3. The commissioner shall avail himself and his department of all such recommendations and material so furnished by the respective such boards, and shall adopt or implement such portions thereof as appear to him appropriate and advisable.

4. Each board may, in addition, consult with the commissioner with respect to possible legislation or regulatory measures designed or intended to improve the quality and nature of the solicitation and servicing of property, casualty or surety insurance by licensed general lines agents, as to the general lines advisory board, or of life insurance by licensed life agents, as to the life advisory board, within this State; but nothing in this section shall be deemed to vest any authority in such a board other than on an advisory basis as stated.

5. The written reports of a board shall be matters of public record, and available from the commissioner upon request.

6. The members of such a board shall serve without compensation, but with the commissioner's approval may be reimbursed for their reasonable travel expenses in attending any meeting called or approved by the commissioner.

#### § 1527. Issuance, refusal of license; refundability of fees

1. If the commissioner finds that the application is complete, that the applicant has passed any required examination and is otherwise qualified for the license applied for, he shall promptly issue the license; otherwise, the commissioner shall refuse to issue the license and promptly notify the applicant and the appointing insurer, if application is for an agent's license, of such refusal, stating the grounds thereof.

2. If the license is refused, the commissioner shall promptly refund to the appointing insurer, in the case of applications for agent's license, the appointment fee tendered with the license application. All other fees for application for agent, broker, consultant or adjuster license shall be deemed earned when paid and shall not be refundable.

#### § 1528. License categories

The commissioner shall issue under this chapter the following categories of license only:

1. Agent license:
  - A. Resident agent, individual or organization.
  - B. Nonresident agent, individual or organization.
  - C. Life agent initial license.
  - D. Life agent permanent license.

E. Except as provided in section 1531, an agent license must cover one or more complete kinds of insurance as defined in chapter 9.

2. Broker license:

A. Resident broker, individual or organization.

B. Nonresident broker, individual or organization.

C. A broker license must cover one or more complete kinds of insurance as defined in chapter 9.

3. Consultant license:

A. Consultant, individual only.

B. A consultant license must cover either or both of the following categories, as selected by the licensee:

(1) General lines, that is, property, casualty and surety insurances.

(2) Life insurance, annuities, and health insurance.

4. Adjuster license:

A. Individual or organization.

§ 1529. License contents; number of licenses required

1. The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, the kind or kinds of insurance covered by the license, if applicable, and such other conditions as the commissioner deems proper for inclusion in the license certificate. No license shall be issued in a trade name unless the name has been duly registered or filed as required by law.

2. The license of an agent shall not specify the name of any particular insurer by which the licensee is appointed as agent, except as provided in subsection 4, as to limited licenses; and the licensee may, subject to section 1530 as to life or health agents, represent as such agent under the one license as many insurers as may appoint him therefor, with respect to the kind or kinds of insurance covered by the license, in accordance with this chapter.

3. A license issued to an organization shall list the location of each place of business of the organization.

4. Each limited license issued pursuant to section 1531 shall show also the name of the insurer so represented, and a separate license shall be required as to each such insurer.

§ 1530. Multiple licensing, life or health insurance agents

1. A life or health insurance agent may concurrently be licensed as to as many life or health insurers as duly file appointments of the licensee with the commissioner and pay the appointment fee, except as provided hereinbelow.

2. Upon the filing of each appointment of the licensee or proposed licensee by a life or health insurer the commissioner shall promptly give written notice of the pending appointment to all other life or health insurers, as the case may be, as to whom the licensee has been licensed in this State within the 24 months next preceding, and shall allow such other insurers a reasonable period as specified in the notice within which to respond. If the commissioner finds that the applicant or licensee has a debit balance with any such other insurer or with a general agent which is not adequately secured or otherwise provided for to the obligee insurer's satisfaction, and that such indebtedness is either acknowledged by the applicant or licensee or the insurer or general agent has secured a judgment therefor, the commissioner shall not effectuate the new appointment until after such debit balance has been adequately secured, or otherwise so provided for.

#### § 1531. Limited licenses

1. The commissioner may issue to an applicant qualified therefor under this chapter a limited agent's license as follows:

- A. Covering motor vehicle insurance only; or
- B. To persons representing public carriers, as provided in subsection 3 of section 1521; or
- C. Covering only credit life and credit health insurance.

2. No person so licensed shall concurrently hold license as an agent or broker as to any other or additional kind of insurance.

3. The fee for limited licenses is as specified in section 601 (fee schedule).

#### § 1532. Continuation, expiration of licenses

1. Each broker (resident or nonresident), consultant, and adjuster license issued under this Title shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to payment to the commissioner at his office in Augusta annually on or before December 31 of the applicable continuation fee as stated in section 601 (fee schedule), accompanied by written request of the licensee for such continuation. Any such license not so continued on or before December 31 shall be deemed to have expired as at midnight on such December 31; except that the commissioner may effectuate a request for continuation received by him within 30 days after such December 31 if accompanied by an annual continuation fee of 150% of the continuation fee otherwise required.

2. An initial license as life agent shall be for a term of one year and shall not be subject to renewal, continuance or reissuance.

3. An agent license, other than initial license as life agent, shall continue in force while there is in effect as to the licensee, as shown by the commissioner's records, an appointment or appointments as agent of authorized insurers covering collectively all the kinds of insurance included in the agent's license. Upon termination of all the licensee's agency appointments as to a particular kind of insurance and failure to replace such appointment within 60 days thereafter, the license shall thereupon expire and terminate as to such

kind of insurance, and the licensee shall promptly deliver his license to the commissioner for reissuance, without fee or charge, as to such kinds of insurance, if any, covered by the licensee's remaining agency appointments. Upon termination of all the licensee's agency appointments the license shall forthwith terminate.

4. As a condition to or in connection with the continuation of any agent or broker license the commissioner may require the licensee to file with him information as for application for the license, or as to the use made of the license during the current or next preceding calendar year.

5. This section does not apply to temporary licenses issued under section 1536.

### § 1533. Appointment of agents

1. Each insurer appointing an agent in this State shall file with the commissioner the appointment in writing, specifying the kinds of insurance or annuity business to be transacted by the agent for the insurer, and pay the appointment fee, or license fee in the case of limited licenses, at the rate specified in section 601 (fee schedule). An agent required to take a variable annuity examination pursuant to section 1520 shall be separately appointed as to variable annuities and the insurer shall pay a separate appointment fee therefor.

2. Where an initial limited license is issued or an initial agent appointment is filed as to an insurer after the insurer's anniversary, as defined in section 1534, the commissioner shall reduce, to the nearest 50c, the license or appointment fee in proportion to the then expired portion of the insurer's appointment year, except that in no case shall the fee as reduced be less than \$1.

3. Subject to annual continuation by the insurer as provided in section 1534, each appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless the insurer earlier terminates the appointment as provided in section 1535.

### § 1534. Annual continuation of appointment

1. In order to spread the renewal of limited licenses and continuation of agent appointments with reasonable uniformity throughout the calendar year, the commissioner shall fix a date, "insurer's anniversary", upon which all such licenses and appointments shall be subject to renewal or continuation as to a particular insurer, and shall give the insurer at least 90 days advance written notice of such date.

2. Annually on or before the insurer's anniversary the insurer shall file with the commissioner an alphabetical list of the names and addresses of all its agents in this State whose appointments, or licenses in the case of limited licenses, are to remain in effect as to the kinds of insurance or annuity business for which the respective agents are so appointed or licensed, accompanied by payment of the annual continuation of appointment fee, or license fee in the case of limited licenses, as specified in section 601 (fee schedule). At the same time, the insurer shall also file with the commissioner an alphabetical list of the names and addresses of all its agents whose appointments or limited licenses in this State are not to remain in effect, or whose appointment as to certain kinds of insurance or annuity business are not to remain in

effect and as designated in such list. Any appointment or limited license not so continued and not otherwise expressly terminated shall be deemed to have expired at midnight on the insurer's anniversary.

§ 1535. Termination of agent appointment

1. Subject to the agent's contract obligations and rights, if any, an insurer or agent may terminate an agency appointment at any time. If termination is by the insurer, the insurer shall promptly give written notice of termination and the effective date thereof to the commissioner, and to the agent where reasonably possible. The list of appointments not being continued referred to in section 1534 shall constitute such notice to the commissioner as to the terminations so listed. The commissioner may require of the insurer reasonable proof that the insurer has given such notice to the agent where reasonably possible.

2. Accompanying the notice of termination given the commissioner the insurer shall file with him a statement of the cause, if any, for termination. Any information, document, record or statement so disclosed or furnished to the commissioner shall be deemed an absolutely privileged communication and shall not be admissible as evidence in any action or proceeding.

§ 1536. Temporary license as agent or broker

1. The commissioner, in his discretion, may issue a temporary license as agent or broker, as the case may be, to or with respect to an individual otherwise qualified therefor but without requiring such individual to take an examination, in the following cases:

A. To the surviving spouse or next of kin, or to the administrator or executor or employee thereof, of a licensed agent or broker becoming deceased, or to the spouse, next of kin, employee or legal guardian or employee thereof, of a licensed agent or broker disabled because of sickness, insanity or injury, if in either case the commissioner deems that such temporary license is necessary for the winding up or continuation of the agent's or broker's business.

B. To a member or employee of a firm, or officer or employee of a corporation, licensed as agent or broker, upon the death or disablement of an individual designated in or registered as to the license to exercise the powers thereof.

C. To the designee of a licensed agent or broker entering upon active service in the armed forces of the United States of America.

2. A temporary license issued under this section shall be for a term of not over 6 months, and shall not be renewed.

3. The fee paid for a temporary license may be applied upon the fee required for any permanent similar license issued to the licensee, prior to expiration of the temporary license and covering the same kinds of insurance.

§ 1537. Same—Rights, limitations

1. The temporary license may cover the same kinds of insurance for which

the agent or broker thereby being replaced was licensed.

2. The temporary licensee may represent under the license all insurers last represented by the replaced agent, and without the necessity of new appointments of the licensee; but the licensee shall not be appointed as to any additional insurer or additional kind of insurance under such a temporary license. This provision shall not be deemed to prohibit termination of its appointment by any insurer.

3. A temporary licensee shall have the same license powers and duties as under a permanent license.

#### § 1538. Insurance vending machines

1. A licensed resident agent may solicit and issue personal travel accident insurance policies by means of mechanical vending machines supervised by the agent and placed at airports and similar places of convenience to the traveling public, if the commissioner finds:

A. That the policy to be so sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and that use of such a machine in a proposed location would be of material convenience to the public;

B. That the type of vending machine proposed to be used is reasonably suitable for the purpose;

C. That reasonable means are provided for informing prospective purchasers of policy coverages and restrictions; and

D. That reasonable means are provided for refund of money inserted in defective machines and for which no insurance, or a less amount than that paid for, is actually received.

2. As to each such machine to be used, the commissioner shall issue to the agent a special vending machine license. The license shall specify the name and address of the insurer and agent, the name of the policy to be sold, the serial number of the machine, and the place where the machine is to be in operation. The license shall be subject to annual continuation, to expiration, suspension or revocation coincidentally with that of the agent. The commissioner shall also revoke the license as to any machine as to which he finds that the license qualifications no longer exist. The license fee shall be as stated in section 601 (fee schedule) for each license year or part thereof for each respective vending machine. Proof of the existence of a subsisting license shall be displayed on or about each such machine in use in such manner as the commissioner reasonably requires.

#### § 1539. Suspension, revocation, refusal of license

1. The commissioner may suspend for not more than 12 months, or may revoke or refuse to continue any license issued under this chapter or any surplus lines broker license if, after notice to the licensee and to the insurer represented as to an agent and hearing, he finds that as to the licensee any one or more of the following causes exist:

A. For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.

B. For violation of or noncompliance with any applicable provision of this Title, or for willful violation of any lawful rule, regulation, or order of the commissioner.

C. For obtaining or attempting to obtain any such license through misrepresentation, or for failure to disclose a material fact required to be disclosed in the application, or for fraud.

D. For misappropriation or conversion to his own use, or illegal withholding, or illegal failure to remit, moneys belonging to policyholders, or insurers, or beneficiaries, or others and received in conduct of business under the license.

E. For material misrepresentation of the terms of any existing or proposed insurance contract.

F. For willful overinsurance of property located in this State.

G. For holding at the same time licenses as a resident agent or broker in this and any other State.

H. If in conduct of his affairs under the license the licensee has used fraudulent, or coercive, or dishonest practices, or has shown himself to be incompetent, or untrustworthy, or financially irresponsible, or a source of injury and loss to the public.

2. The license of a firm or corporation may be suspended, revoked or refused also for any of such causes as relate to any individual designated in or registered as to the license to exercise its powers.

§ 1540. Notice, effective date of suspension, revocation or refusal to continue

1. Upon suspension or revocation of or refusal to continue any such license the commissioner shall forthwith notify the licensee thereof in writing either delivered to the licensee in person or sent by registered or certified mail addressed to the licensee at his address last of record with the commissioner. Notice by mail shall be deemed effective when so mailed. The commissioner shall give like notice to the insurers represented by an agent.

2. The suspension or revocation or refusal to continue shall become effective upon the date specified in the notice, but not less than 20 days after the notice was given or mailed as provided in subsection 1.

§ 1541. Return of license to commissioner

1. All licenses issued under this Title, although issued and delivered to the licensee, shall at all times be the property of the State of Maine. Upon any expiration, termination, suspension or revocation of the license, the licensee or other person having possession or custody of the license shall forthwith deliver it to the commissioner by personal delivery or by mail.

2. As to any license lost, stolen or destroyed while in the possession of any such licensee or person, the commissioner may accept in lieu of return of the license, the affidavit of the licensee or other person responsible for or involved in the safekeeping of such license, concerning the facts of such loss, theft or destruction.

§ 1542. Relicensing after revocation; refusal of license

1. The commissioner shall not again issue license under this Title as to any person whose license has been revoked or continuance refused, until after expiration of one year from the effective date of such revocation or refusal, or, if judicial review of such revocation or refusal is sought, until after one year from the date of final court order or decree affirming such revocation or refusal, and until such person again qualifies for the license in accordance with the applicable provisions of this Title. The commissioner may refuse any such new license applied for unless the applicant shows good cause why the prior revocation or refusal shall not be deemed a bar to the issuance of a new license.

2. A person whose license has been revoked or continuance refused twice shall not again be eligible for any license under this Title.

3. If the license of a firm or corporation is so suspended or revoked or continuance refused, no member of such firm, or officer or director of such corporation, shall be licensed or be designated in or as to any license to exercise the powers thereof during the period of such suspension, revocation or refusal, unless the commissioner determines upon substantial evidence that such member, officer or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended, revoked, or continuance refused.

## SUBCHAPTER II

### GENERAL LINES AGENTS AND BROKERS — QUALIFICATIONS AND REQUIREMENTS

§ 1601. Short title

This subchapter may be referred to as the “general lines agent and broker law.”

§ 1602. Scope of subchapter

1. This subchapter II applies only as to:

A. General lines agents, as defined in section 1503.

B. General lines brokers, as defined in section 1506.

2. As used in this subchapter “agent” means general lines agent, and “broker” means general lines broker.

§ 1603. Qualifications for agent, broker licenses

For the protection of the people of this State, the commissioner shall not issue, continue or permit to exist any agent or broker license except in compliance with this chapter, or as to any individual unless qualified therefor as follows:

1. Age. Must be at least 21 years of age.

2. Residence. Must be a resident of this State if to be licensed as a resident agent or resident broker, and, if to be licensed as a resident agent or

broker, must not be licensed as a resident agent or resident broker of another state.

3. Competence, etc. Must be competent, trustworthy, financially responsible, and of good personal and business reputation.

4. Education. Must have fulfilled applicable education requirements as provided for in section 1604.

5. Examination. Must have passed any written examination required for the license under this chapter.

6. Purpose. Must not seek or use the license for the purpose of writing controlled business, as referred to in section 1514.

7. Appointment. If for agent's license, must have been appointed agent by an authorized insurer or insurers as to the kinds of insurance to be covered by the license, subject to issuance of the license.

8. Experience. If for broker's license, must have had experience either as an agent, consultant, service representative, adjuster, managing general agent or broker, or other special experience, education or training, all of sufficient content and duration as deemed by the commissioner to be reasonably necessary for competence in fulfilling the responsibilities of a broker.

#### § 1604. Educational requirement

1. An applicant for license as agent or broker who is required, under sections 1520 and 1521, to take a written examination must have completed the educational requirement prescribed by either paragraph A or B below within the 2 years next prior to the date his application for license is filed with the commissioner:

A. He must have completed successfully such courses of instruction in insurance as the commissioner may reasonably require and approve. Such courses may be either in attendance at or under the supervision and direction of or by correspondence with an educational institution or insurer, as approved by the commissioner; or

B. He must have had not less than 6 months of responsible duties and experience as a substantially fulltime employee of an insurance agent or broker, or of an insurer, its manager, general agent or representative, in the property, casualty and surety insurance business. As to applicants for license as broker, this provision shall not be deemed to restrict the requirements of section 1603, subsection 8.

2. If qualification is based upon fulfillment of the requirements of paragraph B, the applicant shall file with the commissioner an affidavit by his employer stating the period of employment, that it was substantially fulltime, and the nature of the duties performed by the applicant.

3. An applicant for relicensing as agent or broker and who has once fulfilled the above educational requirement, need not again fulfill them.

#### § 1605. Authority of agent; limitation as to surety bonds

1. A licensed agent resident in this State of an authorized insurer may:

A. Sale of insurance. Solicit, sell and make binding insurance contracts throughout this State within the authority granted him by the insurer and the scope of his license.

B. Adjustment of losses. Adjust the losses of the insurer within the authority granted him by the insurer.

2. An agent who is also a judge of probate, register of probate or an employee in the office of either, shall not write surety bonds or share in the commissions thereon.

#### § 1606. Broker's bond

1. Every applicant for a broker's license shall file with the commissioner with the application and shall thereafter maintain in force while so licensed, a bond in favor of the State of Maine executed by an authorized surety insurer. The bond shall be conditioned upon full accounting and due payment to the person entitled thereto, of funds coming into the broker's possession through insurance transactions under the license. The bond may be continuous in form and aggregate liability on the bond shall be limited to payment of not less than \$2,500.

2. The bond shall remain in force until released by the commissioner, or until cancelled by the surety. Without prejudice to liability previously incurred thereunder, the surety may cancel the bond upon 30 days' advance written notice to both the broker and the commissioner.

#### § 1607. Broker's authority, commissions

1. A person licensed as a resident or nonresident broker may negotiate with any authorized insurer insurance contracts within the scope of his license and covering risks in this State, subject, as to a nonresident broker, to section 1618 (must place business through resident agent).

2. A broker as such is not an agent or other representative of an insurer and does not have power by his own acts to obligate the insurer upon any risk or with reference to any insurance transaction.

3. An insurer or agent shall have the right to pay to a broker licensed under this chapter the customary commissions upon insurance placed through the broker.

#### § 1608. Broker, agent license combinations

A licensed agent may be licensed also as a broker and be a broker as to insurers for which he is not then licensed as agent. The sole relationship between a broker and an insurer as to which he is then licensed as an agent, as to transactions arising during the existence of such agency appointment, shall be that of insurer and agent, and not that of insurer and broker.

#### § 1609. Place of business

Every resident agent and broker shall have and maintain in this State a place of business accessible to the public, and wherein the licensee principally

conducts transactions under his license. The licensee shall promptly notify the commissioner in writing of any change of address. Nothing in this section shall prohibit maintenance of such a place in the licensee's residence in this State.

§ 1610. Records

1. The agent or broker shall keep at his place of business complete records of transactions under his license. Such records shall show, as to each insurance policy or contract placed through or countersigned by the licensee, not less than:

- A. The names of the insurer and insured;
- B. The number and expiration date of the policy or contract;
- C. The premium payable as to the policy or contract;
- D. The date, time, insurer, insured and coverage of every binder made by the agent; and
- E. Such other information as the commissioner may reasonably require.

2. The record shall be kept available for inspection by the commissioner for a period of at least 3 years after completion of the respective transactions.

§ 1611. Signature, countersignature of policies

1. When by law the signature or countersignature of an agent is required on an insurance contract, or rider or endorsement thereto, the agent shall affix his signature thereon, either by original written signature or by a true facsimile signature.

2. The agent may grant a power of attorney to an individual who is 21 years or more of age to sign and countersign policies and endorsements in his name and behalf after first obtaining the commissioner's written consent and that of the proper official of the insurer involved.

3. A facsimile signature may be used as to personal accident insurance policies covering air travel on a common carrier and issued through a vending machine licensed as provided in section 1538.

§ 1612. Countersignature fee

1. A nonresident agent or nonresident broker shall pay as a countersigning fee to a resident agent who countersigns an insurance contract pursuant to section 426, subject to exceptions stated in section 427, 50% of the commission on the first \$50 of commissions, and a negotiated amount of commission on the balance of the commission based on the services rendered or to be rendered by the countersigning resident agent.

2. If the laws of a state or a province of Canada, in which the nonresident agent or nonresident broker is licensed as a resident thereof, imposes upon a Maine agent or broker a requirement to pay a greater countersignature fee of a specific amount of percentage of the commission, the countersigning fee

payable to the Maine agent shall be the same as would be imposed on the Maine agent or broker by or under the laws of such state or province.

§ 1613. Reporting and accounting for premiums

All premiums and return premiums received by an agent or broker are trust funds so received by the licensee in a fiduciary capacity; and the licensee shall in the applicable regular course of business account for and pay the same to the insured, insurer, or person entitled thereto.

§ 1614. Commissions; payment, acceptance

1. No insurer shall pay or allow to any person otherwise required to be licensed as an agent or broker under this chapter, either directly or indirectly, any commission or compensation for soliciting, negotiating or effecting a contract of insurance within this State unless at the time of such solicitation, negotiation or effectuation such person was duly licensed by this State as an agent or broker as to the kind or kinds of insurance involved, and, if an agent, was duly appointed as an agent of the insurer as provided in section 1533. This provision shall not apply as to business placed pursuant to section 1615 or pursuant to any assigned risk plan.

2. No person other than one entitled to the same as provided in subsection 1, shall receive or accept any such commission or compensation.

§ 1615. Sharing commissions

An agent may place with an insurer as to which he is not then appointed as agent, through a duly licensed and appointed agent of such insurer, an insurance coverage necessary for the adequate protection of a subject of insurance and share in the commission thereon, if each such agent is licensed as to the kinds of insurance involved.

§ 1616. Nonresident agents, brokers

1. The commissioner may license as agent or broker a resident of another state or province of Canada otherwise qualified therefor, if a similar privilege is extended by such other state or province to residents of Maine.

2. The commissioner may waive the taking of a written examination by the nonresident applicant for such a license, if a similar privilege is extended by the other state or province to Maine residents and if he finds that the applicant has already met qualification requirements and standards in the applicant's domiciliary state or province substantially as high as those applicable under this chapter to Maine residents applying for a similar license.

3. Such a nonresident licensee shall have the same general duties and obligations as apply under this chapter to a Maine resident holding similar license.

§ 1617. Same—Service of process

1. Every nonresident licensed in this State as an agent or broker under section 1616 shall appoint the commissioner in writing as his attorney upon whom may be served all legal process issued in connection with any action or proceeding brought or pending in this State against or involving the

licensee and relating to transactions under his Maine license. The appointment shall be irrevocable and shall continue in force for so long as any such action or proceeding could arise or exist. The commissioner shall prescribe and furnish the form for such appointment.

2. Duplicate copies of process shall be served upon the commissioner or other person in apparent charge of his office during his absence, accompanied by payment of the process fee specified in section 601 (fee schedule). Upon receiving such service the commissioner shall promptly mail a copy thereof by registered or certified mail with return receipt requested addressed to the nonresident licensee at his business address last of record with the commissioner.

3. Process served as in this section provided shall for all purposes constitute personal service thereof upon the licensee.

§ 1618. Same—Nonresident must place business through resident agent

A nonresident agent or broker must place through an agent resident in this State of the insurer, all insurance covering a resident of this State, property situated in this State, a risk incidental to the performance or nonperformance of any obligation to be performed in this State, or a risk incidental to any obligation which is governed by the laws of this State though actually to be performed elsewhere, except as provided in section 427 (exceptions to counter-signature law).

### SUBCHAPTER III

#### LIFE AGENTS AND BROKERS

#### QUALIFICATIONS AND REQUIREMENTS

§ 1671. Short title

This subchapter may be referred to as the "life agent and broker law."

§ 1672. Scope of subchapter III

1. This subchapter applies only as to:

A. Life agents as defined in section 1504.

B. Life brokers as defined in section 1506.

2. As used in this subchapter "agent" means life agent, and "broker" means life broker.

§ 1673. Qualifications for life agent, broker licenses

For the protection of the people of this State, the commissioner shall not issue, continue or permit to exist any agent or broker license except in compliance with this chapter, or as to any individual unless qualified therefor as

follows:

1. Age. Must be 21 years or more of age.
2. Residence. If to be licensed as a resident agent or resident broker, must be a resident of this State or have his principal place of business located in this State and not be licensed as a resident agent or resident broker of another state.
3. Competence, etc. Must be competent, trustworthy, financially responsible, and of good personal and business reputation.
4. Examination. Must have passed any written examination required for the license under this chapter.
5. Purpose. Must not seek or use the license for the purpose of writing controlled business, as referred to in section 1514.
6. Appointment. If for agent's license, must have been appointed agent by an authorized insurer as to the kinds of insurance to be covered by the license, subject to issuance of the license.
7. Experience. If for broker's license, must have had experience as a life agent or broker, or managing general agent, or other special experience, education or training in the life insurance business, all of sufficient content and duration as deemed by the commissioner reasonably necessary for competence in fulfilling the responsibilities of a broker.

§ 1674. Initial license—Life agents, brokers

1. An individual who has not theretofore been licensed other than under a temporary license as a life agent or life broker in this State or elsewhere, may in this State first qualify for and be licensed as a life agent under an initial license. The initial license shall be valid for a period of one year from date of issue, and shall not be subject to continuance, renewal or reissuance. Not more than one initial license shall ever be issued as to the same individual.

2. Prior to expiration of his initial license, the licensee shall qualify for and obtain issuance to or as to him of a permanent license as a life agent or as a life broker. If the licensee does not so qualify for and secure his permanent license within such year, upon expiration of the initial license the licensee shall discontinue his activities as a life insurance agent and shall not thereafter be or act as a life agent or life broker in this State unless he applies and qualifies, and takes and passes the required examination, for a permanent license as life agent or life broker.

§ 1675. Brokers; bond, authority, commissions, combinations

The following sections shall also apply as to life brokers:

1. Section 1606 (broker's bond);
2. Section 1607 (broker's authority, commissions), except that the require-

ment that a nonresident broker must place insurance covering a subject of insurance in this State through a resident agent shall not apply as to life brokers; and

3. Section 1608 (broker, agent license combinations).

§ 1676. Commissions; payment, acceptance

1. No insurer, life agent or broker shall pay directly or indirectly any commission, brokerage or other valuable consideration to any person for services as a life agent or life broker within this State, unless such person held at the time such services were performed a valid license to act as a life agent or life broker as required by the laws of this State; nor shall any person, other than a person duly licensed as a life agent or life broker by this State at the time such services were performed, accept any such commission, brokerage or other valuable consideration.

2. This section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under subsection 1, even though at the time of such payment or receipt such person had ceased to hold a license as life agent or life broker.

§ 1677. Excess or rejected risks

A life or health agent may place with another insurer as to which he is not licensed as agent, and receive commission from the insurer as to, a particular risk or portion thereof which has been rejected by the insurers as to which the agent is licensed or is known to the agent to be unacceptable to such insurers, and without then being licensed as to such other insurer.

§ 1678. Reporting and accounting for premiums

Section 1613 shall likewise apply as to life agents and life brokers.

§ 1679. Countersignature of health policies

Sections 1611 (signature, countersignature of policies) and 1612 (countersignature fee) shall also apply as to countersignature of health policies by a life agent licensed as to health insurance.

§ 1680. Nonresident agents, brokers

1. An individual not resident in this State may be licensed as a life agent or life broker if the state or Canadian province of his domicile will accord the same privilege to a resident of this State.

2. The commissioner is authorized to enter into reciprocal agreements with the appropriate official of any other state or Canadian province waiving the written examination of an applicant resident in such other state or province, if:

A. A written examination is required of applicants for a life agent's or life broker's license in such other state or province;

B. The appropriate official of such other state or province certifies that the applicant holds a currently valid license as a life agent or life broker, as the case may be, in such other state or province and either passed such written examination or was the holder of such a license prior to the time such written examination was required;

C. The applicant has no place of business within this State, and is not an officer, director, stockholder or partner in any corporation or firm doing business in this State as a life insurance agency or broker; and

D. In such other state or province, a resident of this State is privileged to procure a life agent's or life broker's license, as the case may be, upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state or province.

3. Section 1617 (service of process) shall also apply as to nonresidents licensed under this section.

§ 1681. Change of address, notice to commissioner

Every agent and broker shall promptly notify the commissioner in writing of every change of his principal business or residence address.

#### SUBCHAPTER IV

#### INSURANCE CONSULTANTS

#### QUALIFICATIONS AND REQUIREMENTS

§ 1801. Short title

This subchapter may be referred to as the "insurance consultant law."

§ 1802. Scope of subchapter IV

1. This subchapter applies only as to general lines consultants and life consultants, as defined in section 1508.

2. Unless context otherwise requires, "consultant" as used in this subchapter means both general lines consultants and life consultants.

§ 1803. Qualifications for license as consultant

For the protection of the people of this State the commissioner shall not issue, continue, or permit to exist any license as consultant except in compliance with this chapter, or as to any person not qualified therefor as follows:

1. Must be an individual of 25 or more years of age;
2. Must have had not less than 5 years of actual experience as a licensed agent or broker with respect to the kinds of insurance and contracts to be covered by the license, and other special experience, education or training, all

of sufficient content and duration reasonably necessary for competence in fulfilling the responsibilities of a consultant;

3. Must have a thorough knowledge of insurance and annuity contracts of the kinds proposed to be covered under the license;
4. Must pass all written examinations required for the license under this chapter;
5. Must be competent, trustworthy under highest fiduciary standards, financially responsible, and of good personal and business reputation; and
6. Must have filed the bond required by section 1804.

§ 1804. Consultant's bond

1. Every applicant for license as a consultant shall file with the commissioner with his application for license, and shall maintain in effect while so licensed, a bond issued by an authorized surety insurer in favor of the State of Maine, continuous in form and providing for aggregate liability of \$5,000.

2. The bond shall indemnify any person damaged by any fraudulent act or conduct of the licensee in transactions under the license, and shall likewise be conditioned upon faithful accounting and application of all moneys coming into the licensee's possession in connection with his activities as such a licensee.

3. The bond shall remain in force until released by the commissioner, or until cancelled by the surety. Without prejudice to any liability previously incurred thereunder, the surety may cancel the bond upon 30 days advance written notice to the licensee and the commissioner.

§ 1805. Place of business, records

1. Every consultant shall have and maintain in this State a place of business accessible to the public. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner in writing of any change thereof. Nothing in this section shall prohibit maintenance of such a place in the licensee's residence in this State.

2. The license of the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

3. The licensee shall keep at his place of business a complete record of transactions under his license. The record shall be kept available for inspection by the commissioner for a period of at least 3 years after completion of the respective transactions.

§ 1806. Combined licensing prohibited

A licensed consultant shall not at the same time be licensed as an agent or broker and shall not have a pecuniary interest in any insurance agency or broker.

§ 1807. Sharing in commissions prohibited; penalty

1. A consultant shall not, directly or indirectly, receive or share in any commission or compensation paid, directly or indirectly, by any insurer with respect to any insurance or annuity contract procured, renewed, continued, modified, terminated or otherwise disposed of pursuant to any recommendation given or transaction engaged in by the licensee under his license.

2. If the licensee has received or is to receive any fee, commission, or compensation from the insured or proposed insured, or from any other person other than the insurer, directly or indirectly, with respect to any insurance transaction or proposed insurance transaction, or with respect to any insurance or annuity contract existing or proposed, it shall conclusively be presumed that the licensee was acting as a consultant with respect to such transaction or contract.

3. In addition to any applicable suspension, revocation or refusal to continue the licensee's license, violation of this section shall, upon conviction, be punishable by a fine of not over \$5,000 or by imprisonment for less than one year, or by both such fine and imprisonment.

§ 1808. Obligation to serve interest of client

A consultant is obligated, under his license, to serve with objectivity and complete loyalty the interests of his client alone; and to render his client such information, counsel, and service as within the knowledge, understanding and opinion in good faith of the licensee will best serve the client's insurance or annuity needs and interests.

§ 1809. Nonresident consultants; service of process

Section 1617 (service of process) shall also apply as to nonresidents of this State licensed as consultants by this State.

## SUBCHAPTER V

### INSURANCE ADJUSTERS

#### QUALIFICATIONS AND REQUIREMENTS

§ 1851. Short title

This subchapter may be referred to as the "insurance adjuster law."

§ 1852. Scope of this subchapter

This subchapter shall apply only to insurance adjusters, as defined in section 1509.

§ 1853. Qualifications for adjuster license

For the protection of the people of this State the commissioner shall not issue, continue or permit to exist any license as an adjuster except in compliance with this chapter, or as to any individual not qualified therefor as follows:

1. Must be at least 21 years of age.
2. Must be competent, trustworthy, financially responsible, and of good personal and business reputation.
3. Must pass any written examination required for the license under this chapter.
4. Must have had at least 2 years' experience, or special training with respect to handling of loss claims under insurance contracts, of sufficient duration and scope reasonably to make him competent to fulfill the responsibilities of an adjuster; or, in lieu of such experience or training, is to be employed by and subject to the immediate personal supervision of a licensed adjuster in this State who has been so established in business for not less than 3 years next preceding date of application for the license. This subsection shall not apply as to persons holding subsisting licenses as adjuster in this State immediately prior to the effective date of this Act.
5. Must post the bond required under section 1856.

§ 1854. Adjuster's bond

1. Before issuance of an adjuster license the applicant shall file with the commissioner and thereafter maintain in force while so licensed, a surety bond in favor of the State of Maine executed by an authorized surety insurer, and conditioned on the due accounting and payment by the licensee of funds of others received by him in connection with transactions under the license.

2. The bond shall be continuous in form, and aggregate liability thereon may be limited to \$10,000.

3. The bond shall remain in force until the surety is released from liability by the commissioner, or until cancelled by the surety. Without prejudice to any prior liability accrued, the surety may cancel the bond upon 30 days' advance written notice to the licensee and the commissioner.

4. The commissioner may waive the requirement of a separate bond as to a licensee employed or to be employed by a licensed firm or corporation adjuster which has posted with the commissioner a general bond covering all such licensees in such aggregate liability amount in excess of \$10,000 as the commissioner deems reasonable.

§ 1855. Records

1. Each adjuster shall keep at his business address shown on his license a record of all transactions under the license.

2. The record shall include:

A. A copy of all investigations or adjustments undertaken or consummated.

B. A statement of any fee, commission or other compensation received or to be received by the adjuster on account of such investigation or adjustment.

3. The adjuster shall make such records available for examination by the commissioner at all times, and shall retain the records for at least 3 years.

§ 1856. Nonresident adjusters; process; special catastrophe losses

1. Section 1617 (service of process) shall also apply as to nonresidents of this State licensed as adjuster by this State.

2. No adjuster license is required as to any adjuster sent into this State on behalf of an authorized insurer for the investigation or adjustment of a particularly unusual or extraordinary loss, or of a series of losses resulting from a catastrophe common to all such losses.

## CHAPTER 19

### SURPLUS LINES

§ 2001. Short title

This chapter constitutes and may be cited as the "surplus lines" law.

§ 2002. Exemptions

This surplus line law shall not apply to life insurance, health insurance or reinsurance; or to the following insurance when written by licensed general lines agents or brokers or surplus line brokers of this State:

1. Wet marine and transportation insurance.
2. Insurance on subjects located, resident, or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this State.
3. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
4. Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in commercial interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

§ 2003. Definitions—"Broker," "export"

1. "Broker" as used in this chapter and unless context otherwise requires, means a surplus lines broker duly licensed as such under this chapter.

2. To "export" means to place in an unauthorized insurer under this surplus lines law insurance covering a subject of insurance resident, located or to be performed in Maine.

§ 2004. Conditions for export

If certain insurance coverages cannot be procured from authorized insurers, such coverages, hereinafter designated "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

1. The insurance must be procured through a licensed surplus lines broker.
2. The desired coverage is necessary for the adequate protection of a risk in the State.
3. It may be written under the laws of this State by an authorized insurer.
4. The insurance is not available after diligent effort has been made to place the coverage with authorized insurers.

§ 2005. Application to commissioner

Prior to effecting any such surplus lines insurance the broker shall make written application to the commissioner stating his reasons for desiring to insure a particular risk with an unauthorized insurer. The commissioner shall grant him permission if he finds that the conditions for export referred to in section 2004 exist as to the desired coverage.

§ 2006. Open lines for export

1. The commissioner may by order declare eligible for export generally and without compliance with the provisions of section 2004, subsections 2 and 3, and section 2005, any class or classes of insurance coverage or risk for which he finds, after a hearing of which notice was given to each insurer authorized to transact such class or classes in this State, that there is not a reasonable or adequate market among authorized insurers either as to acceptance of the risk, contract terms, or premium or premium rate. Any such order shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the commissioner.

2. The broker shall file with or as directed by the commissioner a memorandum as to each such coverage placed by him in an unauthorized insurer, in such form and context as the commissioner may reasonably require for the identification of the coverage and determination of the tax payable to the State relative thereto.

3. The broker, or a licensed Maine agent of the authorized insurer or a general lines broker, may also place with authorized insurers any insurance coverage made eligible for export generally under subsection 1, and without regard to rate or form filings which may otherwise be applicable as to the authorized insurer. As to coverages so placed in an authorized insurer the premium tax thereon shall be reported and paid by the insurer as required generally under the law of this State.

§ 2007. Eligible surplus lines insurers

1. A broker shall not knowingly place surplus lines insurance with an

insurer that is unsound financially, or that is ineligible under this section.

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

§ 2008. Evidence of the insurance; changes; penalty

1. Upon placing a surplus lines coverage, the broker shall promptly issue and deliver to the insured evidence of the insurance consisting either of the policy as issued by the insurer, or, if such policy is not then available, the surplus lines broker's certificate. Such a certificate shall be executed by the broker and shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the certificate shall state the name and address and proportion of the entire direct risk assumed by each such insurer.

2. No broker shall issue any such certificate or any cover note, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer, unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

3. If after the issuance and delivery of any such certificate there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by an insurer as stated in the broker's original certificate, or in any other material respect as to the insurance evidenced by the certificate, the broker shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverage and the insurers responsible thereunder.

4. If a policy issued by the insurer is not available upon placement of the insurance and the broker has issued and delivered his certificate as hereinabove provided, upon request therefor by the insured the broker shall as soon as reasonably possible procure from the insurer its policy evidencing such insurance and deliver such policy to the insured in replacement of the broker's certificate theretofore issued.

5. Any surplus lines broker who knowingly or negligently issues a false certificate of insurance or who fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as provided in subsection 3, shall upon conviction, be subject to the penalty provided by section 12 or to any greater applicable

penalty otherwise provided by law.

§ 2009. Endorsement of contract

Every insurance contract procured and delivered as a surplus lines coverage pursuant to this chapter shall have stamped upon it, and bearing the name of the surplus line broker who procured it, the following:

“This insurance contract is issued pursuant to the Maine Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Maine Insurance Department.”

§ 2010. Surplus lines insurance valid

Insurance contracts procured as surplus line coverage from unauthorized insurers in accordance with this chapter shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect as like contracts issued by authorized insurers.

§ 2011. Liability of insurer

1. As to a surplus lines risk which has been assumed by an unauthorized insurer pursuant to this chapter, and if the premium thereon has been received by the surplus lines broker who placed such insurance, in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the broker is indebted to the insurer with respect to such insurance or for any other cause.

2. Each unauthorized insurer assuming a surplus lines risk under this chapter shall be deemed thereby to have subjected itself to the terms of this section.

§ 2012. Surplus lines brokers—Licensing

1. Any person while licensed in this State as a resident general lines agent or as a general lines broker, who is deemed by the commissioner to be competent and trustworthy with respect to the handling of surplus lines, and while maintaining an office at a designated location in this State, may be licensed as a surplus lines broker.

2. Application for the license shall be made to the commissioner on forms as designated and furnished by the commissioner.

3. The license fee shall be as specified in section 601 (fee schedule).

4. The license and licensee shall be subject to the applicable provisions of chapter 17 (agents, brokers, consultants and adjusters).

§ 2013. Suspension, revocation of broker's license

1. The commissioner may suspend or revoke any surplus lines broker's license:

A. If the broker fails to file the annual statement or to remit the tax as required by section 2017; or

B. If the broker fails to maintain an office in this State, or to keep the records, or to allow the commissioner to examine his records as required by this law, or if he removes his records from the State; or

C. If the broker places a surplus lines coverage in an insurer other than as authorized under section 2007; or

D. For any other applicable cause for which a general lines agent's license may be suspended or revoked.

2. The procedures provided by chapter 17 for suspension or revocation of licenses shall apply to suspension or revocation of a surplus lines broker's license.

3. Upon suspending or revoking the broker's surplus lines license the commissioner shall also suspend or revoke all other licenses of or as to the same individual under this Title.

#### § 2014. Broker may compensate agents and brokers

A licensed surplus lines broker may accept and place surplus line business for any insurance agent or broker licensed in this State for the kind of insurance involved, and may compensate the agent or broker therefor.

#### § 2015. Records of broker

1. Each broker shall keep in his office in this State a full and true record of each surplus lines coverage procured by him, including a copy of each daily report, if any, a copy of each certificate of insurance issued by him, and such of the following items as may be applicable:

A. Amount of the insurance;

B. Gross premium charged;

C. Return premium paid, if any;

D. Rate of premium charged upon the several items of property;

E. Effective date of the contract, and the terms thereof;

F. Name and address of each insurer on the direct risk and the proportion of the entire risk assumed by such insurer if less than the entire risk;

G. Name and address of the insured;

H. Brief general description of the property or risk insured and where located or to be performed; and

I. Other information as may be required by the commissioner.

2. The record shall not be removed from this State and shall be open to examination by the commissioner at all times within 5 years after issuance of the coverage to which it relates.

#### § 2016. Monthly report of broker

Each broker shall file a monthly report with the commissioner showing the amount of insurance placed for any person or organization, the location of each risk, the gross premium charged, the names of each insurer in which the insurance was placed, the date and term of each insurance contract issued and any other pertinent information required by the commissioner. The report shall show in the same detail each contract cancelled during the month covered by the report and the return premium on it.

#### § 2017. Annual report and tax

1. Each broker shall file an annual report in January with the commissioner and the Treasurer of State containing a sworn statement of the gross premium charged for insurance placed, and the gross return premiums on the insurance cancelled, during the year ending on the 31st of the preceding December. At the time of filing the report, he shall pay to the Treasurer of State 3% of the difference between the gross premiums and the return premiums reported for the business transacted during the year.

2. If a surplus lines policy covers risks or exposures only partially in this State the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this State.

#### § 2018. Failure to file statement or remit tax—penalty

If any broker fails to file his annual statement, or fails to remit the tax provided by section 2017, prior to the first day of March after the tax is due, and if in the commissioner's opinion such failure is without just cause, he shall be liable for a fine of \$25 for each day of delinquency commencing with the first day of March. The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the commissioner in any court of competent jurisdiction. Any fine collected by the commissioner shall be paid to the Treasurer of State and credited to the insurance regulatory fund.

#### § 2019. Legal process against surplus line insurer

1. An unauthorized insurer shall be sued, upon any cause of action arising in the State under any contract issued by it as a surplus lines contract pursuant to this law, in the Superior Court.

2. Service of legal process against the insurer may be made in any such

action by service of 2 copies thereof upon the commissioner, and payment of the service of process fee specified in section 601 (fee schedule). The commissioner shall forthwith mail a copy of the process served to the person designated by the insurer in the policy for the purpose, by prepaid registered or certified mail with return receipt requested. If no such person is so designated in the policy, the commissioner shall in like manner mail a copy of the process to the broker through whom such insurance was procured, or to the insurer at its principal place of business, addressed to the address of the broker or insurer, as the case may be, last of record with the commissioner. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.

3. An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision stating the substance of this section, and designating the person to whom the commissioner shall mail process as provided in subsection 2 of this section.

## CHAPTER 21

### UNAUTHORIZED INSURERS — PROHIBITIONS, PROCESS AND ADVERTISING

#### § 2101. Representing or aiding unauthorized insurer prohibited

1. No person shall in this State directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, any insurer not then authorized to transact such business in this State, in the solicitation, negotiation, procurement or effectuation of insurance or annuity contracts, or renewal thereof, or forwarding of applications for insurance or annuities, or the dissemination of information as to coverage or rates, or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist such an insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this State.

2. This section does not apply to:

A. Matters authorized to be done by the commissioner under the unauthorized insurers process act, sections 2104 to 2108;

B. Transactions as to which the insurer is not required to have a certificate of authority pursuant to section 405 (exceptions to certificate of authority requirement);

C. A licensed adjuster or attorney at law representing such an insurer from time to time in his professional capacity;

D. Transactions in this State relating to a policy of wet marine and transportation insurance delivered or issued for delivery outside this State;

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

§ 2102. Purpose of unauthorized insurers process act and unauthorized insurers false advertising act

The purpose of sections 2103 to 2108 (unauthorized insurers process act) and sections 2109 to 2111 (unauthorized insurers false advertising process act) is to subject certain insurers to the jurisdiction of the commissioner and the courts of this State in suits and disciplinary proceedings as provided therein, by or on behalf of insureds or beneficiaries under insurance contracts or the commissioner. The Legislature declares its concern that many Maine residents hold insurance policies delivered in this State by unauthorized insurers, other than as to surplus lines coverages written pursuant to chapter 19, thus presenting to such residents the often insuperable obstacle of resort to distant courts for the assertion of legal rights under their policies; and that such insurers may induce residents to purchase insurance through false advertising sent into this State. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers, declares that in so doing it exercises its power to protect Maine residents, to define, for the purposes of this chapter, what constitutes doing business in this State, and also exercises powers and privileges available to the State under Public Law 15, 79th Congress of the United States, chapter 20, 1st Session, S. 340, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states.

§ 2103. Unauthorized insurers process act; title; interpretation

1. Sections 2104 to 2108 constitute and may be cited as the unauthorized insurers process act.

2. The act shall be so interpreted as to effectuate its general purpose to make uniform the laws of those states which enact it.

§ 2104. Commissioner process agent

Solicitation, effectuation, or delivery of any insurance contract, by mail or otherwise, within this State by an unauthorized insurer, or the performance within this State of any other service or transaction connected with such insurance by or on behalf of such insurer, shall be deemed to constitute an appointment by such insurer of the commissioner and his successors in office as its attorney, upon whom may be served all lawful process issued within this State in any action or proceeding against such insurer arising out of any such contract or transaction; and shall be deemed to signify the insurer's agreement that any such service of process shall have the same legal effect and validity as personal service of process upon it in this State.

§ 2105. Service of process

1. Service of process upon any such insurer pursuant to section 2104 shall be made by delivering to and leaving with the commissioner or some person

in apparent charge of his office 2 copies thereof and the payment to him of the fees as prescribed by section 601. The commissioner shall forthwith mail by registered or certified mail one of the copies of such process to the defendant at its principal place of business last known to the commissioner, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered or certified mail by plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt or receipt issued by the post office with which the letter is registered or certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

2. Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection 1 be valid if served upon any person within this State, who in this State on behalf of such insurer, is :

A. Soliciting insurance ; or

B. Making any contract of insurance or issuing or delivering any policies or written contracts of insurance ; or

C. Collecting or receiving any premium for insurance ;  
and a copy of such process is sent within 10 days thereafter by registered or certified mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered or certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

3. No plaintiff or complainant shall be entitled to a judgment or to have his complaint taken pro confesso under this section until the expiration of 30 days from the date of the filing of the affidavit of compliance.

4. Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

#### § 2106. Exemptions from service or process provisions

Sections 2104 and 2105 shall not apply to surplus lines insurance lawfully effectuated under chapter 19, or to reinsurance, or to any action or proceeding against an unauthorized insurer arising out of any of the following where the policy or contract contains a provision designating the commissioner as its attorney for the acceptance of service of lawful process in any action or proceeding instituted by or on behalf of an insured or beneficiary arising

out of any such policy, or where the insurer enters a general appearance in any such action:

1. Wet marine and transportation insurance;
2. Insurance on or with respect to subjects located, resident, or to be performed wholly outside this State, or on vehicles or aircraft owned and principally garaged outside this State;
3. Insurance on property or operations of railroads engaged in interstate commerce; or
4. Insurance on aircraft or cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft.

§ 2107. Defense of action by unauthorized insurer

1. Before an unauthorized insurer files or causes to be filed any pleading in any action or proceeding instituted against it under sections 2104 and 2105, such insurer shall:

A. Procure a certificate of authority to transact insurance in this State; or

B. Deposit with the clerk of the court in which such action or proceeding is pending cash or securities, or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action. The court may in its discretion make an order dispensing with such deposit or bond where the insurer makes a showing satisfactory to the court that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy any final judgment which may be entered in such action or proceeding, and that the insurer will pay final judgment entered therein without requiring suit to be brought on such judgment in the state where such funds or securities are located.

2. The court in any action or proceeding in which service is made in the manner provided in section 2105 may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection 1, and to defend such action.

3. Nothing in subsection 1 is to be construed to prevent an unauthorized insurer from filing a motion to quash or to set aside the service of any process made in the manner provided in section 2105 on the ground either:

A. That such unauthorized insurer has not done any of the acts enumerated in section 2104; or

B. That the person on whom service was made pursuant to subsection 2 of section 2105 was not doing any of the acts therein enumerated.

§ 2108. Attorney fees

In any such action against an unauthorized insurer, if the insurer has failed for 30 days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court shall allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action, and in no event shall such fee be less than \$100. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

§ 2109. Unauthorized insurers false advertising process act; title

Sections 2102 and 2109 to 2111 constitute and may be referred to as the "unauthorized insurers false advertising process act."

§ 2110. Notice to domiciliary supervisory official

No unauthorized insurer through any estimate, illustration, circular, pamphlet, letter, announcement, statement, or any other means or medium, shall misrepresent to any person in this State as to its financial condition or the terms of any contract issued or to be issued by it or the advantages thereof, or the dividends or share to be received thereon. Whenever the commissioner has reason to believe that any such insurer is so misrepresenting, he shall so notify the insurer and the insurance supervisory official of the insurer's domiciliary state or province by registered or certified mail.

§ 2111. Action by commissioner

1. If within 30 days following the giving of the notice provided for in section 2110 the insurer has not ceased such dissemination, and if the commissioner has reason to believe that such insurer is soliciting, issuing or delivering contracts of insurance to residents of this State or collecting premiums on such contracts or performing any other transaction in connection with such insurance, and that a proceeding by him in respect to such matters would be to the interest of the public, he shall take action against such insurer under provisions of section 2167 (trade practices act, service of process on unauthorized insurers).

2. If upon such hearing the commissioner finds that the insurer has misrepresented as referred to in section 2110 of this chapter, he shall by order on such hearing require the insurer to cease and desist from such violation, and shall mail a copy of the order by registered or certified mail to the insurer at its principal place of business last of record with the commissioner and to the insurance supervisory official of the insurer's domiciliary state or province. Each violation thereafter of such desist order shall subject the insurer to a penalty of \$2,000, to be recovered by a civil action brought against the insurer by the commissioner. Service of process upon the insurer in such action may be made upon the commissioner pursuant to sections 2105 or 2167 or in any other lawful manner.

§ 2112. Reciprocal judgment

The Attorney General upon request of the commissioner may proceed in the courts of this State or any reciprocal state or in any federal court or

agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner.

1. Definitions. In this section:

A. "Reciprocal state" means any state the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states, against insurers incorporated or authorized to do business in such state.

B. "Foreign decree" means any decree or order in equity of a court located in a "reciprocal state," including a court of the United States located therein, against a "domestic insurer" obtained by a "qualified party."

C. "Domestic insurer" means any insurer incorporated or authorized to do business in this State.

D. "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

2. List of reciprocal states. The commissioner shall determine which states qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

3. Filing and status of foreign decrees. A copy of any foreign decree authenticated in accordance with the act of Congress or the statutes of this State may be filed in the office of the clerk of any Superior Court of this State. The clerk, upon verifying with the commissioner that the decree or order qualifies as a foreign decree shall treat the foreign decree in the same manner as a decree of a Superior Court of this State. A foreign decree so filed has the same effect and shall be deemed as a decree of a Superior Court of this State, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a Superior Court of this State and may be enforced or satisfied in like manner.

4. Notice of filing.

A. At the time of the filing of the foreign decree, the Attorney General shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

B. Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given, and to the commissioner, and shall make a note of the mailing in the docket. In addition, the Attorney General may mail a notice of the filing of the foreign decree to the defendant and to the commissioner and may file proof of mailing with the clerk. Lack of mailing notice or filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the Attorney General has been filed.

C. No execution or other process for enforcement of a foreign decree filed hereunder shall issue until 30 days after the date the decree is filed.

5. Stay.

A. If the defendant shows the Superior Court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered;

B. If the defendant shows the Superior Court any ground upon which enforcement of a decree of any Superior Court of this State would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this State.

6. Fees. Any person filing a foreign decree shall pay to the clerk of court the applicable fee. Fees for docketing, transcription or other enforcement proceedings shall be as provided for decrees of the Superior Court.

§ 2113. Report and tax of independently procured coverages.

1. Every insured who in this State procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this State so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this State, other than insurance procured through a surplus line broker pursuant to the surplus line law of this State or exempted from tax pursuant to section 2002, shall within 30 days after the date such insurance was so procured, continued or renewed file a written report of the same with the commissioner on forms designated by the commissioner and furnished to the insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as the commissioner reasonably requests. If the insurance covers also a subject of insurance resident, located or to be performed outside this State a proper pro rata portion of the entire premium payable for all such insurance shall be allocated to this State for the purposes of this section.

2. Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this State, or for which premiums in whole or in part are remitted directly or indirectly from within this State, shall be deemed to be insurance procured or continued or renewed in this State within the intent of subsection 1 above.

3. For the general support of the government of this State there is levied upon the insured with respect to the obligation, chose in action, or right represented by such insurance, a tax at the rate of 3% of the gross amount of the premium charged for the insurance. Within 30 days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the commissioner of the report provided for in subsection 1 above, the insured shall pay the amount of the tax to the commissioner.

4. The tax imposed hereunder if delinquent shall bear interest at the rate of 6% per annum, compounded annually.

5. The tax shall be collectible from the insured by civil action brought by the commissioner, or by distraint.

6. The commissioner shall promptly deposit all taxes and interest collected under this section with the Treasurer of State to the credit of the General Fund.

7. This section does not abrogate or modify any provision of section 2101 (representing or aiding unauthorized insurer prohibited).

8. This section does not apply as to life or disability insurances.

#### § 2114. Penalty

Any person who in this State represents an unauthorized insurer in the transaction of business in this State in violation of law, shall, in addition to any other applicable penalty, be liable for the full amount of any loss sustained on any insurance contract made by or through him, directly or indirectly, and for any premium taxes which may become due under any law of this State by reason of such contract.

### CHAPTER 23

#### TRADE PRACTICES AND FRAUDS

#### § 2151. Purpose

The purpose of sections 2151 to 2167 is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945, Public Law 15, 79th Congress, by defining or providing for the determination of all such practices in this State which constitute unfair methods of competition or unfair or deceptive acts or practices, by defining or providing for the determination of all such practices in other states by residents of this State which constitute unfair methods of competition or unfair or deceptive acts or practices, and by prohibiting the trade practices so defined or determined.

#### § 2152. Unfair methods; deceptive acts prohibited

No person shall engage in this State in any trade practice which is defined in this chapter, as, or determined pursuant to this chapter, to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance. No resident of this State shall engage in any other state in any trade practice which is defined in this chapter as, or determined pursuant to this chapter to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

#### § 2153. Misrepresentation; false advertising of policies

No person shall make, issue, circulate, or cause to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the

terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or make any false or misleading statement as to the dividends or share of surplus previously paid on similar policies, or make any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates, or use any name or title on any policy or class of policies misrepresenting the true nature thereof.

§ 2154. False information, advertising

No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

§ 2155. "Twisting" prohibited

No person shall make or issue, or cause to be made or issued, any written or oral statement misrepresenting or making incomplete comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, borrow against, surrender, retain, exchange, modify, convert, or otherwise affect or dispose of any insurance policy.

§ 2156. False or misleading financial statements

1. No person shall file with any supervisory or other public official, or make, publish, disseminate, circulate or deliver to any person, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive.

2. No person shall make any false entry in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omit to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer.

3. No person shall advertise the capital or assets of an insurer without in the same advertisement setting forth the amount of the insurer's liabilities.

§ 2157. Defamation

No person shall make, publish, disseminate, or circulate, directly or indirectly, or aid, abet or encourage the making, publishing, disseminating or

circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to an insurer, or of an organization proposing to become an insurer, and which is calculated to injure any person engaged or proposing to engage in the business of insurance.

§ 2158. Boycott, coercion and intimidation

No person shall:

1. Enter into any agreement to commit, or by any concerted action commit, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance.
2. Enter into any agreement to commit any act of boycott, coercion or intimidation, or in pursuance thereof monopolize or attempt to monopolize any part of the business of insurance.

§ 2159. Unfair discrimination — life insurance, annuities and health insurance

1. No person shall make or permit any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.
2. No person shall make or permit any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

§ 2160. Rebates — life, health and annuity contracts

Except as otherwise expressly provided by law, no person shall knowingly permit or offer to make or make any contract of life insurance, life annuity or health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or pay or allow, or give or offer to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any paid employment or contract for services of any kind, or any valuable consideration or inducement whatever not specified in the contract; or directly or indirectly give, or sell, or purchase or offer or agree to give, sell, purchase, or allow as inducement to such insurance or annuity or in connection therewith, and whether or not to be specified in the policy or contract, any agreement of any form or nature promising returns and profits, or any stocks, bonds, or other securities, or interest present or contingent therein or as measured thereby, of any insurer or other corporation, association, or partnership, or any dividends or profits accrued or to accrue thereon.

§ 2161. Exceptions to discrimination, rebates, stock inducements provision — life, health and annuity contracts

1. Nothing in sections 2159 and 2160 shall be construed as including within the definition of discrimination or rebates any of the following practices:

A. In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses, or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

B. In the case of life insurance policies issued on the debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;

C. Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

D. Reduction of premium rate for policies of large amount, but not exceeding savings in issuance and administration expenses reasonably attributable to such policies as compared with policies of similar plan issued in smaller amounts;

E. Reduction in premium rates for life or health insurance policies or annuity contracts on salary savings, payroll deduction, pre-authorized check, bank draft or similar plans in amounts reasonably commensurate with the savings made by the use of such plans;

F. The issuance of policies of group insurance with or without annuities at rates less than the usual rate of premiums for individual policies or contracts as otherwise provided for by law;

G. Allowance to an agent or broker, and receipt by the agent or broker, of commissions with respect to insurance written on himself.

2. Nothing in this chapter shall be construed as including within the definition of securities as inducements to purchase insurance the selling or offering for sale, contemporaneously with life insurance or annuities, of mutual fund shares or face amount certificates of regulated investment companies under offerings registered with the Securities and Exchange Commission where such shares or such face amount certificates or such insurance or annuities may be purchased independently of and not contingent upon purchase of the other, at the same price and upon the same terms and conditions as where purchased independently.

§ 2162. Unfair discrimination, rebates prohibited — property, casualty, surety insurance

1. No property, casualty or surety insurer or any employee or representative thereof, and no broker, agent or solicitor as to such insurance shall pay, allow or give, or offer to pay, allow or give, directly or indirectly,

as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified or provided for in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

2. No such insurer shall make or permit any unfair discrimination between insureds or property having like insuring or risk characteristics, in the premium or rates charged for insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance.

3. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, brokers or solicitors, or as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond. This section does not apply as to wet marine and transportation insurance.

§ 2163. Receipt of rebate, illegal inducement prohibited

No person shall knowingly receive or accept, directly or indirectly, any rebate of premium or part thereof, or agent's, solicitor's or broker's commission thereon payable on any policy of insurance or annuity contract, or any special favor or advantage in the dividend or other benefit to accrue thereon, or receive anything of value as inducement to such insurance or contract or in connection therewith which is not specified, promised or provided for in the policy or contract, except as provided in section 2161 (exceptions to discrimination, rebate, stock inducement provision).

§ 2164. Stock operations and advisory board contracts

No person shall issue or deliver or permit its agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

§ 2165. Desist orders for prohibited practices

1. If, after a hearing thereon of which notice of such hearing and of the charges against him were given such person, the commissioner finds that any person in this State has engaged or is engaging in any act or practice defined in or prohibited under this chapter, or that a resident of this State has so engaged or is so engaging in another state, the commissioner shall order such person to desist from such acts or practices.

2. Such desist order shall become final upon expiration of the time allowed for appeals from the commissioner's orders, if no such appeal is taken, or, in the event of such an appeal, upon final decision of the court if the court affirms the commissioner's order or dismisses the appeal. An

intervenor in such hearing shall have the right to appeal as provided in section 236.

3. In event of such an appeal, to the extent that the commissioner's order is affirmed the court shall issue its own order commanding obedience to the terms of the commissioner's order.

4. No order of the commissioner pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by such order from any other liability, penalty, or forfeiture under law.

5. Violation of any such desist order shall be deemed to be and shall be punishable as a violation of this Title.

6. This section shall not be deemed to affect or prevent the imposition of any penalty provided by this Title or by other law for violation of any other provision of this chapter, whether or not any such hearing is called or held or such desist order issued.

#### § 2166. Procedures as to undefined practices

1. If the commissioner believes that any person engaged in the insurance business is engaging in this State, or that any resident of this State engaged in the insurance business is engaging in another state, in any method of competition or in any act or practice not defined in this chapter, in the conduct of such business, which is unfair or deceptive and that a proceeding by him in respect thereto would be in the public interest, he shall, after a hearing of which notice of the hearing and of the charges against him are given such person, make a written report of his findings of fact relative to such charges and serve a copy thereof upon such person and any intervenor at the hearing.

2. If such report charges a violation of this chapter and if such method of competition, act or practice has not been discontinued, the commissioner may at any time after 20 days after the service of such report cause an action to be instituted in the Superior Court of the county wherein the person resides or has his principal place of business to enjoin and restrain such person from engaging in such method, act, or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in connection therewith and to issue such writs or orders as are ancillary to its jurisdiction or necessary in its judgment to prevent injury to the public pendente lite; but the people of this State shall not be required to give security before the issuance of any order or injunction under this section. If a stenographic record of the proceedings in the hearing before the commissioner was made, a certified transcript thereof including all evidence taken and the report and findings shall be received in evidence in such action.

3. If the court finds that:

A. The method of competition complained of is unfair, or that the act or practice complained of is unfair or deceptive; and

B. The proceedings by the commissioner with respect thereto is to the interest of the public; and

C. The findings of the commissioner are supported by the weight of the evidence,

it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

4. Either party may appeal from such final judgment or order or decree of court in a like manner as provided for appeals in civil cases.

5. If the commissioner's report made under subsection 1 above, or order on hearing made under section 235 does not charge a violation of this chapter, then any intervenor in the proceedings may appeal therefrom within the time and the manner provided in this Title for appeals from the commissioner generally.

§ 2167. Service upon unauthorized insurers

1. Service of all process, statements of charges, and notices under this chapter upon unauthorized insurers shall be made by any deputy or employee of the department delivering to and leaving with the commissioner or some person in apparent charge of his office, 2 copies thereof, or in the manner provided for by section 2105 (service of process, unauthorized insurers process act).

2. The commissioner shall forward all such process, statements of charges, and notices to the insurer in the manner provided in section 2105.

3. No default shall be taken against any such unauthorized insurer until expiration of 30 days after date of forwarding by the commissioner under subsection 1 above, or date of service of process if under section 2105.

4. Section 2105 shall apply as to all process, statements of charges, and notices under this section.

§ 2168. Coercion in requiring insurance

1. No person engaged in the business of financing the purchase of real or personal property or of lending money on the security of real or personal property shall require, as a condition to such financing or lending, or as a condition to the renewal or extension of any such loan or to the performance of any other act in connection with such financing or lending, that the purchaser or borrower, or his successors, shall negotiate through a particular insurer or insurers, insurance agent or agents, broker or brokers, type of insurer or types of insurers, any policy of insurance or renewal thereof insuring such property.

2. This section shall not prevent the exercise by any mortgagee of his right to approve the insurer selected by the borrower on a reasonable non-discriminatory basis related to the solvency and assessment policies of the insurer and its ability to service the policy.

3. Any person violating this section shall be punished by a fine of not more than \$100 or by imprisonment of not more than 60 days, or by both; and if he holds a license from the commissioner, he shall forfeit the same. The Superior Court, on complaint by any person that this section is being

violated, may issue an injunction against such violation and may hold in contempt and punish therefor in case of disregard of such injunction.

§ 2169. Notice of free choice of agent or insurer

Every debtor, borrower or purchaser of property with respect to which insurance of any kind on the property is required in connection with a debt or loan secured by such property or in connection with the sale of such property shall be informed by the creditor or lender of his right of free choice in the selection of the agent and insurer through or by which such insurance is to be placed. There shall be no interference either directly or indirectly with such borrower's, debtor's or purchaser's free choice of an agent and of an insurer which complies with the requirements set out in section 2168, and the creditor or lender shall not refuse an adequate policy so tendered by the borrower, debtor or purchaser. Upon notice of any refusal of such tendered policy, the commissioner shall order the creditor or lender to accept the tendered policy, if he determines that such refusal is not in accordance with the requirements set out in section 2168. Failure to comply with such an order of the commissioner shall be deemed a violation of this section.

§ 2170. Certain fees for handling insurance transactions in connection with loans prohibited

1. No person who makes a loan on real or personal property shall in connection with such a transaction make any separate charge to or require any fee from or require the payment of any money for handling insurance papers for an insurer, insurance agency, borrower, mortgagor or purchaser, other than the insurance premium on insurance written as additional security for the loan. This prohibition includes any separate charge or fee or payment of any money for the substitution by a borrower or a mortgagor or a purchaser of one insurance policy on the property for an existing policy on the property when the existing or substituted policy is provided through an insurer or insurance agent or broker licensed to do business in the State.

2. This section shall not prohibit fees paid to a lender for handling or processing credit accident and health or credit life insurance not exceeding 10% of premiums.

3. Nothing in this section prevents the payment of the interest which may be charged on premium loans or premium advancements in accordance with the security agreement, or dividends to group policyholders.

§ 2171. Using insurance information to detriment of another

Whenever the instrument requires that the purchaser, mortgagor or borrower furnish insurance of any kind on real or personal property being conveyed or as collateral security to a loan, the mortgagee or lender shall refrain from disclosing or using any and all such insurance information to his or its own advantage and to the detriment of either the borrower, purchaser, mortgagor, insurer or company or agency complying with the requirements relating to insurance.

### § 2172. Fictitious groups prohibited

1. No insurer or person on behalf of any insurer shall offer, make or permit any preference or distinction for purposes of any property, casualty or surety insurance coverage, as to form of policy, certificate, premium, rates, benefits or conditions of insurance, based upon membership, non-membership, or employment of any person or persons in or by any particular group, association, corporation or organization; and shall not make any such preference or distinction available in any event based upon any fictitious grouping of persons. For the purposes of this section a fictitious grouping is defined as any grouping by other than a common insurable interest as to the subject of the insurance and the risk to be insured.

2. This section shall not apply as to any grouping organized prior to January 1, 1968.

### § 2173. Interlocking ownership; management

1. Any insurer may retain, invest in or acquire the whole or any part of the capital stock of any other insurer or insurers, or have a common management with any other insurer or insurers, unless such retention, investment, acquisition or common management is inconsistent with any other provision of this Title, or unless by reason thereof the business of such insurers with the public is conducted in a manner which substantially lessens competition generally in the insurance business or tends to create any monopoly therein.

2. Any person otherwise qualified may be a director of 2 or more insurers which are competitors, unless the effect thereof is to lessen substantially competition between insurers generally or tends materially to create any monopoly.

### § 2174. Illegal dealing in premiums; excess charges for insurance

1. No person shall knowingly collect any sum as premium or charge for insurance, which insurance is not then provided or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as authorized by this Title.

2. No person shall wilfully collect as premium or charge for insurance any sum in excess of the premium or charge applicable to such insurance, and as specified in the policy, in accordance with the applicable classifications and rates as filed with and approved by the commissioner; or, in cases where classifications, premiums, or rates are not required by this Title to be so filed and approved, such premiums and charges shall not be in excess of those specified in the policy and as fixed by the insurer. This provision shall not be deemed to prohibit the charging and collection, by surplus lines brokers licensed under chapter 19, of the amount of applicable state and federal taxes and nominal service charge to cover communication expenses, in addition to the premium required by the insurer. This provision shall not be deemed to prohibit the charging and collection, by a life insurer, of amounts actually to be expended for medical examination of an applicant for life insurance or for reinstatement of a life insurance policy.

### § 2175. Insurer's ownership of funeral establishment prohibited

No insurer shall own or manage or supervise or operate or maintain a mortuary establishment or funeral establishment.

§ 2176. Funeral contracts prohibited

No insurer shall contract or agree with any funeral director, funeral establishment or mortuary establishment to the effect that such director or establishment shall conduct the funeral of any individual insured by the insurer. Nothing in this section shall prevent compliance with Title 39, section 59, or the use of an insurance policy to provide security for the payment for a funeral.

§ 2177. Insurer name — deceptive use prohibited

No person who is not an insurer shall assume or use any name which deceptively infers or suggests that it is an insurer.

§ 2178. False applications, claims, proofs of loss; penalty

No agent, broker, solicitor, examining physician, applicant or other person shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for insurance; or for the purpose of obtaining any money or benefit, knowingly or wilfully present or cause to be presented a false or fraudulent claim; or any proof in support of such a claim for the payment of the loss upon a contract of insurance; or prepare, make, or subscribe a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim. Violations of this section shall be subject to the penalty provided in section 12, or as provided by any other applicable law which provides a greater penalty.

§ 2179. Inquests into insurance frauds

On application in writing to the commissioner by an officer of any insurer doing business in the State, stating that he has reason to believe and does believe that any person has, by false representations, procured from the insurer an insurance, or that the insurer has sustained a loss by the fraudulent act of the insured or with his knowledge or consent, and requesting an investigation thereof, the commissioner shall summon and examine, under oath, at a time and place designated by him, any persons and require the production of all books and papers necessary for a full investigation of the facts and make report thereof, with the testimony by him taken, to the insurer making such application.

## CHAPTER 25

### RATES AND RATING ORGANIZATIONS

§ 2301. Purpose of chapter; interpretation

The purpose of this chapter is to promote the public welfare by regulating insurance rates, in accordance with the intent of Congress as expressed in Public Law 15 — 79th Congress, to the end that they shall not be excessive,

inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this chapter. Nothing in this chapter is intended to prohibit or discourage reasonable competition, or to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in insurance rates, rating systems, rating plans or practices. This chapter shall be liberally interpreted to carry into effect the provisions of this section.

§ 2302. Scope of chapter

1. This chapter applies to:

A. Casualty insurance and all forms of motor vehicle insurance, on risks or operations in this State;

B. Surety insurance;

C. Property, marine and inland marine insurance, on risks located in this State. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner, or as established by general custom of the business, as inland marine insurance.

2. This chapter shall not apply to:

A. Reinsurance, except joint reinsurance as provided in section 2322;

B. Health insurance;

C. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

D. Insurance of hulls of aircraft, including their accessories and equipment, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft;

E. Life insurance;

F. Title insurance;

G. Insurance written on an assessment plan by domestic mutual insurers.

3. Workmen's compensation shall first be subject to Title 39, but any parts of this chapter not inconsistent with such Title shall also apply. The filings required by Title 39, section 22, may be made on behalf of any workmen's compensation insurer by a rating organization licensed in accordance with section 2310.

4. Nothing in this chapter shall abridge or restrict the freedom of contract between insurers and agents or brokers with respect to commissions

or between insurers and their employees with respect to compensation.

§ 2303. Making of rates

1. Rates shall be made in accordance with the following provisions:

A. Manual, minimum, class rates, rating schedules or rating plans, shall be made and adopted, except in the case of specific inland marine rates on risks specially rated;

B. Rates shall not be excessive, inadequate or unfairly discriminatory;

C. Due consideration shall be given:

(1) To past and prospective loss experience within and outside this State;

(2) To the conflagration and catastrophe hazards;

(3) To a reasonable margin for underwriting profit and contingencies;

(4) To dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers;

(5) To past and prospective expenses both countrywide and those specially applicable to this State;

(6) To all other relevant factors within and outside this State; and

(7) In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent 5 year period for which such experience is available;

D. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable;

E. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks which may have a probable effect upon losses or expenses.

2. Nothing in this section shall be taken to prohibit as unreasonable or unfairly discriminatory the establishment of classifications or modifications of classifications or risks based upon size, expense, management, individual experience, purpose of insurance, location or dispersion of hazard, or any other reasonable considerations, provided such classifications and modi-

fications apply to all risks under the same or substantially similar circumstances or conditions.

3. Except to the extent necessary to meet the provisions of subsection 1, paragraph B, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

4. Rates made in accordance with this section may be used subject to this chapter.

#### § 2304. Rate filings

1. Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every such filing shall state the effective date thereof, and shall indicate the character and extent of the coverage contemplated.

2. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this chapter, he shall require the insurer to furnish the information upon which it supports the filing. Any filing may be supported by the experience, or judgment if experience is not available, of the insurer or rating organization making the filing, the experience of other insurers or rating organizations or any other factors which the insurer or rating organization deems relevant. A filing and any supporting information shall be open to public inspection after the filing becomes effective.

3. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner, and shall become effective when filed and shall be deemed approved and in compliance with the requirements of this chapter until such time as the commissioner rejects the filing.

4. A rate filing and its supporting data are confidential until the filing becomes effective.

#### § 2305. Exemption from filing

Under such rules and regulations as he adopts the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he deems advisable to ascertain whether any rates affected by such order meet the standards set forth in section 2303, subsection 1, paragraph B.

#### § 2306. Disapproval of filing

1. If at any time the commissioner has reason to believe that a filing does not meet the requirements of this chapter, he shall, after a hearing held upon not less than 10 days' written notice, specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of the order shall be sent to every such insurer and rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

2. No such order shall be issued by the commissioner with respect to the rate of an insurer if such rate is one used by any other insurer unless such order applies equally to all insurers using such rate. Such order may be issued to an insurer without being applicable to all other insurers using the same rate if the basis for such order is that the insurer affected thereby could not otherwise, with safety to the public and to its policyholders, be permitted to continue to transact business.

#### § 2307. Limitation of disapproval power

No manual of classifications, rules, rating plans, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, and which has been filed pursuant to section 2303, shall be disapproved if the rates produced meet the requirements of this chapter.

#### § 2308. Excess rates

Upon the written application of the insured, stating his reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

#### § 2309. Rating organizations — filings for members and subscribers authorized

An insurer may satisfy its obligation to make filings required by section 2303 by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf. Nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

#### § 2310. Rating organizations — licensing

1. No rating organization shall make or file rates for risks located in this State without first being licensed therefor under this chapter.

2. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this State, may make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application, and shall file therewith as applicable:

A. A certified copy of its constitution, its articles of agreement or association, or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business;

B. A certified list of its members and subscribers;

C. The name and address of a resident of this State upon whom notices or orders of the commissioner or process affecting such rating organization may be served;

D. A statement of its qualifications as a rating organization; and

E. A power of attorney appointing the commissioner to be the true and lawful attorney of such organization in and for this State, upon whom all lawful process in any action or proceeding against the organization, other than an action or proceeding instituted by the commissioner, may be served in the same manner as service of process on insurers under section 422.

3. If the commissioner finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance, or subdivision or class of risk or part or combination thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within 60 days after the same has been filed with him.

4. Licenses issued pursuant to this section shall remain in effect until the first day of the next July and annually thereafter may be renewed, expiring on the first day of the succeeding July unless sooner suspended or revoked by the commissioner. The fee for the license and for each annual renewal thereof shall be as specified in section 601 (fee schedule).

5. Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this section.

#### § 2311. Subscribers to rating organizations

1. Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer to be a subscriber to its rating service for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its subscribers.

2. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer,

be reviewed by the commissioner at a hearing held upon at least 10 days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within 30 days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

#### § 2312. Notice of changes

Every rating organization shall notify the commissioner promptly of every change in its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, its list of members and subscribers, and the name and address of the resident of this State designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

#### § 2313. Rules not to affect dividends

No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

#### § 2314. Technical services

Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all subscribers without discrimination.

#### § 2315. Stamping Bureau

Any fire insurance rating organization may provide for the examination of its members' and subscribers' policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within 60 days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, the rating organization shall notify the commissioner thereof. All information so submitted for examination shall be confidential.

#### § 2316. Adherence to filings

No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for the insurer as provided in this chapter or in accordance with sections 2305 (exemption from filing) or 2308 (excess rates). This section shall not apply to contracts or policies for inland marine risks as to which filings are not required.

§ 2317. Deviations

1. Every member of or subscriber to a rating organization shall adhere to the filings made on its behalf by such organization except that any such insurer may make written application to the commissioner for permission to file a deviation from the class rates, schedules, rating plans or rules respecting any kind of insurance, or class of risk within a kind of insurance, or combination thereof. Such application shall specify the basis for the modification and a copy thereof shall also be sent simultaneously to such rating organization.

2. The commissioner shall set a time and place for a hearing at which the insurer and the rating organization may be heard and shall give them not less than 10 days' written notice thereof. If the commissioner is advised by the rating organization that it does not desire a hearing he may, upon the consent of the applicant, waive such hearing.

3. In considering the application for permission to file such deviation the commissioner shall give consideration to the available statistics and the principles for rate making as provided in section 2303. The commissioner shall issue an order permitting the deviation for the insurer to be filed if he finds it to be justified and it shall thereupon become effective. He shall issue an order denying the application if he finds that the resulting premiums would be excessive, inadequate or unfairly discriminatory.

4. Each deviation permitted to be filed shall be effective for a period of one year from the date of such permission unless terminated sooner with the approval of the commissioner.

§ 2318. Appeal from rating organization

1. Any member of or subscriber to a rating organization may appeal to the commissioner from the action or decision of the rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization.

2. The commissioner shall, after a hearing held upon not less than 10 days' written notice to the appellant and to the rating organization, issue an order approving the action or decision of the rating organization or directing it to give further consideration to such proposal; or if the appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings on behalf of its members and subscribers, in a manner consistent with his findings, within a reasonable time after the issuance of such order.

§ 2319. Appeal by insurers and others as to filings

1. Any person or organization in interest aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon, except that the insurer or rating organization that made the filing shall not be authorized to proceed under this section. Such

application shall specify the grounds to be relied upon by the applicant.

2. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within 30 days after receipt of such application, hold a hearing upon not less than 10 days' written notice to the applicant and to every insurer and rating organization which made such filing.

3. If, after such hearing, the commissioner finds that the filing does not meet the requirements of this chapter, he shall issue an order specifying in what respects he finds that such filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Copies of the order shall be sent to the applicant and to every such insurer and rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

#### § 2320. Information furnished insureds; hearings and appeals of insureds

1. Every rating organization and every insurer which makes its own rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate.

2. Every rating organization and every insurer which makes its own rates shall provide within this State reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by his authorized representative, on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rating organization or insurer fails to grant or reject such request within 30 days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within 30 days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than 10 days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action.

#### § 2321. Advisory organizations

1. Every group, association or other organization of insurers, whether located within or outside this State, which assists insurers which make their own filings or rating organizations in rate making, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

2. Every advisory organization shall file with the commissioner:

A. A copy of its constitution, its articles of agreement or association or its certificate of incorporation and of its bylaws, rules, and regulations governing its activities;

B. A list of its members;

C. The name and address of a resident of this State upon whom notice or orders of the commissioner or process issued at his direction may be served; and

D. An agreement that the commissioner may examine such advisory organization in accordance with section 2328 (examination).

3. If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with this chapter, he may issue a written order specifying in what respects such act or practice is unfair or unreasonable or otherwise inconsistent with this chapter, and requiring the discontinuance of such act or practice.

4. No insurer which makes its own filings nor any rating organization shall support its filings by statistics or adopt rate making recommendations, furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving such statistics or recommendations issued under subsection 3 of this section. If the commissioner finds such insurer or rating organization to be in violation of this subsection he may issue an order requiring the discontinuance of such violation.

#### § 2322. Joint underwriters; joint reinsurers

1. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, shall be subject to regulation with respect thereto as herein provided, subject, however, with respect to joint underwriting, to all other provisions of this chapter and with respect to joint reinsurance, to sections 2328 (examinations), 2329 (penalties), and 2330 (appeals from commissioner).

2. If, after a hearing, the commissioner finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

#### § 2323. Recording and reporting of loss and expense experience

1. The commissioner shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and country-wide expense experience, in order that the experience of all insurers be made available at least annually in such form and detail as may be necessary to aid him in determining whether rating systems comply with the standards set forth in section 2303. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this State and are not susceptible of determination by a prorating of countrywide expense experience.

2. In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems on file with him, and in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it.

3. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

4. Each insurer shall report its loss or expense experience to the lawful rating organization or agency of which it is a member or subscriber, but shall not be required to report its loss or expense experience to any rating organization or agency of which it is not a member or subscriber. Any insurer not reporting such experience to a rating organization or other agency may be required to report such experience to the commissioner. Any report of such experience of any insurer filed with the commissioner shall be deemed confidential and shall not be revealed by the commissioner to any other insurer or other person, but the commissioner may make compilations including such experience.

§ 2324. Interchange of rating plan data; consultation; cooperative action in rate-making

1. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

2. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and rating organization may exchange information and experience data with insurance supervisory officials, insurers and rating organizations in other states and may consult with them with respect to rate making and the application of rating systems.

3. Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is authorized, but the filings resulting from such cooperation are subject to all provisions of this chapter which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

§ 2325. Assigned risks

1. Agreements may be made among casualty insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to

procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner.

2. Every insurer undertaking to transact in this State the business of automobile and motor vehicle bodily injury, property damage liability, physical damage, and medical payments insurance and every rating organization which files rates for such insurance shall cooperate in the preparation and submission of a plan for the equitable apportionment among insurers of applicants for insurance who are in good faith entitled to, but who are unable to procure through ordinary methods, such insurance. The plan shall provide:

A. Distribution of risks. Reasonable rules governing the equitable distribution of risks by direct insurance, reinsurance or otherwise and their assignment to insurers;

B. Rates. Rates and rate modifications applicable to such risks which shall not be excessive, inadequate or unfairly discriminatory;

C. Liability. The limits of liability which the insurer shall be required to assume; and

D. Hearings; appeal. A method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner.

3. The plan referred to in subsection 2 shall be filed in writing with the commissioner. The commissioner shall review the plan as soon as reasonably possible after filing in order to determine whether it meets the requirements set forth in subsection 2, paragraphs A, B, C, and D. The plan, unless sooner approved in writing, shall be on file for a waiting period of 30 days before it becomes effective. The plan shall be deemed approved unless disapproved by the commissioner within the waiting period.

Subsequent to the waiting period, the commissioner may disapprove the plan on the grounds that it does not meet the requirements set forth in subsection 2, paragraphs A, B, C, and D, but only after a hearing held upon not less than 10 days' written notice to every insurer and rating organization affected, specifying the matters to be considered at such hearing, and only by an order specifying in what respect he finds that the plan fails to meet such requirements, and stating when within a reasonable period thereafter the plan shall be deemed no longer effective. Such order shall not affect any assignment made or policy issued or made prior to the expiration of the period set forth in the order. Amendments to the plan shall be prepared, filed and reviewed in the same manner as herein provided with respect to the original plan.

4. When the plan referred to in subsection 2 or amendments thereto have been approved or promulgated, no insurer shall thereafter issue a policy of automobile and motor vehicle bodily injury, property damage liability, physical damage and medical payments insurance or undertake to transact such business in this State unless such insurer shall participate

in such an approved or promulgated plan.

5. If, after hearing, the commissioner finds that any activity or practice of any insurer or rating organization in connection with the operation of the plan referred to in subsection 2 is unfair or unreasonable or otherwise inconsistent with this section, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with this section and requiring the discontinuance of such activity or practice.

§ 2326. False or misleading information

1. No person or organization shall wilfully withhold information from, or knowingly give false or misleading information to:

A. The commissioner;

B. Any statistical agency designated by the commissioner; or

C. Any rating organization, or any insurer which will affect the rates or premiums chargeable under this chapter.

2. A violation of this section shall subject the one guilty of such violation to the penalties provided in section 2329.

§ 2327. Fleet rates

1. Two or more insurers, who, by virtue of their business associations in the United States, represent themselves to be or are customarily known as a "group" or similar insurance trade designation, may make the same filings or use the same rates for each such insurer, subject to the provisions of section 2303; and nothing contained in this chapter shall be construed to prohibit an agreement to make the same filings or use the same rates and concerted action in connection with such filings or rates by such insurers. This section shall not apply to 2 or more insurers who are not under the same common executive or general management or control and who act in concert in underwriting groups or pools.

2. This section shall not be deemed to prohibit or restrict any agreement or action otherwise lawful under section 2322 (joint underwriters; joint reinsurers).

§ 2328. Examinations

The commissioner shall examine the affairs, transactions, accounts, and records of each rating organization licensed in this State as provided in section 2310, of each advisory organization in this State as defined in section 2321, and of joint underwriters and joint reinsurers as defined in section 2322, as often as he deems advisable, but not less frequently than once every 5 years. The examination shall be conducted in the same manner and is subject to the same applicable provisions as apply to examination of insurers in chapter 3. The reasonable costs of any such examination shall be paid by the organization or association so examined. In lieu of any such examination the commissioner may accept the report of an

examination made by the insurance supervisory official of another state, pursuant to the laws of such state.

### § 2329. Penalties

1. Any person or organization violating any provision of this chapter shall be subject to a penalty of not more than \$500 for each such violation; or, if the violation is wilful, the penalty shall be not more than \$1,000. Such penalty may be in addition to any other penalty provided by law.

2. The commissioner may suspend the license of any rating organization or insurer which fails to comply with an order of the commissioner within the time limited by such order or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

3. No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing held upon not less than 10 days' written notice to such person or organization specifying the alleged violation.

### § 2330. Appeals from commissioner

Any insurer or rating organization aggrieved by any order or decision of the commissioner may appeal therefrom as provided in section 236 (appeal from the commissioner).

## CHAPTER 27

### THE INSURANCE CONTRACT

#### § 2401. Scope of chapter

This chapter applies as to all insurance contracts and annuity contracts, other than:

1. Reinsurance.
2. Policies or contracts not issued for delivery in this State nor delivered in this State.
3. Wet marine and transportation insurance.

#### § 2402. "Policy" defined

"Policy" means the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders,

endorsements and papers which are a part thereof.

§ 2403. "Premium" defined

"Premium" is the consideration for insurance, by whatever name called. Any "assessment", or any "membership", "policy", "survey", "inspection", "service" or similar fee or other charge in consideration for an insurance contract is deemed part of the premium.

§ 2404. Insurable interest — personal insurance

1. Any individual of competent legal capacity may procure or effect an insurance contract upon his own life or body for the benefit of any person. But no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under such contract are payable to the individual insured or his personal representatives, or to a person having, at the time when such contract was made, an insurable interest in the individual insured.

2. If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disablement, or injury of the individual insured, the individual insured or his executor or administrator, as the case may be, may maintain an action to recover such benefits from the person so receiving them.

3. "Insurable interest" as to such personal insurance means that every individual has an insurable interest in the life, body, and health of himself, and of other persons as follows:

A. In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

B. In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the individual insured; and

C. An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business proprietorship, partnership or firm, or of shares of stock of a closed corporation or of an interest in such shares, has an insurable interest in the life, body, and health of each individual party to such contract and for the purposes of such contract only, in addition to any insurable interest which may otherwise exist as to such individual.

4. An insurer shall be entitled to rely upon all statements, declarations and representations made by an applicant for insurance relative to the insurable interest of the applicant in the insured; and no insurer shall incur legal liability except as set forth in the policy, by virtue of any untrue statements, declarations or representations so relied upon in good faith by the insurer.

§ 2405. Insurable interest — exception when certain institutions designated beneficiary

1. Life insurance contracts may be entered into in which the person paying the consideration for the insurance has no insurable interest in the life of the individual insured, where charitable, benevolent, educational, or religious institutions, or their agencies, are designated irrevocably as the beneficiaries thereof.

2. In making such contracts the person paying the premium shall make and sign the application therefor as owner, and shall designate a charitable, benevolent, educational or religious institution, or any agency thereof, irrevocably as the beneficiary or beneficiaries of such contract. The application shall be signed also by the individual whose life is to be insured.

3. Nothing in this section shall be deemed to prohibit any combination of the applicant, premium payer, owner, and beneficiary from being the same person.

4. Such a contract shall be valid and binding among the parties thereto, notwithstanding the absence otherwise of an insurable interest in the life of the individual insured.

§ 2406. Insurable interest, property

1. No contract of insurance of property or of any interest in property or arising from property shall be enforceable as to the insurance except for the benefit of persons having an insurable interest in the things insured as at the time of the loss.

2. "Insurable interest" as used in this section means any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.

§ 2407. Power to contract — Purchase of insurance and annuities by minors

1. Any person of competent legal capacity may contract for insurance.

2. Any minor not less than 15 years of age, nearest birthday, may, notwithstanding his minority, contract for or own annuities, or insurance, or affirm by novation or otherwise pre-existing contracts for annuities or insurance upon his own life, body, health, property, liabilities or other interests, or on the persons of another in whom the minor has an insurable interest. Such a minor shall, notwithstanding such minority, be deemed competent to exercise all rights and powers with respect to or under any contract for annuity or for insurance upon his own life, body or health, or any contract such minor effected upon his own property, liabilities or other interests, or any contract effected or owned by the minor on the person of another, as might be exercised by a person of full legal age, and may at any time surrender his interest in any such contracts and give valid discharge for any benefit accruing or money payable thereunder. Such a minor shall not, by reason of his minority, be entitled to rescind, avoid or repudiate the contract, nor to rescind, avoid or repudiate any exercise of a right or privilege thereunder, except that such a minor not otherwise emancipated, shall not be bound by

any unperformed agreement to pay by promissory note or otherwise, any premium on any such annuity or insurance contract.

3. Any annuity contract or policy of life or health insurance procured by or for a minor under subsection 2 shall be made payable either to the minor or his estate or to a person having an insurable interest in the life of the minor.

#### § 2408. Consent of insured — life, health insurance

No life or health insurance contract upon an individual, except a contract of group life insurance or annuity or of group or blanket health insurance, shall be made or effectuated unless at the time of the making of the contract the individual insured, being of competent legal capacity to contract, applies therefor or has consented thereto in writing, except in the following cases:

1. A spouse may effectuate such insurance upon the other spouse.
2. Any person having an insurable interest in the life of a minor, or any person upon whom a minor is dependent for support and maintenance, may effectuate insurance upon the life of or pertaining to such minor.
3. Family policies may be issued insuring any 2 or more members of a family on an application signed by either parent, a step-parent, or by a husband or wife.

#### § 2409. Alteration of application, life and health insurance

No alteration of any written application for any life or health insurance policy or annuity contract shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer, for administrative purposes only, in such manner as to indicate clearly that such insertions are not to be ascribed to the applicant.

#### § 2410. Application; statements; as evidence

1. The insured shall not be bound by any statement made in an application for an individual life or health insurance policy or annuity contract, and the application shall not be admissible in evidence in any action relative to such policy or contract, unless a true copy of the application was attached to or endorsed on the policy or contract when issued as a part thereof. This provision shall not apply to industrial life insurance policies or to group life or group health insurance policies.

2. If any policy of life or health insurance delivered in this State is reinstated or renewed, and the insured or the beneficiary or assignee of the policy makes written request to the insurer for a copy of the application, if any, for such reinstatement or renewal, the insurer shall within 30 days after receipt of such request at its home office, or branch office, deliver or mail to the person making such request a copy of such application reproduced by any legible means. If such copy is not so delivered or mailed after having been so requested, the insurer shall be precluded from introducing the application in evidence in any action or proceeding based upon or involving the policy or its reinstatement or renewal. In the case of such a request from a beneficiary or assignee, the time within which the insurer is required to furnish a copy of such application shall not begin to run until after receipt of evidence satis-

factory to the insurer of the beneficiary's or assignee's vested interest in the policy or contract.

3. As to kinds of insurance other than individual life or health insurance, no application for insurance signed by or on behalf of the insured shall be admissible in evidence in any action between the insured and the insurer arising out of the policy so applied for, if the insurer has failed, at the expiration of 30 days after receipt by the insurer of written demand therefor by or on behalf of the insured, to furnish to the insured a copy of such application reproduced by any legible means.

§ 2411. Representations in applications

All statements and descriptions in any application for insurance or for an annuity contract, by or in behalf of the insured or annuitant, shall be deemed to be representations and not warranties. Misrepresentations, omissions, concealment of facts, and incorrect statements shall not prevent a recovery under the policy or contract unless either :

1. Fraudulent; or

2. Material either to the acceptance of the risk, or to the hazard assumed by the insurer; or

3. The insurer in good faith would either not have issued the insurance or contract, or would not have issued it at the same premium rate, or would not have issued insurance in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or contract or otherwise.

§ 2412. Filing, approval of forms

1. No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or endorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this State, unless the form has been filed with and approved by the commissioner. This provision shall not apply to surety bonds, or to specially rated inland marine risks, or to policies, riders, endorsements or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies effectuated and delivered outside this State but covering persons resident in this State, the group certificates to be delivered or issued for delivery in this State shall be filed, for the commissioner's information only, with the commissioner at his request. As to forms for use in property, marine other than wet marine and transportation insurance, casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

2. Every such filing shall be made not less than 30 days in advance of any such delivery. At the expiration of such 30 days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional 30 days the period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial 30 days period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after hearing and for cause shown, withdraw any such approval.

3. Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than 30 days after the giving of the order of withdrawal, as the commissioner shall in such order prescribe.

4. The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

5. Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval may be taken as provided in sections 229 to 236.

#### § 2413. Grounds for disapproval

1. The commissioner shall disapprove any form filed under section 2412, or withdraw any previous approval thereof, only on one or more of the following grounds:

A. If it is in any respect in violation of or does not comply with this Title;

B. If it contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract;

C. If it has any title, heading, or other indication of its provisions which is misleading;

D. As to an individual health insurance policy, if the benefits provided therein are unreasonable in relation to the premium charged; or, as to any health insurance contract, if it contains any unjust, unfair or inequitable provision or provisions;

E. As to a life insurance or health insurance policy, if it contains a provision or provisions such as to encourage misrepresentation.

2. The insurer shall not use in this State any such form after disapproval or withdrawal of approval.

§ 2414. Standard provisions, in general

1. Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this Title pertaining to contracts of particular kinds of insurance. The commissioner may waive the required use of a particular provision in a particular insurance policy form if:

- A. He finds such provision unnecessary for or unrelated to the protection of the insured and inconsistent with the purposes of the policy, and
- B. The policy is otherwise approved by him.

2. No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the commissioner may approve any substitute provision which is, in his opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

3. In lieu of the provisions required by this Title for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the commissioner.

4. A policy issued by a domestic insurer for delivery in another jurisdiction may contain or omit any provisions as required or permitted by the laws of such jurisdiction.

5. This section does not apply as to the standard fire policy.

§ 2415. Charter, bylaw provisions

No policy shall contain any provision purporting to make any portion of the charter, bylaws or other constituent document of the insurer (other than the subscriber's agreement or power of attorney of a reciprocal insurer) a part of the contract unless such portion is set forth in full in the policy. Any policy provision in violation of this section shall be invalid.

§ 2416. Execution of policies

1. Every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer.

2. A facsimile signature of any such executing individual may be used in lieu of an original signature.

3. No insurance contract heretofore or hereafter issued and which is otherwise valid shall be rendered invalid by reason of the apparent execution thereof on behalf of the insurer by the imprinted facsimile signature of an individual not authorized so to execute as of the date of the policy.

### § 2417. Underwriters' and combination policies

1. Two or more authorized insurers may jointly issue, and shall be jointly and severally liable on, an underwriters' policy bearing their names. Any one insurer may issue policies in the name of an underwriter's department and such policy shall plainly show the true name of the insurer.

2. Two or more insurers may, with the approval of the commissioner, issue a combination policy which shall contain provisions substantially as follows:

A. That the insurers executing the policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of insurance under the policy, and

B. That service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing the policy, shall constitute service upon all such insurers.

3. This section shall not apply to co-surety obligations.

### § 2418. Validity and construction of non-complying forms

1. A policy hereafter delivered or issued for delivery to any person in this State in violation of this Title but otherwise binding on the insurer, shall be held valid, but shall be construed as provided in this Title.

2. Any condition, omission or provision not in compliance with the requirements of this Title and contained in any policy, rider, or endorsement hereafter issued and otherwise valid, shall not thereby be rendered invalid but shall be construed and applied in accordance with such condition, omission or provision as would have applied had the same been in full compliance with this Title.

### § 2419. Delivery of policy as to motor vehicle insurance

In event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle is insured, a duplicate of such policy setting forth the name and address of the insurer, insurance classification of vehicle, type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy, or memorandum thereof containing the same such information, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of such duplicate policy or memorandum. This section does not apply to inland marine floater policies.

### § 2420. Assignability; rights of insurer, assignee

1. A policy may be assignable or not assignable, as provided or permitted by its terms.

2. Subject to its terms relating to assignability, a life or health insurance policy, whether heretofore or hereafter issued, under the terms of which the beneficiary may be changed upon the sole request of the insured or owner, may be assigned either by pledge or transfer of title, by an assignment executed by the insured or owner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer.

3. Any assignment of a policy which is otherwise lawful and of which the insurer has received notice, shall entitle the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment, until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

4. Any individual insured under a group insurance policy or group annuity contract shall have the right, unless expressly prohibited under the terms of the policy or contract, to assign to any other person his rights and benefits under the policy or contract, including, but not limited to, the right to designate the beneficiary or beneficiaries and the rights as to conversion provided for in sections 2621 to 2625. While the assignment is in effect, and whether heretofore or hereafter made, the insurer shall be entitled to deal with the assignee as the owner of such rights and benefits in accordance with the terms of the assignment; but without prejudice to the insurer on account of any lawful action taken or payment made by it prior to receipt by it at its home office of written notice of the assignment or of the termination thereof.

#### § 2421. Renewal of policy

Any policy terminating by its terms at a specified expiration date and not otherwise renewable, may be renewed or extended at the option of the insurer and upon a currently authorized policy form and at the premium rate then required therefor for a specified additional period or periods by a certificate or other endorsement of the policy, and without requiring issuance of a new policy.

#### § 2422. Notice to, knowledge of agent binding on insurer

1. An agent authorized by an insurer, if the name of such agent is borne on the policy, is the insurer's agent in all matters of insurance. Any notice required to be given by the insured to the insurer or any of its officers may be given in writing to such agent.

2. The authorized agent of an insurer shall be regarded as in the place of the insurer in all respects regarding any insurance effected by him. The insurer is bound by his knowledge of the risk and all matters connected therewith. Omissions and misdescriptions known to the agent shall be regarded as known to the insurer and waived by it as if noted in the policy.

#### § 2423. Forms for proof of loss to be furnished

An insurer shall furnish, upon written request of any person claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion.

§ 2424. Claims administration not waiver

Without limitation of any right or defense of an insurer otherwise, none of the following acts by or on behalf of an insurer shall be deemed to constitute a waiver of any provision of a policy or of any defense of the insurer thereunder:

1. Acknowledgement of the receipt of notice of loss or claim under the policy.
2. Furnishing forms for reporting a loss or claim, for giving information relative thereto, or for making proof of loss, or receiving or acknowledging receipt of any such forms or proofs completed or uncompleted.
3. Investigating any loss or claim under any policy or engaging in negotiations looking toward a possible settlement of any such loss or claim.

§ 2425. Payment discharges insurer

Whenever the proceeds of or payments under an insurance policy or annuity contract heretofore or hereafter issued become payable in accordance with the terms of such policy or contract, or the exercise of any right or privilege thereunder, and the insurer makes payment thereof in accordance therewith or in accordance with any written assignment thereof, the person then designated as being entitled thereto shall be entitled to receive such proceeds or payments and to give full acquittance therefor, and such payments shall fully discharge the insurer from all claims under the policy or contract unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that such other person claims to be entitled to such payment or some interest in the policy or contract.

§ 2426. Advance payments

1. No payment or payments made by any person, or by his insurer by virtue of an insurance policy, on account of bodily injury or death or damage to or loss of property of another, shall constitute an admission of liability or waiver of defense as to such injury, death, loss or damage, or be admissible in evidence in any action brought against the insured person or his insurer for damages, indemnity or benefits arising out of such injury, death, loss or damage unless pleaded as a defense to the action.

2. All such payments shall be credited upon any settlement with respect to the same damage, expense, or loss made by, or upon any judgment rendered therefor in such an action against, the payor or his insurer, and in favor of any person to whom or on whose account payment was made.

§ 2427. Minor may give acquittance

1. Any minor domiciled in this State who has attained the age of 18 years shall be deemed competent to receive and to give full acquittance and discharge for a payment or payments in aggregate amount not exceeding \$3,000 in any one year made by a life insurer under the maturity, death, or settlement agreement provisions in effect or elected by such minor under a life insurance policy or annuity contract, if such policy, contract or agreement provides for payment to such minor. No such minor shall be deemed competent to alienate the right to or to anticipate or commute such payments. This section shall not be deemed to restrict the rights of minors set forth in section 2407.

2. If a guardian of the property of any such minor is duly appointed and written notice thereof is given to the insurer at its home office, any such payment thereafter falling due shall be paid to the guardian for the account of the minor, unless the policy or contract under which the payment is made expressly provides otherwise.

3. This section shall not be deemed to require any insurer making any such payment to determine whether any other insurer may be effecting a similar payment to the same minor.

§ 2428. Exemption of proceeds — life, endowment, annuity,  
accident contracts

1. Certain policies of insurance shall be exempt from claims of creditors, and the rights of beneficiaries and assignees thereof shall be protected, as set forth.

2. Except in cases of transfers with intent to defraud creditors, if a contract of life, endowment, annuity or accident insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life, in favor of a person other than himself or is assigned or in any way made payable to any other person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such contract of insurance or executors or administrators of such insured or of the person so effecting such contract of insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted and whether or not the contract of insurance is made payable to the person whose life is insured or to the executor or administrator of such person if the beneficiary or assignee shall predecease such person, and such proceeds and avails shall be exempt from all liability for any debt of the beneficiary existing at the time the proceeds and avails is made available for his use. Subject to the statutes of limitations, the amount of any premiums for such contract of insurance paid with intent to defraud creditors, with interest thereon, shall inure to the benefit of the creditors from the proceeds of the contract of insurance; but the insurer issuing the contract shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the insurer shall have received written notice, by or in behalf of a creditor with specifications of the amount claimed along with such facts as will assist the insurer to ascertain the particular policy, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, and unless such insurer shall have been served

with trustee process for the cash surrender value of any such contract of insurance as required by law prior to making payment of the proceeds in accordance with the terms of the contract of insurance.

3. For the purpose of subsection 2, a contract of insurance shall also be deemed to be payable to a person other than the insured if and to the extent that a facility-of-payment clause or similar clause in the contract permits the insurer to discharge its obligation after the death of the individual insured by paying the death benefits to a person as permitted by such clause.

§ 2429. Exemption of proceeds, health insurance

Except as may otherwise be expressly provided by the policy or contract, the proceeds or avails of all contracts of health insurance and of provisions providing benefits on account of the insured's disability which are supplemental to life insurance or annuity contracts heretofore or hereafter effected shall be exempt from all liability for any debt of the insured, and from any debt of the beneficiary existing at the time the proceeds are made available for his use.

§ 2430. Exemption of proceeds, group insurance

1. A policy of group life insurance or group health insurance or the proceeds thereof payable to the individual insured or to the beneficiary thereunder, shall not be liable, either before or after payment, to be applied by any legal or equitable process to pay any debt or liability of such insured individual or his beneficiary or of any other person having a right under the policy.

2. This section shall not apply to group insurance issued pursuant to this Title to a creditor covering his debtors, to the extent that such proceeds are applied to payment of the obligation for the purpose of which the insurance was so issued.

§ 2431. Exemption of proceeds, individual annuity contracts; assignability of rights

1. The benefits, rights, privileges and options which under any individual annuity contract heretofore or hereafter issued are due or prospectively due the annuitant, shall not be subject to execution nor shall the annuitant be compelled to exercise any such rights, powers, or options, nor shall creditors be allowed to interfere with or terminate the contract, except:

A. As to amounts paid for or as premium on any such annuity with intent to defraud creditors, with interest thereon, and of which the creditor has given the insurer written notice received at its home office prior to the making of the payment to the annuitant out of which the creditor seeks to recover. Any such notice shall specify the amount claimed or such facts as will enable the insurer to ascertain such amount, and shall set forth such facts as will enable the insurer to ascertain the annuity contract, the annuitant and the payment sought to be avoided on the ground of fraud.

B. The total exemption of benefits presently due and payable to any annuitant periodically or at stated times under all annuity contracts under

which he is an annuitant, shall not at any time exceed \$450 per month for the length of time represented by such installments, and that such periodic payments in excess of \$450 per month shall be subject to garnishee execution to the same extent as are wages and salaries.

C. If the total benefits presently due and payable to any annuitant under all annuity contracts under which he is an annuitant, shall at any time exceed payment at the rate of \$450 per month, then the court may order such annuitant to pay to a judgment creditor or apply on the judgment, in installments, such portion of such excess benefits as to the court may appear just and proper, after due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him, as well as any payments required to be made by the annuitant to other creditors under prior court orders.

2. If the contract so provides, the benefits, rights, privileges or options accruing under such contract to a beneficiary or assignee shall not be transferable nor subject to commutation, and if the benefits are payable periodically or at stated times, the same exemptions and exceptions contained herein for the annuitant, shall apply with respect to such beneficiary or assignee.

§ 2432. Exemption of employee's interest — group annuities, pension trusts

If any group annuity contract or pension trust, whether heretofore or hereafter issued, is effected by an employer for the benefit of his employees, whether or not requiring any contribution toward the cost thereof by such employees, the interest of any employee, beneficiary or joint or contingent annuitant in any policy, certificate or fund in connection therewith and his interest in any payments or proceeds thereof and in any optional or death benefits shall not in any way be subject to execution, levy, attachment, garnishment, trustee process or any other legal or equitable process.

§ 2433. Jurisdiction of courts, limitation of actions

No conditions, stipulations or agreements in a contract of insurance shall deprive the courts of this State of jurisdiction of actions against foreign insurers, or limit the time for commencing actions against such insurers to a period of less than 2 years from the time when the cause of action accrues.

§ 2434. Suits against foreign insurers

Any person having a claim against any foreign insurer may bring a trustee action or any other appropriate action therefor in the courts of this State. Service of process upon such an insurer shall be made as provided in sections 421 and 422.

CHAPTER 29

LIFE INSURANCE AND ANNUITY CONTRACTS

§ 2501. Scope of chapter

This chapter applies only to contracts of life insurance and annuities, other than reinsurance, group life insurance and group annuities, except that section 2537 (separate accounts) shall also apply as to group annuity contracts.

§ 2502. Industrial life insurance defined

For the purposes of this Title "industrial life insurance" is that form of life insurance written under policies of face amount of \$2,500 or less bearing the words "industrial policy," or "weekly premium policy" or words of similar import imprinted on the face thereof as part of the descriptive matter, and under which premiums are payable monthly or more often.

§ 2503. Standard provisions required

1. No policy of life insurance other than pure endowments with or without return of premiums or of premiums and interest, shall be delivered or issued for delivery in this State unless it contains in substance all of the applicable provisions required by sections 2504 to 2515. This section shall not apply to annuity contracts nor to any provision of a life insurance policy, or contract supplemental thereto, relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

2. Any of such provisions or portions thereof not applicable to single premium or nonparticipating or term policies or insurance granted in exchange for lapsed or surrendered policies, shall to that extent not be incorporated therein.

§ 2504. Payment of premiums

There shall be a provision relating to the time and place of payment of premiums.

§ 2505. Grace period

There shall be a provision that a grace period of 30 days, or, at the option of the insurer, of one month of not less than 30 days, or of 4 weeks in the case of industrial life insurance policies the premiums for which are payable more frequently than monthly, shall be allowed within which the payment of any premium after the first may be made, during which period of grace the policy shall continue in full force. The insurer may impose an interest charge not in excess of 6% per annum for the number of days of grace elapsing before the payment of the premium, and, whether or not such interest charge is imposed, if a claim arises under the policy during such period of grace the amount of any premium due or overdue, together with interest and any deferred installment of the annual premium, may be deducted from the policy proceeds. Grace shall date from the premium due date specified in the policy.

§ 2506. Entire contract

There shall be a provision that except as otherwise expressly provided by law, the policy and the application therefor, if a copy of such application is endorsed upon or attached to the policy when issued, shall constitute the

entire contract between the parties, and that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

§ 2507. Incontestability

There shall be a provision that the policy shall be incontestable after it has been in force during the lifetime of the insured for a period of not more than 2 years after its date of issue, except for nonpayment of premiums and, at the insurer's option, provisions relating to benefits in the event of total and permanent disability and provisions granting additional benefits specifically against death by accident or accidental means.

§ 2508. Misstatement of age

There shall be a provision that if the age of the insured or of any other person whose age is considered in determining the premium or benefit has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages.

§ 2509. Dividends

1. There shall be a provision in participating policies that, beginning not later than the end of the 3rd policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy provided the policy is in force and all premiums to that date are paid. Except as hereinafter provided, any dividend becoming payable shall at the option of the party entitled to elect such option be either :

A. Payable in cash, or

B. Applied to any one of such other dividend options as may be provided by the policy. If any such other dividend options are provided, the policy shall further state which option shall be automatically effective if such party shall not have elected some other option. If the policy specifies a period within which such other dividend option may be elected, such period shall be not less than 30 days following the date on which such dividend is due and payable. The annually apportioned dividend shall be deemed to be payable in cash within the meaning of A even though the policy provides that payment of such dividend is to be deferred for a specified period, provided such period does not exceed 6 years from the date of apportionment and that interest will be added to such dividend at a specified rate.

2. Renewable term policies of 10 years or less may provide that the surplus accrued to such policies shall be determined and apportioned each year after the second policy year, and accumulated during each renewal period, and that at the end of the renewal period, on renewal of the policy by the insured, the insurer shall apply the accumulated surplus as an annuity for the next succeeding renewal term in the reduction of premiums.

3. In participating industrial life insurance policies, in lieu of the provision required in subsection 1, there shall be a provision that, beginning not later than the end of the 5th policy year, the policy shall participate annually in the divisible surplus, if any, in the manner set forth in the policy.

4. This section does not apply as to insurance issued in consideration of lapsed or surrendered policies.

#### § 2510. Policy loan

1. There shall be a provision that after 3 full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, an amount equal to or, at the option of the party entitled thereto, less than the loan value of the policy. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, and the insurer may deduct, either from such loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining such cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year. The policy may also provide that if interest on any indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value thereof, then the policy shall terminate and become void, but not until at least 30 days' notice has been mailed by the insurer to the last address, of record with the insurer, of the insured or other policy owner and of any assignee of record at the insurer's home office. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for 6 months after application therefor. Such provision shall also contain a table showing in figures the loan values each year during the first 20 years of the policy, or during the term of the policy, whichever is shorter. The policy, at the insurer's option, may provide for automatic premium loan.

2. This section shall not apply to term policies, or to term insurance benefits provided by rider or supplemental policy provisions or to industrial life insurance policies.

#### § 2511. Table of installments

In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments.

#### § 2512. Reinstatement

There shall be a provision that unless:

1. The policy has been surrendered for its cash surrender value, or
2. Its cash surrender value has been exhausted, or
3. The paid-up term insurance, if any, has expired;

the policy will be reinstated at any time within 3 years, or 2 years in the case of industrial life insurance policies, from the date of premium default

upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears and the payment or reinstatement of any other indebtedness to the insurer upon the policy, all with interest at a rate not exceeding 6% per annum compounded annually.

#### § 2513. Payment of claims

There shall be a provision that when the benefits under the policy shall become payable by reason of the death of the insured, settlement shall be made upon receipt of due proof of death and, at the insurer's option, surrender of the policy and proof of the interest of the claimant. If an insurer shall specify a particular period prior to the expiration of which settlement shall be made, such period shall not exceed 2 months from the receipt of such proofs.

#### § 2514. Beneficiary, industrial policies

An industrial life insurance policy shall have the name of the beneficiary designated thereon or in the application or other form if attached to the policy, with a reservation of the right to designate or change the beneficiary after the issuance of the policy, unless such beneficiary be irrevocably designated. The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of any proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured. The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which shall not be less than 30 days after the death of the insured, or if the beneficiary is the estate of the insured, or is a minor, or dies before the insured, or is not legally competent to give a valid release, then the insurer may make any payment thereunder to the executor or administrator of the insured, or to any relative of the insured by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled thereto by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured. The policy may also include a similar provision applicable to any other payment due under the policy.

#### § 2515. Title

There shall be a title on the policy, briefly describing the same.

#### § 2516. Excluded or restricted coverage

A clause in any policy of life insurance policy or annuity contract providing that such policy or contract shall be incontestable after a specified period shall preclude only a contest of the validity of the policy or contract, and shall not preclude the assertion at any time of defenses based upon provisions in the policy or contract which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such clause.

§ 2517. Standard provisions — annuity and pure endowment contracts

1. No annuity or pure endowment contract, other than reversionary annuities, also called survivorship annuities, or group annuities and except as stated herein, shall be delivered or issued for delivery in this State unless it contains in substance each of the provisions specified in sections 2518 to 2523. Any of such provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

2. This section shall not apply to contracts for deferred annuities included in, or upon the lives of beneficiaries under, life insurance policies, nor to variable annuity contracts.

§ 2518. Grace period — annuities

In an annuity or pure endowment contract, other than a reversionary, survivorship or group annuity, there shall be a provision that there shall be a period of grace of one month, but not less than 30 days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer to an interest charge thereon at a rate to be specified in the contract but not exceeding 6% per annum for the number of days of grace elapsing before such payment, during which period of grace the contract shall continue in full force; but in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payments of the current contract year, if any, are made, the amount of such payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

§ 2519. Incontestability — annuities

If any statements, other than those relating to age, sex and identity are required as a condition to issuing an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, and subject to section 2521, there shall be a provision that the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom such statements are required, for a period of 2 years from its date of issue, except for nonpayment of stipulated payments to the insurer; and at the option of the insurer such contract may also except any provisions relative to benefits in the event of disability and any provisions which grant insurance specifically against death by accident or accidental means.

§ 2520. Entire contract — annuities

In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application therefor shall constitute the entire contract between the parties.

§ 2521. Misstatement of age or sex — annuities

In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or of any of them has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex and that if the insurer shall make or has made any overpayment or overpayments on account of any such misstatement, the amount thereof with interest at the rate to be specified in the contract but not exceeding 6% per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract.

§ 2522. Dividends — annuities

If an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

§ 2523. Reinstatement — annuities

In an annuity or pure endowment contract, other than a reversionary or group annuity, there shall be a provision that the contract may be reinstated at any time within one year from the default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest thereon at a rate to be specified in the contract but not exceeding 6% per annum payable annually, and in cases where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

§ 2524. Standard provisions — reversionary annuities

1. Except as stated herein, no contract for a reversionary annuity shall be delivered or issued for delivery in this State unless it contains in substance each of the following provisions:

A. Any such reversionary annuity contract shall contain the provisions specified in sections 2518 to 2522, except that under section 2518 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue payment in lieu of providing for deduction of such payments from an amount payable upon settlement under the contract.

B. In such reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within 3 years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the insurer on account of the contract be paid, or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding 6% per annum compounded annually.

2. This section shall not apply to group annuities, variable annuities, or to annuities included in life insurance policies, and any of such provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

§ 2525. Limitation of liability

1. No policy of life insurance shall be delivered or issued for delivery in this State if it contains any of the following provisions:

A. A provision limiting the time within which an action at law or in equity may be commenced on such a policy to less than 3 years after the cause of action has accrued.

B. A provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one or more of the following circumstances:

(1) Death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces, or of any act or hazard of such war or action, or of service in the military, naval, or air forces or in civilian forces auxiliary thereto, or from any cause while a member of such military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in such military action;

(2) Death as a result of aviation or any air travel or flight;

(3) Death as a result of a specified hazardous occupation or occupations or avocation;

(4) Death while the insured is a resident outside continental United States and Canada; or

(5) Death within 2 years from the date of issue of the policy as a result of suicide, while sane or insane.

2. A policy which contains any exclusion or restriction pursuant to paragraph B, shall also provide that in the event of death under the circumstances to which any such exclusion or restriction is applicable, the insurer will pay an amount not less than the reserve attributable thereto determined according to the Commissioners reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits, or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy, with adjustment for indebtedness or dividend credit.

3. This section shall not apply to group life insurance, health insurance, reinsurance, or annuities, or to any provision in a life insurance policy or contract supplemental thereto relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

4. Nothing contained in this section shall prohibit any provision which in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section.

§ 2526. Prohibited provisions

1. No life insurance policy, other than industrial insurance, shall be delivered or issued for delivery in this State, if it contains any of the following provisions:

A. A provision by which the policy purports to be issued or to take effect more than one year before the original application for the insurance was made.

B. A provision for any mode of settlement at maturity of the policy of less value than the amount insured under the policy, plus dividend additions, if any, less any indebtedness to the insurer on or secured by the policy and less any premium that may by the terms of the policy be deducted.

C. A provision to the effect that the agent soliciting the insurance is the agent of the person insured under the policy, or making the acts or representations of such agent binding upon the person so insured under the policy.

2. No policy of industrial life insurance shall be delivered or issued for delivery in this State if it contains any of the following provisions:

A. A provision by which the insurer may deny liability under the policy for the reason that the insured has previously obtained other insurance from the same insurer.

B. A provision giving the insurer the right to declare the policy void because the insured has had any disease or ailment, whether specified or not, or because the insured has received institutional, hospital, medical or surgical treatment or attention, except a provision which gives the insurer the right to declare the policy void if the insured has, within 2 years prior to the issuance of the policy, received institutional, hospital, medical or surgical treatment or attention and if the insured or claimant under the policy fails to show that the condition occasioning such treatment or attention was not of a serious nature or was not material to the risk.

C. A provision giving the insurer the right to declare the policy void because the insured has been rejected for insurance, unless such right be conditioned upon a showing by the insurer that knowledge of such rejection would have led to a refusal by the insurer to make such contract.

3. No insurer shall provide in any policy, certificate, contract or agreement of life insurance for the payment of any insurance, indemnity or benefit in services, goods, wares or merchandise of any kind.

§ 2527. Provisions required by law of other jurisdiction

The policies of a foreign life insurer may contain any provision which the law of the state, territory, district, or country under which the insurer is organized prescribes shall be in such policies when issued in this State, and the policies of a domestic life insurer may, when issued or delivered in any other state, territory, district, or country, contain any provisions required by the laws thereof, anything in this chapter to the contrary notwithstanding.

§ 2528. Short title

Sections 2528 to 2534 shall be known as the "Standard Nonforfeiture Law."

§ 2529. Nonforfeiture provisions

1. In the case of policies issued on or after the effective date of this Title no policy of life insurance, except as stated in section 2534 shall be issued or delivered in this State unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder :

A. Paid-up nonforfeiture benefit. That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified.

B. Cash surrender value. That, upon surrender of the policy within 60 days after the due date of any premium payment in default after premiums have been paid for at least 3 full years in the case of ordinary insurance or 5 full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.

C. Effective date of benefit. That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than 60 days after the due date of the premium in default.

D. Cash surrender value if policy paid up. That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the 3rd policy anniversary in the case of ordinary insurance or the 5th policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within 30 days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.

E. Mortality table and interest rate used. A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first 20 policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.

F. Method used in computing value and benefit. A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

2. Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

3. The insurer shall reserve the right to defer the payment of any cash surrender value for a period of 6 months after demand therefor with surrender of the policy.

#### § 2530. Cash surrender value

Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by section 2529, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

1. Present value of adjusted premiums. The then present value of the adjusted premiums as defined in section 2532, corresponding to premiums which would have fallen due on and after such anniversary, and

2. Amount of indebtedness. The amount of any indebtedness to the insurer on the policy. Any cash surrender value available within 30 days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by section 2529, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on the policy.

#### § 2531. Paid-up nonforfeiture benefits

Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by sections 2529 to 2534 in the absence of the condition that premiums shall have been paid for at least a specified period.

## § 2532. Adjusted premiums

1. How calculated. Except as provided in subsection 3, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:

- A. The then present value of the future guaranteed benefits provided for by the policy;
- B. 2% of the amount of insurance, if the insurance be uniform in amount, or the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;
- C. 40% of the adjusted premium for the first policy year;
- D. 25% of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

In applying the percentages specified in paragraphs C and D, no adjusted premium shall be deemed to exceed 4% of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

2. In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy, provided that in the case of a policy providing a varying amount of insurance issued on the life of a child under age 10, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age 10 were the amount provided by such policy at age 10.

3. The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to:

- A. The adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by
- B. The adjusted premiums for such term insurance, the foregoing items A and B being calculated separately and as specified in subsections 1 and 2 except that, for the purposes of subsection 1, paragraphs B, C and D, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in paragraph B shall be equal to the excess of the corresponding amount determined for the entire

policy over the amount used in the calculation of the adjusted premiums in paragraph A.

4. All adjusted premiums and present values referred to in sections 2529 to 2534 shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than 3 years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the Commissioners 1961 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding  $3\frac{1}{2}\%$  per year, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit for ordinary insurance, the rates of mortality assumed may not be more than those shown in the Commissioners 1958 Extended Term Insurance Table and for industrial insurance the rates of mortality may not be more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

§ 2533. Calculation of cash surrender value of certain policies on default

Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in sections 2530 to 2532 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the dividends used to provide such additions. Notwithstanding section 2530, additional benefits payable:

1. Death or accident. In the event of death or dismemberment by accident or accidental means;
2. Total disability. In the event of total and permanent disability;
3. Reversionary annuity. As reversionary annuity or deferred reversionary annuity benefits;
4. Term insurance benefits. As term insurance benefits provided by a rider or supplemental policy provisions to which, if issued as a separate policy, section 2529 to 2534 would not apply;
5. Child term insurance benefits. As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is 26, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child; and

6. Other policy benefits. As other policy benefits additional to life insurance and endowment benefits; and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by sections 2529 to 2534, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

#### § 2534. Exceptions

Sections 2529 to 2534 shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of 15 years or less expiring before age 66, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in section 2532 is less than the adjusted premium so calculated, on such 15-year term policy issued at the same age and for the same initial amount of insurance, nor to any policy which shall be delivered outside this State through an agent or other representative of the insurer issuing the policy.

#### § 2535. Incontestability, limitation of liability after reinstatement

1. A reinstated policy of life insurance or annuity contract may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

2. When any life insurance policy or annuity contract is reinstated, such reinstated policy or contract may exclude or restrict liability to the same extent that such liability could have been or was excluded or restricted when the policy or contract was originally issued, and such exclusion or restriction shall be effective from the date of reinstatement.

#### § 2536. Participating, nonparticipating policies — right to issue

A life insurer may issue policies on either the participating basis or the nonparticipating basis, or on both bases, if the right or absence of right of participation is reasonably related to the premium charged and the insurer is otherwise not in violation of sections 2159 (unfair discrimination — life insurance, annuities, and health insurance) or 2160 (rebates — life, health and annuity contracts).

#### § 2537. Separate accounts

1. Any insurer may establish one or more separate accounts, including that type known as a unit investment trust, as defined by the Investment Company Act of 1940, Stat. 789, 15 U.S.C. § 80a, et seq., as amended, and may allocate to such separate accounts, in accordance with the terms of a written contract or agreement or annuity or pension, profitsharing or retirement plan, whether or not qualified under the applicable provisions of the Internal Revenue Code, 68A Stat. 1, 26 U.S.C. § 1, et seq., as amended, with any individual or any group, any amounts paid or remitted to or held by the insurer which are to be applied to provide for annuities or other benefits payable in fixed and guaranteed or variable dollar amounts, or both.

2. The amounts allocated to each such account and accumulations thereon may be invested and reinvested as provided in section 1128 (special investments: separate accounts).

3. The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the separate account, without regard to other income, gains or losses of the insurer. That portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the insurer may conduct.

4. Assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then in accordance with the terms of the contract or the rules or other written agreement applicable to such separate account; except, that the portion of the assets of such separate account at least equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in section 1128, if any, shall be valued in accordance with rules otherwise applicable to the insurer's assets.

5. If the contract or agreement provides for payment of benefits in variable amounts, it shall contain a statement of the essential features of the procedure to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract or agreement including a group agreement and any certificate issued thereunder shall state that such dollar amount may decrease or increase and shall contain on its first page a statement that the benefits thereunder are on a variable basis.

6. No insurer shall deliver or issue for delivery within this State any contract or agreement providing benefits in variable amounts under this section unless it is duly authorized to conduct a life insurance or annuity business within this State and has satisfied the commissioner that its condition or methods of operation in connection with the issuance of such contracts or agreements will not render its operation hazardous to the public or its policyholders in this State. In determining the qualification of an insurer requesting such authority, the commissioner shall consider, among other things,

- A. The history and financial condition of the insurer;
- B. The character, responsibility and general fitness of the officers and directors of the insurer; and
- C. In the case of an insurer other than a domestic insurer, whether the statutes or regulations of the jurisdiction of its incorporation provide a degree of protection to policyholders and the public which is substantially equal to that provided by this section and the rules and regulations issued thereunder.

An insurer which issues variable contracts and which is a subsidiary of, or affiliated through common management or ownership with, another life insurer authorized to transact business in this State shall be deemed to have met the provisions of this subsection if either it or the parent or affiliated insurer meets the requirements hereof.

7. Any insurer which establishes one or more separate accounts pursuant to subsection 1, to the extent it deems necessary to comply with the Investment Company Act of 1940, 54 Stat. 789, 15 U.S.C. § 80a, et seq., as amended, may amend its charter to provide, with respect to any separate account or any portion thereof, for the benefit of persons having beneficial interests therein, special voting and other rights and special procedures for the conduct of the business and affairs of such separate account or portion thereof, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business and affairs of such separate account or portion thereof. In addition, the insurer may make such other provisions in respect to the separate account, as the insurer may deem appropriate to facilitate compliance with any requirements of, or pursuant to, any federal or state law, now or hereafter in effect. However, this subsection shall not in any manner affect existing laws pertaining to the voting rights of the policyholders of the insurer.

8. No sale, exchange or other transfer of assets may be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account to which the transfer is made,

A. By a transfer of cash, or

B. By a transfer of securities having a readily determinable market value, is approved by the commissioner. The commissioner may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

9. The insurer shall not, in connection with the allocation of investments or expenses, or in any other respect, discriminate unfairly between separate accounts or between separate and other accounts, but this subsection shall not require the insurer to follow uniform investment policies for its accounts.

10. Variable annuity contracts delivered or issued for delivery in this State may include as an incidental benefit provisions for payment on death during the deferred period of an amount not in excess of the greater of the sum of the premiums or stipulated payments paid under the contract or the value of the contract at the time of death. Any such contract providing such a benefit shall not be deemed to be life insurance and therefore shall not be subject to the provisions of this Title governing life insurance contracts. A provision for any other benefit on death during the deferred period shall be subject to such insurance provisions.

11. The commissioner shall have sole authority to regulate the issuance and sale of the contracts or agreements authorized by subsection 1, and to promulgate such rules and regulations as may be necessary for the effectuation of this section.

12. Except as otherwise provided in this section, all pertinent provisions of this Title shall apply to separate accounts and contracts relating thereto.

The reserve liability for variable annuities shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

§ 2538. Prohibited policy plans

1. No life insurer shall hereafter deliver or issue for delivery in this State:

A. As part of or in combination with any life insurance, endowment or annuity contract, any agreement or plan, additional to the rights, dividends, and benefits arising out of any such contract, which provides for the accumulation of profits over a period of years and for payment of all or any part of such accumulated profits only to members or policyholders of a designated group or class who continue as members or policyholders until the end of a specified or ascertainable period of years.

B. Any "registered" policy; that is, any policy (other than one "registered" as a security under applicable State law) purporting to be "registered" or otherwise specially recorded, with any agency of the State of Maine, or of any other state, or with any bank, trust company, escrow company, or other institution other than the insurer; or purporting that any reserves, assets or deposits are held, or will be so held, for the special benefit or protection of the holder of such policy, by or through any such agency or institution.

C. Any policy or contract under which any part of the premium or of funds or values arising from the policy or contract or from investment of reserves, or from mortality savings, lapses or surrenders, in excess of the normal reserves or amounts required to pay death, endowment, and non-forfeiture benefits in respective amounts as specified in or pursuant to the policy or contract, are on a basis not involving insurance or life contingency features,

(1) To be placed in special funds or segregated accounts or specially designated places or

(2) To be invested in specially designated investments or types thereof, and the funds or earnings thereon to be divided among the holders of such policies or contracts, or their beneficiaries or assignees. This provision does not apply as to any contract authorized under section 2537.

D. Any policy which provides that on the death of anyone not specifically named therein the owner or beneficiary shall receive the payment or granting of anything of value. This provision shall not prohibit family policies insuring unspecified members of a family, nor prohibit payment to unspecified beneficiaries of a class designated by the insured or policy owner.

E. Any policy providing benefits or values for surviving or continuing policyholders contingent upon the lapse or termination of the policies of other policyholders, whether by death or otherwise.

F. Any policy, other than as authorized under section 2537 (separate

accounts), containing or referring to one or more of the following provisions or statements:

- (1) Investment returns or profit-sharing, other than as a participation in the divisible surplus of the insurer under a regular participation provision as provided for in section 2509.
- (2) Special treatment in the determination of any dividend that may be paid as to such policy.
- (3) Reference to premiums as "deposits".
- (4) Relating policyholder interest or returns from such policy or contract to those of stockholders.
- (5) That the policyholder as a member of a select group will be entitled to extra benefits or extra dividends not available to policyholders generally.

2. This section shall not be deemed to prohibit the provision, payment, allowance or apportionment of regular dividends or "savings" under regular participating forms of policies or contracts.

#### § 2539. Holding proceeds of policies in trust

1. Any domestic life insurer shall have power to hold the proceeds of any policy issued by it under a trust or other agreement upon such terms and restrictions as to revocation by the policyholder and control by the beneficiaries and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as shall have been agreed to in writing by the insurer and the policyholder.

2. The insurer shall not be required to segregate funds so held but may hold them as a part of its general corporate assets.

3. A foreign or alien insurer, when authorized by its charter or the laws of its domicile, may exercise any such powers with respect to policies issued to or held by residents of this State.

4. Nothing in this section shall be construed to subject any such insurer to any other laws or requirements of this State which would not be deemed applicable in the absence of this section.

#### § 2540. "Wholesale life insurance" defined

"Wholesale life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where such policies are issued on the lives of not less than 4 employees at date of issue. Premiums for such policies shall be paid either wholly from the employer's funds, or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees.

CHAPTER 31  
GROUP LIFE INSURANCE

§ 2601. Scope of chapter — short title

1. This chapter applies only to group life insurance.
2. This chapter does not apply to any contracts or policies entered into or issued prior to August 6, 1949 nor to any extensions, renewals or modifications thereof or amendments thereto whenever made.
3. This chapter may be known and cited as the "Group Life Insurance Law."

§ 2602. Group contracts must meet group requirements

1. No life insurance policy shall be delivered or issued for delivery in this State insuring the lives of more than one individual unless to one of the groups as provided for in sections 2603 to 2610, and unless in compliance with the other applicable provisions of this chapter.
2. Subsection 1, shall not apply to life insurance policies :
  - A. Insuring only individuals related by blood, marriage or legal adoption ;  
or
  - B. Insuring only individuals having a common interest through ownership of a business enterprise, or a substantial legal interest or equity therein, and who are actively engaged in the operation thereof ; or
  - C. Insuring only individuals otherwise having an insurable interest in each other's lives.

§ 2603. Employee groups

The lives of a group of individuals may be insured under a policy issued to an employer, or to the trustee or trustees of a fund established by an employer, which employer, trustee or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements :

1. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, or contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include re-

tired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. A policy issued to insure the employees of a public body may provide that the term "employees" shall include elected or appointed officials.

2. The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at least 10 employees at date of issue.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

#### § 2604. Debtor groups

The lives of a group of individuals may be insured under a policy issued to a creditor, or to a trustee or trustees or agent designated by 2 or more creditors, which creditor, trustee, trustees or agent shall be deemed the policyholder, to insure debtors of the single creditor or debtors of 2 or more creditors, as the case may be, subject to the following requirements:

1. The debtors eligible for insurance under the policy shall be all of the debtors of the single creditor or all the debtors of the 2 or more creditors whose indebtedness is repayable either

A. In installments, or

B. In one sum at the end of a period not in excess of 18 months from the initial date of debt, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract or otherwise. No debtor shall be eligible unless the indebtedness constitutes an obligation to repay which is binding upon him during his lifetime, at and from the date the insurance becomes effective upon his life.

2. The premium for the policy shall be paid by the policyholder, either from the creditor's or creditors' funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of insurability unless at least 75% of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least 100 persons yearly, or may reasonably be expected to receive at least 100 new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

4. The amount of the insurance on the life of any debtor shall at no time exceed the lesser of (a) the amount of the unpaid indebtedness, or (b) \$40,000. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of 18 months except that such insurance may be continued for an additional period not exceeding 6 months in the case of default, extension or recasting of the loan.

5. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

6. Notwithstanding the provisions of the above subsections, insurance on agricultural credit transaction commitments not exceeding 2 years in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan, and insurance on educational credit transaction commitments may be written for the amount of the portion of such commitment that has not been advanced by the creditor.

#### § 2605. Labor union groups

The lives of a group of individuals may be insured under a policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives or agents, subject to the following requirements:

1. The members eligible for insurance under the policy shall be all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union or both. The policy may provide that the term "members" shall include retired members.

2. The premium for the policy shall be paid by the policyholder, either

wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at least 25 members at date of issue.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

#### § 2606. Trustee groups

The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by 2 or more employers in the same industry or in related industries or by one or more labor unions, or by one or more employers and one or more labor unions, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

1. No policy may be issued to insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer, except where such other employer exercises substantial control over the business operations of the participating employers.

2. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include retired employees or union members, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include trustees or their employees, or both, if their duties are principally connected with such trusteeship.

3. The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or

by the union or unions, or by both or partly from such funds and partly from funds contributed by the insured persons. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least 75% of the then eligible persons, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

4. The policy must cover at date of issue at least 100 persons; and it must cover an average of not less than 3 persons per employer unit unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

5. The amount of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholders, employers or unions.

#### § 2607. Trade association groups

The lives of a group of individuals may be insured under a policy issued to trustees of a fund established by the employer members of a trade association, which trustees shall be deemed the policyholder, to insure employees of such employers for the benefit of persons other than the association or the employers, subject to the following requirements:

1. The policy may be issued only if

A. The association has been in existence for at least 5 years and was formed for purposes other than obtaining insurance, and

B. The participating employers, meaning such employer members whose employees are to be insured, constitute at date of issue at least 50% of the total employers eligible to participate, unless the total number of persons covered at date of issue exceeds 600, in which event such participating employers must constitute at least 25% of such total employers, in either case omitting from consideration any employer whose employees are already covered for group life insurance.

2. The persons eligible for insurance under the policy shall be all of the employees of the participating employers, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the individual proprietor or partners whenever a participating employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees. The policy may provide that the term "employees" shall include the employees of the association, and the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

3. The premium for the policy shall be paid by the trustees either wholly from funds contributed by the employers or funds contributed jointly by the employers and the employees. A policy on which part of the premium so payable is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees of each participating employer, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium so payable is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

4. The policy must cover at least 100 employees at date of issue.

5. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the policyholder or the employer.

#### § 2608. Municipal employees association groups

The lives of a group of individuals may be insured under a policy issued to an incorporated or unincorporated association of municipal employees, which association is organized and maintained in good faith for purposes other than that of obtaining insurance and has been so organized and maintained for a period of 2 years prior to the issuance of such policy or contract, which shall be deemed the policyholder to insure members of such association for the benefit of persons other than the association or any of its officials, representatives or agents, subject to the following requirements:

1. The members eligible for insurance shall be all of the members of the association, or all of any class or classes thereof determined by conditions pertaining to their employment or to membership in the association, or both.

2. The premium for the policy shall be paid by the policyholder wholly from the association's funds. No policy may be issued which does not insure all of the eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at least 10 members at date of issue.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or the association.

5. The policy must provide for a reduction of coverage of a member after his retirement from active service with a municipality.

#### § 2609. Professional association groups

The lives of a group of individuals may be insured under a policy issued to the trustees of a fund established by an association of individuals licensed by the State of Maine or authorized by law to engage in a recognized profession, which trustees shall be deemed the policyholder, to insure members of such association, or all of any class or classes thereof determined by con-

ditions pertaining to their employment or to membership in the association, subject to the following requirements:

1. The individuals eligible for insurance shall be all the members of the association or all of any class or classes thereof, determined by conditions pertaining to their employment or to membership in the association, or to both.

2. The premium for the policy shall be paid by the trustees wholly from funds contributed by the association, or partly from such funds and partly from funds contributed specifically for their insurance by the insured individuals. The number of individuals covered by the policy must exceed 75% of the eligible individuals, unless the policy reserves to the insurer the right to require evidence of individual insurability if less than 75% of the entrants become insured. A policy on which no part of the premium is to be derived from funds contributed by the insured individuals specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at date of issue at least 100 individuals.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder; and as to any one insured person the amount of term insurance together with term insurance of such person under all other group life insurance policies, shall not exceed \$100,000.

#### § 2610. Credit union groups

The lives of a group of individuals may be insured under a policy issued to a single credit union, or to a trustee or trustees or agent designated by 2 or more credit unions, which credit union, trustee, trustees or agent shall be deemed the policyholder, to insure members of the credit union or credit unions to the extent of each insured member's share in any such union, for the benefit of persons other than the credit union or credit unions or its officials, representatives or agents, subject to the following requirements:

1. The members eligible for insurance under the policy shall be all of the members of the single credit union or all of the members of the 2 or more credit unions, or all of any class or classes thereof determined by conditions pertaining to their membership in the credit union or credit unions, or both.

2. The premium for the policy shall be paid by the policyholder, either wholly from the credit union's funds, or the credit unions' funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is

not satisfactory to the insurer.

3. The policy must cover at least 25 members at date of issue.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured members or by the policyholder.

#### § 2611. Dependents' coverage

1. Insurance under any group life insurance policy issued pursuant to sections 2603 (employee groups), 2605 (labor union groups), 2606 (trustee groups), 2607 (trade association groups), and 2608 (municipal employees association groups), may if 60% of the then insured employees or members who then have eligible dependents elect, be extended to insure the dependents, or any class or classes thereof, of each insured employee or member who so elects in amounts in accordance with a plan which precludes individual selection and shall not be in excess of 50% of the insurance on the life of such employee or members nor in any event in excess of \$2,000 upon the life of a spouse or in excess of \$1,000 upon the life of a child, or, as to a child whose age at death is under 6 months, the amount shall not be in excess of \$100. A "dependent" is the spouse of the insured employee or member and an insured employee's or member's child under 21 years of age or his child 21 years or older who is attending an educational institution and relying upon the insured employee or member for financial support.

2. Premiums for the insurance on such dependents may be paid by the group policyholder, or by the employee or member or by the group policyholder and the employee or member jointly.

3. A spouse, but not a child, insured pursuant to this section shall have the same conversion right as to the insurance on his or her life as is vested in the employee or member.

4. Notwithstanding the provision of section 2620 only one certificate need be issued for each family unit if a statement concerning any dependent's coverage is included in such certificate.

#### § 2612. Limit as to amount of insurance

No such policy of group life insurance may be issued to an employer, or labor union or to the trustees of a fund established in whole or in part by an employer or a labor union, which provides term insurance on any person which, together with any other term insurance under any group life insurance policy or policies issued to the employer or employers of such person or to a labor union or labor unions of which such person is a member or to the trustees of a fund or funds established in whole or in part by such employer or employers or such labor union or labor unions, exceeds \$25,000, unless 150% of the annual compensation of such person from his employer or employers exceeds \$25,000, in which event all such term insurance shall not exceed \$100,000, or 150% of such annual compensation, whichever is the lesser.

#### § 2613. Provisions required in group contracts

No policy of group life insurance shall be delivered in this State unless it contains in substance the provisions set forth in sections 2613 to 2624 or provisions which in the opinion of the commissioner are more favorable to the persons insured, or at least as favorable to the persons insured and more favorable to the policyholder; except, however, that:

1. Sections 2619 to 2623 and section 2627 shall not apply to policies issued to a creditor to insure debtors of such creditor;

2. The standard provisions required for individual life insurance policies shall not apply to group life insurance policies; and

3. If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing herein shall be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies.

#### § 2614. Grace period

The group life insurance policy shall contain a provision that the policyholder is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period.

#### §2615. Incontestability

1. The group life insurance policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premium, after it has been in force for 2 years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force prior to the contest for a period of 2 years during such person's lifetime nor unless it is contained in a written instrument signed by him.

2. Any such provision shall preclude only a contest of the validity of the policy or of the insurance, and shall not preclude the assertion at any time of defenses based upon terms of the policy which exclude or restrict coverage, whether or not such restrictions or exclusions are excepted in such provision.

#### § 2616. Application; statements deemed representations

The group life insurance policy shall contain a provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued and become a part of the contract; that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used

in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or to his beneficiary prior to the insured's death.

#### § 2617. Insurability

The group life insurance policy shall contain a provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage.

#### § 2618. Misstatement of age

The group life insurance policy shall contain a provision specifying an equitable adjustment of premiums or of benefits or both to be made in the event the age of a person insured has been misstated, such provision to contain a clear statement of the method of adjustment to be used.

#### § 2619. Payment of benefits

The group life insurance policy shall contain a provision that any sum becoming due by reason of the death of the person insured shall be payable to the beneficiary designated by the person insured, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of such sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of such sum not exceeding \$500 to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

#### § 2620. Information as to insurance

The group life insurance policy shall contain a provision that the insurer will issue to the policyholder for delivery to each person insured printed information as to the insurance protection to which he is entitled, to whom the insurance benefits are payable, and the rights and conditions set forth in sections 2621, 2622 and 2623.

#### § 2621. Conversion on termination of eligibility

There shall be a provision that if the insurance, or any portion of it, on a person covered under the policy ceases because of termination of employment or of membership in the class or classes eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within 31 days after such termination, and provided further that:

1. The individual policy shall, at the option of such person, be on any one of the forms, except term insurance, then customarily issued by the insurer at the age and for the amount applied for;
2. The individual policy shall be in an amount not in excess of the amount

of life insurance which ceases because of such termination less the amount of any life insurance for which such person is or becomes eligible under the same or any other group policy within 31 days after such termination; provided, that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person insured, whether in one sum or in installments or in the form of an annuity, shall not, for the purposes of this provision, be included in the amount which is considered to cease because of such termination; and

3. The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to his age attained on the effective date of the individual policy.

§ 2622. Conversion on termination of policy

The group life insurance policy shall contain a provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates and who has been so insured for at least 5 years prior to such termination date shall be entitled to have issued to him by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided by section 2621, except that the group policy may provide that the amount of such individual policy shall not exceed the smaller of:

1. The amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under any group policy issued or reinstated by the same or another insurer within 31 days after such termination, and

2. \$2,000.

§ 2623. Death pending conversion

The group life insurance policy shall contain a provision that if a person insured under the policy dies during the period within which he would have been entitled to have an individual policy issued to him in accordance with sections 2621 or 2622 and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued to him under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

§ 2624. Information to debtor

A policy issued to a creditor to insure debtors of such creditor shall contain a provision that the insurer will furnish to the policyholder for delivery to each debtor insured under the policy a form which will contain a statement that the life of the debtor is insured under the policy and that any death benefit paid thereunder by reason of his death shall be applied to reduce or extinguish the indebtedness.

§ 2625. Notice as to conversion right

If any individual insured under a group life insurance policy hereafter delivered in this State becomes entitled under the terms of such policy to have an individual policy of life insurance issued to him without evidence of insurability, subject to making of application and payment of the first premium

within the period specified in such policy, and if such individual is not given notice of the existence of such right at least 15 days prior to the expiration date of such period, then, in such event the individual shall have an additional period within which to exercise such right, but nothing herein contained shall be construed to continue any insurance beyond the period provided in such policy. This additional period shall expire 15 days next after the individual is given such notice but in no event shall such additional period extend beyond 60 days next after the expiration date of the period provided in such policy. Written notice presented to the individual or mailed by the policyholder to the last known address of the individual or mailed by the insurer to the last known address of the individual as furnished by the policyholder shall constitute notice for the purpose of this section.

#### § 2626. Rate of premiums

1. No insurer shall be permitted to do business in this State if it delivers or issues for delivery, within this State, any policy of group life insurance on which the premium shall be less than the net premium based on an applicable mortality table and interest assumption factor found by the commissioner to be reasonably suitable for current use for the purpose, plus in any case a loading computed in accordance with a formula which shall be determined by the commissioner.

2. Anything in this Title to the contrary notwithstanding, any group life insurance policy issued or delivered in this State may provide for readjustment of the rate of premium based on the experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, and such readjustment may be made retroactive only for such policy year.

#### § 2627. Application of dividends, rate reductions

If a policy dividend is hereafter declared or a reduction in rate is hereafter made or continued for the first or any subsequent year of insurance under any policy of group life insurance heretofore issued or hereafter issued under this chapter to any policyholder, the excess, if any, of the aggregate dividends or rate reductions under such policy and all other group insurance policies of the policyholder over the aggregate expenditure for insurance under such policies made from funds contributed by the policyholder, or by an employer of insured persons, or by a union or association to which the insured persons belong, including reasonable expenditures made in connection with administration of such policies, shall be applied by the policyholder for the sole benefit of insured employees, members or debtors.

### CHAPTER 33

#### HEALTH INSURANCE CONTRACTS

#### § 2701. Scope of chapter

Nothing in this chapter shall apply to or affect:

1. Any policy of liability or workmen's compensation insurance with or without supplementary expense coverage therein;

2. Any group or blanket policy;

3. Life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to health insurance as:

A. Provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means, or as

B. Operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract.

4. Reinsurance

§ 2702. Short title

This chapter may be cited as the "uniform health policy provision law".

§ 2703. Scope, format of policy

No policy of health insurance shall be delivered or issued for delivery to any person in this State unless it otherwise complies with this Title, and complies with the following:

1. The entire money and other considerations therefore shall be expressed therein;

2. The time when the insurance takes effect and terminates shall be expressed therein;

3. It shall purport to insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family, who shall be deemed the policyholder, any 2 or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 23 years and any other person dependent upon the policyholder;

4. The style, arrangement and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lower case unspaced alphabet length not less than one hundred and twenty-point; the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions;

5. The exceptions and reductions of indemnity shall be set forth in the policy and, other than those contained in sections 2705 to 2729, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions", or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies;

6. Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and

7. The policy shall contain no provision purporting to make any portion of the charter, rules, constitution or bylaws of the insurer a part of the policy unless such portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the commissioner.

§ 2704. Required provisions; captions—omissions—substitutions

1. Except as provided in subsection 2, each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in sections 2705 to 2716, in the words in which the same appear; except, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded individually by the applicable caption shown, or, at the option of the insurer, by such appropriate individual or group captions or sub-captions as the commissioner may approve.

2. If any such provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

§ 2705. Entire contract—changes

There shall be a provision as follows:

Entire contract; changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

§ 2706. Time limit on certain defenses

There shall be a provision as follows:

Time limit on certain defenses: (a) After 3 years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability, as defined in the policy, commencing after the expiration of such 3-year period.

1. The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial 3-year period, nor to limit the application of sections 2717 through 2723 in the event of misstatement with respect to age or occupation or other insurance.

2. A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium 1 until at least age 50 or, 2 in the case of a policy issued after age 44, for at least 5 years from its date of issue, may contain in lieu of the foregoing the following provision, from which the clause in parentheses may be omitted at the insurer's option, under the caption "Incontestable:"

After this policy has been in force for a period of 3 years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application.

(b) No claim for loss incurred or disability, as defined in the policy, commencing after 3 years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

§ 2707. Grace period

There shall be a provision as follows :

A grace period of . . . . , insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies, days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision :

Unless not less than 30 days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the company written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.

§ 2708. Reinstatement

1. There shall be a provision as follows :

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the 45th day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as

they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed herein or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than 60 days prior to the date of reinstatement.

2. The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums

A. Until at least age 50, or

B. In the case of a policy issued after age 44, for at least 5 years from its date of issue.

#### § 2709. Notice of claim

1. There shall be a provision as follows:

Notice of claim: Written notice of claim must be given to the insurer within 20 days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at \_\_\_\_\_ (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

2. In a policy providing a loss-of-time benefit which may be payable for at least 2 years, an insurer may at its option insert the following between the first and 2nd sentence of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least 2 years, he shall, at least once in every 6 months after having given notice of the claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of 6 months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.

#### § 2710. Claim forms

There shall be a provision as follows:

Claim forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within 15 days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

### § 2711. Proofs of loss

There shall be a provision as follows :

**Proofs of loss:** Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within 90 days after the termination of the period for which the insurer is liable and in case of claim for any other loss within 90 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

### § 2712. Time of payment of claims

There shall be a provision as follows :

**Time of payment of claims:** Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment, will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid \_\_\_\_\_ (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

### § 2713. Payment of claims

1. There shall be a provision as follows :

**Payment of claims:** Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the company, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

2. The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer :

A. "If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$\_\_\_\_\_ (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

B. Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.

#### § 2714. Physical examination, autopsy

There shall be a provision as follows:

Physical examination and autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

#### § 2715. Legal actions

There shall be a provision as follows:

Legal actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of 3 years after the time written proof of loss is required to be furnished.

#### § 2716. Change of beneficiary

1. There shall be a provision as follows:

Change of beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change the beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

2. The first clause of the above provision relating to the irrevocable designation of beneficiary may be omitted at the insurer's option.

#### § 2717. Right to examine and return policy

1. Except as to nonrenewable accident policies and individual credit health insurance policies, every individual health insurance policy shall contain a provision therein or in a separate rider attached thereto when delivered, stating in substance that the person to whom the policy is issued shall be permitted to return the policy within 10 days of its delivery to such person and to have a refund of the premium paid if after examination of the policy the purchaser is not satisfied with it for any reason. The provision shall be set forth in the policy under an appropriate caption, and if not so printed on the face page of the policy adequate notice of the provision shall be printed or stamped conspicuously on the face page.

2. The policy may be so returned to the insurer at its home or branch office to the agent through whom it was applied for, and thereupon shall be void as from the beginning and as if the policy had not been issued.

§ 2718. Optional policy provisions

Except as provided in section 2704, subsection 2, no such policy delivered or issued for delivery to any person in this State shall contain provisions respecting the matters set forth in sections 2719 to 2723, unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the commissioner which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the commissioner may approve.

§ 2719. Change of occupation

There may be a provision as follows:

Change of occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the company as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

§ 2720. Misstatement of age

There may be a provision as follows:

Misstatement of age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

§ 2721. Overinsurance—same insurer

There may be a provision as follows:

If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for . . . . . (insert type of coverage or coverages) in excess of \$. . . . . (insert maximum limit of indemnity or indemnities) the excess shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

or, in lieu thereof :

Insurance effective at any one time on the insured under this policy and a like policy or policies in this insurer is limited to the one policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

§ 2722. Insurance with other insurers, provision of service or expense incurred basis

1. There may be a provision as follows :

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage.

2. If the foregoing policy provision is included in a policy which also contains the policy provision set out in section 2723 there shall be added to the caption of the foregoing provision the phrase "—expense incurred benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organization or by union welfare plans or employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workmen's compensation or employer's liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage."

§ 2723. Insurance with other insurers—other benefits

1. There may be a provision as follows:

Insurance with other insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice, including the indemnities under this policy, bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

2. If the foregoing policy provision is included in a policy which also contains the policy provision set out in section 2722, there shall be added to the caption of the foregoing provision the phrase "other benefits." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the commissioner. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workmen's compensation or employer's liability statute, whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage."

§ 2724. Relation of earnings to insurance

- There may be a provision as follows:

If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of 2 years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such 2 years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of \$200 or the sum of the monthly benefits specified in such coverages, which-

ever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time. The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (A.) until at least age 50 or, (B.) in the case of a policy issued after age 44, for at least 5 years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the commissioner, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the commissioner or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute, including any workmen's compensation or employer's liability statute, or benefits provided by union welfare plans or by employer or employee benefit organizations.

#### § 2725. Unpaid premiums

There may be a provision as follows:

Unpaid premium: Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

#### § 2726. Conformity with state statutes

There may be a provision as follows:

Conformity with state statutes: Any provision of this policy which, on its effective date is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

#### § 2727. Illegal occupation

There may be a provision as follows:

Illegal occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

#### § 2728. Intoxicants and narcotics

There may be a provision as follows:

Intoxicants and narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic, or of any hallucinogenic drug, unless administered on the advice of a physician.

§ 2729. Renewability

Health insurance policies, other than accident insurance only policies, in which the insurer reserves the right to refuse renewal on an individual basis, shall provide in substance in a provision thereof or in an endorsement thereon or rider attached thereto that subject to the right to terminate the policy upon nonpayment of premium when due, such right to refuse renewal may not be exercised so as to take effect before the renewal date occurring on, or after and nearest, each policy anniversary (or in the case of lapse and reinstatement, at the renewal date occurring on, or after and nearest, each anniversary of the last reinstatement), and that any refusal of renewal shall be without prejudice to any claim originating while the policy is in force. The parenthetic reference to lapse and reinstatement may be omitted at the insurer's option.

§ 2730. Order of certain provisions

The provisions which are the subject of sections 2705 to 2716, and 2718 to 2727, or any corresponding provisions which are used in lieu thereof in accordance with such sections shall be printed in the consecutive order of the provisions in such sections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided that the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.

§ 2731. Third party ownership

The word "insured", as used in this chapter, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits, and rights provided therein.

§ 2732. Requirements of other jurisdictions

1. Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this State, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of this chapter and which is prescribed or required by the law of the state or country under which the insurer is organized.

2. Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.

§ 2733. Policies issued for delivery in another state

If any policy is issued by a domestic insurer for delivery to a person residing in another state, and if the insurance commissioner or corresponding public official of such other state has informed the commissioner that any such policy is not subject to approval or disapproval by such official, the commissioner may by ruling require that the policy meet the standards set

forth in sections 2703 to 2732.

§ 2734. Conforming to statute

1. No policy provision which is not subject to this chapter shall make a policy, or any portion thereof, less favorable in any respect to the insured or the beneficiary than the provisions thereof which are subject to this chapter.

2. A policy delivered or issued for delivery to any person in this State in violation of this chapter shall be held valid but shall be construed as provided in this chapter. When any provision in a policy subject to this chapter is in conflict with any provision of this chapter, the rights, duties, and obligations of the insurer, the insured and the beneficiary shall be governed by the provisions of this chapter.

§ 2735. Age limit

If any such policy contains a provision establishing, as an age limit or otherwise, a date after which the coverage provided by the policy will not be effective, and if such date falls within a period for which premium is accepted by the insurer or if the insurer accepts a premium after such date, the coverage provided by the policy will continue in force, subject to any right of termination, until the end of the period for which premium has been accepted. In the event the age of the insured has been misstated and if, according to the correct age of the insured, the coverage provided by the policy would not have become effective, or would have ceased prior to the acceptance of such premium or premiums, then the liability of the insurer shall be limited to the refund, upon request, of all premiums paid for the period not covered by the policy.

§ 2736. Filing of rates

Each insurer issuing individual health insurance policies for delivery in this State shall, before use thereof, file with the commissioner its premium rates and classification of risks pertaining to such policies. The insurer shall adhere to its rates and classifications as filed with the commissioner. The insurer may change such filings from time to time as it deems proper.

§ 2737. Noncancellable disability insurance defined

“Noncancellable disability insurance” means insurance against disability resulting from sickness, ailment or bodily injury, but not including insurance solely against accidental injury, under any contract which does not give the insurer the option to cancel or otherwise terminate the contract at or after one year from its effective date or renewal date.

§ 2738. Notice as to renewability

The commissioner shall have the right to make the following requirements:

1. When a policy has neither a brief description nor a separate statement printed on the first page and on the filing back, referring to the renewal con-

ditions of the policy, a separately captioned provision, setting forth the conditions under which the policy may be renewed, must appear on the first page of the policy. The caption shall be clear and definite and shall be approved by the commissioner; but any one of the following captions is acceptable:

“RENEWAL SUBJECT TO CONSENT OF COMPANY.

RENEWAL SUBJECT TO COMPANY CONSENT.

RENEWABLE AT OPTION OF COMPANY.”

2. If the policy is not renewable, a separate, appropriately captioned provision on the first page of the policy shall so state.

§ 2739. Lapse of policy, advance notice; limitation of action

No individual policy of health insurance issued or delivered in this State, except a policy which by its terms is renewable or continuable with the insurer's consent, or except a policy the premiums for which are payable monthly or at shorter intervals, shall terminate or lapse for non-payment of any premium until the expiration of 3 months from the due date of such premium, unless the insurer, within not less than 10 nor more than 45 days prior to said due date, shall have mailed, postage prepaid, duly addressed to the insured at his last address shown by the insurer's records, a notice showing the amount of such premium and its due date. If such a notice is not so sent, the insured may pay the premium in default at any time within such period of 3 months. The affidavit of any officer, clerk or agent of the insurer, or of any other person authorized to mail such notice, that the notice required by this section has been duly mailed by the insurer in the manner required shall be prima facie evidence that such notice was duly given. No action shall be maintained on any policy to which this section applies and which has lapsed for nonpayment of any premium unless such action is commenced within 2 years from the due date of such premium.

§ 2740. Franchise health insurance law

1. Health insurance on a franchise plan is hereby declared to be that form of health insurance issued to:

A. Four or more employees of any corporation, copartnership, or individual employer or any governmental corporation, agency or department thereof; or

B. Ten or more members, employees or employees of members of any trade or professional association or of a labor union or of any other association having had an active existence for at least 2 years where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance; where such persons with or without their dependents, are issued the same form of an individual policy varying only as to amounts and kinds of coverage applied for by such persons, under an arrangement whereby the premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll

deductions, or by the association or union for its members, or by some designated person acting on behalf of such employer or association or union, or by the insured directly to the insurer if permitted by the insurer. The term "employees" as used herein may be deemed to include the officers, managers and employees and retired employees of the employer and the individual proprietor or partners if the employer is an individual proprietor or partnership.

2. No provision of this Title shall be deemed to prohibit different rates charged, or benefits payable, or different underwriting procedure for individuals insured under a franchise plan, if rates charged, benefits payable or underwriting procedure used do not discriminate between franchise plans.

## CHAPTER 35

### GROUP AND BLANKET HEALTH INSURANCE

#### § 2801. Scope of chapter—short title

1. This chapter applies only to group health insurance contracts and to blanket health insurance contracts as herein provided.

2. This chapter may be cited as the "group or blanket health insurance law."

#### § 2802. Group insurance defined

1. Any policy or contract of insurance against death or injury resulting from accident or from accidental means which covers more than one person, except blanket accident policies as defined in section 2812 and family accident and sickness policies conforming to section 2703, shall be deemed a group accident insurance policy.

2. Any policy or contract which insures against disablement, disease or sickness of the insured, excluding disablement which results from accident or from accidental means, and which covers more than one person, except blanket sickness insurance policies as defined in section 2813 and family accident and sickness policies conforming to section 2703, shall be deemed a group sickness insurance policy or contract.

3. Any policy or contract of insurance which combines the coverage of group accident insurance and of group sickness insurance shall be deemed a group accident and sickness insurance policy.

4. Any reference hereinafter to group health insurance shall mean group accident, group sickness and group accident and sickness insurance as herein defined.

#### § 2803. Must meet requirements

No policy or contract of group health insurance, shall be delivered or issued for delivery in this State unless to a group as provided for in this chapter and otherwise in conformity with the requirements of this chapter.

§ 2804. Employee groups

A group of individuals may be insured under a policy issued to an employer or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

1. The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations and the employees, individual proprietors and partners of one or more affiliated corporations, proprietors or partnerships, if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership or contract or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners, if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees, and that it may also include elected or appointed officials of a public body. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership.

2. The premium for the policy shall be paid by the policyholder, either wholly from the employer's funds or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees, or wholly from funds contributed by the insured employees. A policy on which any part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least 75% of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions.

A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at least 3 employees at date of issue.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

§ 2805. Union and employee association groups

A group of individuals may be insured under a policy issued to a labor union or to an incorporated or unincorporated association of employees, which association has a constitution and bylaws and has 50 or more members and is organized and maintained in good faith for purposes other than that of obtain-

ing insurance and has been so organized and maintained for a period of not less than 2 years prior to the issuance of such policy or contract, which shall be deemed the policyholder to insure members of such union or association for the benefit of persons other than the union or association or any of its officials, representatives or agents, subject to the following requirements:

1. The members eligible for insurance under the policy shall be all of the members of the union or association or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union or association, or both. The policy may provide that the term member shall also include retired members.

2. The premium for the policy shall be paid by the policyholder, either wholly from the union's or association's funds or partly from such funds and partly from funds contributed by the insured members specifically for their insurance, or wholly from funds so contributed by the insured members. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least 75% of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at least 25 members at date of issue.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union or association.

#### § 2806. Trustee groups

A group of individuals may be insured under a policy issued to the trustee or trustees of a fund established by 2 or more employers in the same industry or related industries or by one or more labor unions, or by one or more employers and one or more labor unions which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

1. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or to both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employee" shall include retired employees. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term

“employees” shall include the trustee or trustees or their employees, or both, if their duties are principally connected with such trusteeship.

2. The premium for the policy shall be paid by the trustee or trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or partly from such funds and partly or wholly from funds contributed by the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

3. The policy must cover at date of issue at least 100 persons and not less than an average of 5 persons per employer unit, except that, in the case of credit union employees or associations of insurance agents the policy must cover at least 25 persons but shall not be subject to any required average number of employees covered per employer unit; and if the fund is established by the members of an association of employers the policy may be issued only if either:

A. The participating employers constitute at date of issue at least 60% of those employer members whose employees are not already covered for the same or similar benefits under a plan maintained by their employer, or

B. The total number of persons covered at date of issue exceeds 600.

4. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers or unions.

#### § 2807. Debtor groups

A group of individuals may be insured under a policy issued to a creditor, or to a trustee or trustees or agent designated by 2 or more creditors, which creditor, trustee, trustees or agent shall be deemed the policyholder, insuring a group of debtors of the creditor or a group of debtors of the 2 or more creditors, as the case may be, all as defined and set forth under section 2604 and under the same conditions and limitations as specified in such section, provided that the amount of indemnity payable with respect to any person insured thereunder shall not at any time exceed the aggregate of the periodic scheduled unpaid installments, nor the sum of \$40,000, whichever is less, and provided that nothing in this paragraph shall be construed or deemed to apply to or affect disability benefit provisions in group credit life insurance policies as authorized under section 2604.

#### § 2808. Other groups

A group of individuals may be insured under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this State under this Title, to insure any class or classes of individuals that could be insured under such group life policy. A group health insurance policy may also be issued to cover any other group which in the commissioner's discretion is substantially similar.

#### § 2809. Coverage of family, dependents; continuation of coverage

1. Any policy of group health insurance issued pursuant to sections 2804 (employee groups), 2805 (union and employee association groups), 2806 (trustee groups) or 2808 (other groups) may include coverage for members of the family or dependents of individuals otherwise insured in such groups.

2. Any group health insurance policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical or surgical services for members of the family or dependents of an individual in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of such individual.

#### § 2810. Group health insurance payments; beneficiaries

The benefits payable under any policy or contract of group health insurance shall be payable to the employee or other insured member of the group or to some beneficiary or beneficiaries designated by him, other than the employer or the association or any officer thereof as such; but if there is no designated beneficiary as to all or any part of the insurance at the death of the employee or member, then the amount of insurance payable for which there is no designated beneficiary shall be payable to the estate of the employee or member, except that the insurer may in such case, at its option, pay such insurance to any one or more of the following surviving relatives of the employee or member: Wife, husband, mother, father, child or children, brothers or sisters; and except that payment of benefits for expenses incurred on account of hospitalization or medical or surgical aid, as provided in section 2811, may be made by the insurer to the hospital or other person or persons furnishing such aid. Payment so made shall discharge the insurer's obligation with respect to the amount of insurance so paid.

#### § 2811. Payment of expenses

Any policy or contract of group health insurance may include provisions for the payment by the insurer of benefits for expenses incurred, by the employee or other member of the insured group, on account of hospitalization or medical or surgical aid for himself, his spouse, his child or children, or other persons chiefly dependent upon him for support and maintenance.

#### § 2812. Readjustment of premium rate

If a policy dividend is hereafter declared or a reduction in rate is hereafter made or continued for the first or any subsequent year of insurance under any policy of group health insurance heretofore issued, or hereafter issued under this chapter, to any policyholder, the excess, if any, of the aggregate dividends or rate reductions under the policy and all other group insurance policies of the policyholder over the aggregate expenditure for insurance under such policies made from funds contributed by the policyholder, or by an employer of insured persons, or by a union or association to which the insured persons belong, including reasonable expenditures made in connection with administration of such policies, shall be applied by the policyholder for the sole benefit of insured employees, members or debtors.

§ 2813. "Blanket health insurance" defined

Blanket health insurance is hereby declared to be that form of health insurance covering groups of persons as enumerated in one of the following paragraphs:

1. Under a policy or contract issued to any common carrier or to any operator, owner or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on such common carrier or such means of transportation.

2. Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering any group of employees, dependents or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder.

3. Under a policy or contract issued to a college, school or other institution of learning, a school district or districts, or school jurisdictional unit, or to the head, principal or governing board of any such educational unit, who or which shall be deemed the policyholder, covering students, teachers, or employees.

4. Under a policy or contract issued to any religious, charitable, recreational, educational, or civic organization, or branch thereof, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

5. Under a policy or contract issued to a sports team, camp or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials or supervisors.

6. Under a policy or contract issued to any volunteer fire department, first aid, civil defense, or other such volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

7. Under a policy or contract issued to a newspaper or other publisher, which shall be deemed the policyholder, covering its carriers.

8. Under a policy or contract issued to an association, including a labor union, which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.

9. Under a policy or contract issued to cover any other risk or class of risks which, in the discretion of the commissioner, may be properly eligible for blanket health insurance. The discretion of the commissioner may be exercised on an individual risk basis or class of risks, or both.

**§ 2814. Blanket health insurance—payments; beneficiaries**

All benefits under any blanket health insurance policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, as shall be specified in the policy, except that if the person insured be a minor, such benefits may be made payable to his parent, guardian or other person actually supporting him, or to a person or persons chiefly dependent upon him for support and maintenance.

**§ 2815. Legal liability of policyholders**

Nothing contained in this chapter shall be deemed to affect the legal liability of policyholders for the death of or injury to any member of any such group.

**§ 2816. Requirements**

No policy of group or blanket health insurance shall, except as provided in section 2829, be delivered or issued for delivery in this State, unless the policy contains in substance each and all of the provisions set forth in sections 2817 to 2827, or provisions which in the opinion of the commissioner are more favorable to the holders of such certificates or not less favorable to the holders of such certificates and more favorable to policyholders.

**§ 2817. Applicant's statements; waivers, amendments**

There shall be a provision that no statement made by the applicant for insurance shall avoid the insurance or reduce benefits thereunder unless contained in the written application signed by the applicant; and a provision that no agent has authority to change the policy or to waive any of its provisions; and that no change in the policy shall be valid unless approved by an officer of the insurer and evidenced by indorsement on the policy, or by amendment to the policy signed by the policyholder and the insurer.

**§ 2818. Statements in application**

There shall be a provision that all statements contained in any such application for insurance shall be deemed representations and not warranties.

**§ 2819. New employees, members**

There shall be a provision that all new employees or new members, as the case may be, in the groups or classes eligible for such insurance must be added to such groups or classes for which they are respectively eligible.

**§ 2820. Renewal of policy**

There shall be a provision stating the conditions under which the insurer may decline to renew the policy.

**§ 2821. Individual certificates**

Except in the case of blanket health insurance, a provision that the insurer shall issue to the policyholder, for delivery to each member of the insured

group, an individual certificate or printed information setting forth in summary form a statement of the essential features of the insurance coverage of such employee or such member, to whom the benefits thereunder are payable, and in substance the provisions of sections 2821 to 2827. If dependents are included in the coverage only one certificate or printed summary need be issued for each family unit.

#### § 2822. Age limits

There shall be a provision specifying the ages, if any there be, to which the insurance provided therein shall be limited; and the ages, if any there be, for which additional restrictions are placed on benefits and the additional restrictions placed on the benefits at such ages.

#### § 2823. Notice of claim

There shall be a provision that written notice of sickness or of injury must be given to the insurer within 30 days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

#### § 2824. Proof of loss

There shall be a provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within 30 days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within 90 days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.

#### § 2825. Forms for proof of loss

There shall be a provision that the insurer will furnish to the policyholder such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of 15 days after the insurer received notice of any claim under the policy, the person making such claim shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

#### § 2826. Examination, autopsy

There shall be a provision that the insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the

right and opportunity to make an autopsy in case of death where it is not prohibited by law.

#### § 2827. Time for payment of benefits

There shall be a provision that all benefits payable under the policy, other than benefits for loss of time, will be payable not more than 60 days after receipt of proof, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not later than at the expiration of each period of 30 days during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.

#### § 2828. Time for suits

There shall be a provision that no action at law or in equity shall be brought to recover on the policy prior to the expiration of 60 days after proof of loss has been filed in accordance with the requirements of the policy and that no such action shall be brought at all unless brought within 2 years from the expiration of the time within which proof of loss is required by the policy.

#### § 2829. Exceptions

1. Any portion of any such policy, delivered or issued for delivery in this State, which purports, by reason of the circumstances under which a loss is incurred, to reduce any benefits promised thereunder to an amount less than that provided for the same loss occurring under ordinary circumstances, shall be printed in such policy and in each certificate issued thereunder, in bold face type and with greater prominence than any other portion of the rest of such policy or certificate, respectively; and all other exceptions of the policy shall be printed in the policy and certificate with the same prominence as the benefits to which they apply.

2. If any such policy contains any provision which affects the liability of the insurer because of any violation of law by the insured during the term of the policy, it shall be in the following form: The insurer shall not be liable for death, injury incurred or disease contracted, to which a contributing cause was the insured's commission of or attempt to commit a felony, or which occurs while the insured is engaged in an illegal occupation.

3. If any such policy contains any provision which affects the liability of the insurer because of the insured's use of intoxicating liquor or narcotics or hallucinogenic drugs during the term of the policy, it shall be in the following form: The insurer shall not be liable for death, injury incurred or disease contracted while the insured is intoxicated or under the influence of narcotics or hallucinogenic drugs unless administered on the advice of a physician.

#### § 2830. Omissions, modifications: commissioner may approve

The commissioner may approve any form of group or blanket health insurance policy, or any form of certificate or printed information to be issued under such policy, which omits or modifies any of the provisions hereinbefore required, if he deems such omission or modification suitable for the character of such insurance and not unjust to the persons insured thereunder.

§ 2831. Hospital, medical benefits—direct payment

Any such group or blanket policy may include benefits payable on account of hospital or medical or surgical aid for an employee or other member of the group insured by such policy, his or her spouse, child or children or other dependents, and may provide that any such benefits be paid by the insurer directly to the hospital, physician, surgeon doctor, nurse or other person furnishing services covered by such provisions of the policy.

CHAPTER 37

CREDIT LIFE AND CREDIT HEALTH INSURANCE

§ 2851. Scope

All life insurance and all health insurance in connection with loans or other credit transactions shall be subject to this chapter, except such insurance in connection with a loan or other credit transaction of more than 5 years duration or issued in an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

§ 2852. Purpose; construction

The purpose of this chapter is to promote the public welfare by regulating credit life insurance and credit health insurance. Nothing in this chapter is intended to prohibit or discourage reasonable competition. This chapter shall be liberally construed.

§ 2853. Definitions

For the purpose of this chapter:

1. "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.
2. "Credit health insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.
3. "Creditor" means the lender of money or vendor or lessor of goods, services or property, rights or privileges for which payment is arranged through a credit transaction, or any successor to the right, title or interest of any such lender, vendor or lessor, and an affiliate, associate or subsidiary of any of them, or any director, officer or employee of any of them, or any other person in any way associated with any of them.
4. "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction.
5. "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

## § 2854. Forms available

Credit life insurance and credit health insurance shall be issued only in the following forms:

1. Individual life. Individual policies of life insurance issued to debtors on the term plan.
2. Individual accident and health. Individual policies of health insurance issued to debtors on a term plan, or disability benefit provisions in individual policies of credit life insurance.
3. Group life. Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan.
4. Group accident and health. Group policies of health insurance issued to creditors on a term plan insuring debtors, or disability benefit provisions in group credit life insurance policies to provide such coverage.
5. Combination. A combination under subsections 1 and 2, or under 3 and 4.

## § 2855. Amounts of insurance

## 1. Credit life insurance.

A. Amount of coverage limited. The initial amount of credit life insurance shall not exceed the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater.

2. Agricultural credit commitments. Notwithstanding subsection 1, paragraph A, insurance on agricultural credit transaction commitments not exceeding 2 years in duration may be written up to the amount of the loan commitment, on a nondecreasing or level term plan.

3. Educational credit commitments. Notwithstanding subsection 1, paragraph A, insurance on educational credit transaction commitments may be written for the amount of the portion of such commitment that has not been advanced by the creditor.

## 4. Credit health insurance.

A. Coverage limited. The total amount of indemnity payable by credit health insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments.

## § 2856. Term of insurance

1. The term of credit life insurance or credit health insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor; except, that where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy.

2. Where evidence of insurability is required and such evidence is furnished more than 30 days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurer determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance.

3. The term of such insurance shall not extend more than 15 days beyond the original or revised scheduled maturity date of the indebtedness except when extended without additional cost to the debtor.

4. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in section 2859.

#### § 2857. Policy provisions; delivery or disclosure to debtors

1. Policy or certificate delivered. All credit life insurance and credit health insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

2. Content of policy or certificate. Each individual policy or group certificate of credit life insurance or credit health insurance shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the name or names of the debtor, or, in the case of a certificate under a group policy, the identity by name or otherwise of the debtor; the premium or amount of payment if a separate identifiable charge is paid by the debtor separately for credit life insurance and credit health insurance; a description of the coverage including the amount and term thereof, and any exceptions, limitations and restrictions; and shall state that the benefit shall be paid to the creditor to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

3. When delivered. The individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the indebtedness is incurred except as otherwise provided.

4. Notice of proposed insurance. If the individual policy or group certificate of insurance is not delivered to the debtor at the time indebtedness is incurred, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the insurer, the name or names of the debtor, the premium or

amount of payment by the debtor, if a separate identifiable charge is made separately for credit life insurance and credit health insurance, the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred. Failure to comply with the foregoing requirement shall preclude the use of such application as evidence in any action brought against the insured. The copy of the application for, or notice of proposed insurance, shall refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument or agreement, unless the information required by this subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within 30 days of the date upon which the indebtedness is incurred, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. The application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective as provided in section 2856.

5. Risk not accepted. If the named insurer does not accept the risk, the debtor shall receive a policy or certificate of insurance setting forth the name and home office address of the substituted insurer and the amount of the premium to be charged, and if the amount of premium is less than that set forth in the notice of proposed insurance, an appropriate refund shall be made.

#### § 2858. Filing, approval and withdrawal of forms, rates ; appeals

1. Forms filed. All policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders delivered or issued for delivery in this State and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

2. Approval of forms and rates. The commissioner shall within 30 days after the filing of any such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the benefits provided therein are not reasonable in relation to the premium charge, or if it contains provisions which are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the coverage, or are contrary to any provision of the insurance laws or of any regulation promulgated thereunder. In determining whether to disapprove any such form or premium rates, the commissioner shall give due consideration to past and prospective loss experience and mortality or morbidity rates, based on an appropriate mortality or morbidity table, and claim adjustment expenses, general administrative expenses, including handling cost for return premiums, commissions to agents, cost and compensation to the creditor, branch and field expenses and other acquisition costs, federal, state and local taxes, profit to the insurer, reasonable underwriting judgment, and any and all other factors and trends demonstrated to be relevant. The insurer may support these factors by statistical information, experience, actuarial computations and estimates certified by an executive officer of the insurer, and the commissioner shall give due consideration to such supporting data.

3. Notice of disapproval; waiting period. If the commissioner notifies the insurer that the form or rates are disapproved, it is unlawful thereafter for such insurer to issue or use such form or rates. In such notice, the commissioner shall specify the reason for his disapproval and state that a hearing will be granted within 20 days after request in writing by the insurer. No

such policy, certificate of insurance, notice of proposed insurance, or any application, endorsement or rider or rate shall be issued or used until the expiration of 30 days after it has been so filed, unless the commissioner shall give his prior written approval thereto.

4. **Approval withdrawn.** The commissioner may, at any time after a hearing held not less than 20 days after written notice to the insurer, withdraw his approval of any such form or rate on any ground set forth in subsection 2. The written notice of such hearing shall state the reason for the proposed withdrawal. The insurer shall not use a form or rate after withdrawal of approval thereof.

5. **Group certificate filing.** If a group policy of credit life insurance or credit health insurance has been delivered in this State before September 16, 1961, or has been or is delivered in another state before or after such date, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in section 2857, subsections 2 and 4, and such forms shall be approved by the commissioner if they conform with the requirements specified in such subsections and if the schedules of premium rates applicable to the insurance evidenced by such certificate or notice are not in excess of the insurer's schedules of premium rates filed with the commissioner.

§ 2859. Premium rates; refunds; accounts credited  
when insurance not issued

1. **Rates filed.** Any insurer may revise its schedules of premium rates from time to time, and shall file such revised schedules with the commissioner. No insurer shall issue any credit life insurance policy or credit health insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner.

2. **Refund.** Each individual policy or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the debtor. The commissioner shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing such refund shall be filed with and approved by the commissioner.

3. **Accounts credited where insurance not issued.** If a creditor requires a debtor to make any payment for credit life insurance or credit health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.

§ 2860. Authorized insurer, agent required

All policies of credit life insurance and credit health insurance shall be delivered or issued for delivery in this State only by an insurer authorized to transact such insurance therein, and shall be issued only through holders of licenses or authorizations issued by the commissioner.

§ 2861. Premium not deemed interest; amount, collection

1. The premium or cost of such insurance when issued through any creditor shall not be deemed interest, or charges, or consideration, or an amount in excess of permitted charges in connection with the loan or other credit transaction, and any benefit or return or other gain or advantage to the creditor arising out of the sale or provision of such insurance shall not be deemed a violation of any other law, general or special, of the State of Maine.

2. The amount charged to a debtor for any credit life or credit health insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.

3. The insurance premium or other identifiable charge for such insurance may be collected from the insured or included in the finance charge or principal of any loan or other credit transaction at the time such transaction is completed.

#### § 2862. Claims

1. Claims reported. All claims shall be promptly reported to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

2. Claims paid. All claims shall be paid either by draft drawn upon the insurer or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.

3. Creditor may not adjust claims. No plan or arrangement shall be used whereby any person other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall not be designated as claim representative for the insurer in adjusting claims; except, that a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

#### § 2863. Existing insurance; choice of insurer

When credit life insurance or credit health insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact such insurance within this State.

#### § 2864. Enforcement

Whenever the commissioner finds that there has been a violation of this chapter or any regulations issued pursuant thereto, and after written notice thereof and hearing given to the insurer or other person authorized or licensed by the commissioner, he shall set forth the details of his findings together with an order for compliance by a specified date. Such order shall be binding on the insurer and other person authorized or licensed by the commissioner on the date specified unless sooner withdrawn by the commissioner.

CHAPTER 39

CASUALTY INSURANCE CONTRACTS

§ 2901. Contracts subject to general provisions

All contracts of casualty insurance delivered or issued for delivery in this State and covering subjects resident, located, or to be performed in this State are also subject to the applicable provisions of chapter 27 (the insurance contract) and to other applicable provisions of this Title.

§ 2902. Uninsured vehicle coverage; insolvency of insurer

1. No policy insuring against liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this State with respect to any such vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages, from owners or operators of uninsured or hit-and-run motor vehicles, for bodily injury, sickness or disease, including death, resulting from the ownership, maintenance, or use of such uninsured or hit-and-run motor vehicle. The coverage herein required may be referred to as "uninsured vehicle coverage."

2. The amount of coverage to be so provided shall be not less than the minimum limits for bodily injury liability insurance provided for under the motorists financial responsibility laws of this State.

3. For the purposes of this section the term "uninsured motor vehicle" shall be deemed also to include, subject to the terms and conditions of such coverage, an insured other motor vehicle where:

A. The liability insurer of such other motor vehicle is unable because of its insolvency to make payment with respect to the legal liability of its insured within the limits specified in its policy; and

B. The occurrence out of which such legal liability arose took place while the uninsured vehicle coverage required under subsection 1, above, was in effect; and

C. Written notice of such occurrence shall have been given to the insurer within 2 years thereof.

Nothing contained in this subsection shall be deemed to prevent any insurer from providing insolvency protection to its insureds under more favorable terms.

4. In the event of payment to any person under uninsured vehicle coverage, and subject to the terms of such coverage, to the extent of such payment the insurer shall be entitled to the proceeds of any settlement or recovery from any person legally responsible for the bodily injury as to which such payment was made, and to amounts recoverable from the assets of the insolvent insurer of the other motor vehicle.

§ 2903. Liability absolute when loss occurs

The liability of every insurer which insures any person against accidental loss or damage on account of personal injury or death or on account of accidental damage to property shall become absolute whenever such loss or damage, for which the insured is responsible, occurs. The rendition of a final judgment against the insured for such loss or damage shall not be a condition precedent to the right or obligation of the insurer to make payment on account of such loss or damage.

§ 2904. Judgment creditor may have insurance; exceptions

Whenever any person, administrator, executor, guardian, recovers a final judgment against any other person for any loss or damage specified in section 2903, the judgment creditor shall be entitled to have the insurance money applied to the satisfaction of the judgment by bringing a civil action, in his own name, against the insurer to reach and apply the insurance money, if when the right of action accrued, the judgment debtor was insured against such liability and if before the recovery of the judgment the insurer had had notice of such accident, injury or damage. The insurer shall have the right to invoke the defenses described in this section in the proceedings. None of the provisions of this paragraph and section 2903 shall apply:

1. Motor vehicle operated illegally or by one under age. When the insured automobile, motor vehicle or truck is being operated by any person contrary to law as to age or by any person under the age of 16 years where no statute restricts the age; or

2. Motor vehicle used in race contest. When such automobile, motor vehicle or truck is being used in any race or speed contest; or

3. Motor vehicle used for towing a trailer. When such automobile, motor vehicle or truck is being used for towing or propelling a trailer unless such privilege is indorsed on the policy or such trailer is also insured by the insurer; or

4. Liability assumed. In the case of any liability assumed by the insured for others; or

5. Liability under workmen's compensation. In the case of any liability under any workmen's compensation agreement, plan or law; or

6. Fraud or collusion. When there is fraud or collusion between the judgment creditor and the insured.

No civil action shall be brought against an insurer to reach and apply such insurance money until 20 days shall have elapsed from the time of the rendition of the final judgment against the judgment debtors.

§ 2905. Cancellation, release of interest insured under, automobile physical damage insurance

1. The insurer may cancel an automobile physical damage insurance policy only on 10 days' written notice to the insured and any other person mentioned in the loss payable clause of the policy.

2. When the policy is cancelled by the insured he shall notify forthwith any other person mentioned in the loss payable clause; and in the event the interest of any person mentioned in the loss payable clause is released, such person shall forthwith notify the insurer.

## CHAPTER 41

### PROPERTY INSURANCE CONTRACTS

#### § 3001. Contracts subject to general provisions

All contracts of property insurance covering subjects located in this State are subject to this chapter, to the applicable provisions of chapter 27 (the insurance contract) and to other applicable provisions of this Title.

### SUBCHAPTER I

#### STANDARD FIRE POLICY

#### § 3002. Standard fire policy required; exceptions

1. No insurer shall issue fire insurance policies on property in this State, other than those of the Maine standard fire insurance policy, which shall contain the following general conditions and stipulations:

Concealment, fraud. This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically, named hereon in writing, bullion or manuscripts.

Perils not included. This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

Other insurance. Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring (a) while the hazard is increased by any means within the control or knowledge of the insured; or

(b) while a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days; or

(c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

Other perils or subjects. Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

Added provisions. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

Waiver provisions. No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to appraisal or to any examination provided for herein.

Cancellation of policy. This policy shall be cancelled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this Company by giving to the insured a ten days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

Mortgagee interests and obligations. If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the insured, such interest in this policy may be cancelled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty (60) days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this Company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

Pro rata liability. This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insur-

ance covering the property against the peril involved, whether collectible or not.

Requirements in case loss occurs. The insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed; and within sixty days after the loss, unless such time is extended in writing by this Company, the insured shall render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

Appraisal. In case the insured and this Company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this Company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

Company's options. It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

Abandonment. There can be no abandonment to this Company of any property.

When loss payable. The amount of loss for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

Suit. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within two years next after inception of the loss.

Subrogation. This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

2. The insurer may use an endorsement or rider attached to its printed policy forms used in other states in order, where necessary, to bring the terms of such form into compliance with the above provisions.

### § 3003. Combination coverages

Any policy or contract otherwise subject to the provisions of section 3002 (standard fire policy required; exceptions), which includes either on an unspecified basis as to the coverage or for a single premium coverage against the peril of fire and substantial coverage against other perils need not comply with such provisions, provided:

1. Such policy or contract shall afford coverage, with respect to the peril of fire, not less than the coverage afforded by such Maine standard fire policy.

2. That such coverage as to the peril of fire shall be made subject without change to the same general provisions and stipulations as those of such standard fire policy.

3. The provisions in relation to mortgagee interests and obligations in such standard fire policy shall be incorporated therein without change.

4. Such policy or contract is complete as to all of its terms without reference to the standard form of fire insurance policy or any other policy.

5. The commissioner is satisfied that such policy or contract complies with the provisions hereof.

### § 3004. Lines numbered consecutively

The lines of the conditions of the standard fire insurance policy shall be numbered consecutively at the option of the commissioner.

### § 3005. Cancellation of standard fire policy for nonpayment of premium

An insurer issuing fire insurance policies on property in this State, under the standard form required by section 3002, may cancel any such policy in

the manner provided by law without tendering to the assured a ratable proportion of the premium, if the premium has not been paid to the insurer or its agent, or to a duly licensed insurance broker through whom the contract of insurance was negotiated.

§ 3006. Willful violations

Any insurer or agent who shall make, issue or deliver a policy of fire insurance in willful violation of sections 3002 or 3003 shall forfeit for each offense not less than \$50 nor more than \$200, but the policy shall nevertheless be binding upon the insurer issuing the same.

SUBCHAPTER II

DEPOSIT NOTES

§ 3020. Policy and deposit note one contract ; insolvency ; liability of insured ; note surrendered

1. A policy of insurance issued by a fire or marine insurer, domestic or foreign, and a deposit note given therefor are one contract. A loss under such policy or other equitable claims may be proved in defense to the note, though it was indorsed or assigned before it was due.

2. When an insurer becomes insolvent, the maker of the note is only liable for the equitable proportion thereof which accrued during the solvency. If the insolvency occurs within 60 days of the date of the note, it is void except for the amount of the maker's claim, if any, on the insurer. No insured shall be held to contribute to any losses or expenses beyond the amount of his deposit note. At the expiration of his term of insurance, his note, on payment of all assessments for which it is liable, shall be relinquished to him, except as provided in section 3021.

§ 3021. Lien on insured real estate

Any fire insurer shall have a lien against the insured, on the buildings insured and the land appurtenant thereto, for the amount at any time due on the note referred to in section 3020, to commence from the time of the recording of the same, and to continue 60 days after the expiration of the policy on which such note is given, if the insurer causes a certificate of its claim to such lien, signed by the secretary, to be recorded by the register of deeds for the county or district. During the pendency of such lien, an attachment of such property, in a civil action on the note in favor of the insurer, has priority of all other attachments or claims. Execution, when recovered, may be levied on it accordingly.

§ 3022. Lien continues on deceased's property ; policy descends to estate

Upon the death of a member, the lien of the insurer remains good on the property insured to the amount due on the deposit note, and the policy descends to the executor or administrator of the deceased for the benefit of the estate during its continuance, unless voluntarily surrendered or forfeited by the charter of the insurer.

## SUBCHAPTER III

## LIEN OF MORTGAGEES ON POLICIES

## § 3030. Lien established ; application of payments

The mortgagee of any real estate or the mortgagee of any personal property shall have a lien upon any policy of insurance against loss by fire procured thereon by the mortgagor, to take effect from the time he files with the insurer, at its home office, a written notice, briefly describing his mortgage, the estate conveyed thereby and the sum remaining unpaid thereon. If the mortgagor, by a writing by him signed and filed with the secretary, consents that the whole of the sum secured by the policy, or so much as is required to discharge the amount due on the mortgage at the time when a loss occurs, shall be applied to the payment of the mortgage, it shall be so paid by the insurer and the mortgagee's receipt therefor shall be a sufficient discharge of the insurer.

## § 3031. Enforcement of lien

If the mortgagor does not consent as provided for in section 3030, the mortgagee of any real estate may, at any time within 60 days after a loss, and the mortgagee of any personal property may at any time within 30 days after a loss, enforce his lien by a civil action against the mortgagor, and the insurer as his trustee, in which judgment may be rendered for what is found due from the insurer upon the policy, notwithstanding the time of payment of the whole sum secured by the mortgage has not arrived, and which action shall be commenced and service made on the trustee within such 60 or 30 days.

## § 3032. Application of amount recovered

The amount recovered under section 3031 shall be applied first to the payment of the costs of the civil action and officer's fees on the execution and next to the payment of the amount due on the mortgage. The balance, if any, shall be retained by the insurer and paid to the mortgagor. If the insurer assumes the defense, it shall be liable to the plaintiff for costs in the same manner as the principal defendant, defending the action, would be.

## § 3033. Priority of mortgagees

When 2 or more mortgagees claim the benefit of sections 3030 to 3032, their rights shall be determined according to the priority of their claims and mortgages by the principles of law.

## § 3034. Mortgagee's policy void, unless consented to

When any mortgagee claims the benefit of sections 3030 to 3033, any policy of insurance which he had procured or subsequently procures on his interest in the same property by virtue of his mortgage is void, unless consented to by the insurer insuring the mortgagor's interest.

SUBCHAPTER IV  
GENERAL PROVISIONS

§ 3040. Insurance on furniture, owned jointly by husband and wife

Insurance effected by a husband or wife on a dwelling house owned by the insured and on the furniture therein, is valid for all the furniture, although part is owned by the husband and part by the wife.

§ 3041. Time limit for adjusting, paying fire loss; penalty

1. In case of physical loss by fire to property insured by any insurer, the insurer or its representative shall begin adjustment of such loss within 20 days after the receipt of the notice of loss provided for by the policy.

2. In any statute relating to fire insurance or in any policy of fire insurance reference to the date of loss or the time when a loss occurs shall mean the day of the fire against which the policy insures.

CHAPTER 43  
SURETY INSURANCE CONTRACTS

§ 3101. Contracts subject to general provisions

All contracts of surety insurance delivered or issued for delivery in this State and covering subjects resident, located, or to be performed in this State are also subject to the applicable provisions of chapter 27 (the insurance contract) and to other applicable provisions of this Title.

§ 3102. Acceptance as surety on bonds

Any insurer duly authorized to transact surety insurance in this State may be accepted as surety upon the bond of any person required by the laws of the State to execute a bond. If such insurer shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional surety may be exacted, but other surety or sureties may, in the discretion of the official authorized to approve such bond, be required. Such insurer may be released from its liability on the same terms and conditions as are by law prescribed for the release of individuals. It is the true intent and meaning of this section to enable corporations created for that purpose to become surety on bonds required by law, subject to all the rights and liabilities of private individuals.

§ 3103. Premiums on bonds

Any court or officer whose duty it is to pass upon the account of any person required by law to give a bond may, whenever such person has given any such surety insurer as surety upon the bond, allow in the settlement of such account a reasonable sum for the expense of procuring such surety. The premiums on account of all official bonds required by law to be given by county officials shall be paid from the treasuries of their several counties.

## § 3104. Notice of authorization to registers of probate

Whenever any surety insurer is authorized to transact business in this State, the commissioner shall forthwith transmit to each register of probate the name of such insurer and the names of all agents of such insurer who have been licensed by him, their places of residence and the dates when their licenses will expire, and the names and addresses of all attorneys in fact registered with him whose addresses are in the county of such register. He shall from time to time communicate to the registers of probate the names of all surety insurers which become authorized or cease to be authorized to transact business in this State. The registers shall preserve such lists on the files of the courts.

## § 3105. Estoppel to deny corporate power

Any insurer which shall execute any bond as surety under section 3102 shall be estopped in any proceedings to enforce the liability which it shall have assumed to incur, to deny its corporate power or the authority of its attorney in fact within the scope of his power of attorney filed in accordance with section 413, to execute such instrument or assume such liability or the authority of any licensed agent to countersign such instrument.

## CHAPTER 45

## TITLE INSURANCE CONTRACTS

## § 3201. Contracts subject to general provisions

All contracts of title insurance delivered or issued for delivery in this State and covering subjects located in this State are subject to the applicable provisions of chapter 27 (the insurance contract) and to other applicable provisions of this Title.

## CHAPTER 47

ORGANIZATION, CORPORATE POWERS, PROCEDURES OF  
DOMESTIC LEGAL RESERVE STOCK AND MUTUAL INSURERS

## SUBCHAPTER I

## ORGANIZATION AND GENERAL POWERS

## § 3301. Scope of chapter

This chapter applies only as to domestic stock and mutual insurers transacting insurance on the cash premium or legal reserve plan, and applies as to such insurers in particular as follows:

1. To each such insurer hereafter organized.
2. To each such insurer heretofore organized under general laws.

§ 3302. Insurers to be organized under this Title

All domestic stock and mutual legal reserve insurers hereafter organized shall be organized under the provisions of this Title, and not otherwise.

§ 3303. Reservation of power

The Legislature shall have power to amend, repeal or modify this Title at pleasure.

§ 3304. Applicability of general corporation statutes

Domestic stock and mutual insurers shall be governed by the applicable provisions of the general statutes of this State relating to private corporations organized for profit, as such statutes are now or hereafter may be constituted, except where such general statutes are in conflict with the express provisions of this Title and the reasonable implications thereof, and in which case the provisions of this Title shall govern.

§ 3305. "Stock," "mutual" insurers defined

1. A "stock" insurer is as defined in section 400.
2. A "mutual" insurer is as defined in section 401.

§ 3306. Incorporation of domestic stock, mutual insurers

1. This section applies to stock and mutual insurers hereafter incorporated in this State. Such an insurer may be formed for the purpose of transacting any kind or kinds of insurance, as well as annuity business.

2. Incorporators. Three or more individuals, none of whom is less than 21 years of age, may incorporate a stock insurer; 10 or more such individuals may incorporate a mutual insurer. At least a majority of the incorporators must be citizens of the United States of America.

3. Certificate of organization. The incorporators shall execute a certificate of organization in quadruplicate, and at least a majority of the incorporators shall acknowledge their execution thereof under oath. The certificate of organization shall state and show:

A. The name of the corporation, which must be generally indicative of the business to be transacted and be subject to section 408 (name of insurer); if a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in foreign countries, or in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein.

B. The duration of its existence, which may be perpetual.

C. The kinds of insurance, as defined in this Title, which the corporation is formed to transact.

D. If a stock corporation, its authorized capital and the number of shares of stock into which divided. The capital stock shall consist entirely of common stock of one uniform class, par value not less than \$1.00 per share, each outstanding share of which shall have equal rights in every respect with every other such share, except that treasury stock shall not have dividend or voting rights. Shares without par value shall not be authorized.

E. If a stock corporation the extent, if any, to which shares of its stock shall be subject to assessment.

F. If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability shall be as stated in the certificate of organization, but shall not be less than 1 or more than 6 times the premium for the member's policy at the annual premium rate for a term of one year.

G. If a mutual corporation, the amount, if any, of its guaranty capital shares, the number and par value of shares into which divided, the voting and other rights of such shares, and the conditions under which such shares shall or may be retired by the corporation, all consistent with the provisions of section 3358 (guaranty capital shares).

H. The number of directors, not less than 3, who shall constitute the board of directors and conduct the affairs of the corporation; and the names, addresses and terms of the members of the initial board of directors, who shall conduct the corporation's affairs for the term specified in the certificate, but for not more than one year after date of incorporation.

I. The city or town, and county in this State in which the corporation's principal place of business is to be located.

J. The name, residence address and national citizenship of each incorporator.

K. Other provisions, not inconsistent with law, deemed appropriate by the incorporators, and including, in the case of life insurers, the power to act as trustee with respect to proceeds of maturity or death benefits payable under life insurance or annuity contracts issued or assumed by it.

#### § 3307. Certificate of organization, approval and filing

1. The incorporators of a proposed insurer shall deliver the quadruplicate originals of the certificate of organization to the commissioner. The commissioner shall deliver one set of such originals to the Attorney General of this State, and the Attorney General shall examine the same. If the Attorney General finds that the certificate of organization complies with law, he shall so certify in writing and return the original of the certificate of organization, so certified, to the commissioner.

2. When the certificate of organization has been so approved and returned by the Attorney General, the commissioner shall also endorse his approval upon each set thereof and return the quadruplicate originals of the certificate of organization to the incorporators. The incorporators shall then file one of such sets with the Secretary of State of this State, one set with the commis-

sioner bearing the certification of the Secretary of State, one set for recording in the registry of deeds of the county in this State in which the corporation's principal place of business is to be located, and shall retain the remaining set in the corporate records.

3. For filing the certificate of organization of a mutual insurer the Secretary of State shall charge and collect a filing fee of \$25; except, that if it is a mutual insurance corporation with provision for guaranty capital shares, the Secretary of State shall charge and collect for the filing of the certificate of organization the same amount as would be payable by a stock insurance corporation having a like amount of authorized capital stock.

4. If the Attorney General finds that the proposed certificate of organization does not comply with law, he shall refuse to approve the same and shall return the set thereof to the commissioner, together with a written statement of the respects in which he finds that the certificate does not so comply. The commissioner shall thereupon return all sets of the proposed certificate of organization to the proposed incorporators together with the Attorney General's written statement.

5. The Secretary of State shall not permit the filing in that office of any such certificate unless the same bears the commissioner's approval endorsed thereon as hereinabove provided.

6. The approval of the Attorney General or commissioner, as hereinabove provided for, shall be deemed to relate only to the form and contents of the certificate, and shall not constitute approval or commitment as to any other aspect or operation of the proposed insurer or relative to its entitlement, if any, to a certificate of authority.

7. The commissioner and Attorney General shall perform all duties required of them under this section within a reasonable time after the certificate of organization has been submitted to the commissioner as provided in subsection 1.

§ 3308. Certificate of Secretary of State

1. Upon filing with him of the certificate of organization of a proposed insurer as provided in section 3307, subsection 2, and payment of the charges and fees therefor, the Secretary of State shall issue to the corporation his certificate of organization in the following form:

"STATE OF MAINE

"Be it known, that whereas" (names of the incorporators) "have associated themselves with the intention of forming a corporation, under the name of ..... , for the purpose" (here the purpose declared in the certificate of organization shall be inserted,) "with a capital stock of \$..... , and have complied with the provisions of the statutes of the State in such case made and provided, as appear from the certificate of organization, duly approved by the Insurance Commissioner and recorded in this office: Now, therefore, I, ..... , Secretary of State of Maine, hereby certify that" (incorporators' names) "their associates and successors, are legally organized and established as, and are

hereby made, an existing corporation under the name of the ..... company, with all the powers, rights and privileges, and subject to the duties, liabilities and restrictions which by law appertain thereto. Witness my official signature, hereunto subscribed, and the seal of the State of Maine hereunto affixed, this ..... day of....., A. D. 19.....” (In case of purely mutual companies, so much as relates to capital stock shall be omitted.)

2. The Secretary of State shall sign the same, and cause the seal of the State to be thereto affixed, and such certificate shall have the force and effect of a special charter and be conclusive evidence of the organization and establishment of such corporation. The certificate shall be duly recorded in the office of the Secretary of State, and a duly authenticated copy of such record may be used in evidence, with like effect as the original certificate.

§ 3309. Completion of incorporation; general powers, duties

The incorporation of an insurer shall be effective as of the date of issuance by the Secretary of State of his certificate as provided for in section 3308; and thereupon the corporation shall be vested with all the powers, rights and privileges, and be subject to all the duties, liabilities and restrictions applicable to insurer corporations; subject, however, to qualification and application for, and issuance to the corporation of, a certificate of authority as an insurer by the commissioner under the provisions of this Title.

§ 3310. Amendment of certificate of organization;  
change of principal place of business

1. A stock insurer may amend its certificate of organization for any lawful purpose by authorization or vote of stockholders as provided for business corporations in general under the laws of this State applicable to such business corporations.

2. A mutual insurer may amend its certificate of organization for any lawful purpose by affirmative vote of a majority of those of its members entitled to vote and present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend and the substance of such proposal, and by affirmative vote of the holders of at least 2/3 of the insurer’s outstanding guaranty capital shares, if any.

3. Upon adoption of such an amendment the insurer shall make in quadruplicate under its corporate seal a certificate, sometimes referred to as a “certificate of amendment”, setting forth such amendment and the date and manner of the adoption thereof. The certificate shall be executed by the insurer’s president or vice-president and secretary or assistant secretary and duly sworn to by one of them. The insurer shall deliver to the commissioner the quadruplicate originals of the certificate for review, certification and approval or disapproval by the Attorney General and the commissioner, and filing and recording, all as provided for original certificates of organization under section 3307. The Secretary of State shall charge and collect for the use of the State a fee of \$20 for filing and recording the certificate of amendment of a mutual insurer. The amendment shall be effective when duly approved and filed with the Secretary of State.

4. An insurer may change its principal place of business without amendment of its certificate of organization, by resolution of its board of directors. A copy of such resolution, duly certified under oath by the corporate secretary, shall be executed in quadruplicate and filed with the commissioner, the Secretary of State, the registry of deeds of the county in which the insurer's principal place of business was theretofore located, and in the corporate records. If the principal place of business is thereby changed to another county of this State, the insurer shall also file in the registry of deeds of such county a copy, duly certified by the commissioner, of its certificate of organization and of each amendment thereto, and a certified copy of the resolution by which the principal place of business was so changed.

§ 3311. Insurance business exclusive; exceptions

1. No domestic insurer heretofore or hereafter formed shall engage in any business other than the insurance business and in business activities reasonably and necessarily incidental to such insurance business.

2. Except that:

A. A title insurer may also engage in business as an escrow agent;

B. Any insurer may also engage in business activities reasonably related to the management, supervision, servicing of, and protection of its interests as to its lawful investments;

C. An insurer may own subsidiaries, or subsidiaries owning other subsidiaries which may engage in such businesses all as provided for in section 1115 (stocks of subsidiaries); and

D. An insurer may utilize its facilities to perform administrative services for any governmental body, unit, or agency.

SUBCHAPTER II

PROVISIONS APPLYING ONLY TO MUTUAL INSURERS

§ 3352. Mutual insurers, initial qualifications

1. When hereafter newly organized, a mutual insurer may be authorized to transact any one of the kinds of insurance listed in the schedule contained in subsection 2 or any combination of such kinds as provided in subsection 3.

2. When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this Title, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at a rate not less than that usually charged by other insurers for comparable coverages, must have surplus funds on hand and deposited as of the date such insurance coverages are to become effective, or, in lieu of such applications, premiums, and surplus, may deposit and thereafter maintain surplus, all in accordance with that part of the following schedule which applies to each kind of insurance the insurer proposes to transact:

| (A)          | (B)                        | (C)                       | (D)                       | (E)                        | (F)                            | (G)                           | (H)                         |
|--------------|----------------------------|---------------------------|---------------------------|----------------------------|--------------------------------|-------------------------------|-----------------------------|
| Kind of Ins. | Min. No. of Apps. Accepted | Min. No. Subjects Covered | Minimum Premium Collected | Min. Amt. Ins. Ea. Subject | Max. Amt. Ins. Ea. Subject (5) | Deposit Min. Surplus Fund (6) | Deposit Surplus in Lieu (7) |
| Life(1)      | 500                        | 500                       | Annual                    | \$ 2,000                   | \$ 5,000                       | \$100,000                     | \$200,000                   |
| Health(2)    | 500                        | 500                       | Quarterly                 | \$ 25<br>(wkly. indem.)    | \$ 50<br>(wkly. indem.)        | \$100,000                     | \$200,000                   |
| Property(3)  | 100                        | 250                       | Annual                    | \$ 3,000                   | \$ 7,000                       | \$100,000                     | \$200,000                   |
| Casualty(4)  | 250                        | 500                       | Annual                    | \$ 5,000                   | \$25,000                       | \$200,000                     | \$300,000                   |

The following provisos are respectively applicable to the foregoing schedule and provisions as indicated by like numerals appearing in such schedule:

A. No group insurance or term policies for terms of less than 10 years shall be included.

B. No group, blanket or family plans of insurance shall be included. In lieu of weekly indemnity a life premium value in medical, surgical, and hospital benefits may be provided. Any accidental death or dismemberment benefit provided shall not exceed \$5,000.

C. Only insurance of the owner's interest in real property may be included.

D. Must include insurance of legal liability for bodily injury and property damage, to which the maximum and minimum insured amounts apply.

E. The maximums provided for in this column (F) are net of applicable reinsurance.

F. The deposit of surplus in the amount specified in columns (G) and (H) must thereafter be maintained unimpaired. The deposit is subject to the provisions of chapter 15 (administration of deposits).

Expendable surplus: In addition to surplus deposited and thereafter to be maintained as shown in columns (G) or (H) above, the insurer when first authorized must have on hand surplus funds, which it can thereafter expend in the conduct of its business, in amount not less than 50% of the applicable deposited and maintained surplus required of it under the above schedule.

3. An insurer may initially qualify for authority to transact both life and health insurances by fulfilling the foregoing requirements as to each such kind of insurance; and may in like manner initially qualify for authority to transact both property and casualty insurance. An insurer shall not, however, so qualify to transact any other combination of such insurances except as provided in section 3357.

§ 3353. Qualifying applications for insurance; bond or deposit

1. Before soliciting any applications for insurance required under section 3352 as qualification for the original certificate of authority, the incorporators of the proposed insurer shall file with the commissioner a corporate surety bond in the penalty of \$15,000, in favor of the State of Maine and for use and benefit of the State of Maine and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

- A. For the prompt return to applicant members of all premiums collected in advance;
- B. For payment of all indebtedness of the corporation; and
- C. For payment of costs incurred by the State of Maine in event of any legal proceedings for liquidation or dissolution of the corporation;

all in the event the corporation fails to complete its organization and secure a certificate of authority within one year after the date of its certificate of organization.

2. In lieu of such bond, the incorporators may deposit with the commissioner \$15,000 in cash or United States government bonds, negotiable and payable to the bearer, with a market value at all times of not less than \$15,000 and to be held in trust upon the same conditions as required for the bond.

3. The commissioner shall release and discharge any such bond filed or deposit or remaining portion thereof held under this section upon settlement and termination of all liabilities against it.

#### § 3354. Qualifying applications for insurance; solicitation

1. Upon receipt of the commissioner's approval of the bond or deposit as provided in section 3353, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.

2. All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this State.

3. All such applications shall provide that:

A. Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

B. No insurance is in effect unless and until the certificate of authority has been issued; and

C. The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date which date shall be not later than one year after the date of the certificate of organization.

4. All qualifying premiums collected shall be in cash.

5. Solicitation for such qualifying applications for insurance shall be by licensed agents of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to subsection 3, paragraph C to individuals qualified as for a resident agent's license except as to the taking or passing of an examination. The commissioner may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under chapter 17.

§ 3355. Deposit of qualifying premiums; effective date of insurance

1. All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this State under a written trust agreement consistent with this section and with section 3354, subsection 3, paragraph C. The corporation shall file an executed copy of such trust agreement with the commissioner.

2. Upon issuance to the corporation of a certificate of authority as an insurer for the kind or kinds of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

§ 3356. Failure to complete and qualify

If the proposed domestic mutual insurer fails to complete its organization and to secure its original certificate of authority within one year from and after date of its certificate of organization its corporate powers shall cease, and the commissioner shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premium held in trust under section 3355.

§ 3357. Authority to transact additional kinds of insurance

After being authorized to transact one kind or combination of kinds of insurance as provided in section 3352, a mutual insurer may be authorized by the commissioner to transact such additional kinds of insurance as are permitted under section 409 (combinations of insuring powers), while otherwise in compliance with this Title and while maintaining unimpaired surplus and guaranty capital funds in an amount not less than the amount of paid-in capital stock required to be maintained by a like domestic stock insurer transacting the same kinds of insurance.

§ 3358. Guaranty capital shares

1. A mutual insurer formed to transact or transacting any kind of insurance shall have the right to provide for guaranty capital shares in its certificate of organization. Outstanding guaranty capital shares at the par value thereof shall take the place of a like amount of basic surplus otherwise re-

quired for authority to transact insurance.

2. Shares of guaranty capital stock shall have a par value of \$100 each, and shall be paid for in cash. Nothing in this Title shall be deemed to prohibit the sale of such shares at a price above such par value in order to provide the insurer with capital surplus.

3. Only one class of such guaranty capital shares shall be provided for, and each such share outstanding shall have equal voting, dividend, retirement and other rights with every other such share. Each such share shall have one vote on matters coming to a vote at meetings of the insurer's shareholders and members. Policyholders of the insurer shall have the same voting rights as would exist in the absence of such guaranty capital.

4. Noncumulative dividends not exceeding in any one year 7% of the amount paid to the insurer for the same, may be declared and paid by the insurer on outstanding guaranty capital shares out of that portion of the insurer's expendable surplus representing net realized earnings from its operations; and may be so paid even though the amount of the insurer's expendable surplus is then less in amount than any prior total of expendable contributed, borrowed, or paid-in surplus. Such a dividend may be paid in cash or in guaranty capital shares, or part in each. An amount equal to the par value of shares so distributed as dividend shall be transferred from the insurer's earned surplus account to its guaranty capital shares account.

5. If the guaranty capital becomes impaired, the impairment shall be cured as provided in section 3423 (impairment of capital funds).

6. The insurer shall retire and cancel the guaranty capital shares in part and in whole as soon as is reasonably possible, out of expendable surplus resulting from net realized earnings from its operations, or out of surplus created through issuance of agreements authorized by section 3415. The insurer shall retire and cancel the guaranty capital shares in their entirety when such retirement would, in the commissioner's opinion, leave the insurer with surplus as to policyholders reasonably adequate to enable it to continue to transact the kinds and volume of insurance business transacted.

7. In any liquidation of the insurer outstanding guaranty capital shares shall have the same rights and priority as to the insurer's assets as are possessed by the stockholders of a like stock insurer.

### § 3359. Bylaws

1. A domestic mutual insurer shall have bylaws for the government of its affairs. The insurer's initial board of directors shall adopt original bylaws, subject to the approval of the insurer's members at the next meeting of members.

2. The bylaws shall contain provisions, consistent with this Title, relating to:

A. The voting rights of members;

- B. Election of directors, and the number, qualifications, terms of office and powers of directors;
- C. Annual and special meetings of members;
- D. The number, designation, election, terms and powers and duties of the respective corporate officers;
- E. Deposit, custody, disbursement and accounting for corporate funds;
- F. Fidelity bonds covering such officers and employees of the insurer as handle its funds, to be issued by a corporate surety and to be in such amount as may be reasonable; and
- G. Such other matters as may be customary, necessary, or convenient for the management or regulation of corporate affairs.

3. The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The commissioner shall disapprove any bylaw provision deemed by him, after a hearing held thereon, to be unlawful, unreasonable, inadequate, unfair or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

#### § 3360. Members are policyholders

1. Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, as the charter and as the policy shall so specify.

2. Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee or fiduciary may be a member of a domestic, foreign, or alien mutual insurer. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, and shall not be personally liable upon any contract of insurance for acting in such representative capacity.

3. Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which such corporation is organized, and as much granted as the rights and powers expressly conferred.

#### § 3361. Meetings of members, in general

1. Meetings of members of a domestic mutual insurer shall be held in the city or town of its principal office in this State, except as may otherwise be provided in the insurer's bylaws with the commissioner's approval.

2. Each such insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its members to fill vacancies existing or

occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs and transact such other business as may properly be brought before it.

3. Written notice of the time and place of the annual meeting of members shall be given members not less than 30 days prior to the meeting. Notice may be given by imprinting the notice plainly on the policies issued by the insurer or in any other appropriate manner. Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change, among other appropriate methods may be given:

A. By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting; or

B. Unless the commissioner otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the 24 months immediately following such meeting.

4. If more than 6 months are allowed to elapse after an annual meeting of members is due to be held and without such annual meeting being held, the commissioner shall, upon written request of any officer, director, or member of the insurer, cause written notice of such meeting to be given to the insurer's members, and the meeting shall be held as soon as reasonably possible thereafter.

#### § 3362. Special meetings of members

1. A special meeting of the members of a mutual insurer may be held for any lawful purpose. The meeting shall be called by the corporate secretary pursuant to request of the insurer's president or of its board of directors, or upon request in writing signed by not less than 1/10 of the insurer's members. The meeting shall be held at such time as the secretary may fix, but not less than 10 nor more than 30 days after receipt of the request. If the secretary fails to issue such call, the president, directors, or members making the request may do so.

2. Not less than 10 days' written notice of the meeting shall be given. Notice addressed to the insurer's members at their respective post office addresses last of record with the insurer and deposited, postage prepaid, in a letter depository of the United State post office, shall be deemed to have been given when so mailed. In lieu of mailed notice the insurer may publish the notice in such publication or publications as shall afford a majority of its members a reasonable opportunity to have actual advance notice of the meeting. The notice shall state the purposes of the meeting, and no business shall be transacted at the meeting of which notice was not so given.

#### § 3363. Voting rights of members

1. Each member of a mutual insurer is entitled to one vote upon each matter coming to a vote at a meeting of members, or to such other vote as

may be provided for on a reasonable basis in the insurer's bylaws with the commissioner's approval.

2. A member shall have the right to vote in person or by his written proxy filed with the corporate secretary not less than 20 days prior to the meeting. No such proxy shall be made irrevocable, nor be valid beyond the earlier of the following dates:

- A. The date of expiration set forth in the proxy; or
- B. The date of termination of membership; or
- C. 5 years from the date of execution of the proxy.

3. No member's vote upon any proposal to divest the insurer of its business or assets, or the major part thereof, shall be registered or taken except in person or by proxy newly executed and specific as to the matter to be voted upon.

#### § 3364. Contingent liability of members

1. Except as provided otherwise in section 3367 with respect to non-assessable policies, each member of a domestic mutual insurer shall have a contingent liability, prorata and not one for another, for the discharge of its obligations, which contingent liability shall be in such maximum amount—not less than 1 or more than 6 times the annual premium for the member's policy at the annual premium rate—as shall be specified in the insurer's certificate of organization or bylaws.

2. Every policy issued by the insurer shall contain a plain and legible statement of the contingent liability upon either the face or back thereof.

3. Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion of the obligations of the insurer which accrued while the policy was in force.

4. Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

#### § 3365. Levy of contingent liability

1. If at any time the assets of a domestic mutual insurer are less than its liabilities, exclusive of guaranty capital shares, if any, at par value, and the minimum amount of surplus required to be maintained by it under this Title for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors may, if the same is approved by the commissioner as being reasonable and in the best interests of the insurer and its members, levy an assessment only on its members who held the policies providing for contingent liability at any time within the 12 months next preceding the date the levy was authorized by the board of directors, and such members shall be liable to the insurer for the amount so assessed.

2. The levy of assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed 5% of the sum of the insurer's liabilities and such minimum required surplus as of the date of the levy.

3. As to the respective policies subject to the levy, the assessment shall be computed upon the basis of premium earned during the period covered by the levy.

4. No member shall have an offset or counterclaim against any assessment for which he is liable, on account of any claim for unearned premium or loss payable.

5. As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held or to be held by the insurer to the credit of the member's policy.

#### § 3366. Enforcement of contingent liability

1. The insurer shall notify each member of the amount of assessment to be paid, and the date—not less than 20 days after mailing date—by which payment is to be made, by written notice mailed to the member at his address last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

2. If a member fails to pay the assessment within the period specified in the notice, the insurer may institute suit to collect the same.

#### § 3367. Nonassessable policies; limits of assessability; use of funds; combination operations

1. A domestic mutual insurer may extinguish the contingent liability to assessment of its members as to cash premium plan policies in force and may omit provisions imposing contingent liability in such policies currently issued while it has and maintains surplus, as determined by its financial statement filed with the commissioner as of the year end next preceding, of not less than \$100,000 as to an insurer formed prior to January 1, 1968, and of not less than \$200,000 as to an insurer formed after January 1, 1968.

2. If the insurer after qualifying to issue such a nonassessable policy fails to maintain the applicable above requirement, it shall cease to issue non-assessable policies until it has again met and maintained the requirement for a period of one year.

3. Any assessment levied under the contingent liability provisions of the policy shall be for the exclusive benefit of the holders of policies subject to contingent liability, and such policyholders shall not be liable to assessment in an amount greater in proportion to the total deficiency than the ratio that

the deficiency attributable to the contingently liable business bears to the total deficiency. An assessment shall apply only to the holders of the type of policy or plan under which the deficiency occurred, and funds received from the assessment shall be for the exclusive benefit of such holders.

4. Nothing in this chapter shall be deemed to prohibit a domestic mutual insurer formed prior to January 1, 1968 from at any one time transacting, in respective departments or divisions of its operations, insurance business on any two or all of the following bases:

- A. Cash premium plan, without contingent liability to assessment, and issuance of nonassessable policies if qualified therefor as above provided in this section;
- B. Cash premium plan, with contingent liability to assessment; and
- C. Assessment plan.

### SUBCHAPTER III

#### PROVISIONS APPLYING TO

#### STOCK AND MUTUAL INSURERS

§ 3408. Home office, records, assets to be in State; exceptions

1. Every domestic insurer shall have and maintain its principal place of business and home office in this State, and shall keep therein accurate and complete accounts and records of its assets, transactions and affairs in accordance with the usual and accepted principles and practices of insurance accounting and record keeping as applicable to the kinds of insurance transacted by the insurer.

2. Every domestic insurer shall have and maintain its assets in this State, except as to:

- A. Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this State, and
- B. Such property of the insurer as may be customary, necessary and convenient to enable and facilitate the operation of its branch offices located outside this State as referred to in subsection 4.

3. No person shall remove all or a material part of the records or assets of a domestic insurer from this State except pursuant to a plan of merger, consolidation, or bulk reinsurance approved by the commissioner under this Title, or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal, or conceal such records or assets or such material part thereof from the commissioner. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this State with the intent to remove the same from this State, or who conceals or attempts to conceal the same from the commissioner, in violation of this section, shall upon

conviction thereof be guilty of a felony, punishable by a fine of not more than \$10,000, or by imprisonment in the penitentiary for not more than 5 years or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records of assets, or upon retention of such records or assets or material part thereof outside this State, beyond the period therefor specified in the commissioner's consent under which the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 57.

4. This section shall not be deemed to prohibit or prevent an insurer from:

A. Establishing and maintaining regional home offices or branch offices in other states or countries where necessary or convenient to the transaction of its business, and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request.

B. Having, depositing or transmitting funds and assets of the insurer in or to jurisdictions outside of this State required by the law of such jurisdiction or as reasonably and customarily required or convenient in the regular course of its business.

#### § 3409. Vouchers for expenditures

1. No insurer shall make any disbursement of \$50 or more, unless evidenced by a voucher or other document correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

2. If the disbursement is for services and reimbursement, the voucher or other document, or some other writing referred to therein, shall describe the services and itemize the expenditures.

3. If in a particular instance such a voucher cannot be obtained, the expenditure must be supported by an affidavit executed by an officer of the insurer stating the reasons for such inability and the particulars of such expenditure as otherwise hereinabove required.

#### § 3410. Destruction of records

1. An insurer may destroy its obsolete records after expiration of such reasonable period after completion of the transactions to which they relate as the insurer may deem proper. The insurer may so destroy its closed files relating to losses and claims arising under its policies after the first to occur of the following events:

A. Completion of a regular examination of the insurer by the commissioner and to which the closed file was subject; or

B. Expiration of 6 years after the file was duly closed.

2. Records preserved on microfilm or other similar process and freely retrievable shall not be deemed to have been destroyed.

3. This section shall not relieve the insurer of any responsibility or liability otherwise arising under law with respect to the existence and availability of any record.

#### § 3411. Directors

1. The affairs of every domestic insurer shall be managed by a board of directors consisting of not less than 7 directors or more than 21 directors.

2. Directors, other than initial directors named in the insurer's certificate of organization, shall be elected by the members or stockholders of a domestic insurer at the annual meeting of stockholders or members. Directors may be elected for terms of not more than 3 years each and until their successors are elected and have qualified; and if to be elected for terms of more than one year the insurer's bylaws may provide for a staggered term system under which the terms of a proportionate part of the members of the board of directors shall expire on the date of each annual meeting of stockholders or members. A directorship becoming vacant before expiration of the term may be filled by the board of directors for the remainder of the term.

#### § 3412. Officers; notice of change

1. An insurer's board of directors shall elect one of their number as president, and shall elect a corporate secretary and such other officers as may be provided for in the bylaws or otherwise required by law. Any such officer shall serve for such term as may be fixed in the bylaws or by the board of directors, but shall be subject to removal as an officer by the board of directors at any time.

2. Each officer shall have such powers and duties as may be prescribed by or pursuant to the insurer's charter or bylaws.

#### § 3413. Prohibited pecuniary interest of officials and others; use of confidential information prohibited

1. Any officer or director, or any member of any committee or any employee of a domestic insurer, having the duty or power of investing or handling the insurer's funds, shall not deposit or invest such funds except in the insurer's name; shall not borrow the funds of the insurer; or be pecuniarily interested in any loan, pledge, deposit, security, investment, sale, purchase, exchange, reinsurance or other similar transaction or property of the insurer except as a stockholder, member, employee or director, unless the transaction is authorized or approved by the insurer's board of directors, with knowledge and recording of such pecuniary interest, by affirmative vote of not less than  $\frac{2}{3}$  of the directors; and shall not take or receive to his own use any fee, brokerage, commission, gift or other similar consideration for or on account of any such transaction made by or on behalf of the insurer.

2. No director, officer or employee of a domestic insurer shall directly or indirectly use for his own private pecuniary advantage confidential information concerning the insurer or its past, existing or proposed affairs or transactions acquired by him in the course of his services as such director, officer, or employee. The amount of any financial gain realized directly or indirectly by any such individual and accompanied by violation of this subsection shall belong to the insurer, and shall be recoverable by the insurer by civil suit. This subsection shall not apply as to transactions in shares of a stock insurer which are subject to section 16 of the Securities Exchange Act of 1934, as amended.

3. No insurer shall guarantee the financial obligation of any of its officers or directors.

4. This section shall not prohibit such a director, officer, member of a committee, or employee from becoming a policyholder of the insurer and enjoying the usual rights of a policyholder or from participating as beneficiary in any pension trust, deferred compensation plan, profit sharing plan, stock option plan or similar plan authorized by the insurer and to which he may be eligible; or prohibit any director or member of a committee from receiving a reasonable fee for lawful services actually rendered to the insurer.

5. The commissioner may, by regulation from time to time, define and permit additional exceptions to the prohibition contained in subsection 1 solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which a director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director, corporation or firm.

#### § 3414. Management, commission, exclusive agency contracts

1. No domestic insurer shall hereafter make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the material exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, or, if an officer, director or otherwise part of the insurer's management, is to receive any commission, bonus or compensation based upon the volume of the insurer's business or transactions, unless the contract is filed with and not disapproved by the commissioner. The contract shall become effective in accordance with its terms unless disapproved by the commissioner within 20 days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within such 20 days. Any disapproval shall be delivered to the insurer in writing stating the grounds therefor.

2. Any such contract shall provide that any such manager, producer of its business or contract holder shall within 90 days after expiration of each calendar year furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, with specification of the emoluments received therefrom by the respective directors, officers and other principal management personnel of the manager or producer, and with

such classification of items and further detail as the insurer's board of directors may reasonably require.

3. The commissioner shall disapprove any such contract if he finds that it:

A. Subjects the insurer to excessive charges; or

B. Is to extend for an unreasonable length of time; or

C. Does not contain fair and adequate standards of performance; or

D. Contains other inequitable provision or provisions which impair the proper interests of stockholders or members of the insurer.

4. The commissioner may, after a hearing held thereon, disapprove any such contract theretofore permitted to become effective, if he finds that the contract should be disapproved on any of the grounds referred to in subsection 3.

5. This section does not apply as to contracts entered into prior to the effective date of this Act, or to amendment of such contracts other than extensions thereof.

6. This section shall not be deemed to prohibit receipt of commissions on insurance written personally by a director or officer who is duly licensed and regularly engaged in business as an insurance agent or broker; or to prohibit receipt of vested commissions by a director or officer based upon insurance business theretofore written by him.

#### § 3415. Borrowed capital funds

1. A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding per annum a rate 2 percentage points in excess of the then current discount rate of the Federal Reserve Bank, Boston, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan, except that if sale is made of the loan securities through established securities brokers or by public offering the insurer may pay the reasonable costs thereof approved by the commissioner.

2. Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any set-off or counterclaim; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

3. Any such loan shall be subject to the commissioner's approval. The

insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within 15 days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

4. Any such loan to a mutual insurer or substantial portion thereof may be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan, whether heretofore or hereafter outstanding shall be made, other than as provided in the loan agreement, unless approved in advance by the commissioner.

5. This section shall not apply to other kinds of loans obtained by the insurer in ordinary course of business, or to loans secured by pledge or mortgage of assets.

6. Loans authorized under this section may be made by domestic insurers as well as by other persons; but such a loan shall not constitute an asset in any determination of the financial condition of the lending insurer.

#### § 3416. Dividends to stockholders

1. A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and net realized capital gains.

2. A cash dividend otherwise lawful may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed or paid-in surplus.

3. A stock dividend may be paid out of any available surplus funds, other than "surplus" resulting from borrowed capital funds such as provided for under section 3415.

#### § 3417. Participating policies

1. If provided for in its certificate of organization or charter, a stock insurer or mutual insurer may issue any or all of its policies or contracts with or without participation in profits, savings, unabsorbed portions of premiums or surplus; may classify policies issued and perils insured on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable, and shall not unfairly discriminate as between policies so classified.

2. A life insurer may issue both participating and nonparticipating policies or contracts if the right or absence of right to participate is reasonably related to the premium charged.

3. After the first policy year, no dividend, otherwise earned under a life or health insurance policy or annuity contract, shall be made contingent upon the payment of renewal premium on any such policy or contract; except, that a participating life or health insurance policy providing for participation at the end of the first or second policy year may provide that the dividend or dividends will be paid subject to payment of premium for the next ensuing year.

#### § 3418. Dividends to policyholders

1. The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its accumulated surplus funds which represents net realized savings, net realized earnings and net realized capital gains, all in excess of the surplus required by law to be maintained by the insurer.

2. A dividend otherwise proper may be payable out of such savings, earnings and gains even though the insurer's total surplus is then less than the aggregate of contributed surplus remaining unpaid by the insurer.

3. A domestic stock insurer may pay dividends to holders of its participating policies out of any available surplus funds.

4. No dividend shall be paid which is inequitable, or which unfairly discriminates as between classifications of policies or policies within the same classifications.

#### § 3419. Pension and other plans for employees and others

1. Pursuant to the terms of a pension plan or plans or any modification thereof, heretofore or hereafter adopted by the insurer's board of directors and approved by the commissioner, any domestic stock or mutual insurer may pay the whole or any part of the cost of retirement or disability pensions for such of its officers, employees or full-time insurance agents as are specified in such plan or plans or modifications thereof. If so specified in the plan or plans, in lieu of such pensions actuarially equivalent benefits may be paid to such officers, employees or full-time agents or to their designated beneficiaries.

2. The commissioner shall approve any such plan unless he finds the same not to be within the reasonable financial resources of the insurer or not fair and equitable as between the respective classifications of participants therein.

3. Nothing contained in this section or in section 3420 shall be deemed to prohibit profit-sharing, stock option or similar plans for an insurer's officers, employees or agents.

#### § 3420. Insurance benefits for employees and others

Pursuant to vote of its board of directors heretofore or hereafter made, any domestic stock or mutual insurer may provide for its officers, employees or full-time insurance agents, a plan or plans of insurance, to be issued under

group or individual policies. The insurer may pay the cost, in whole or in part, of such insurance; or, if duly authorized by its charter and bylaws, may itself provide such benefits directly as the insurer thereof, without requirement of placement through a licensed insurance agent, and in such case may adjust the premium rate for the insurance to reflect such savings in expense as the insurer may deem applicable.

#### § 3421. Solicitation, insuring in other states

1. No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which not then licensed as an authorized insurer. This subsection shall not prohibit advertising through publications and radio, television and other media originating outside such reciprocating state, if the insurer is licensed in the state in which the advertising originates and the advertising is not specifically directed to residents of such reciprocating state. This subsection shall not apply as to surplus lines insurance, or reinsurance, or prohibit insurance covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed, or insurance otherwise effectuated in accordance with the laws of the reciprocating state. A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

2. A domestic insurer duly authorized to transact insurance in another jurisdiction may frame and issue policies for delivery in such jurisdiction pursuant to applications for insurance solicited and obtained therein, in accordance with the laws thereof, subject only to such restrictions, if any, as may be contained in the insurer's certificate of organization or bylaws; and subject, in the case of health insurers, to the provisions of section 2732 (policies issued for delivery in another state).

#### § 3422. Purchase of own shares by stock insurer

A domestic stock insurer shall have the right to purchase or acquire shares of its own stock only as follows:

1. For elimination of fractional shares.
2. Incidental to the enforcement of rights of the insurer with respect to lawful transactions previously entered into in good faith for purposes other than the acquisition of such shares.
3. For the purposes of a general savings and investment plan for employees or agents of the insurer.
4. For mutualization of the insurer, as provided in section 3472.
5. For retirement or otherwise of the shares under a plan submitted to and approved in writing by the commissioner. The commissioner shall not approve a plan unless found by him to be reasonable, fair and equitable as to remaining stockholders of the insurer, and not materially adverse to the protection of the insurer's policyholders.

#### § 3423. Impairment of capital funds

1. If a domestic stock insurer's paid-in capital stock, as represented by the aggregate par value of its outstanding capital stock, becomes impaired, or the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of basic surplus required to be maintained by it under this Title for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to cure the deficiency and file proof thereof with him within the period specified in the notice, which period shall be not less than 30 nor more than 90 days from the date of the notice. Such notice may be so served by delivery to the insurer, or by mailing to the insurer addressed to its registered office in this State.

2. The deficiency may be made good in cash or in assets eligible under chapter 13 (investments) for the investment of the insurer's funds or by amendment of the insurer's certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient paid-in capital stock, if a stock insurer, or surplus, if a mutual insurer, under this Title; or, if a stock insurer, by reduction of the number of shares of the insurer's authorized capital stock or the par value thereof through amendment of its certificate of organization, to an amount of authorized and unimpaired paid-in capital stock not below the minimum required for the kinds of insurance thereafter to be transacted.

3. If the deficiency is not made good and proof thereof filed with the commissioner within the period required by the notice as specified in subsection 1, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it under chapter 57.

#### § 3424. Restrictions during impairment; penalty

1. During the existence of impairment of the capital stock or surplus of an insurer, as referred to in section 3423, the commissioner shall require such restriction of, or arrangements as to, operations of the insurer while the impairment exists as he deems advisable for protection of policyholders, the insurer or the public.

2. Any officer, director, representative or employee of the insurer who knowingly violates or fails to comply with any such restriction or requirement shall upon conviction thereof be subject to fine of not less than \$500 or more than \$5,000, or imprisonment for less than one year or to both such fine and imprisonment.

### SUBCHAPTER IV

#### CONVERSION, AMALGAMATION, DISSOLUTION

#### § 3471. Scope of subchapter

The applicable provisions of this subchapter apply as to domestic stock and mutual insurers whether heretofore or hereafter formed, and to such domestic insurers chartered under special legislative Acts where feasible and not in conflict with specific provisions of the Act, as heretofore amended, under which the insurer was so organized.

#### § 3472. Mutualization of stock insurer

1. A stock insurer other than a title insurer may become a mutual insurer, or a combination stock and mutual insurer, under such plan and procedure as may be approved by the commissioner after a hearing thereon.

2. The commissioner shall not approve any such plan, procedure, or mutualization unless:

A. It is equitable to stockholders and policyholders;

B. It is subject to approval by the holders of not less than  $\frac{2}{3}$  of the insurer's outstanding capital stock having voting rights, and by not less than  $\frac{2}{3}$  of the insurer's policyholders who vote on such plan in person, by proxy or by mail pursuant to such notice and procedure as may be approved by the commissioner;

C. If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies, and whose policies have been in force for more than one year;

D. Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

E. The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by the general corporation law of the State as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

F. The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

G. The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance, and for the kinds of insurance included in its certificates of authority in such states.

3. Any such combination stock and mutual insurer referred to in subsection 1 above must have and maintain separate paid-in capital stock and basic surplus in respective amounts as would be required under this Title of separate domestic stock and mutual insurers transacting the same kind or kinds of insurance.

4. No director, officer, agent or employee of the insurer, or any other person, shall receive any fee, commission or other valuable consideration whatsoever, other than their customary salaries or other regular compensation, for in any manner aiding, promoting or assisting in the mutualization, except as set forth in the plan of mutualization as approved by the commissioner.

5. This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 57.

§ 3473. Conversion of stock insurer to ordinary business corporation

1. A domestic stock insurer may convert to a Maine ordinary business corporation through the following procedures:

A. The insurer must give the commissioner written notice of its intent to convert to an ordinary business corporation;

B. The insurer must bulk reinsure all of its insurance, if any, in force, with another authorized insurer under a bulk reinsurance agreement approved by the commissioner as provided in section 3483. The agreement of bulk reinsurance may be made contingent upon approval of stockholders as provided in paragraph D;

C. The insurer must set aside funds in a special reserve in such amount and subject to such administration as may be found by the commissioner to be reasonable and adequate for the purpose, for payment of all obligations, if any, of the insurer incurred by it and remaining unpaid under its insurance contracts prior to the effective date of such bulk reinsurance, or make other reasonable disposition satisfactory to the commissioner for such payment;

D. The proposed conversion must be approved by affirmative vote of not less than  $\frac{2}{3}$  of each class of outstanding securities of the insurer having voting rights, at a special meeting of holders of such securities called for the purpose; and at such meeting and by a like vote the certificate of organization of the corporation must be amended to remove therefrom the power to transact an insurance business as an insurer, to provide for such new powers and purposes authorized by the general corporation laws of this State as may be consistent with the purposes for which the corporation is thereafter to exist, and to make such further alterations in the certificate of organization as may be required under such general corporation laws of an ordinary business corporation;

E. Security holders of the corporation who dissent from such proposed conversion shall have the same applicable rights as exist under such general corporation laws with respect to dissent from a proposed merger of the corporation; and

F. Upon compliance with paragraphs A to D, and upon filing of the amendment of the certificate of organization with the commissioner and otherwise as required by laws applicable to ordinary business corporations, the conversion shall thereupon become effective.

2. An insurer which has once converted to an ordinary business corporation shall not have power thereafter to convert to an insurer; and no ordinary business corporation shall have power to convert to an insurer.

#### § 3474. Merger, consolidation of stock insurers

1. A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock insurers, by complying with the applicable provisions of the statutes of this State governing the merger or consolidation of stock corporations formed for profit, but subject to subsections 2 and 3. A domestic stock insurer shall not merge or consolidate with any corporation not formed for the purpose of transacting insurance as an insurer.

2. No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon after notice to the stockholders of each insurer involved. The commissioner shall give such approval within a reasonable time after such filing unless he finds that the plan or agreement:

A. Is contrary to law; or

B. Is unfair or inequitable to the stockholders of any insurer involved; or

C. Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this State or elsewhere; or

D. Would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or

E. Is subject to other material and reasonable objections.

3. No director, officer, agent or employee of any insurer party to the merger or consolidation shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in the plan or agreement.

4. If the commissioner does not approve the plan or agreement, he shall so notify the insurer in writing specifying his reasons therefor.

#### § 3475. Exchange of securities between insurers

1. Upon application of any domestic insurer, the commissioner is authorized to approve the fairness of the terms and conditions of the issuance by the insurer of any shares of its capital stock or of guaranty capital or bonds or its other securities or obligations in exchange for one or more bona fide outstanding securities, claims or property interest of any other insurer or corporation, domestic or foreign, or partly in such exchange and partly for cash; but only after a hearing has been held by the commissioner upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear and be heard.

2. Notice of such hearing and conduct thereof shall be as provided in chapter 3 (the insurance commissioner).

#### § 3476. Acquisition of controlling stock

1. Any person proposing to acquire the controlling capital stock or guaranty capital shares of any domestic stock insurer and thereby to change the control of the insurer, other than through merger or consolidation or affiliation as provided for in this chapter, shall first apply to the commissioner in writing for approval of such proposed change of control. The application shall state the names and addresses of the proposed new owners of the controlling stock or shares and contain such additional information as the commissioner may reasonably require.

2. The commissioner shall not approve the proposed change of control if he finds:

- A. That the proposed new owners are not qualified by character, experience and financial responsibility to control and operate the insurer, or cause the insurer to be operated, in a lawful and proper manner ; or
- B. That as a result of the proposed change of control the insurer may not be qualified for a certificate of authority under section 407 (ownership, management) ; or
- C. That the interests of the insurer or other stockholders of the insurer or policyholder would be impaired through the proposed change of control ; or
- D. That the proposed change of control would tend materially to lessen competition, or to create any monopoly, in a business of insurance in this State or elsewhere.

3. If the commissioner does not by affirmative action approve or disapprove the proposed change of control within 30 days after the date such application was so filed with him, the proposed change may be made without such approval. Except, that if the commissioner gives notice to the parties of a hearing to be held by him with respect to the proposed change of control, and the hearing is held within such 30 days or on a date mutually acceptable to the commissioner and the parties, the commissioner shall have 10 days after the conclusion of the hearing within which to so approve or disapprove the proposed change ; and if not so approved or disapproved, the change may thereafter be made without the commissioner's approval.

4. If the commissioner disapproves the proposed change he shall give written notice thereof to the parties, setting forth in detail the reasons for disapproval.

5. The commissioner shall suspend or revoke the certificate of authority of any insurer the control of which has been changed in violation of this section.

#### § 3477. Conversion of mutual to stock insurer

1. A mutual insurer may become a stock insurer, or a combination stock and mutual insurer, under such reasonable plan and procedure as may be approved by the commissioner after a hearing thereon of which notice was given to the insurer, its directors or trustees, its officers, employees and its members, all of whom shall have the right to appear and be heard at the hearing.

2. The commissioner shall not approve any such plan or procedure unless :

A. Its terms and conditions are fair and equitable ;

B. It is subject to approval by vote of not less than  $\frac{2}{3}$  of the insurer's current members entitled to vote and voting thereon in person, by proxy, or by mail at a meeting of members entitled to vote and called for the purpose pursuant to such reasonable notice and procedure as may be

approved by the commissioner; if a life insurer, right to vote shall be limited to members who hold policies other than group policies or term policies for terms of less than 20 years, and whose policies have been in force for not less than one year;

C. The equity of each member in the insurer is determinable under a fair and reasonable formula approved by the commissioner, which such equity shall be based upon the insurer's entire surplus as shown by the insurer's financial statement filed with the commissioner, including all voluntary reserves but excluding contingently repayable funds and outstanding guaranty capital shares at the redemption value thereof, and without taking into account the value of nonadmitted assets or of insurance business in force;

D. The plan gives to each member of the insurer as specified in paragraph E, a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, or all of the stock of a proposed parent corporation of the insurer, within a designated reasonable period, as such part is determinable under the plan of conversion, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under paragraph C;

E. The members entitled to participate in the purchase of stock or distribution of assets shall include not less than all current policyholders of the insurer and each existing person who had been a policyholder of the insurer within 3 years prior to the date such plan was submitted to the commissioner;

F. Shares are to be offered to members at a price not greater than to be thereafter offered under the plan to others;

G. The plan provides for payment to each member not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled, of cash in an amount found to be reasonable by the commissioner but not in excess of 50% of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the member's equity or property interest in such mutual insurer;

H. The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital stock required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance, together with expendable surplus funds in amount not less than  $\frac{1}{2}$  of such required capital stock; and

I. The commissioner finds that the insurer's management has not, through reduction in volume of new business written, or cancellation or through any other means sought to reduce, limit, or affect the number or identity of the insurer's members to be entitled to participate in such plan, or to secure for the individuals comprising management any unfair advantage through such plan.

3. Any such combination stock and mutual insurer referred to in subsection 1 must have and maintain separate paid-in capital stock and basic

surplus in respective amounts as would be required under this Title of separate domestic stock and mutual insurers transacting the same kind or kinds of insurance.

4. Subsection 2 shall not be deemed to prohibit the inclusion in the conversion plan of provisions under which the individuals comprising the insurer's management and employee group shall be entitled to purchase for cash at the same price as offered to the insurer's members, shares of stock not taken by members on the preemptive offering to members, in accordance with such reasonable classification of such individuals as may be included in the plan and approved by the commissioner.

5. No director, officer, agent or employee of the insurer, or any other person, shall receive any fee, commission or other valuable consideration whatsoever, other than their usual regular salaries and compensation, for in any manner aiding, promoting or assisting in such conversion except as set forth in the plan approved by the commissioner. This provision shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys at law, accountants and actuaries for services performed in the independent practice of their professions, even though also directors of the insurer.

§ 3478. Merger, consolidation of mutual insurers authorized

1. Any one or more mutual insurers existing under any of the laws of this State, may absorb by merger or consolidation, or be merged into or consolidate with, any one or more domestic or foreign mutual insurers either authorized to transact insurance in this State or qualified for such authority. The procedure for effectuation of such merger or consolidation shall be as set forth in sections 3479 to 3482.

2. Nothing in this section shall authorize the merger or consolidation of a mutual insurer with a stock insurer.

§ 3479. Same — Plan, agreement of merger, consolidation; approval by corporations

1. The plan and agreement for a merger or consolidation referred to in section 3478 shall be in writing signed by the duly authorized officers and under the corporate seals of the respective insurers; and shall be acknowledged to be the act, deed and agreement of the insurer by one of the executing officers of the respective insurers before an officer authorized by law to take acknowledgments of deeds. The plan and agreement shall be approved and authorized by vote of the majority of the directors of the respective insurers, and approved by vote of at least  $\frac{2}{3}$  of such policyholders of the respective insurers who are entitled to vote and do vote thereon in person or by proxy at a special meeting of such members call for the purpose.

2. Notice of such special meeting of members shall be given by publishing the same once weekly for 3 consecutive weeks in a newspaper circulated in each county of this State, the last such publication to be at least 7 days prior to such meeting. Notice to its members by a foreign insurer shall be in accordance with the laws of its domiciliary jurisdiction.

3. All of the members of the insurer shall be bound by the vote of policyholders as above provided for, and shall not have thereafter any right as to dissent or appraisal.

§ 3480. Same — Approval by commissioner

1. The plan and agreement referred to in section 3479 shall not be effectuated until filed with and approved by the commissioner in writing. The insurers shall furnish the commissioner such additional information in relation to the proposed merger or consolidation as the commissioner may reasonably require.

2. The commissioner shall approve the plan and agreement unless he finds that it:

- A. Is contrary to law; or
- B. Is inequitable to the policyholders of any domestic insurer involved; or
- C. Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer; or
- D. Would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or
- E. Is subject to other material and reasonable objections.

3. If the commissioner does not approve the plan and agreement he shall so notify the insurers parties thereto in writing, specifying his reasons therefor.

§ 3481. Same — Review by Attorney General:  
filing with Secretary of State

1. Upon approval by the commissioner as provided in section 3480, the plan and agreement of merger or consolidation shall be submitted to the Attorney General and be examined by him. If the Attorney General finds the plan and agreement to be properly drawn and signed and otherwise in conformity with the Constitution and laws of this State, he shall so certify thereon in writing.

2. Within 60 days from date of approval by the commissioner, both an original and a copy of the plan and agreement showing thereon the certificate of the Attorney General, shall be delivered to the office of the Secretary of State. The Secretary of State shall file such copy and enter the date of filing on both the copy and the original, shall record the copy and return the original to the surviving merged or consolidated corporation.

3. From time of filing the copy of the plan and agreement in the office of the Secretary of State, the agreement shall be deemed to be the agreement and act of merger or consolidation of the insurers, and the original of such agreement or a certified copy thereof shall be evidence of the existence of such merged or consolidated corporation and of the performance of all acts and conditions necessary for the effectuation of such merger or consolidation.

4. If a domestic insurer is merged into or consolidated with a foreign insurer, the foreign insurer shall not transact insurance in this State until it has procured a certificate of authority from the commissioner therefor under this Title.

§ 3482. Same — Effective date of merger, consolidation; effect as to assets, liabilities, rights and powers

1. When the plan and agreement for merger or consolidation has been so signed, acknowledged, approved, authorized, certified, filed and recorded as provided in sections 3478 to 3481, then the separate existence of all of the constituent corporations other than the surviving corporation into which the other corporation or corporations parties have merged or consolidated, shall cease.

2. The surviving corporation shall be the merged or consolidated corporation by the name provided for in the agreement; and shall thereby possess all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and shall thereby be subject to all the liabilities, restrictions and duties, of each of the merged or consolidated corporations, and have all and singular the rights, privileges, powers, franchises and immunities of each of such corporations, together with all property, real, personal and mixed, wheresoever located, and all debts due to any of such constituent corporations on whatever account; and all other things in action of each of such corporations, are by virtue of such merger or consolidation automatically vested in such surviving corporation.

3. All such property, rights, privileges, powers, franchises and immunities and all and every other such interest shall be thereafter as effectually the property of the surviving corporation as they were of the respective constituent corporations; and title to any real estate, whether by deed or otherwise, under the laws of this State, vested in any of such constituent corporations shall not revert or be in any way impaired by reason of such merger or consolidation. All rights of creditors and all liens upon the property of any of such constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the merger or consolidation; and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to the surviving corporation and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

§ 3483. Bulk reinsurance

1. A domestic insurer may reinsure, and thereby transfer its direct liability as the insurer with respect to, all or substantially all of its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the commissioner, or if disapproved by him.

2. The commissioner shall disapprove such agreement within a reasonable time after filing if he finds:

A. That the plan and agreement are unfair and inequitable to any insurer or to policyholders involved; or

B. That the reinsurance, if effectuated, would substantially reduce the protection or service to the policyholders of any domestic insurer involved; or

C. That the agreement does not embody adequate provisions by which the reinsuring insurer becomes liable to the original insureds for any loss or damage occurring under the policies reinsured in accordance with the original terms of such policies; or

D. That the assuming reinsurer is not authorized to transact such insurance in this State, or is not qualified as for such authorization or will not appoint the commissioner and his successors as its irrevocable attorney for service of process, so long as any policy so reinsured or claim thereunder remains in force or outstanding; or

E. That such reinsurance would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or

F. That the proposed bulk reinsurance is not free of other reasonable objections.

3. If the commissioner disapproves the agreement he shall forthwith notify in writing each insurer involved, specifying his reasons therefor.

4. If for reinsurance of all or substantially all of the business in force of an insurer at a time when the insurer's capital, if a stock insurer, or surplus, if a mutual insurer, is not impaired, the plan and agreement of such reinsurance must be approved by a vote of not less than  $\frac{2}{3}$  of the insurer's outstanding stock having voting rights, if a stock insurer, or of members, if a mutual insurer, voting thereon, at a meeting of stockholders or members called for the purpose pursuant to such reasonable notice and procedure as is provided for in the agreement. If a mutual life insurer, right to vote may be limited to members otherwise entitled to vote and whose policies are other than term policies for terms of less than 20 years, or group policies, and have been in effect for more than one year.

5. No director, officer, agent or employee of any insurer party to such reinsurance, or any other person, shall receive any special compensation for arranging or with respect to, any such reinsurance except as is set forth in the reinsurance agreement filed with the commissioner.

#### § 3484. Voluntary dissolution

1. A solvent domestic stock or mutual insurer, which then is not the subject of a delinquency proceeding under chapter 57, may voluntarily dissolve under a plan therefor in writing authorized by its board of directors, approved or adopted by stockholders or members as hereinafter provided, and filed with

and approved by the commissioner. The plan shall provide for the disposition, by bulk reinsurance or other lawful procedure, of all insurance in force in the insurer, for full discharge of all obligations of the insurer, and designate or provide for trustees to conduct and administer the settlement of the insurer's affairs.

2. The commissioner shall approve the plan unless found by him to be unlawful or unfair or inequitable or prejudicial to the interests of any stockholder, policyholder or creditor.

3. If a mutual insurer, the plan must have been approved by vote of not less than  $\frac{2}{3}$  of the policyholders voting thereon at a special meeting of such policyholders called and held for the purpose pursuant to such reasonable notice and information as the commissioner may have approved.

4. If a stock insurer, the plan must have been adopted by vote of not less than  $\frac{2}{3}$  of all outstanding voting securities of the insurer at a special meeting of such security holders called and held for the purpose.

5. Following approval of the dissolution and plan therefor by members or adopted thereof by stockholders as above provided, and approval by the commissioner, the trustees designated or provided for in the plan shall proceed to execute the plan. When all liabilities of the corporation have been discharged or otherwise adequately provided for, and all assets of the corporation have been liquidated and distributed in accordance with the plan, the trustees shall so certify in quadruplicate under oath in writing. The trustees shall deliver the original and the 3 copies of such certificate to the commissioner. The commissioner shall make such examination of the affairs of the corporation, and of the liquidation and distribution of its assets and discharge of or provision for its liabilities as he deems advisable. If upon such examination he finds that the facts set forth in the certificate of the trustees are true, he shall inscribe his approval on the certificate, file the original thereof so inscribed in the office of the Secretary of State, file a copy thereof in the department, and return the remaining 2 copies to the trustees. The trustees shall file one of such copies for recording in the registry of deeds of the county in this State in which the corporation's principal place of business is located, and retain the fourth copy for the corporate files.

6. Upon filing the certificate of the trustees with the Secretary of State as provided in subsection 5, the Secretary of State shall issue to the trustees his certificate of dissolution, and the corporate existence of the corporation shall thereupon forever terminate. The Secretary of State shall charge and collect a fee of \$25 for the filing of the trustee's certificate, and shall deposit the same with the Treasurer of State for credit to the General Fund.

#### § 3485. Mutual member's share of assets on liquidation

1. Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, retirement of guaranty fund capital shares and payment of expenses of administration and of the dissolution and liquidation procedure, shall be distributed to currently existing persons who had been members of the insurer for at least a year and who were its members at any time within 36 months next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority, whichever date is the earlier; except, that if the commissioner

has reason to believe that those in charge of the insurer's management have caused or encouraged the reduction of the number of members of the insurer, or changed the identity thereof, in anticipation of liquidation and for the purpose of reducing or controlling thereby the number or identity of persons who may be entitled to share in distribution of the insurer's assets, he may enlarge the qualification period in such manner as he deems to be reasonable.

2. The insurer shall make a reasonable classification of its policies so held by such members, and a formula based upon such classification for determination of the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner, who shall approve the same except for reasonable cause.

## CHAPTER 49 CONTINUITY OF MANAGEMENT

### § 3551. Purpose

Enemy attack could seriously disrupt the management functions of an insurance organization. Prompt resumption of insurance operations following attack is in the public interest and requires provisions for the continuity of management. It is essential that advance corporate action be taken to provide for the reconstitution of the board of directors or substitute governing body, for the succession of key personnel and for the designation of alternate headquarters.

### § 3552. Definitions; interpretation of chapter

When use in this chapter, the following terms shall mean and include the following:

1. **Acting director.** Acting director means an acting director elected or appointed in accordance with this chapter.

2. **Acting officer.** Acting officer means an acting officer appointed in accordance with this chapter.

3. **Acute emergency.** Acute emergency means a period, as formally declared and proclaimed by the Governor of this State, in which, by reason of loss of life, epidemic disease, destruction or damage of property, contamination of property by radiological, chemical or bacteriological means, or disruption of the means of transportation or communication, resulting from an attack, it is impossible or impractical for the business of insurance in this State to be conducted in strict accord with the provision of law or charters applicable thereto.

4. **Attack.** Attack means any attack, actual or imminent, or series of attacks by an enemy of a foreign nation upon the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, shell fire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.

5. **Board.** Board means the board of directors, board of trustees, committee or similar body having control of the affairs of an insurance organization.

6. Charter. Charter means the certificate of organization or incorporation or special law incorporating a corporation together with its bylaws, or the agreement establishing a fund or association together with its constitution and bylaws.

7. Commissioner. Commissioner means the State Insurance Commissioner or person duly designated to exercise the powers of that office during an attack or acute emergency.

8. Director. Director means the director, trustee or member of the board.

9. Domestic organization. Domestic organization means any insurance organization which is domiciled in this State.

10. Insurance organization. Insurance organization means any insurer, rating organization, service or advisory organization, joint underwriting association, welfare or pension fund, which is subject, in whole or in part, to the insurance laws of this State.

11. Officer. Officer means an officer of a domestic insurance organization.

12. Quorum. Quorum means the minimum number of directors required by charter and bylaw, exclusive of the provisions of this chapter, to be present for valid action to be taken at a meeting of a board with respect to each particular item of business which may come before such meeting.

This chapter does not and shall not be construed to limit the powers of, or permit or require, any insurance organization which is not domiciled in this State or of any branch office, or agents of such insurance organization, or the directors, officers, members, policyholders, or stockholders of any such organization to act, or fail to act, in such fashion as would violate the laws of the jurisdiction wherein such organization has its domicile.

### § 3553. Emergency bylaws

1. With the approval of the commissioner, any domestic organization may, at any time, adopt, in the same manner as in the case of ordinary bylaws, emergency bylaws to become operative during a period of acute emergency. Emergency bylaws may contain provisions with respect to the number of directors capable of acting which shall constitute its board, the number of such directors which shall constitute a quorum at a meeting of the board, the number of votes necessary for action by such board, the manner in which vacancies on the board shall be filled, the line of succession of its officers, and the interim management of the affairs of the insurance organization; such provisions, if approved by the commissioner, need not comply with the requirement of the charter of such domestic organization or of the insurance or incorporation laws of this State.

2. Section 3554 and section 3555, subsections 2 to 6, shall not be applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the commissioner.

### § 3554. Change of location; emergency boards of directors

Notwithstanding any provision of its charter, any domestic insurance organization, without complying with any provision of law requiring approval, or application for approval, of a change of location of its principal office may, from time to time, change the location thereof during an acute emergency to a suitable location within the United States, and may carry on its business at such new location during such acute emergency, and for a reasonable time thereafter. Any insurance organization which changes the location of its principal office during an acute emergency shall notify the commissioner thereof in writing as soon as practical, stating the address of the new location, the address of the former location, and the dates when business is ceasing at the former location and commencing at the latter location.

Notwithstanding any contrary provision of law or with its charter, if at any time during an acute emergency affecting any domestic insurance organization, no person otherwise empowered to call meetings of the board is capable of acting, a meeting thereof may be called by any director or acting director or if no director or acting director is capable of acting, by any officer or acting officer. If it shall be impracticable or impossible to give notice of a meeting of the board in the manner prescribed by charter and law, other than this chapter, the person calling such a meeting may give notice thereof by making such reasonable efforts as circumstances may permit to notify each director and acting director of the time and place of the meeting, but need not specify the purposes thereof. Failure of any director or acting director to receive actual notice of a meeting of directors and acting directors shall not affect the power of the directors and acting directors present at such meeting to exercise the powers of an emergency board of directors as prescribed in this section. Nothing in this chapter shall be construed as requiring a meeting of the board of such an organization to be convened in any manner different from that prescribed by its charter and by the provisions of law other than this chapter.

If 3 or more directors and acting directors of any domestic insurance organization are present at any meeting of its board duly convened during an acute emergency affecting such domestic insurance organization, they shall constitute its emergency board of directors which, notwithstanding any contrary provision of law or of its charter, shall have the power, subject to the limitations prescribed by this chapter, by a majority of those present, to take any and every action which may be necessary to enable such domestic insurance organization to meet the exigencies of the acute emergency and conduct its business during such period, but no other powers. The powers of an emergency board of directors shall include, but shall not be limited to, the following powers:

1. Fill vacancies and absentees. At any meeting, to elect such acting directors as it may deem necessary, without regard to the number of directors which would otherwise be required, to serve in any positions on such board which are vacant or in place of any directors or acting directors who are absent from such meeting, but not to elect any director on a permanent basis.

2. Acting officers and duties. To elect such acting officers as it may deem necessary, without regard to the number of officers which would otherwise be required, to serve in any offices which are vacant or in place of any officers or acting officers who fail to appear and assume their duties, to fix the compensation and determine the powers and duties of acting officers and to remove acting officers but not to remove any officer or to fill any vacancy on a

permanent basis or to cause the insurance organization to enter into any contract of employment for a term in excess of one year.

3. Change of location. To cause the insurance organization to change the location of its principal office, pursuant to this section, or any of its places of business, and to authorize such action as it may deem appropriate to acquire space and facilities at new locations, but not to acquire for use as its principal office property in fee or for a term in excess of one year.

4. Postpone meetings. To postpone any meeting of the stockholders, policyholders or members or directors of such organization if, in the judgment of majority of the members of such emergency board of directors, it would be impracticable to hold such meeting at the time it would otherwise have been held or conducted.

5. Call meetings. If it shall appear to an emergency board of directors that a quorum of the board cannot be assembled within a reasonable time, to call a meeting of the stockholders, policyholders or members of the insurance organization to be held as soon as the circumstances may reasonably permit, at a place to be designated by the emergency board of directors within this State or a contiguous state, for the purpose of electing directors to fill vacancies on the board, but for no other purpose, and to propose nominees for such election. Any such meetings of stockholders, policyholders or members shall be held upon notice given in accordance with the charter of the organization and applicable law other than this section.

As soon as practicable after each meeting of an emergency board of directors, the person who presided thereat shall notify the commissioner in writing of the time and place of such meeting, of the manner in which notice thereof was given, of the persons present and of all actions taken at such meeting.

No person prohibited by law or by the charter of a domestic insurance organization from serving as a member of its board shall be eligible to serve as an acting director except that no person shall be disqualified to serve as an acting director by reason of his not being a stockholder, policyholder or member of such insurance organization, by reason of his not being a resident of this State or of a contiguous state, or by reason of the number of directors or acting directors who are officers, acting officers or employees of the insurance organization. Any person may serve as an acting director of a fund who is a director, acting director, officer or acting officer of an organization which is a party to the agreement creating the fund. No oath of acting directors shall be required.

Acting directors elected under this section or appointed under section 3555 shall be entitled to vote at all meetings of emergency board of directors equally with directors. Acting directors shall not be entitled to take part in the deliberations or to vote at any meeting of the board which is duly convened in accordance with the applicable provisions of its charter and of law other than this chapter and at which a quorum is present. Each acting director shall serve until the director or acting director in whose place he was elected or appointed shall attend the meeting of the board or until the director is duly elected to fill the vacancy in which such acting director has been serving, whichever event occurs earlier. An acting director shall be entitled to the compensation, if any, payable to a director.

Acting officers elected pursuant to this section shall have powers and duties and receive such compensation as may from time to time be determined by the emergency board of directors. Each acting officer shall serve until the officer in whose place he was elected shall appear and assume his duties or until his successor officer or acting officer shall be elected, whichever event occurs earlier.

This section shall not be deemed applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the commissioner.

§ 3555. Powers of the commissioner

1. Designate additional acting directors. If at any time during an acute emergency, the number of directors or acting directors of a domestic insurance organization who are capable of acting shall be less than 3, as determined by the commissioner after a reasonable investigation, the commissioner shall have the power to designate additional acting directors in such number as will bring to 3 the number of directors and acting directors who are capable of acting.

2. Resolve controversies. To resolve controversy as to the power of any group of persons purporting to act as an emergency board of directors so to act, the commissioner shall, upon a determination that such action will tend to promote the safe and sound and orderly conduct of the business of any domestic insurance organization, have power to issue orders declaring that any such group shall or shall not have the powers of an emergency board of directors, or confirming, modifying or vacating in whole or in part any action taken or purportedly taken by any such group or by removing any acting director.

3. Declare provisions of law operative or inoperative. At any time after an attack, upon his determination that such action will tend to promote certainty as to the powers of insurance organizations or individuals pursuant to this chapter or that such action is desirable to enable insurance organizations to take preparatory precautions prior to the occurrence of an acute emergency, the commissioner shall have power to declare that any provision of this chapter which he may specify shall be operative with respect to any domestic insurance organization or to the Maine business of any other insurance organization which he may designate. Upon such declaration such organization and its directors, officers, acting directors and acting officers shall have all powers conferred by this chapter. The failure of the commissioner so to declare shall not be deemed to limit the powers of any organization or its directors, officers, acting directors or acting officers where an acute emergency exists in fact.

At any time after the commencement of an acute emergency or after the commissioner shall have declared any provision of this chapter operative under this subsection upon his determination that an insurance organization is able, in whole or in part, to carry on its business in compliance with its charter and the laws, other than this chapter, the commissioner shall have power to declare that any provision of this chapter which he may specify shall be inoperative with respect to any domestic insurance organization or in the Maine business of any other insurance organization which he may designate. Upon such declaration, such organization shall be governed by its

charter and the provisions of law other than this chapter, except insofar as they remain inoperative.

4. Possession of business and property. Upon the determination that, as a result of an acute emergency, the business and affairs of an insurance organization cannot otherwise be conducted in a safe and sound manner, the commissioner may forthwith take possession of the business and property of the insurance organization within this State or, if a domestic insurance organization, its business and property wherever situated. This chapter shall be applicable in any case in which the commissioner takes possession of an insurance organization under this subsection as though the insurance organization were an insurer of which the commissioner had taken possession under this chapter, except that no such provision shall be applicable which the commissioner shall have declared inapplicable under this subsection. The commissioner shall have power to declare inapplicable any such provision upon his determination that the same is inappropriate or unnecessary to protect the interest of the public or the stockholders or creditors of the insurance organization, in view of the acute emergency and the nature of the organization.

5. When powers exercised. The powers given the commissioner by subsections 2 and 4 shall be exercised by him only in the event that there is no court of competent jurisdiction available to which an application can be made for an order permitting him to exercise such powers with respect to a particular insurance organization. The powers conferred by subsection 4 shall not be exercised in a case of an insurance organization which is not insolvent within the meaning of this chapter, unless the commissioner finds that such insurance organization lacks personnel able to manage its business in the interest of the public stockholders and policyholders.

6. Regulations. The commissioner shall have power to issue general and specific regulations, directives and orders consistent with and in furtherance of the purposes of this chapter.

#### § 3556. General provisions

1. Presumption. In any action or proceeding it shall be presumed that an acute emergency existing within any city or county within this State constitutes an acute emergency affecting every insurance organization doing business within such city or county.

2. Powers of board. During an acute emergency the board of a domestic insurance organization which has adopted emergency bylaws approved by the commissioner shall have all of the powers conferred by such bylaws, and no other or different powers with respect to the subject matter of this chapter, and the board of a domestic insurance organization which has not adopted emergency bylaws approved by the commissioner shall have all of the powers of an emergency board of directors as the same are provided for under this chapter.

#### § 3557. Governor's authority; effect of other laws

The Governor of this State, or his successor in office, alone shall have the power to proclaim and declare the fact that a period of "acute emergency" exists at any time or times or has terminated, as such term is defined in this chapter. Nothing in this chapter shall be deemed or construed to affect sec-

tions 471 to 479, to the extent that the latter sections may be inconsistent herewith.

CHAPTER 51  
DOMESTIC MUTUAL ASSESSMENT INSURERS

§ 3601. Scope of chapter

1. This chapter applies only as to domestic mutual insurers heretofore or hereafter authorized to transact and transacting fire and related insurances in this State on the assessment plan, as defined in section 3603, and to the assessment department of insurers also transacting insurance on the cash premium plan.

2. Insurers to the extent to which subject to this chapter may in this chapter be referred to as "mutual assessment insurers."

§ 3602. Chapter exclusive

Nothing in this Title shall either directly or indirectly apply to such mutual assessment insurers except as contained or referred to in this chapter.

§ 3603. Mutual assessment plans; definitions

1. For the purposes of this Title a mutual assessment insurer is a mutual insurer which is doing business on:

- A. A post-loss assessment plan; or
- B. On an advance assessment or contingent liability plan.

2. A post-loss assessment plan insurer is one which depends in whole or substantial part on regular or special assessments levied upon its members after a loss or series of losses for payment of losses and expenses. A post-loss assessment plan insurer may collect from each member such initial amount as it may deem proper prior to or at the time of the effectuation of the member's insurance. Future regular or special assessments may be secured by use of a premium note signed by the policyholder.

3. An advance assessment plan insurer shall by its bylaws and policies fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than one or more than 6 times the advance assessment for the member's policy at the annual advance assessment rate for a term of one year. Such an advance assessment plan insurer may issue both assessable and nonassessable advance cash premium policies. Any assessment, special or regular, levied under the contingent liability provisions of this chapter shall be for the exclusive benefit of the holders of policies subject to assessment, and such policyholders shall not be liable to an assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the assessable business bears to the total deficiency.

4. Nothing in this chapter shall be deemed to prohibit the acquisition, accumulation and maintenance of surplus and unallocated funds.

§ 3604. Insuring powers; reinsurance

1. An assessment plan insurer shall have authority to transact, and shall transact only such insurance as is permitted by its charter and by its certificate of authority.

2. Any such insurer shall have power to cede reinsurance of any risk or part thereof which it is authorized to insure direct; and shall have power to accept reinsurance from other domestic assessment plan insurers of any risk which it has authority to insure direct.

§ 3605. Formation of new assessment plan insurers

Assessment plan insurers shall hereafter be formed under the applicable provisions of sections 3306 (incorporation of domestic stock, mutual insurers) to 3309 (completion of incorporation; general powers, duties); except, that the certificate of organization of the corporation shall stipulate that the corporation is formed to transact insurance on the assessment plan, and other provisions contained in the certificate shall be consistent with the applicable provisions of this chapter.

§ 3606. Certificate of authority required

No such insurer shall transact insurance in this State except as authorized by a subsisting certificate of authority issued to the insurer by the commissioner.

§ 3607. Capital funds required; existing insurers

1. A mutual assessment insurer heretofore organized to transact and transacting only fire, marine and glass insurance shall not have a net retention of liability on any one risk in excess of \$200 until its gross assets exceed \$2,000, after which its net retention of liability shall be as provided in section 3623.

2. Mutual insurers organized prior to January 1968 to transact and transacting kinds of insurance other than fire, marine and glass shall have a guaranty capital fund in amount not less than as required under laws in force immediately prior to the effective date of this Act, and if organized on or after January 1, 1968, shall have guaranty capital funds of not less than \$500,000. Such an insurer shall not be authorized to transact insurance until at least  $\frac{1}{4}$  of its guaranty capital funds have been paid in, in cash, and invested in such manner as is provided in chapter 13.

3. If an insurer operating under this section fails to comply with the commissioner's request to increase its paid-in guaranty capital funds within the amount otherwise required by law, it shall cease to write any class or kind of insurance other than fire, marine or glass until such time as the commissioner's request has been complied with.

4. Except as hereinabove provided, all such insurers holding subsisting certificates of authority immediately prior to the effective date of this Act may continue to be so authorized as long as qualified for such authority as under laws in force immediately prior to such effective date.

§ 3608. Capital funds required; new mutual assessment insurers

A mutual insurer hereafter organized to transact property insurance on the assessment plan shall not be authorized to transact insurance unless it:

1. Establishes and maintains guaranty capital funds of at least \$50,000, all of which shall have been paid in, in cash, and
2. Receives not less than 25 bona fide written applications from not less than 25 persons for insurance of the kind proposed to be transacted, of not less than \$100,000 in amount at risk as to principal hazards to be insured, and
3. Receives or collects the initial payment on the premium for the insurance applied for, together with such premium notes as it is contemplated to use in connection with applications for insurance in general, and
4. Is otherwise qualified for such authority under this chapter.

§ 3609. New assessment plan insurers; conversion

Mutual insurers hereafter organized to transact insurance on the assessment plan shall not be authorized to transact any kind of insurance other than property insurance, or to transact insurance of any kind on the cash premium plan, unless the insurer qualifies for such authority in accordance with the requirements of domestic mutual insurers hereafter organized under chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers), and by appropriate amendment to its certificate of organization converts to such a legal reserve insurer.

§ 3610. Guaranty capital shares; dividends, investment, deposit, voting rights

1. Where the insurer is permitted or required to have guaranty capital shares such capital shall be divided into shares of \$100 each and certificates shall be issued therefor.
2. The holders of guaranty capital shares may receive dividends not exceeding 7% of the amount received by the insurer for issuance of such shares in any one calendar year from the net earnings of the insurer after providing for all expenses, losses, reserves and liabilities then incurred.
3. Guaranty capital resulting from shares shall be invested in such manner as is provided in chapter 13.
4. Guaranty capital shareholders and members of the insurer shall be subject to the same provisions of law relative to their right to vote as apply respectively to stockholders in stock insurers and policyholders in purely mutual insurers.

§ 3611. Guaranty capital shares; increase of paid-in capital

If an insurer heretofore or hereafter has been authorized to transact insurance upon the basis of guaranty capital shares not 100% paid-in, the unpaid portion of such guaranty or so much thereof as the commissioner deems necessary, shall be paid in at such times as in the opinion of the commissioner is necessary for the adequate protection of the policyholders.

§ 3612. Guaranty capital shares; deficiency and assessment

When the cash and other available assets of an insurer with guaranty capital shares are exhausted, such part of the guaranty capital fund as may be required shall, with the approval of the commissioner, be drawn and used to pay losses then due. When such fund is so drawn upon, the directors of the insurer shall make good the amount so drawn by assessments upon the contingent funds or notes of the insurer or by borrowed funds as provided for under section 3415; and unless such fund is restored within 6 months from the date of withdrawal, the holders of guaranty fund shares shall be assessed in proportion to the amount of such shares owned by them for the purpose of restoring such capital.

§ 3613. Guaranty capital shares; retirement

Guaranty capital shares may be retired by vote of the policyholders of the insurer when the insurer's surplus, over and above all liabilities including guaranty capital, equals or exceeds the amount of the guaranty capital shares. The guaranty capital shares may be retired in part when the insurer's remaining net surplus and guaranty fund will not thereby be reduced below the amount of original guaranty capital.

§ 3614. Notice of contingent liability; reduction

Where contingent liability of policyholders is provided for, notice of the existence of such liability shall be plainly and legibly given in each policy. Whenever any reduction is made in the contingent liability of members, the reduction shall apply proportionally to all policies in force.

§ 3615. Delivery, acceptance of policy

The delivery of the policy to the insured and payment by the insured of the final charge shall be deemed an acceptance of the contract.

§ 3616. Assessment; remedy if not paid

If any lawful assessment is not paid within 30 days after written demand by the insurer or its agent, the directors may declare the policy suspended until the assessment is paid or may at their option sue for and collect the amount due on such assessment. Mailing such demand addressed to the insured at his address last of record with the insurer, or delivering it to him in hand by an authorized agent or officer of the insurer, shall be deemed conclusive proof that demand has been duly made.

§ 3617. Assessment — Court review; adjustment of claims where no assessment made

1. Whenever the directors of a mutual assessment insurer make an assessment or call on its members for money, or by vote determine that there exists a necessity for such assessment or call, they, or any person interested in the insurer as an officer, policyholder or creditor, may file in the Superior Court in any county, a complaint praying the court to examine the assessment or call or to determine the necessity therefor and all matters connected therewith, and to ratify, amend or annul the assessment or call or to order that the same be made as law and justice may require.

2. The decision on such complaint, when filed by any party except the insurer, or a receiver, or the commissioner, shall rest in the discretion of the court.

3. Whenever the directors unreasonably neglect to make an assessment or call to satisfy an admitted or ascertained claim upon the insurer, any judgment creditor, or any person holding such admitted or ascertained claim, or the commissioner may make the application. Upon such application, if made by the directors, or upon order of court if made by application of any other party, the directors shall set forth the claims against the insurer, its assets and all other facts and particulars appertaining to the matter.

§ 3618. Same — Order of notice to parties interested, and proceedings

The court before which the complaint described in section 3617 is filed shall order notice to all parties interested, by publication or otherwise. Upon the return thereof, the court shall proceed to examine the assessment or call, the necessity therefor and all matters connected therewith. Any parties interested may appear and be heard thereon, and all questions that may arise shall be heard and determined as in other civil actions in which equitable relief is sought. The court may refer the apportionment or calculation to any competent person, and upon the examination may ratify, amend or annul the assessment or call, or order one to be made. In case the assessment or call is altered or amended, or one is ordered, the directors shall forthwith proceed to vote the same in legal form and the record of such vote shall be set forth in a supplemental answer.

§ 3619. Same — Proceedings before master or auditor

Whenever the court appoints a master or auditor to make the apportionment or calculation for an assessment, such master or auditor shall appoint a time and place to hear all parties interested in the assessment or call, and shall give personal notice thereof, in writing, to the commissioner, and through the post office or in such other manner as the court directs, so far as he is able, to all persons liable upon the assessment or call. The auditor or master shall hear the parties and make report to the court of all his doings respecting such assessment or call and all matters connected therewith, and all parties interested in such report or assessment have a right to be heard by the court respecting the same, in the same manner as is provided.

§ 3620. Same — When assessment final; costs; control of funds and payment of assessments

1. When an assessment or call has been ratified, ascertained or established as provided for in sections 3617 to 3619, a decree shall be entered which shall be final and conclusive upon the insurer and all parties liable to the assessment

or call as to the necessity of the same, the authority of the insurer to make or collect it, the amount thereof and all formalities connected therewith. Where an assessment or call is altered or amended by vote of directors and decree of the court thereon, such amended or altered assessment or call is binding upon all parties who would have been liable under it as originally made, and in all legal proceedings shall be held to be such original assessment or call.

2. All proceedings shall be at the cost of the insurer, unless the court for cause otherwise orders.

3. In all cases the court may control the disposal of the funds collected under these proceedings, and may issue all necessary processes to enforce the payment of such assessments against all persons liable therefor.

#### § 3621. Same — Assessment not sufficient; collection stayed by court

Whenever it shall appear to the court before which the complaint provided for in section 3617 is pending, that the net proceeds of any assessment or call will not be sufficient to furnish substantial relief to those having claims against the insurer, it may decree that no assessment shall be collected. When, on application of the commissioner or any person interested, the court is of opinion that further attempts to collect an assessment then partially collected will not benefit those having claims against the insurer, it may stay its further collection.

#### § 3622. Nonassessable policies; assessable, nonassessable liability

1. A mutual insurer heretofore formed and transacting insurance under this chapter may issue nonassessable advance cash premium policies in this State upon compliance with either of the following requirements:

A. Surplus. The insurer shall have and maintain a surplus to policyholders, as determined by its last annual statement filed with the commissioner, of not less than \$100,000, or

B. Surplus and unearned premium reserve. The insurer shall have and maintain a surplus to policyholders, as determined by its latest annual statement filed with the commissioner, of not less than \$75,000, provided its unearned premium reserve is at all times less than its surplus to policyholders.

2. If such an insurer, after qualifying to issue a nonassessable cash premium policy, fails to maintain one of the above requirements it shall cease to issue a nonassessable policy until it has again met and maintained the requirements for a period of one year.

#### § 3623. Limit of risk

1. Except as provided in section 3607, subsection 1, an insurer shall not retain liability as to any one risk in an amount exceeding 10% of its gross assets, including 80% of the amount at any time due on its premium notes.

2. Valid reinsurance ceded by the insurer and then in force shall be deducted from the gross risk assumed in determining net risk retained.

§ 3624. Unearned premium reserve

An insurer which collects a cash premium or advance assessment shall maintain an unearned premium reserve equal to 50% of the cash premium or advance assessment on its policies in force.

§ 3625. Directors' residence, compensation

1. A majority of the board of directors of the insurer shall be residents of, and actually reside in, this State.

2. The salary or compensation for services of the directors of the insurer shall be fixed by the policyholders at their annual meeting.

§ 3626. Annual statement by directors

The directors of every insurer shall cause a detailed account of its expenses for the year preceding, the amount of property actually insured at that time, the amount due on its premium notes and the amount of all debts due to and from the insurer to be laid before the policyholders at the annual meeting.

§ 3627. Agents; liability

Any person who solicits insurance on behalf of any insurer or transmits for a person other than himself an application for, or a policy of, insurance to or from such insurer, or in any manner acts in the negotiation of such insurance, or in the inspection or valuation of the property insured shall be deemed the agent of the insurer, and except as otherwise provided, shall become liable to all the duties, requirements, liabilities and penalties to which an agent of any insurer is subject.

§ 3628. Agents — Licensing

All agents of insurers subject to this chapter shall be subject to the applicable requirements of chapter 17 (agents, brokers, consultants, adjusters), except that:

1. No personal examination shall be required of the applicant and no examination fee shall be charged, as to an applicant for a license as an agent of an insurer writing insurance solely on the assessment plan, if on the effective date of this Act the applicant was also a director or officer of such insurer.

2. No fee shall be required by the commissioner for license as resident agent issued to any individual referred to in subsection 1, as agent of such an insurer.

§ 3629. Other provisions applicable

The following chapters and provisions of this Title, where and to the extent not inconsistent with this chapter and the reasonable implications thereof, also apply as to domestic mutual assessment insurers which are subject to this chapter:

1. Chapter 1 (general definitions and provisions).
2. Chapter 3 (the insurance commissioner), except that an insurer transacting insurance only on the assessment plan shall not be subject to section 228 (examination expense), and shall not be required to pay the expense of examination of the insurer.
3. Chapter 5 (authorization of insurers and general requirements), except that the following sections or provisions shall not apply:
  - A. Section 410 (capital funds required);
  - B. Section 411 (insuring combinations without additional capital funds);
  - C. Section 413 (application for certificate of authority), to the extent that payment is required of a fee for application for or issuance of a certificate of authority of an insurer transacting insurance on the assessment plan only;
  - D. Section 415 (continuance, expiration, reinstatement of certificate of authority), to the extent that payment of fee for continuance of certificate of authority is required of an insurer transacting insurance on the assessment plan only; and
  - E. Section 423 (annual statement), to the extent that payment of a fee for filing the annual statement is required of an insurer transacting insurance on the assessment plan only.
4. Chapter 7 (fees and taxes), except as otherwise expressly provided in this chapter, and that no fee shall be charged for the certificate of authority of an insurer transacting insurance on the assessment plan only.
5. Chapter 9 (kinds of insurance), except the following sections:
  - A. Section 702 ("life insurance" defined);
  - B. Section 709 ("title insurance" defined); and
  - C. Section 721 (limits of risk).
6. The following sections of chapter 11 (assets and liabilities):
  - A. Section 901 ("assets" defined);
  - B. Section 902 (assets not allowed);
  - C. Section 922 (disallowance of "wash" transactions); and
  - D. Sections 981 through 984 (valuation of assets).
7. Chapter 13 (investments).

8. Chapter 15 (administration of deposits).
9. Chapter 17 (agents, brokers, consultants, adjusters).
10. Chapter 23 (trade practices and frauds).
11. Chapter 25 (rates and rating organizations), except as provided in such chapter 25.
12. Chapter 27 (the insurance contract); except that section 2415 (charter, bylaw provisions) shall not apply as to insurance written on the mutual assessment plan.
13. Chapter 39 (casualty insurance contracts).
14. Chapter 41 (property insurance contracts).
15. Chapter 43 (surety insurance contracts).
16. Chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers), except as to the following sections:
  - A. Sections 3352 to 3358 (initial qualification, qualifying applications for insurance, guaranty capital, and related subjects); and
  - B. Sections 3364 to 3367 (provisions relative to contingent liability and nonassessable policies).
17. Chapter 49 (continuity of management).
18. Chapter 57 (delinquent insurers; rehabilitation and liquidation).

## CHAPTER 53.

### RECIPROCAL INSURERS

#### § 3851. "Reciprocal" insurance defined

"Reciprocal" insurance is that resulting from an interchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interchange being effectuated through an "attorney-in-fact" common to all such persons.

#### § 3852. Scope of chapter — existing insurers

1. All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

2. Existing authorized reciprocal insurers shall after the effective date of this Act comply with the provisions of this chapter, and shall make such amendments to their subscribers' agreement, power of attorney, policies and other documents and accounts and perform such other acts as may be required

for such compliance.

§ 3853. Insuring powers of reciprocals

1. A reciprocal insurer may, upon qualifying therefor as provided for by this Title, transact any kind or kinds of insurance defined by this Title, other than life or title insurances.

2. Such an insurer may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance it is authorized to transact direct.

§ 3854. Name; suits

A reciprocal insurer shall:

1. Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting" or "association."

2. Sue and be sued in its own name.

§ 3855. Attorney

1. "Attorney", as used in this chapter, refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm or corporation.

2. The attorney of a foreign reciprocal insurer, which insurer is duly authorized to transact insurance in this State, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this State, be thereby deemed to be doing business in this State within the meaning of any laws of this State applying to foreign persons, firms or corporations.

3. The subscribers and the attorney-in-fact comprise a reciprocal insurer and a single entity for the purposes of chapter 7 as to all operations under the insurer's certificate of authority.

§ 3856. Organization of reciprocal insurer

1. Twenty-five or more persons domiciled in this State may organize a domestic reciprocal insurer and make application to the commissioner for a certificate of authority to transact insurance.

2. The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority, a declaration setting forth:

A. The name of the insurer;

B. The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this State;

- C. The kinds of insurance proposed to be transacted;
- D. The names and addresses of the original subscribers;
- E. The designation and appointment of the proposed attorney and a copy of the power of attorney;
- F. The names and addresses of the officers and directors of the attorney, if a corporation, or its members if a firm;
- G. The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof;
- H. That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- I. A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the commissioner;
- J. A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by section 410 is on hand; and
- K. A copy of each policy, endorsement and application form it then proposes to issue or use.

The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

#### § 3857. Certificate of authority

1. The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

2. The commissioner may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, for failure of the attorney to comply with any applicable provision of this Title.

#### § 3858. Power of attorney

1. The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

2. The power of attorney must set forth:

A. The powers of the attorney;

B. If a domestic reciprocal insurer, that the attorney is empowered to

accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;

C. The general services to be performed by the attorney;

D. The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and

E. Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one nor more than 10 times the premium or premium deposit stated in the policy.

3. The power of attorney may:

A. Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

B. Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

C. Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

D. Contain other lawful provisions deemed advisable.

4. The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this State until approved by the commissioner.

### § 3859. Modifications

Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto.

### § 3860. Attorney's bond

1. Concurrently with the filing of the declaration provided for in section 3856, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this State for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection 2. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

2. The bond shall be in the penal sum of \$25,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands, and that he will not withdraw or appropriate to his own use from the funds of the insurer, any moneys or property to which he is not entitled under the power of attorney.

3. The bond shall provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney and the commissioner.

§ 3861. Deposit in lieu of bond

In lieu of the bond required under section 3860, the attorney may maintain on deposit with the Treasurer of State through the office of the commissioner, a like amount in cash or in value of securities qualified under this Title as insurers' investments, and subject to the same conditions as the bond.

§ 3862. Action on bond

Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

§ 3863. Service of process; judgment

1. Legal process shall be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal offices or by serving the commissioner as the insurer's process agent under sections 421 and 422.

2. Any judgment based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear, but in an amount not exceeding their respective contingent liabilities, if any, the same as though personal service of process was had upon each such subscriber.

§ 3864. Contributions to insurer

The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the commissioner. This section does not apply to bank loans, or to other loans made upon security.

§ 3865. Financial conditions; method of determining

In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

1. He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

2. The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit.

3. The surplus deposits of subscribers shall not be charged as a liability.
4. All premium deposits delinquent less than 90 days shall be allowed as assets.
5. An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.
6. The contingent liability of subscribers shall not be allowed as an asset.
7. The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

#### § 3866. Who may be subscribers

Individuals, partnerships and corporations of this State may make application, enter into agreement for and hold policies or contracts in or with and be a subscriber of any domestic, foreign or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this State shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations. Government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees or fiduciaries are authorized to exchange nonassessable reciprocal interinsurance contracts with each other and with individuals, partnerships and corporations to the same extent that individuals, partnerships and corporations are herein authorized to exchange reciprocal interinsurance contracts. Any officer, representative, trustee, receiver or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

#### § 3867. Subscribers' advisory committee

1. The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.
2. Not less than 2/3 of such committee shall be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.
3. The committee shall:
  - A. Supervise the finances of the insurer;
  - B. Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;
  - C. Procure the audit of the accounts and records of the insurer and of

the attorney at the expense of the insurer; and

D. Have such additional powers and functions as may be conferred by the subscribers' agreement.

#### § 3868. Subscribers' liability

1. The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several and proportionate liability, and not joint.

2. Except as to a nonassessable policy, each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one nor more than 10 times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in section 3872.

3. Each assessable policy issued by the insurer shall contain a statement of the contingent liability, set in type of the same prominence as the insuring clause.

#### § 3869. Subscribers' liability on judgment

1. No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days.

2. Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

#### § 3870. Assessments

1. Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner; or by the commissioner in liquidation of the insurer.

2. Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as computed in accordance with section 3872, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

3. In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

4. No subscriber shall have an offset against any assessment for which

he is liable, on account of any claim for unearned premium or losses payable.

#### § 3871. Time limit for assessments

Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

1. While his policy is in force or within one year after its termination, he is notified by either the attorney or the commissioner of his intentions to levy such assessment, or

2. If an order to show cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while his policy is in force or within one year after its termination.

#### § 3872. Aggregate liability

No one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year, in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

#### § 3873. Nonassessable policies

1. If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock and surplus required to be maintained by a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this State, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this State for so long as all such surplus remains unimpaired.

2. Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

3. The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualified to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

§ 3874. Subscribers' share in assets

Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus, and the return of any unused premium, savings or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were such within the 12 months prior to the last termination of its certificate of authority, according to such reasonable formula as the commissioner may approve.

§ 3875. Merger or conversion

1. A domestic reciprocal insurer upon affirmative vote of not less than  $\frac{2}{3}$  of its subscribers who vote on such merger pursuant to due notice and the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

2. Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

3. The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with section 3874 and a reasonable length of time within which to exercise such right.

§ 3876. Impaired reciprocals

1. If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.

2. If the attorney fails to make up such deficiency or to make the assessment within 30 days after the commissioner orders him to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this Title.

3. If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

CHAPTER 55.

FRATERNAL BENEFIT SOCIETIES

§ 4101. Fraternal benefit societies defined

1. Any incorporated society, order or supreme lodge, without capital stock, including one exempted under section 4142, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

2. When used in this chapter the word "society," unless otherwise indicated, shall mean fraternal benefit society.

§ 4102. Lodge system defined

A society having a supreme legislative or governing body and subordinate lodges or branches by whatever name known, into which members are elected, initiated or admitted in accordance with its constitution, laws, ritual and rules, which subordinate lodges or branches shall be required by the laws of the society to hold regular meetings at least once in each month, shall be deemed to be operating on the lodge system.

§ 4103. Representative form of government defined

A society shall be deemed to have a representative form of government when:

1. It provides in its constitution or laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members of such body as may be prescribed by the society's constitution and laws;

2. The representatives elected constitute a majority in number and have not less than  $\frac{2}{3}$  of the votes nor less than the votes required to amend its constitution and laws;

3. The meetings of the supreme legislative or governing body and the election of officers, representatives or delegates are held as often as once in 4 calendar years;

4. The society has a board of directors charged with the responsibility for managing its affairs in the interim between meetings of its supreme legislative or governing body, subject to control by such body and having powers and duties delegated to it in the constitution or laws of the society;

5. Such board of directors is elected by the supreme legislative or governing body, except in case of filling a vacancy in the interim between meetings of such body;

6. The officers are elected either by the supreme legislative governing body or by the board of directors; and

7. The members, officers, representatives or delegates shall not vote by proxy.

#### § 4104. Organization

The organization of a society shall be governed as follows :

1. Seven or more citizens of the United States, a majority of whom are citizens of this State, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated :

A. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing ;

B. The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this chapter, provided that any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal or religious advantages may be set forth among the purposes of the society ; and

C. The names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

2. Such articles of incorporation, duly certified copies of the constitution, laws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the commissioner, who may require such further information as he deems necessary. The bond with sureties approved by the commissioner shall be in such amount, not less than \$5,000 nor more than \$25,000, as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of law have been complied with, the commissioner shall so certify, retain and file the articles of incorporation and furnish the incorporators a preliminary certificate authorizing the society to solicit members as hereinafter provided.

3. No preliminary certificate granted under this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the 500 applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

4. Upon receipt of a preliminary certificate from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow or offer or promise to pay or allow, any death or disability benefit to any person until:

A. Actual bona fide applications for death benefits have been secured aggregating at least \$500,000 on not less than 500 lives;

B. All such applicants for death benefits shall have furnished evidence of insurability satisfactory to the society;

C. Certificates of examinations or acceptable declarations of insurability have been duly filed and approved by the chief medical examiner of the society;

D. Ten subordinate lodges or branches have been established into which the 500 applicants have been admitted;

E. There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

F. It shall have been shown to the commissioner by sworn statement of the treasurer, or corresponding officer of such society, that at least 500 applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least \$2,500, all of which shall be credited to the fund or funds from which benefits are to be paid and no part of which may be used for expenses. The advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within one year, as herein provided, such premiums shall be returned to the applicants.

5. The commissioner may make such examination and require such further information as he deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to the society a certificate to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate shall be prima facie evidence of the existence of the society at the date of such certificate. The commissioner shall cause a record of such certificate to be made. A certified copy of such record may be given in evidence with like effect as the original certificate.

6. Every society shall have the power to adopt a constitution and laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of its members

from time to time. It shall have the power to change, alter, add to or amend such constitution and laws and shall have such powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

§ 4105. Corporate powers retained

Any incorporated society authorized to transact business in this State at the time this chapter becomes effective may thereafter exercise all the rights, powers and privileges prescribed in this chapter and in its charter or articles of incorporation as far as consistent with this chapter. A domestic society shall not be required to reincorporate.

§ 4106. Voluntary associations

No unincorporated or voluntary association shall be permitted to transact business in this State as a fraternal benefit society.

§ 4107. Location of office—place of meeting

The principal office of any domestic society shall be located in this State. The meetings of its supreme legislative or governing body may be held in any state, district, province or territory wherein such society has at least 5 subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State.

§ 4108. Consolidations and mergers

A domestic society may consolidate or merge with any other society by complying with the provisions of this section.

It shall file with the commissioner:

1. A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

2. A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the commissioner but not earlier than December 31, next preceding the date of the contract;

3. A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a 2/3 vote of the supreme legislative or governing body of each society; and

4. Evidence that at least 60 days prior to the action of the supreme legislative or governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official organ of each society.

If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, he shall approve the contract and issue his certificate to such effect. Upon

such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval filed with the commissioner or, if the laws of such state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of such state or territory and a certificate of such approval filed with the commissioner of this State.

Upon the consolidation or merger becoming effective as herein provided, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this State in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the addressees.

#### § 4109. Conversion of fraternal benefit society into mutual life insurance company

Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of section 3352 if such plan of conversion has been approved by the commissioner. Such plan shall be prepared in writing setting forth in full the terms and conditions thereof. The board of directors shall submit such plan to the supreme legislative or governing body of such society at any regular or special meeting thereof by giving a full, true and complete copy of such plan with the notice of such meeting. Such notice shall be given as provided in the laws of the society for the convocation of a regular or special meeting of such body, as the case may be. The affirmative vote of  $\frac{2}{3}$  of all members of such body shall be necessary for the approval of such agreement. No such conversion shall take effect unless and until approved by the commissioner who may give such approval if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

#### § 4110. Qualifications for membership

A society may admit to benefit membership any person not less than 15 years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than 6 months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society unless such additional benefits are issued pursuant to an existing contract under the terms of which such member is entitled to purchase such additional benefits without

furnishing evidence of insurability.

Any person admitted prior to attaining the full age of 21 years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

§ 4111. Articles of incorporation, constitution and laws—amendments

A domestic society may amend its articles of incorporation, constitution or laws in accordance with the provisions thereof by action of its supreme legislative or governing body at any regular or special meeting thereof or, if its articles of incorporation, constitution or laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its articles of incorporation, constitution or laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges or branches. No amendment submitted for adoption by referendum shall be adopted unless, within 6 months from the date of submission thereof, a majority of all the voting members of the society shall have signified their consent to such amendment by one of the methods herein specified.

No amendment to the articles of incorporation, constitution or laws of any domestic society shall take effect unless approved by the commissioner, who shall approve such amendment if he finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this State or with the character, objects and purposes of the society. Unless the commissioner shall disapprove any such amendment within 60 days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case he disapproves such amendment, the reasons therefor shall be stated in such written notice.

Within 90 days from the approval thereof by the commissioner, all such amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official organ of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof, have been furnished the addressee.

Every foreign or alien society authorized to do business in this State shall file with the commissioner a duly certified copy of all amendments of, or additions to, its articles of incorporation, constitution or laws within 90 days after the enactment of same.

Printed copies of the constitution or laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

## § 4112. Institutions

It shall be lawful for a society to create, maintain and operate charitable, benevolent or educational institutions for the benefit of its members and their families and dependents and for the benefit of children insured by the society. For such purpose it may own, hold or lease personal property or real property located within or without this State, with necessary buildings thereon. Such property shall be reported in every annual statement but shall not be allowed as an admitted asset of such society.

Maintenance, treatment and proper attendance in any such institution may be furnished free or a reasonable charge may be made therefor, but no such institution shall be operated for profit. The society shall maintain a separate accounting of any income and disbursements under this section and report them in its annual statement. No society shall own or operate funeral homes or undertaking establishments.

## § 4113. No personal liability

The officers and members of the supreme, grand or any subordinate body of a society shall not be personally liable for payment of any benefits provided by a society.

## § 4114. Benefits

1. A society authorized to do business in this State may provide for the payment of:

- A. death benefits in any form;
- B. endowment benefits;
- C. annuity benefits;
- D. temporary or permanent disability benefits as a result of disease or accident;
- E. hospital, medical or nursing benefits due to sickness or bodily infirmity or accident; and
- F. monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of \$300.

2. Such benefits may be provided on the lives of members or, upon application of a member, on the lives of the member's family, including the member, the member's spouse and minor children, in the same or separate certificates.

## § 4115. Benefits on lives of children

A society may provide for benefits on the lives of children under the minimum age for adult membership but not greater than 21 years of age at time of application therefor, upon the application of some adult person, as its laws

or rules may provide, which benefits shall be in accordance with the provisions of section 4114, subsection 1. A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

A society shall have power to provide for the designation and changing of designation of beneficiaries in the certificates providing for such benefits and to provide in all other respects for the regulation, government and control of such certificates and all rights, obligations and liabilities incident thereto and connected therewith.

§ 4116. Nonforfeiture benefits, cash surrender values, certificate loans and other options

A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans and such other options as its laws may permit. As to certificates issued on and after the effective date of this Act, a society shall grant at least one paid-up nonforfeiture benefit; except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts or contracts of term insurance of uniform amount of 15 years or less expiring before age 66.

In the case of certificates other than those for which reserves are computed on the Commissioners 1941 Standard Ordinary Mortality Table, the Commissioners 1941 Standard Industrial Table or the Commissioners 1958 Standard Ordinary Mortality Table, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the excess, if any, of 1 over 2 as follows:

1. The reserve under the certificate determined on the basis specified in the certificate; and
2. The sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrender charge equal to  $2\frac{1}{2}\%$  of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be the ultimate face amount of the certificate, if death benefits provided therein are graded.

However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American Men Ultimate Table of Mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than 130% of those shown by the mortality table specified in the certificate for the computation of the reserve.

In the case of certificates for which reserves are computed on the Commissioners 1941 Standard Ordinary Mortality Table, the Commissioners 1941 Standard Industrial Table or the Commissioners 1958 Standard Ordinary Mortality Table, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this State applicable to life insurers issuing policies containing like insurance benefits based upon such tables.

**§ 4117. Beneficiaries**

The member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, laws or rules of the society. Every society by its constitution, laws or rules may limit the scope of beneficiaries and shall provide that no beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the insurance contract.

A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, provided the portion so paid shall not exceed the sum of \$500.

If, at the death of any member, there is no lawful beneficiary to whom the insurance benefits shall be payable, the amount of such benefits, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased member.

**§ 4118. Benefits not attachable**

No money or other benefit, charity, relief or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

**§ 4119. The contract**

Every society authorized to do business in this State shall issue to each benefit member a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the charter or articles of incorporation, the constitution and laws of the society, the application for membership, and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the agreement, as of the date of issuance, between the society and the member, and the certificate shall so state. A copy of the application for membership and of the declaration of insurability, if any, shall be endorsed upon or attached to the certificate.

All statements purporting to be made by the member shall be representations and not warranties. Any waiver of this provision shall be void.

Any changes, additions or amendments to the charter or articles of incorporation, constitution or laws duly made or enacted subsequent to the issuance of the certificate, shall bind the member and the beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership, except that no change, addition or amendment shall destroy or diminish benefits which the society contracted to give the member as of the date of issuance.

Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

A society shall provide in its constitution or laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the member to the society the amount of the member's equitable proportion of such deficiency as ascertained by its board, and that if the payment be not made it shall stand as an indebtedness against the certificate and draw interest not to exceed 5% per annum compounded annually.

§ 4120. Life benefit certificate provisions, standard and prohibited

No life benefit certificate shall be delivered or issued for delivery in this State unless a copy of the form shall have been filed with the commissioner and approved by him as conforming to the requirements of this section and not inconsistent with any other provisions of law applicable thereto. A certificate shall be deemed approved unless disapproved by the commissioner within 60 days from the date of such filing.

1. The certificate shall contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member :

A. Title on the face and filing page of the certificate clearly and correctly describing its form ;

B. A provision stating the amount of rates, premiums or other required contributions, by whatever name known, which are payable by the insured under the certificate ;

C. A provision that the member is entitled to a grace period of not less than a full month, or 30 days at the option of the society, in which the payment of any premium after the first, may be made. During such grace period the certificate shall continue in full force, but in case the certificate becomes a claim during the grace period before the overdue payment is made, the amount of such overdue payment or payments may be deducted in any settlement under the certificate ;

D. A provision that the member shall be entitled to have the certificate reinstated at any time within 3 years from the due date of the premium in default, unless the certificate has been completely terminated through the application of a nonforfeiture benefit, cash surrender value or certificate loan, upon the production of evidence of insurability satisfactory to the society and the payment of all overdue premiums and any other indebtedness to the society upon the certificate, together with interest on such premiums and such indebtedness, if any, at a rate not exceeding 6% per annum compounded annually ;

E. Except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66, a provision that, in the event of default in payment of any premium after 3 full years' premiums have been paid or after premiums for a lesser period have been

paid if the contract so provides, the society will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of such value as specified in this chapter. The certificate may provide, if the society's laws so specify or if the member shall so elect prior to the expiration of the grace period of any overdue premium, that default shall not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate;

F. A provision that one paid-up nonforfeiture benefit as specified in the certificate shall become effective automatically unless the member elects another available paid-up nonforfeiture benefit, not later than 60 days after the due date of the premium in default;

G. A statement of the mortality table and rate of interest used in determining all paid-up nonforfeiture benefits and cash surrender options available under the certificate, and a brief general statement of the method used in calculating such benefits;

H. A table showing in figures the value of every paid-up nonforfeiture benefit and cash surrender option available under the certificate for each certificate anniversary either during the first 20 certificate years or during the term of the certificate whichever is shorter;

I. A provision that the certificate shall be incontestable after it has been in force during the lifetime of the member for a period of 2 years from its date of issue except for nonpayment of premiums, violation of the provisions of the certificate relating to military, aviation, or naval service and violation of the provisions relating to suspension or expulsion as substantially set forth in the certificate. At the option of the society, supplemental provisions relating to benefits in the event of temporary or permanent disability or hospitalization and provisions which grant additional insurance specifically against death by accident or accidental means, may also be excepted. The certificate shall be incontestable on the ground of suicide after it has been in force during the lifetime of the member for a period of 2 years from date of issue. The certificate may provide, as to statements made to procure reinstatement, that the society shall have the right to contest a reinstated certificate within a period of 2 years from date of reinstatement with the same exceptions as herein provided;

J. A provision that in case the age or sex of the member or of any other person is considered in determining the premium and it is found at any time before final settlement under the certificate that the age or sex has been misstated, and the discrepancy and premium involved have not been adjusted, the amount payable shall be such as the premium would have purchased at the correct age and sex; but if the correct age or sex was not an insurable age or sex under the society's charter or laws, only the premiums paid to the society, less any payments previously made to the member, shall be returned or, at the option of the society, the amount payable under the certificate shall be such as the premium would have purchased at the correct age and sex according to the society's promulgated rates and any extension thereof based on actuarial principles;

K. A provision or provisions which recite fully, or which set forth the substance of, all sections of the charter, constitution, laws, rules or regulations of the society, in force at the time of issuance of the certificate, the violation of which will result in the termination of, or in the reduction of, the benefit or benefits payable under the certificate; and

L. If the constitution or laws of the society provide for expulsion or suspension of a member, any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentations in such member's application for membership shall have the privilege of maintaining his insurance in force by continuing payment of the required premium.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance or because the certificate is an annuity certificate may to the extent inapplicable, be omitted from the certificate.

2. No life benefit certificate shall be delivered or issued for delivery in this State containing in substance any of the following provisions:

A. Any provision limiting the time within which any action at law or in equity may be commenced to less than 2 years after the cause of action shall accrue;

B. Any provision by which the certificate shall purport to be issued or to take effect more than 6 months before the original application for the certificate was made, except in case of transfer from one form of certificate to another in connection with which the member is to receive credit for any reserve accumulation under the form of certificate from which the transfer is made; or

C. Any provision for forfeiture of the certificate for failure to repay any loan thereon or to pay interest on such loan while the total indebtedness, including interest, is less than the loan value of the certificate.

3. The word "premiums" as used in this chapter means premiums, rates, or other required contributions by whatever name known.

§ 4121. Accident and health insurance and total and permanent disability insurance certificates

No society shall issue or deliver in this State any certificate or other evidence of any contract or accident insurance or health insurance or of any total and permanent disability insurance contract unless and until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the commissioner and approved by him as conforming to reasonable rules and regulations from time to time made by him and as not inconsistent with any other provisions of law applicable thereto. The commissioner shall, within a reasonable time after the filing of any such form, notify the society filing the same either of his approval or of his disapproval of such form. The commissioner may approve any such form which in his opinion contains provisions on any one or more of the several requirements made by him which are more favorable to the members than the one or ones so required. The commissioner shall have

power, from time to time, to make, alter and supersede reasonable regulations prescribing the required, optional and prohibited provisions in such contracts, and such regulations shall conform, as far as practicable, to the provisions of chapter 33. Where the commissioner deems inapplicable, either in part or in their entirety, the provisions of the foregoing sections, he may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member. Any filing made hereunder shall be deemed approved unless disapproved within 60 days from the date of such filing.

#### § 4122. Waiver

The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society. Such provisions shall be binding on the society and every member and beneficiary of a member.

#### § 4123. Reinsurance

A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance and authorized to do business in this State, or if not so authorized, one which is approved by the commissioner, but no such society may reinsure substantially all of its insurance in force without the written permission of the commissioner. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after the effective date of this Act, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

#### § 4124. Annual license

Societies which are now authorized to transact business in this State may continue such business until the first day of July next succeeding the effective date of this Title. The authority of such societies and all societies hereafter licensed, may thereafter be renewed annually but in all cases to terminate on the first day of the succeeding July. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner \$50. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

#### § 4125. Foreign or alien society—admission

No foreign or alien society shall transact business in this State without a license issued by the commissioner. Any such society may be licensed to transact business in this State upon filing with the commissioner:

1. A duly certified copy of its charter or articles of incorporation;

2. A copy of its constitution and laws, certified by its secretary or corresponding officer;
3. A power of attorney to the commissioner as prescribed in section 4129;
4. A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the commissioner of this State;
5. A certificate from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;
6. Copies of its certificate forms; and
7. Such other information as he may deem necessary; and upon a showing that its assets are invested in accordance with the provisions of this chapter.

Any foreign or alien society desiring admission to this State shall have the qualifications required of domestic societies organized under this chapter.

§ 4126. Injunction—liquidation—receivership of domestic society

1. When the commissioner upon investigation finds that a domestic society:

- A. Has exceeded its powers;
- B. Has failed to comply with any provision of this chapter;
- C. Is not fulfilling its contracts in good faith;
- D. Has a membership of less than 400 after an existence of 1 year or more;  
or
- E. Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business;

he shall notify the society of such deficiency or deficiencies and state in writing the reasons for his dissatisfaction. He shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After such notice the society shall have a 30-day period in which to comply with the commissioner's request for correction, and if the society fails to comply the commissioner shall notify the society of his findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action in quo warranto should not be commenced against the society.

If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner may present the facts relating thereto to the Attorney

General who shall, if he deems the circumstances warrant, commence an action to enjoin the society from transacting business or in quo warranto.

The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order.

2. No society so enjoined shall have the authority to do business until:

A. The commissioner finds that the violation complained of has been corrected;

B. The cost of such action shall have been paid by the society if the court finds that the society was in default as charged;

C. The court has dissolved its injunction; and

D. The commissioner has reinstated the certificate of authority.

3. If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

4. No action under this section shall be recognized in any court of this State unless brought by the Attorney General upon request of the commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner as such receiver.

5. The provisions of this section relating to hearing by the commissioner, action by the Attorney General at the request of the commissioner, hearing by the court, injunction and receivership shall be applicable to a society which shall voluntarily determine to discontinue business.

§ 4127. Suspension, revocation or refusal of license of foreign or alien society

1. When the commissioner upon investigation finds that a foreign or alien society transacting or applying to transact business in this State:

A. Has exceeded its powers;

B. Has failed to comply with any of the provisions of this chapter;

C. Is not fulfilling its contracts in good faith; or

D. Is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public;

he shall notify the society of such deficiency or deficiencies and state in writing the reasons for his dissatisfaction. He shall at once issue a written notice to the society requiring that the deficiency, or deficiencies which exist are cor-

rected. After such notice the society shall have a 30-day period in which to comply with the commissioner's request for correction, and if the society fails to comply the commissioner shall notify the society of his findings of non-compliance and require the society to show cause on a date named why its license should not be suspended, revoked or refused. If on such date the society does not present good and sufficient reason why its authority to do business in this State should not be suspended, revoked or refused, he may suspend or refuse the license of the society to do business in this State until satisfactory evidence is furnished to him that such suspension or refusal should be withdrawn or he may revoke the authority of the society to do business in this State.

2. Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein.

§ 4128. Licensing of agents

1. Agents of societies shall be licensed in accordance with the provisions of this section.

2. Insurance agents defined. The term "insurance agent" as used in this section means any authorized or acknowledged agent of a society who acts as such in the solicitation, negotiation or procurement or making of a life insurance, accident and health insurance or annuity contract, except that the term "insurance agent" shall not include:

A. Any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

B. Any agent or representative of a society who devotes, or intends to devote, less than 25% of his time to solicitation and procurement of insurance contracts for such society. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of \$25,000, or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than 25 individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, 25% of his time to the solicitation or procurement of insurance contracts for such society.

3. License required. Any persons who in this State acts as insurance agent for a society without having authority so to do by virtue of a license issued and in force pursuant to the provisions of this section shall, except as provided in subsection 2, be guilty of a misdemeanor.

4. Payment of commissions forbidden. No society doing business in this State shall pay any commission or other compensation to any person for any services in obtaining in this State any new contract of life, accident or health insurance, or any new annuity contract, except to a licensed insurance agent of such society and except an agent exempted under subsection 2, paragraph B.

5. Prerequisites, issuance and renewal of insurance agents' licenses.

A. The commissioner may issue a license to any person who has paid an annual license fee as provided in section 601 (fee schedule) and who has complied with the requirements of this section, authorizing such licensee to act as an insurance agent on behalf of any society named in such license which is authorized to do business in this State.

B. Before any insurance agent's license shall be issued there shall be on file in the office of the commissioner of insurance the following documents:

(1) A written application by the prospective licensee in such form or forms and supplements thereto, and containing such information, as the commissioner may prescribe; and

(2) A certificate by the society which is to be named in such license, stating that such society has satisfied itself that the named applicant is trustworthy and competent to act as such insurance agent and that the society will appoint such applicant to act as its agent if the license applied for is issued by the commissioner. Such certificates shall be executed and acknowledged by an officer or managing agent of such society.

C. No written or other examination shall be required of any individual seeking to be named as licensee to represent a fraternal benefit society as its agent.

D. The commissioner may refuse to issue or renew any insurance agent's license if in his judgment the proposed licensee is not trustworthy and competent to act as such agent, or has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance or renewal, as the case may be, of such license.

E. License years shall be from July 1st of each calendar year to the last day of June of the next calendar year. Every license issued pursuant to this section, and every renewal thereof, shall expire on July 1st of the license year for which issued.

F. If the application for a renewal license shall have been filed with the commissioner on or before December 31st of the year in which the existing license was issued, the applicant named in such existing license may continue to act as insurance agent under such existing license, unless same shall be revoked or suspended, until the issuance by the commissioner of the renewal license or until the expiration of 5 days after he shall have refused to renew such license and shall have served written notice of such refusal on the applicant. If the applicant shall, within 30 days after such notice is given, notify the commissioner in writing of his request for a hearing on such refusal, the commissioner shall, within a reasonable time after receipt of such notice, grant such hearing, and he may, in his discretion, reinstate such license.

G. Any such renewal license of an insurance agent may be issued upon the application of the society named in the existing license. Such application

shall be in the form or forms prescribed by the commissioner and shall contain such information as he may require. Such application shall contain a certificate executed by the president, or by a vice president, a secretary, an assistant secretary, or corresponding officer by whatever name known, or by an employee expressly designated and authorized to execute such certificate of a domestic or foreign society or by the United States manager of an alien society, stating that the addresses therein given of the agents of such society for whom renewal licenses are requested therein have been verified in each instance immediately preceding the preparation of the application. Notwithstanding the filing of such application, the commissioner may, after reasonable notice to any such society, require that any or all agents of such society to be named as licensees in renewal licenses shall execute and file separate applications for the renewal of such licenses, as hereinbefore specified, and he may also require that each such application shall be accompanied by the certificate specified in subsection 5, paragraph B, subparagraph (2).

6. Notice of termination of appointment of agent. Every society doing business in this State shall, upon the termination of the appointment of any agent licensed to represent it in this State, forthwith file with the commissioner a statement, in such form as he may prescribe, of the facts relative to such termination and the cause thereof. Every statement made pursuant to this section shall be deemed a privileged communication.

7. Revocation or suspension of agent's license.

A. The commissioner may revoke, or may suspend for such period as he may determine, any insurance agent's license if, after notice and hearing as specified in this section, he determines that the licensee has:

- (1) Violated any provision of, or any obligation imposed by, this section, or has violated any law in the course of his dealings as agent;
- (2) Made a material misstatement in the application for such license;
- (3) Been guilty of fraudulent or dishonest practices;
- (4) Demonstrated his incompetency or untrustworthiness to act as an insurance agent; or
- (5) Been guilty of rebating as defined by the laws of this State applicable to life insurance companies.

B. The revocation or suspension of any insurance agent's license shall terminate forthwith the license of such agent. No individual whose license has been revoked shall be entitled to obtain any insurance agent's license under the provisions of this section for a period of one year after such revocation or, if such revocation be judicially reviewed, for one year after the final determination thereof affirming the action of the commissioner in revoking such license.

Every society authorized to do business in this State shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in such writing that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this State. Copies of such appointment, certified by the commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

Service shall only be made upon the commissioner, or if absent, upon the person in charge of his office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, he shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. Legal process shall not be served upon a society except in the manner herein provided. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of \$5.

#### § 4130. Injunction

No application or petition for injunction against any domestic, foreign or alien society, or branch thereof, shall be recognized in any court of this State unless made by the Attorney General upon request of the commissioner.

#### § 4131. Review

All decisions and findings of the commissioner made under the provisions of this chapter shall be subject to review by proper proceedings in any court of competent jurisdiction in this State.

#### § 4132. Funds

All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued after one year from the effective date of this chapter, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses.

#### § 4133. Investments

A society shall invest its funds only in such investments as are authorized by the laws of this State for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this State which invests its funds in accordance with the laws of the state, district, territory, country or province in which it is incorporated, shall be held to meet the requirements of this section for the investment of funds.

#### § 4134. Reports and valuations

Reports shall be filed and synopses of annual statements shall be published in accordance with the provisions of this section.

1. Every society transacting business in this State shall annually, on or before the 1st day of March, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay a fee of \$50 for filing same. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

2. A synopsis of its annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society not later than June 1 of each year, or, in lieu thereof, such synopsis may be published in the society's official publication.

3. As a part of the annual statement herein required, each society shall, on or before the 1st day of March, file with the commissioner a valuation of its certificates in force on December 31 last preceding, provided the commissioner may, in his discretion for cause shown, extend the time for filing such valuation for not more than 2 calendar months. Such report of valuation shall show, as reserve liabilities, the difference between the present midyear value of the promised benefits provided in the certificates of such society in force and the present midyear value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present midyear value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the net tabular value. Such net tabular value as to certificates issued prior to one year after the effective date of this chapter shall be determined in accordance with the provisions of law applicable prior to the effective date of this chapter and as to certificates issued on or after one year from the effective date of this chapter shall not be less than the reserves determined according to the commissioner's reserve valuation method as hereinafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

4. Reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums

shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such certificates, over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of A over B, as follows:

A. A net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such certificate on which a premium falls due; provided however, that such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age 1 year higher than the age at issue of such certificate; and

B. A net one-year term premium for such benefits provided for in the first certificate year.

Reserves according to the commissioner's reserve valuation method for:

(1) life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums,

(2) annuity and pure endowment benefits,

(3) disability and accidental death benefits in all certificates and contracts, and

(4) all other benefits except life insurance and endowment benefits, shall be calculated by a method consistent with the principles of this subsection.

5. The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in the following subsection.

6. Such valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

A. The minimum standards of valuation for certificates issued prior to the effective date of this chapter shall be those provided by the law applicable immediately prior to the effective date of this chapter but not lower than the standards used in the calculating of rates for such certificates.

B. The minimum standard of valuation for certificates issued after the effective date of this chapter shall be  $3\frac{1}{2}\%$  interest and the following tables:

(1) For certificates of life insurance: American Men Ultimate Table of

Mortality, with Bowerman's or Davis' extension thereof or with the consent of the commissioner, the Commissioners 1941 Standard Ordinary Mortality Table, the Commissioners 1941 Standard Industrial Mortality Table or the Commissioners 1958 Standard Ordinary Mortality Table, using actual age of the insured for male risks and an age more than 3 years younger than the actual age of the insured for female risks;

(2) For annuity and pure endowment certificates, excluding any disability and accidental death benefits in such certificates: The 1937 Standard Annuity Mortality Table or the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(3) For total and permanent disability benefits in or supplementary to life insurance certificates: Hunter's Disability Table, or the class III disability table (1926) modified to conform to the contractual waiting period, or the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries with due regard to the type of benefit. Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance certificates;

(4) For accidental death benefits in or supplementary to life insurance certificates: The Inter-company Double Indemnity Mortality Table or the 1959 Accidental Death Benefits Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(5) For noncancellable accident and health benefits: The class III disability table (1926) with conference modifications or, with the consent of the commissioner, tables based upon the society's own experience.

The commissioner may, in his discretion, accept other standards for valuation if he finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in his discretion, vary the standards of mortality applicable to all certificates of insurance on substandard lives or other extra hazardous lives by any society authorized to do business in this State. Whenever the mortality experience under all certificates valued on the same mortality table is in excess of the expected mortality according to such table for a period of 3 consecutive years, the commissioner may require additional reserves when deemed necessary in his judgment on account of such certificates.

Any society, with the consent of the insurance supervisory officer of the state of domicile of the society and under such conditions, if any, which he may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any insured member shall not be affected thereby.

7. A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit \$100 for each day during which such neglect continues, and, upon notice by the commissioner to that effect, its authority to do business in this State shall cease while such default continues.

The commissioner, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society and he shall make such examination at least once in every 3 years. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all books, papers and documents that relate to the business of the society. The minutes of the proceedings of the supreme legislative or governing body and of the board of directors or corresponding body of a society shall be in the English language. In making any such examination the commissioner may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society. A summary of the report of the commissioner and such recommendations or statements of the commissioner as may accompany such report, shall be read at the first meeting of the board of directors or corresponding body of the society following the receipt thereof, and if directed so to do by the commissioner, shall also be read at the first meeting of the supreme legislative or governing body of the society following the receipt thereof. A copy of the report, recommendations and statements of the commissioner shall be furnished by the society to each member of such board of directors or other governing body. The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

#### § 4136. Examination of foreign and alien societies

The commissioner, or any person whom he may appoint, may examine any foreign or alien society transacting or applying for admission to transact business in this State. He may employ assistants and he, or any person he may appoint, shall have free access to all books, papers and documents that relate to the business of the society. He may in his discretion accept, in lieu of such examination, the examination of the insurance department of the state, territory, district, province or country where such society is organized. The compensation and actual expenses of the examiners making any examination or general or special valuation shall be paid by the society examined or by the society whose certificate obligations have been valued, upon statements furnished by the commissioner.

#### § 4137. No adverse publications

Pending, during or after an examination or investigation of a society, either domestic, foreign or alien, the commissioner shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any society, until a copy thereof shall have been served upon the society at its principal office and the society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

#### § 4138. Misrepresentation

No person shall cause or permit to be made, issued or circulated in any form:

1. Any misrepresentation or false or misleading statement concerning the terms, benefits or advantages of any fraternal insurance contract now issued or to be issued in this State, or the financial condition of any society;

2. Any false or misleading estimate or statement concerning the dividends or shares of surplus paid or to be paid by any society on any insurance contract; or

3. Any incomplete comparison of an insurance contract of one society with an insurance contract of another society or insurer for the purpose of inducing the lapse, forfeiture or surrender of any insurance contract. A comparison of insurance contracts is incomplete if it does not compare in detail:

A. The gross rates, and the gross rates less any dividend or other reduction allowed at the date of the comparison; and

B. Any increase in cash values, and all the benefits provided by each contract for the possible duration thereof as determined by the life expectancy of the insured; or if it omits from consideration:

C. Any benefit or value provided in the contract;

D. Any differences as to amount or period of rates; or

E. Any differences in limitations or conditions or provisions which directly or indirectly affect the benefits. In any determination of the incompleteness or misleading character of any comparison or statement, it shall be presumed that the insured had no knowledge of any of the contents of the contract involved.

Any person who violates any provision of this section or knowingly receives any compensation or commission by or in consequence of such violation, shall upon conviction be punished by a fine not less than \$100 nor more than \$500, or by imprisonment in the county jail not less than 30 days nor more than 11 months, or both fine and imprisonment and shall in addition, be liable for a civil penalty in the amount of 3 times the sum received by such violator as compensation or commission, which penalty may be sued for and recovered by any person or society aggrieved for his or its own use and benefit in accordance with the provisions of civil practice.

#### § 4139. Discrimination and rebates

No society doing business in this State shall make or permit any unfair discrimination between insured members of the same class and equal expectation of life in the premiums charged for certificates of insurance, in the dividends or other benefits payable thereon or in any other of the terms and conditions of the contracts it makes.

No society, by itself or any other party, and no agent or solicitor, personally or by any other party, shall offer, promise, allow, give, set off or pay, directly or indirectly, any valuable consideration or inducement to, or for insurance, on any risk authorized to be taken by such society, which is not specified in the certificate. No member shall receive or accept, directly or indirectly, any rebate of premium, or part thereof, or agent's or solicitor's commission thereon, payable on any certificate or receive or accept any favor or advantage or share in the dividends or other benefits to accrue on, or any valuable consideration or inducement not specified in the contract of insurance.

## § 4140. Taxation

Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax other than taxes on real estate and office equipment.

## § 4141. Exemptions

Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this State, not only in governmental relations with the state, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

## § 4142. Exemption of certain societies

Nothing contained in this chapter shall be so construed as to affect or apply to:

1. Grand or subordinate lodges of societies, orders or associations now doing business in this State which provide benefits exclusively through local or subordinate lodges;

2. Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

3. Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than \$400 or disability benefits of not more than \$350 to any person in any one year, or both; or

4. Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than \$400 or for disability benefits of not more than \$350 to any one person in any one year, or both.

Any such society or association described in subsections 3 or 4 supra which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in subsection 4 which has more than 1,000 members, shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in subsection 2 supra, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions

thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from this chapter.

Societies, exempted under this section, shall also be exempt from all other provisions of the insurance laws of this State.

#### § 4143. Penalties

Any person who willfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society, shall upon conviction be fined not less than \$100 nor more than \$500 or imprisonment in the county jail not less than 30 days nor more than 11 months, or both.

Any person who willfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of a member for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of perjury and shall be subject to the penalties therefor prescribed by law.

Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in this State shall upon conviction be fined not less than \$50 nor more than \$200.

Any person guilty of a willful violation of, or neglect or refusal to comply with, the provisions of this chapter for which a penalty is not otherwise prescribed, shall upon conviction, be subject to the penalties provided by section 12 (general penalty).

## CHAPTER 57

### DELINQUENT INSURERS

#### SUBCHAPTER I

#### REHABILITATION AND LIQUIDATION

#### § 4351. Scope of provisions

The applicable provisions of this chapter shall apply as to:

1. All insurers authorized to transact insurance in this State;
2. All insurers having policyholders resident in this State;
3. All insurers against whom a claim under an insurance contract may arise in this State;
4. All persons in process of organization, or holding themselves out as

organizing, or proposing to organize in this State for the purpose of becoming an insurer; and

5. All other persons as to whom such provisions are otherwise expressly made applicable by law.

#### § 4352. Short title

This chapter constitutes and may be cited as the "insurance rehabilitation and liquidation law."

#### § 4353. Definitions

For the purposes of this chapter:

1. "Insurer," in addition to persons so defined under section 4, includes also persons purporting to be insurers, or organizing or holding themselves out as organizing in this State for the purpose of becoming an insurer.

2. "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to sections 4351 to 4385 for the purpose of conserving, rehabilitating, reorganizing or liquidating the insurer, or the proceedings authorized by sections 4401 to 4407.

3. "State" has the meaning ascribed in section 7.

4. "Domiciliary state" means the state in which an insurer is incorporated or organized, or as to an alien insurer, the state in which, at the commencement of delinquency proceedings the larger amount of the insurer's assets are held in trust or on deposit for the benefit of policyholders and creditors in the United States of America.

5. "Ancillary state" means any state other than a domiciliary state.

6. "Reciprocal state" means any state other than this State in which in substance and effect the uniform insurers liquidation act, as defined in section 4363, is in force, including provisions requiring that the Insurance Commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer, and in which effective provisions exist for avoidance of fraudulent conveyances and unlawful preferential transfers.

7. "Foreign country" means territory not in any state.

8. "Impairment" exists as to a stock insurer when the insurer's assets do not at least equal the sum of its liabilities and its paid-in capital stock; and as to a mutual insurer when the insurer's assets do not at least equal the sum of the insurer's liabilities and the minimum basic surplus required under this Title to be maintained for authority to transact the kinds of insurance transacted.

9. "Insolvency" exists when the insurer fails to meet its obligations as they mature or when a stock insurer's assets are less than the sum of its liabilities and the minimum paid-in capital stock required for its authority to transact

insurance in this State; or when a mutual insurer's assets are less than the sum of its liabilities and the minimum basic surplus required to be maintained by the insurer under this Title for authority to transact the kinds of insurance transacted; or as otherwise expressly provided in this Title.

10. "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons; and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby. Assets held in trust or on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States of America are deemed general assets.

11. "Preferred claim" means any claim accorded priority of payment from the insurer's general assets under applicable law.

12. "Special deposit claim" means any claim secured by deposit made under statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

13. "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets through judicial process and not invalidated.

14. "Receiver" means receiver, liquidator, rehabilitator, or conservator, as context requires.

15. "Creditor" means a person having a claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed or contingent.

§ 4354. Jurisdiction of delinquency proceedings; venue; exclusiveness of remedy; appeal

1. The Superior Court shall have original jurisdiction of delinquency proceedings under this chapter, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of such sections.

2. The venue of delinquency proceedings against a domestic insurer shall be in the county in this State of the insurer's principal place of business; or, if the principal place of business is located in another state, in any county in this State selected by the commissioner for the purpose. The venue of proceedings against foreign insurers shall be in any county in this State selected by the commissioner for the purpose.

3. At any time after commencement of a proceeding the commissioner or any other party may apply to the court for an order changing the venue of, and removing, the proceeding to any other county of this State in which the proceeding may most conveniently, economically and efficiently be conducted.

4. No court shall have jurisdiction to entertain, hear or determine any petition or complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of any insurer, or for an injunction or restraining order or other relief preliminary, incidental or relating to such proceedings, other than in accordance with this chapter.

5. An appeal shall lie to the Supreme Judicial Court from any court granting or refusing rehabilitation, liquidation, conservation or receivership and from every order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

#### § 4355. Jurisdiction over related persons and transactions

1. A court of this State in which an order of rehabilitation or liquidation has been entered in delinquency proceedings against a domestic insurer or alien insurer domiciled in this State, has jurisdiction also over persons, served as provided in subsection 2, in an action brought by the insurer's receiver on or arising out of such obligation or relationship, as follows:

A. Persons obligated to the insurer as a result of agency or brokerage or transactions between such persons and the insurer;

B. Reinsurers of the insurer, and their representatives; and

C. Past or present officers, managers, trustees, directors, organizers and promoters of the insurer, and other persons in positions of similar responsibility with the insurer.

2. As to those of such persons who are in this State, personal service of process shall be made as in other civil actions. As to those of such persons who cannot be found in this State at the time process is to be served, personal service of process shall be made thereon by a public officer of the jurisdiction in which such person may be found, in the same manner as personal service of process is required to be made within this State under the laws of this State; and the affidavit or certificate under oath setting forth the facts of such service shall be filed in the court in this State in which the action is pending.

#### § 4356. Grounds for rehabilitation of domestic insurer or domiciled alien insurer

The commissioner may petition for an order directing him to rehabilitate a domestic insurer or an alien insurer domiciled in this State on any one or more of the following grounds:

1. On any ground for liquidation of the insurer under section 4357, if the commissioner believes rehabilitation possible without substantial increase of risk to creditors, policyholders or the public;

2. If the insurer is in unsound condition, or is using or has been subject to, such methods and practices in conduct of its business as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, or creditors, or the public;

3. If the insurer's solvency is endangered by illegal action;
4. For material falsification of the insurer's records, reports or financial condition;
5. If the commissioner finds after hearing that any individual exercising executive power with respect to or otherwise materially influencing or controlling the insurer, directly or indirectly, is dishonest or untrustworthy in matters affecting the insurer, and has not been or cannot effectively and permanently be removed from such power, influence or control;
6. For unlawful concealment or removal by the insurer of any of its records or assets;
7. For failure of the insurer, or its parent corporation, or subsidiary or affiliated person controlled by the insurer, to submit its books, accounts, records and affairs to the reasonable inspection or examination of the commissioner or his examiner as authorized under this Title; or if any individual exercising any executive authority in the affairs of the insurer, or parent corporation, or subsidiary or affiliated person has refused to be examined under oath, by the commissioner or his examiner thereunto duly authorized, whether within this State or otherwise, concerning the pertinent affairs of the insurer, or parent corporation, or subsidiary, or affiliated person, or if examined under oath refuses to divulge pertinent information reasonably known to him; or for failure of officers, employees and other representatives of the insurer or parent corporation or subsidiary or affiliated person to comply promptly with the reasonable requests of the commissioner or his examiner for the purposes of and during the conduct of any such examination;
8. That a deadlock exists in the insurer's board of directors relative to the general management of the insurer's affairs, that the insurer's stockholders or members, as to a mutual insurer, are unable to break the deadlock, and that the same threatens irreparable injury to the insurer or its creditors or its policyholders or to the public;
9. If the insurer has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge or consolidate substantially its entire property or business in that of any other insurer, without first having obtained the written approval of the commissioner as required under this Title;
10. If the controlling stock of the insurer has been transferred to others without compliance with the requirements of section 3476 (acquisition of controlling stock), except where such transfer is by testamentary bequest or inheritance;
11. If the insurer has willfully violated its charter or a law of this State, or has willfully exceeded its corporate powers;
12. If the insurer has requested or consented to rehabilitation by vote or written authorization of a majority of its directors, or stockholders, or members, as to mutual insurers; or
13. If the insurer has failed to pay any valid judgment against it within

30 days after the same became final.

§ 4357. Grounds for liquidation of domestic insurer or domiciled alien insurer

The commissioner may apply to the court for an order appointing him as receiver, if his appointment as receiver is not then in effect, and directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this State, whether or not there has been a prior order directing him to rehabilitate the insurer, upon any one or more of the following grounds:

1. That the insurer has failed to cure an impairment of surplus or capital or assets within the time allowed therefor by any lawful order of the commissioner;

2. That the insurer is insolvent, or has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute or is the object, in this State or elsewhere, of any action of proceeding to liquidate its business or affairs or to dissolve its corporate charter or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except this Title. This provision shall not apply as to the conversion of a stock insurer to an ordinary business corporation as authorized under section 3473 or to voluntary dissolution of the insurer pursuant to section 3484;

3. That the insurer has ceased for a period of one year to transact insurance business;

4. If a proposed insurer has not completed its organization and obtained a certificate of authority as an insurer within the time allowed therefor under any applicable law;

5. That efforts to rehabilitate the insurer and remove the causes or adverse effects thereof for which rehabilitation was instituted, have failed despite all reasonable efforts by the commissioner, or cannot be continued without material increase of risk of loss to the insurer's creditors or policyholders; or

6. If the insurer has requested or consented to liquidation by vote or written authorization of a majority of its directors or stockholders, or members if a mutual insurer.

§ 4358. Ground for conservation, foreign and alien insurers

The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this State, of a foreign or alien insurer upon any of the applicable ground specified in sections 4356 or 4357, or upon the ground that the insurer's property has been sequestrated in its domiciliary sovereignty or in any other sovereignty; or, in the case of an alien insurer that the insurer has failed to make good an impairment of its trusteed funds within the time required therefor by order of the commissioner.

§ 4359. Grounds for ancillary liquidation, foreign and alien insurers

The commissioner may apply to the court for an order appointing him to liquidate the business of a foreign or alien insurer having assets, business or claims in this State upon the appointment in the domiciliary sovereignty of such insurer of a receiver, liquidator, conservator, rehabilitator or other officer by whatever name called for the purpose of liquidating the business of the insurer.

§ 4360. Commencement of proceeding

1. The commissioner shall commence a delinquency proceeding authorized under this chapter, the Attorney General representing him, by filing a petition in a court of proper jurisdiction praying for appointment of the commissioner as receiver of the insurer.

2. Upon the filing of the petition the court shall issue an order directing the insurer to appear in court on the day fixed in the order and show cause why the petition should not be granted. Unless good cause is shown for a shorter period, the order shall require the insurer to so show cause not less than 15 or more than 30 days from date of the order.

3. The order to show cause and service thereof on the insurer shall constitute due and legal process and shall be in lieu of any other process otherwise provided by law.

§ 4361. Service of process

A certified copy of any order to show cause issued under section 4360, and a copy of the petition upon which the same is made, shall be served upon the insurer by delivering the same to its president, vice-president, secretary, treasurer, director or to its managing agent or attorney in fact, if a reciprocal insurer; or if no such officer or functionary can readily be found in this State, then such process may be served upon the insurer by service thereof upon the commissioner pursuant to sections 421 and 422.

§ 4362. Injunctions

1. Upon application by the commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

2. The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

3. Notwithstanding any other provision of law, no bond shall be required of the commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

§ 4363. Uniform Insurers Liquidation Act; severability; interpretation

1. This section, section 4353 (definitions), and sections 4364 to 4369 comprise and may be cited as the Uniform Insurers Liquidation Act.

2. If any provision of the Uniform Insurers Liquidation Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

3. This Uniform Insurers Liquidation Act shall be so interpreted as to effectuate its general purpose to make uniform the laws of those states which enact it. To the extent that its provisions, when applicable, conflict with other provisions of this Title, the Uniform Insurers Liquidation Act shall control.

§ 4364. Conduct of delinquency proceedings against domestic insurers and certain alien insurers

1. Whenever under this chapter a receiver is to be appointed in delinquency proceedings for an insurer, the court shall appoint the commissioner as such receiver. The court shall order the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

2. As a domiciliary receiver, the commissioner shall be vested by operation of law with the title to all of the property, contracts and rights of action and all of the books and records of the insurer, wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this State, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this State as to assets located in this State.

3. The filing or recording of the order directing possession to be taken, or a certified copy thereof, in any office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

4. The commissioner as domiciliary receiver shall be responsible for the proper administration of all assets coming into his possession or control. The court may at any time require a bond from him or his deputies if deemed desirable for the protection of such assets.

5. Upon taking possession of the assets of an insurer, the domiciliary receiver shall immediately proceed to conduct the business of the insurer or to take such steps as are authorized by this chapter for the purpose of rehabilitating, liquidating or conserving the affairs or assets of the insurer.

6. In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners to act for him and he may employ such counsel, clerks and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver and shall be paid out of the funds or assets of the insurer. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.

7. During such receivership the commissioner shall file in the court, at regular intervals not less frequently than quarterly, his true reports in summary form of the insurer's affairs under the receivership, and of progress being made in accomplishing the objectives of the receivership. All such reports, together with such additional or special reports as the court may reasonably require, shall be subject to review by the court; and all actions of the receiver therein reported shall be subject to the court's approval, but the court shall not withhold approval or disapprove any such action unless found by the court after a hearing thereon in open court to be unlawful, or arbitrary, or capricious.

#### § 4365. Conduct of delinquency proceedings against foreign insurers

1. Whenever under this chapter an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this State, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment on the grounds set forth in sections 4358 or 4359:

A. If he finds that there are sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver, or

B. If 10 or more persons resident in this State having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

2. The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer located in this State and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this State. He shall also be entitled to recover the other assets of the insurer located in this State, except that upon the appointment of an ancillary receiver in this State, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this State.

3. The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this State to recover any assets of such insurer to which he may be entitled under the laws of this State.

§ 4366. Claims of nonresidents against domestic insurers

1. In a delinquency proceeding begun in this State against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

2. Controverted claims belonging to claimants residing in reciprocal states may either:

A. Be proved in this State, or

B. If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this State, as provided in section 4367 with respect to ancillary proceedings in this State, the final allowance of such claim by the courts in the ancillary state shall be accepted in this State as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

§ 4367. Claims against foreign insurers

1. In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this State may file claims either with the ancillary receiver, if any, appointed in this State, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

2. Controverted claims belonging to claimants residing in this State may either:

A. Be proved in the domiciliary state as provided by the law of that state, or

B. If ancillary proceedings have been commenced in this State, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this State, he shall file his claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered or certified mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based and the priorities asserted, if any. If the domiciliary receiver within 30 days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered or certified mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this State involving

adjudication of the claim. The final allowance of the claim by the courts of this State shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this State.

§ 4368. Form of claim; notice; hearing

1. All claims against an insurer against which delinquency proceedings have been begun shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant or someone authorized to act on his behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.

2. All claims filed in this State shall be filed with the receiver, whether domiciliary or ancillary, in this State, on or before the last date for filing as specified in this chapter.

3. Within 10 days of the receipt of any claim, or within such further period as the court may fix for good cause shown, the receiver shall report the claim to the court, specifying in such report his recommendation with respect to the action to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

4. At the hearing, all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

§ 4369. Attachment and garnishment of assets

During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this State against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

§ 4370. Limitations on appointment of receiver; action  
by judgment creditor

No order, judgment or decree enjoining, restraining or interfering with the prosecution of the business of any insurer or for the appointment of a temporary or permanent receiver of a domestic insurer shall be made or granted otherwise than upon the petition of the commissioner represented by the Attorney General as provided in this chapter.

### § 4371. Deposit of monies

The monies collected by the commissioner in a proceeding under this chapter shall be from time to time deposited in one or more state or national banks, savings banks or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this State, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this State. The commissioner may in his discretion deposit such monies or any part thereof in a national bank or trust company as a trust fund.

### § 4372. Exemption from fees

The commissioner shall not be required to pay any fee to any public officer in this State for service of process, filing, recording, issuing a transcript or certificate or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this chapter, whether or not such paper or instrument be executed by the commissioner or his deputies, employees or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the commissioner, or with the subsequent conduct of such action or proceeding.

### § 4373. Escrowing on pledge of assets

For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter, the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property, whether real, personal or mixed, of such insurer, and the commissioner subject to the approval of the court shall have power to take any and all other action necessary and proper to consummate any such loan and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity to repay any loan made pursuant to this section.

### § 4374. Termination of rehabilitation

If at any time the court finds, after hearing in open court, upon petition of the commissioner or of the insurer or of his own motion, that the objectives of an order to rehabilitate a domestic insurer or an alien insurer domiciled in this State have been accomplished, and that the insurer can be returned to its own management without further jeopardy to the insurer and its creditors or policyholders or stockholders or to the public, the court may, upon a full report and accounting by the commissioner relative to the conduct of the insurer's affairs during the rehabilitation and of the insurer's current financial condition, terminate the rehabilitation and by order return the insurer, its assets and affairs, to the insurer's management.

### § 4375. Prohibited and voidable transfers, liens

1. No insurer shall make any transfer of or create any lien upon any of its

property with the intent of giving to, or enabling any creditor or policyholder to obtain a greater percentage of his debt than any other creditor or policyholder of the same class.

2. Any transfer of, or lien upon, any property of any insurer made or created within 4 months prior to the filing of a petition for an order to show cause under this chapter, which gives to any creditor or policyholder or enables him to obtain a greater percentage of his debt than any other creditor or policyholder in the same class, and which is accepted by a creditor or policyholder having reasonable cause to believe that such a preference will occur, shall be voidable. Where the preference consists in a transfer, such period of 4 months shall not expire until 4 months after the date of the recording or registering of the transfer if by law such recording or registering is required.

3. Every director, officer, employee, stockholder, member or any other person acting on behalf of such insurer, who, within 2 years prior to the filing of a petition for an order to show cause against such insurer under this chapter, shall knowingly participate in the making of any transfer or the creation of any lien prohibited by subsection 1, and every person receiving any property of, or cash surrender from, such insurer or the benefit thereof as a result of a transaction voidable under subsection 2, shall be jointly and severally liable therefor and shall be bound to account to the commissioner as receiver, rehabilitator, liquidator or conservator, as the case may be.

4. The commissioner as receiver, rehabilitator, liquidator or conservator may avoid any transfer of or lien upon the property of an insurer which any creditor, stockholder or member of such insurer might have avoided and may recover the property so transferred or its value from the person to whom it was transferred unless he was a bona fide holder for value prior to the date of the entry of an order to show cause under this chapter. Such property may be recovered or its value collected from whoever may have received it except a bona fide holder for value.

#### § 4376. Date rights fixed on liquidation

The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to this chapter with respect to the rights of claimants holding contingent claims.

#### § 4377. Time to file claims

1. If upon the entry of an order of liquidation under this chapter or at any time thereafter during liquidation proceedings the insurer is not clearly solvent, the court shall, upon hearing after such notice as it deems proper, make and enter an order adjudging the insurer to be solvent.

2. After the entry of the order of insolvency, regardless of any prior notice that may have been given to creditors, the commissioner shall notify all persons who may have claims against the insurer to file such claims with him, at a place and within the time specified in the notice, or that such claims shall

be forever barred. The time specified in the notice shall be as fixed by the court for filing of claims and which shall be not less than 6 months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

§ 4378. Allowance of contingent and other claims

1. No contingent claim shall share in a distribution of assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to section 4377, except that such claims shall be considered, if properly presented, and may be allowed to share where:

A. The claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of the insurer, or

B. There is a surplus and the liquidation is thereafter conducted upon the basis that the insurer is solvent.

2. Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of the insurer, shall have the right to file a claim in the liquidation proceeding, regardless of the fact that the claim may be contingent, and the claim may be allowed:

A. If it may be reasonably inferred from the proof presented upon the claim that such person would be able to obtain a judgment upon such cause of action against such insured; and

B. If such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claims against the insurer arising out of his cause of action other than those already presented can be made; and

C. If the total liability of the insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

3. No judgment against such an insurer, referred to in subsection 2, taken after the date of the entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, inquest or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceeding either of the liability of the insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

4. No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for the fixation of rights and liabilities as provided in section 4376 unless the claimant shall surrender his security to the liquidator and in which event the claim shall be allowed in the full amount for which it is valued.

§ 4379. Priorities in distribution of assets

The priorities in distribution of assets from the insurer's estate shall be in the order as shown in this section. The first \$50 of the amount allowed on each claim in the classes under subsections 2 to 6 shall be deducted from the claim and included in the class under subsection 8. Claims shall not be cumulated by assignment to avoid application on the \$50 deductible provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment thereof before claims of the next succeeding class receive any payment. No subclasses shall be established within any class:

1. Administration costs. The costs and expenses of administration, including but not limited to the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

2. Wages. Debts due to employees of the insurer, other than officers, for services performed, not to exceed \$1,000 to each employee and earned within 1 year immediately prior to the filing of the petition for liquidation. This priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of such employees.

3. Loss claims. All claims under policies for losses incurred, including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, except the first \$200 of losses otherwise payable to any claimant under this subsection. All claims under life insurance policies and annuity contracts, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims. Claims shall not be cumulated by assignment to avoid application of the \$200 deductible provision. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to his employee shall be treated as a gratuity.

4. Unearned premiums and small loss claims. Claims under nonassessable policies for unearned premiums or other premium refunds and the first \$200 or loss excepted by the deductible provision in subsection 3.

5. Residual classification. All other claims, including claims of the federal or any state or local government, not falling within other classes under this section. Claims, including those of any governmental body, for a penalty or forfeiture shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection 8.

6. Judgments. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it

would have received in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

7. Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under subsections 1 through 6 from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the court's approval, may make reasonable classifications of claims for purpose of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis.

8. Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subsection 7:

A. The first \$50 of each claim in the classes under subsections 2 through 6 subordinated under this section;

B. Claims subordinated by section 4380 (subordination of claims for non-cooperation);

C. Claims filed late;

D. Portions of claims subordinated under subsection 5; and

E. Claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.

9. Preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in subsections 7 and 8.

10. Proprietary claims. The claims of stockholders or other owners of the insurer.

#### § 4380. Subordination of claims for noncooperation

If an ancillary receiver, by whatever name called, in another state or foreign country fails to transfer to the domiciliary liquidator in this State any assets within his control other than special deposits, diminished only by the expenses, if any, of the ancillary receivership, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 4379, subsection 8.

#### § 4381. Offsets

1. In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid except as provided in subsection 2.

2. No offset shall be allowed in favor of any such person where:

- A. The obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided in section 4376, entitle him to share as a claimant in the assets of the insurer, or
- B. The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or
- C. The obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer.

§ 4382. Report and petition for assessment

Within 3 years after the date of the entry of an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer, the commissioner may make and file his report and petition to the court setting forth:

- 1. The reasonable value of the assets of the insurer;
- 2. The liabilities of the insurer to the extent thus far ascertained by the commissioner;
- 3. The aggregate amount of the assessment, if any, which the commissioner deems reasonably necessary to pay all claims, the costs and expenses of the collection of the assessments and the costs and expenses of the delinquency proceedings in full; and
- 4. Any other information relative to the affairs or property of the insurer that the commissioner deems material.

§ 4383. Order and levy of assessment

1. Upon the filing and reading of the report and petition provided for in section 4382, the court, ex parte, may order the commissioner to assess all members or subscribers of the insurer who may be subject to such an assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceedings, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceedings in full. Any such order shall require the commissioner to assess each such member or subscriber for his proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the commissioner and approved by the court.

2. The court may order additional assessments upon the filing and reading of any amendment or supplement to the report and petition referred to in subsection 1, if such amendment or supplement is filed within 3 years after the date of the entry of the order of rehabilitation or liquidation.

3. After the entry of the order to levy and assess members or subscribers of an insurer referred to in subsections 1 and 2, the commissioner shall levy

and assess members or subscribers in accordance with the order.

4. The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to any other provision of this Title, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this Title, except as to any policy which was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, in which event the assessment against any such policyholder shall be upon the basis of the minimum rate for such risk.

5. No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this Title.

§ 4384. Assessment prima facie correct; notice; payment; proceedings to collect

1. Any assessment of a subscriber or member of an insurer made by the commissioner pursuant to the order of court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the commissioner under section 4383, subsection 1 shall be prima facie correct.

2. Each member or subscriber shall be notified of the amount of assessment to be paid by him by written notice mailed to the address of the member or subscriber last of record with the insurer. Failure of the member or subscriber to receive the notice so mailed, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment.

3. If any such member or subscriber fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the commissioner may obtain an order in the delinquency proceedings requiring the member or subscriber to show cause at a time and place fixed by the court why judgment should not be entered against such member or subscriber for the amount of the assessment together with all costs, and a copy of the order and a copy of the petition therefor shall be served upon the member or subscriber within the time and in the manner designated in the order.

4. If the subscriber or member after due service of a copy of the order and petition referred to in subsection 3 is made upon him:

A. Fails to appear at the time and place specified in the order, judgment shall be entered against him as prayed for in the petition; or

B. Appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision.

5. The commissioner may collect any such assessment through any other lawful means.

§ 4385. Federal receivership

1. Whenever in the commissioner's opinion, liquidation of a domestic insurer or an alien insurer domiciled in this State would be facilitated by a federal receivership, and when any ground exists upon which the commissioner might petition the court for an order of rehabilitation or liquidation of the insurer under this chapter, or if such an order has already been entered, the commissioner may request another commissioner or other resident of another state to petition any appropriate federal district court for the appointment of a federal receiver. The commissioner may intervene in any such action to support or oppose the petition, and may accept appointment as the receiver if so designated. So much of this chapter shall apply to the receivership as may be applicable and appropriate. Upon the commissioner's motion, the courts of this State shall relinquish all jurisdiction over the insurer for purposes of rehabilitation or liquidation.

2. If he is appointed receiver under this section, the commissioner shall comply with requirements necessary to give him title to and control over the assets and affairs of the insurer.

## SUBCHAPTER II

### SUMMARY PROCEEDINGS

#### § 4401. Summary proceedings. Commissioner's corrective orders authorized

1. If the commissioner determines after a hearing that any insurer has committed or engaged in, or is committing or engaging in, or is about to commit or engage in any act, practice or transaction that would subject it to formal delinquency proceedings under section 4351 to 4407, he may make and serve upon the insurer and other persons involved, such orders, other than seizure orders under sections 4404 and 4405, as he deems reasonably necessary to correct, eliminate or remedy such conduct, condition or ground. Orders to cure impairment of capital or surplus of a domestic insurer are subject to sections 3423 and 3424.

2. If the commissioner believes that irreparable harm to the insurer or its policyholders, creditors or the public may occur unless his order is issued with immediate effect, he may make and serve his order without notice and before hearing, and shall simultaneously therewith serve upon the insurer and other persons involved the notice of hearing as required under subsection 3.

3. The commissioner's order and notice of hearing hereunder shall be served by personal service in any manner provided by the laws of this State for service of process in civil actions.

#### § 4402. Same; appeal from commissioner's order

If the commissioner has issued a summary order before hearing as provided in section 4401, subsection 2, any person upon whom such order is served may waive the commissioner's hearing and apply for any immediate judicial relief available under law and without first exhausting administrative remedies. Section 236 (appeal from commissioner) shall apply as to appeals from the commissioner's order made after hearing.

§ 4403. Same; enforcement, penalty

1. The commissioner may apply for and any superior court may grant such restraining orders, temporary and permanent injunctions and other orders as may be deemed necessary to enforce the commissioner's order.

2. Violation of any order of the commissioner issued under section 4401 by any person as to whom the order is in effect shall subject such person to a penalty of not to exceed \$10,000, to be collected in a civil action brought by the Attorney General in the name of the State of Maine. The Attorney General shall deposit all funds so collected with the Treasurer of State to the credit of the insurance division regulatory revolving fund.

§ 4404. Same; seizure under court order

1. Upon filing by the commissioner in any Superior Court of this State of his verified petition alleging any ground for a formal delinquency proceeding against an insurer under sections 4351 to 4385 and that the interests of the insurer's policyholders or creditors or the public will be jeopardized by delay, and setting forth the order deemed necessary by the commissioner, the court shall, ex parte and without notice or hearing, issue the requested order. The requested order may:

A. Direct the commissioner to take possession and control of all or part of the property, books, accounts, and records of the insurer and the premises occupied by it for transaction of its business; and

B. Until further order of court, enjoin the insurer and its officers, managers, agents, and employees from removal, concealment, or other disposition of its property, and from transaction of its business, except with the commissioner's written consent.

2. The court's order shall be for such duration, specified in the order, as the court deems necessary to enable the commissioner to ascertain the insurer's condition. On motion of any party or on its own motion, the court may hold such hearings as it deems desirable after such notice as it deems appropriate, and extend or shorten the duration or modify the terms of the order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under sections 4351 to 4385 after reasonable opportunity to do so; and a seizure order is automatically vacated by issuance of the court's order pursuant to formal delinquency proceedings under such sections of this chapter.

3. Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

§ 4405. Same; seizure under the commissioner's order

1. If it appears to the commissioner that the interests of policyholders, creditors or the public will be jeopardized by delay incident to requesting a court seizure order, then on any ground which would justify a court seizure order under section 4404, and without notice and without applying to the court, the commissioner may issue a seizure order which must contain a statement verified by him of the grounds of his action. As directed by the

seizure order, the commissioner's representatives shall forthwith take possession and control of all or part of the property, books, accounts and records of the insurer, and of the premises occupied by the insurer for transaction of its business. The commissioner shall retain possession and control until the order is vacated or is replaced by an order of court pursuant to subsection 2 or pursuant to a formal proceeding under this chapter.

2. At any time after seizure under subsection 1 the insurer may apply to the Superior Court for Kennebec County or for the county in this State in which the insurer's principal office is located. The court shall thereupon order the commissioner to appear forthwith and shall thereafter proceed as if the order were a court seizure order issued under section 4404.

3. Every law enforcement officer of this State shall assist the commissioner in making and enforcing any such seizure, and every sheriff's and police department shall furnish him with such deputies, patrolmen or officers as are necessary for the purpose.

4. Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

§ 4406. Same; conduct of hearings, both administrative and by the court, in summary proceedings

1. The commissioner shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing shall be public.

2. The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.

3. In all summary proceedings and judicial reviews thereof, all records of the insurer, other documents, and all insurance department files and court records and papers, so far as they pertain to or are part of the record of the summary proceedings, shall be and remain confidential except as necessary to obtain compliance therewith, unless the court after hearing arguments by the parties in chambers, shall order otherwise, or unless the insurer requests that the matter be made public. Until the court otherwise orders, all papers filed with the clerk of court shall be held by him in a confidential file.

4. If at any time it appears to the court that any person whose interest is or will be substantially affected by an order did not appear at the hearing and has not been served, the court may order that notice be given and the proceedings be adjourned to give such person opportunity to appear, on such terms as may be reasonable and just.

§ 4407. Same; penalty for refusal to deliver property, etc.

Any person having possession or custody of and refusing to deliver to the commissioner or his representative upon request any of the property, books, accounts, documents or other records of an insurer against which a seizure order or a summary order has been issued by the commissioner or by the court, as provided under sections 4401 to 4406, shall upon conviction thereof

be subject to a fine of not over \$10,000 or imprisonment for less than one year, or by both such fine and imprisonment.

## CHAPTER 59

### INSURANCE OF PUBLIC EMPLOYEES AND PROPERTY

#### § 4501. Insurance, annuities, pensions for public employees ; payment of premiums and charges

1. The State, any county, city or town may make contracts of insurance with any insurer authorized to transact such business within the State insuring its employees or any class or classes thereof under a policy or policies of group insurance covering life, health or accident insurance and may contract with any such insurer granting annuities or pensions for the pensioning of such employees and for such purposes may agree to pay part or all of the premiums or charges for carrying such contract, raise money by taxation therefor and appropriate out of its treasury money necessary to pay such premiums or charges or portions thereof.

2. Like authority to make contracts of insurance and appropriate out of its treasury, money necessary to pay such premiums or charges or portions thereof, is granted to any water district or other quasi-municipal corporation chartered and organized as such under the laws of this State. Any such water district or other quasi-municipal corporation may provide for the retirement and pensioning of its employees and for such purpose may create and set aside out of its treasury funds for a reserve or reserves, or it may contract with any insurer authorized to transact such business within the State and grant annuities for the retirement and pensioning of its employees, and for such purposes may agree to pay a part or all of the premiums or annual charges for carrying out such contracts or for creating such annuity reserves.

#### § 4502. Tax sheltered annuities for school employees

1. In order to extend to the employees of any school administrative unit, school or educational institution located in the State of Maine the benefits of tax sheltered annuities available under the Internal Revenue Code, it is declared to be the policy of the Legislature that any such school administrative unit, school, or institution may contract with any insurer authorized to contract such business within the State to provide one or more individual or group annuities for the pensioning of any employees of such unit, school or institution and for such purposes may agree to pay part or all of the premiums or charges for carrying such contracts, raise money by taxation therefor where otherwise lawful and appropriate out of its treasury money necessary to pay such premiums or charges or portions thereof.

2. It is the intent of the Legislature that employees of any school administrative unit, school or educational institution located in the State of Maine shall be extended the opportunity to share in the benefits of tax sheltered annuities and all laws and regulations of the State of Maine shall be construed liberally to enable such employees to come within the Internal Revenue Code, section 403(b) without loss to themselves, or to the school administrative unit, school or educational institution to which they belong, of any benefits, subsidies or opportunities therefor that they might otherwise be entitled to under the laws of the State of Maine.

CHAPTER 61  
UNCLAIMED FUNDS OF LIFE INSURERS

§ 4551. Short title

This chapter shall be known as the Unclaimed Funds Act of Life Insurers.

§ 4552. Scope

This chapter shall apply to unclaimed funds, as defined in section 4553, of any life insurer doing business in this State where the last known address, according to the records of the insurer, of the person entitled to the funds is within this State; but if a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the insurer, or if it is not definite and certain from the records of the insurer what person is entitled to the funds, then in either event it shall be presumed for the purposes of this chapter that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurer.

§ 4553. Definitions

1. As used in this chapter :

A. "Life insurer" means any association or corporation, including a fraternal benefit society as defined by section 4101, transacting within this State the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

B. "Unclaimed funds" means all moneys held and owing by any life insurer doing business in this State which shall have remained unclaimed and unpaid for 7 years or more after it is established from the records of the insurer that such moneys became due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated.

2. A life insurance policy not matured by actual proof of the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be "due and payable" within the meaning of this chapter if the policy is in force when the insured shall have attained the limiting age under the mortality table on which the reserve is based.

3. Moneys otherwise admittedly due and payable shall be deemed to be "held and owing" within the meaning of this chapter although the policy or contract shall not have been surrendered as required.

§ 4554. Reports

1. Every life insurer shall on or before May 1st of each year make to the

commissioner a written report of all unclaimed funds, as defined in section 4553, held and owing by it on December 31st next preceding, but the report shall not be required to include amounts of less than \$5, or amounts which have been paid to another state or jurisdiction prior to the effective date of this Act, or amounts representing claims which have been barred by the statute of limitations prior to such effective date.

2. The report shall be signed and sworn to by an officer of the insurer and shall set forth:

A. In alphabetical order, the full name of the insured or annuitant, his last-known address according to the insurer's records, and the policy or contract number.

B. The amount appearing from the insurer's records to be due on the policy or contract.

C. The date the unclaimed funds became payable.

D. The name and last-known address of each beneficiary or other person who, according to the insurer's records, may have an interest in the unclaimed funds.

E. Items of value under \$25 each may be reported in the aggregate.

F. Such other identifying information as the commissioner may require.

#### § 4555. Notice of unclaimed funds; publication

1. On or before September 1st following the making of the reports under section 4554, the commissioner shall cause to be published notices based on the information contained in the reports and entitled "notice of certain unclaimed funds held and owing by life insurance companies." Such a notice shall be published once a week for 2 successive weeks in a newspaper published or having a general circulation in each county of this State in which is located the last known address of a person appearing to be entitled to such funds.

2. Each notice shall set forth in alphabetical order the names of the insureds or annuitants under policies or contracts where the last known address of the person appearing to be entitled to such funds is in the county of publication or general circulation, together with:

A. The amount reported due and the date it became payable.

B. The name and last known address of each beneficiary or other person who, according to the insurer's reports, may have an interest in the unclaimed funds.

C. The name and address of the insurer.

3. The notice shall also state that the unclaimed funds will be paid by the insurer to persons establishing to its satisfaction before the following Decem-

ber 1 their right to receive the same, and that not later than the following December 20 such unclaimed funds still remaining will be paid to the commissioner who shall thereafter be liable for the payment thereof.

4. It shall not be obligatory upon the commissioner to publish any item of less than \$50 in such notice, unless the commissioner deems such publication to be in the public interest.

5. The expenses of publication shall be charged against the special trust fund provided for in section 4559.

§ 4556. Payment to commissioner

1. All unclaimed funds contained in the report required to be filed by section 4554, excepting those which have ceased to be unclaimed funds, shall be paid over to the commissioner on or before the following December 20.

2. The commissioner shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurer shall file any report and in such event the time for publication and payment required by this chapter shall be extended for a like period.

§ 4557. Custody of unclaimed funds in State; insurers indemnified

Upon the payment of unclaimed funds to the commissioner, the State shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of the unclaimed funds, and the life insurer making such payment shall immediately and thereafter be relieved of and held harmless by the State from any and all liability for any claim or claims which exist at such time with reference to the unclaimed funds or which thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

§ 4558. Reimbursement for claims paid by insurers

Any life insurer which has paid moneys to the commissioner pursuant to this chapter may make payment to any person appearing to such insurer to be entitled thereto, and upon proof of such payment the commissioner shall forthwith reimburse such insurer for such payment out of the special trust fund in his custody or, if the special trust fund shall be insufficient, out of the General Fund of the State.

§ 4559. Special trust fund; administration

Upon receipt of any unclaimed funds from life insurers by the commissioner, he shall pay forthwith three-fourths of the amount thereof into the State Treasury for credit to the General Fund of the State for the use of the State. The remaining one-fourth shall be administered by him as a special trust fund for the purposes of this chapter, and deposited in the manner provided by law for the deposit of such funds. At the end of each calendar year, any unclaimed funds which shall have been a part of such special trust fund for a period of 7 years or more shall be paid into the General Fund of the State for the use of the State, but the special trust fund shall never be so reduced to less than \$1,000.

### § 4560. Determination and review of claims

Any person claiming to be entitled to unclaimed funds paid to the commissioner may file a claim at any time with the commissioner. The commissioner shall possess full authority to accept or reject any such claim. If he rejects a claim or fails to act thereon within 90 days after receipt of the claim, the claimant may make application to the Superior Court of Kennebec County, upon not less than 30 days' notice to the commissioner, for an order to show cause why he should not accept and pay the claim.

### § 4561. Payment of allowed claims

Any claim which is accepted by the commissioner or ordered to be paid by him by a court of competent jurisdiction shall be paid out of the special trust fund in his custody or, if such special trust fund shall be insufficient, it shall be paid out of the General Fund of the State.

### § 4562. Records required

The commissioner shall keep in his office a public record of each payment of unclaimed funds received by him from any life insurer. The record shall show in alphabetical order the name and last-known address of each insured or annuitant, and of each beneficiary or other person who, according to the insurer's reports, may have an interest in such unclaimed funds, and with respect to each policy or contract, its number, the name of the insurer and the amount due.

### § 4563. Inapplicability of other statutes

No other statute of this State relating to escheat or unclaimed funds in force on the effective date of this Act shall apply to life insurers nor shall any such statute enacted after the effective date of this Act so apply unless specifically made applicable by its terms.

## CHAPTER 63

### ROAD OR TOURIST SERVICE

#### § 4701. Licensed companies only

No person shall perform or offer to perform in this State, for a stipulated fee covering a certain period, any form of road or other tourist service relating to the repair, operation and care of automobiles or to the protection and assistance of automobile owners or drivers, other than licensed insurers; or furnish or offer to furnish tourist service by selling or offering to sell to any proprietor of any so-called roadside house, motel or camp furnishing or offering to furnish meals or lodging to the traveling public, any form of sign or other insignia indicating that said roadside house, motel or camp has been approved by any person, without being licensed therefor by the commissioner.

#### § 4702. Licenses; fee

1. If the commissioner is of the opinion that an applicant is reliable and entitled to confidence, such applicant shall be granted a license to perform

such road or other service in this State, and the license shall expire on December 31st succeeding the date of issuance, but may be renewed annually thereafter so long as the commissioner regards the licensee as financially responsible and entitled to confidence.

2. The applicant shall pay a license fee to the commissioner as provided in section 601 (fee schedule).

§ 4703. Agents

No person, for himself or in behalf of any other person, shall sell or offer to sell any such road or other service without being licensed therefor by the commissioner.

§ 4704. Agent's license; fee

The commissioner shall grant a license to sell such service in behalf of any person licensed therefor to any applicant who shall furnish the commissioner with satisfactory evidence of his integrity and authority to sell the service offered. Such license, when granted, shall expire on December 31st thereafter, and annually thereafter may be renewed so long as the commissioner shall be satisfied of the licensee's integrity, authority and responsibility to provide the service stipulated.

The applicant shall pay a license fee to the commissioner as provided in section 601 (fee schedule).

§ 4705. Revocation

The commissioner may revoke a license for cause, at any time, after hearing.

§ 4706. Penalties

Any person, firm, association or corporation, or any officer, agent, servant or employee thereof, who shall violate any of the provisions of this chapter shall be punished by a fine of not more than \$300 or by imprisonment for not more than 6 months, or by both.

Sec. 2. R. S., T. 5, § 86, amended. The 5th, 6th, 7th and 8th paragraphs of section 86 of Title 5 of the Revised Statutes are amended to read as follows:

For receiving, filing and recording copy of certificate of organization of a corporation organized under ~~Title 13, chapters 1 to 21~~ Title 24-A, \$5 in advance.

For receiving, filing and recording certificate of organization of officers of a proposed insurance company, and issuing certificates of organization, \$20; for receiving and filing certificate of increase of capital stock of an insurance company, \$10.

For receiving, filing and recording certificate of officers of a proposed fraternal benefit society and issuing certificate of organization, \$5.

For filing power of attorney of a foreign corporation under ~~Title 13, section 591~~ Title 24-A, \$10; for filing instrument revoking such power of attorney, \$5; for filing copy of charter under ~~Title 13, section 592~~ Title 24-A, \$10 additional; for filing certificate of increase or reduction of stock of a foreign corporation, \$10.

Sec. 3. R. S., T. 5, § 121, amended. The 4th, 5th and 6th paragraphs of section 121 of Title 5 of the Revised Statutes are repealed, as follows:

~~The Treasurer of State shall receive for the use of the State:~~

~~For each certificate of securities deposited by a domestic insurance company under Title 24, sections 321 and 326, \$5; and for each certificate granted by him upon change of such securities, \$5.~~

~~For services required of him in case of proceedings under Title 24, section 328, 2% of the amount received and disbursed by him.~~

Sec. 4. R. S., T. 9, § 3729, sub-§ 2, amended. Subsection 2 of section 3729 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

2. Prohibited charges. No home repair contractor or any other person shall charge, collect or receive from any owner, directly or indirectly, any further or other amount for costs, charges, examination, appraisal service, brokerage, commission, interest, discount, expense, fee, fine, penalty or other thing of value in connection with a home repair contract other than the charges permitted by this chapter, except court costs, attorney's fees, the expenses of retaking and storing repossessed goods which are authorized by law, and insurance premiums as authorized by ~~Title 24, sections 1201 to 1214~~ Title 24-A, chapter 37.

Sec. 5. R. S., T. 24, § 2301, sub-§ 1, amended. The last sentence of subsection 1 of section 2301 of Title 24 of the Revised Statutes, as enacted by section 1 of chapter 114 of the public laws of 1967, is amended to read as follows:

The State, any county, city, town or other quasi-municipal corporation shall have the same right to contract with any corporation subject to this chapter as it may have under ~~section 1701~~ Title 24-A, section 4501 with respect to insurance companies.

Sec. 6. R. S., T. 24, § 2301, sub-§ 5, additional. Section 2301 of Title 24 of the Revised Statutes is amended by adding thereto a new subsection 5 to read as follows:

5. "Commissioner" defined. As used in this chapter "commissioner" means the Insurance Commissioner of this State.

Sec. 7. R. S., T. 24, § 2305, amended. The first paragraph of section 2305 of Title 24 of the Revised Statutes is amended to read as follows:

The commissioner shall issue a license on payment of a fee ~~as provided in section 371, subsection 3~~ of \$20 if the applicant meets the following requirements:

**Sec. 8. R. S., T. 24, § 2313, amended.** The last paragraph of section 2313 of Title 24 of the Revised Statutes is amended to read as follows:

The applicant shall pay a license fee to the commissioner ~~as provided in section 371, subsection 3~~ of \$2.

**Sec. 9. R. S., T. 29, § 781, sub-§ 1, ¶ A, amended.** The first sentence of paragraph A of subsection 1 of section 781 of Title 29 of the Revised Statutes is amended to read as follows:

“Certificate,” the certificate of an insurance company authorized to transact the business specified in Title ~~24~~ 24-A, that it has issued to or for the benefit of any person a motor vehicle liability policy covering the motor vehicle, trailer or semitrailer involved in the accident as a result of which the action at law to recover damages referred to in section 783, subsection 2, was commenced as respects such accident; or the certificate of a surety company authorized to transact business under Title ~~24~~ 24-A that it has issued to or for the benefit of any person a motor vehicle liability bond covering the motor vehicle, trailer or semitrailer involved in the accident as a result of which the action at law to recover damages referred to in section 783, subsection 2, was commenced as respects such accident.

**Sec. 10. R. S., T. 36, § 2520, amended.** The first sentence of section 2520 of Title 36 of the Revised Statutes is amended to read as follows:

Every attorney, agent or other representative by or through whom are issued policies or contracts of indemnity ~~of the kind referred to in Title 24, chapter 7, subchapter 2~~ by a reciprocal insurer as identified in Title 24-A, chapter 5, in lieu of all other taxation, state, county or municipal, in this State, shall annually pay a tax at the rate of 2% on gross premiums or deposits actually received during the year after deducting amounts actually returned to policyholders as the unused part of such premium or deposit, or such part as may be credited on the renewal or extension of the indemnity.

**Sec. 11. Repealing clause.** The following chapters of Titles 13 and 24 of the Revised Statutes are repealed:

Title 13, chapter 89, as amended by section 1 of chapter 412 of the public laws of 1967; Title 24, chapter 1, as amended by section 5 of chapter 412 and section 18 of chapter 476, both of the public laws of 1967; chapter 3, as amended by chapter 467 of the public laws of 1965 and by chapter 92, section 1 of chapter 93, chapters 118, 196 and 381, all of the public laws of 1967; chapter 5, as amended by chapter 163 of the public laws of 1965; chapter 7, as amended by section 6 of chapter 412 of the public laws of 1967; chapter 9, as amended by chapter 73 of the public laws of 1967; chapter 11; chapter 13, as amended by section 5 of chapter 186 of the public laws of 1965; chapters 15 and 17; chapter 21, as amended by chapter 358 of the public laws of 1965 and by chapters 183, 185 and 379, all of the public laws of 1967; chapter 23; chapter 25, as amended by chapter 296 of the public laws of 1965 and by section 1 of chapter 131 and by chapter 350, both of the public laws of 1967; chapter 26, as enacted by chapter 111 of the public laws of 1965; chapter 27; and chapter 28, as enacted by chapter 124 of the public laws of 1965.

**Sec. 12. Existing certificates of authority continuation.** Every certificate

of authority of an insurer in force immediately prior to the effective date of this Act and existing under any law herein repealed shall be valid until midnight of the last day of June next following such effective date, unless earlier terminated in accordance with this Act. Such certificate of authority upon first renewal under this Act shall be replaced by a certificate of authority in form as consistent with this Act, and shall thereafter be subject to continuance, suspension, revocation or termination as though originally issued under this Act.

**Sec. 13. Existing licenses, continuation**

1. Every license of an agent, broker, surplus lines broker or adjuster in force immediately prior to the effective date of this Act and existing under any law herein repealed shall be valid until midnight of the date next following the effective date of this Act as shown below, unless earlier suspended, revoked, or terminated in accordance with this Act:

**A.** Agent licenses, at midnight on June 30th.

**B.** Broker and surplus lines broker licenses, at midnight on December 31st; unless any particular such license would otherwise by its term expire earlier; and in which case the old license shall be extended until such midnight on December 31st upon payment by the licensee to the commissioner of an applicable proportion of the license fee of a full license year at the rate provided for in section 601 (fee schedule).

**C.** Adjuster licenses, at midnight on December 31st.

2. The respective such licenses upon first renewal under this Act shall be replaced by a license in form consistent with this Act, and shall thereafter be subject to continuation, suspension, revocation, or termination as though originally issued under this Act.

**Sec. 14. Existing forms and filings.** Every form of insurance document and every rate or other filing lawfully in use immediately prior to the effective date of this Act may continue to be so used or be effective until the commissioner otherwise prescribes pursuant to this Act; except, that before expiration of one year from and after such effective date neither this Act nor the commissioner shall prohibit the use of any such document, rate, or filing because of any power, prohibition, or requirement contained in this Act which did not exist under laws in force immediately prior to such effective date.

**Sec 15. Department, commissioner's tenure preserved.** Continuation by this Act of the Insurance Department and the office of Insurance Commissioner, existing under any law repealed herein, preserves such department and tenure of the individual holding such office at the effective date of this Act.

**Sec. 16. Advisory boards; continuation.** Continuation by this Act of the advisory boards with respect to the licensing of agents and existing under any law repealed herein, preserves such boards and the tenures of the individuals serving as members thereof at the effective date of this Act.

**Sec. 17. Continuation of deposits.** Any deposit made in this State under any law repealed herein, with or through the department, or the commissioner, or the Treasurer of State, or by any insurer in compliance with a condition

precedent to or in connection with its certificate of authority to transact insurance in this State, or any other state or country, and so on deposit immediately prior to the effective date of this Act, shall be given full recognition as fulfillment, to the extent of such deposit, of any deposit so required for similar purposes under this Act. The deposit shall hereafter be held for the purpose applicable thereto as specified in this Act, and shall be subject in all respects to the provisions of this Act applicable to similar deposits newly made under this Act.

**Sec. 18. "Chapter" defined.** As used in this Act and except as otherwise required by context, "chapter" means a particular numbered chapter of this Act as indicated by context.

**Sec. 19. Saving clause.** This Act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture, or punishment incurred, prior to the time this Act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this Act had not been passed.

**Sec. 20. Constitutionality and severability.** If any section, subsection, subdivision, paragraph, sentence, part or provision of this Act shall be found to be invalid or ineffective by any court it shall be conclusively presumed that this Act would have been passed by the Legislature without such invalid section, subsection, subdivision, paragraph, sentence, part or provision, and this Act as a whole shall not be declared invalid by reason of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, parts or provisions may be so found invalid.

**Sec. 21. Effective date.** Except as otherwise expressly provided the respective provisions of this Act, and this Act, shall be in full force and effect on and after September 1, 1969.

Director's note: Title 24-A of the Revised Statutes was amended by the following 1969 Public Laws:  
Chapter 177  
Chapter 374  
Chapter 402  
Chapter 433, sections 59 to 64  
Chapter 504, sections 40-A, 55 and 56

Effective October 1, 1969

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## Chapter 133

### AN ACT Relating to Funds and Personal Property of Deceased Patients and Inmates of State Institutions.

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

**R. S., T. 34, § 9, amended.** The first paragraph of section 9 of Title 34 of the Revised Statutes, as enacted by section 1 of chapter 324 of the public laws of 1967, is amended to read as follows:

If any patient or inmate of any institution under the control of the department shall die, leaving on deposit in his personal account at such institution an amount not exceeding \$500, ~~or leaving in the custody of the head thereof~~