MAINE INSURANCE CODE REVISION

CHAPTER 1

GENERAL DEFINITIONS AND PROVISIONS

§ 1. Short title

Chapters 1 through _____ of this ~~Act constitute~~ title shall be known and may be cited as the "Maine Insurance Code."

Ref.:

Comment: A short title is of convenience. Sam Slosberg has indicated that the revised insurance code will be part of Title 24-A of Maine statutes. It is possible that subjects not strictly part of the insurance code may be included in the insurance law revision, and in general we will use the term "code" when speaking of the insurance portion, and "Title" when speaking of the entire law.

§ 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.

Ref.:

Comment: A broad definition of "person" is useful, since by use of that term the law is made applicable to everybody without necessity of further enumeration.

§ 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.

Ref.: Me. 1: A contract of insurance, life excepted, is an agreement by which one party for a consideration promises to pay money or its equivalent or to do some act of value to the assured upon the destruction or injury of something in which the other party has an interest. A contract of life ins. is an agreement dependent upon human life by which one party for a consideration promises to pay money or its equivalent or to do some act of value upon the death or disability of the insured or the termination of a specified period.

421: Annuity contracts whereby corporation, in consideration of a premium agrees to pay an annuity commencing in the future, or a sum fixed or to be ascertained by given methods, are subject to laws relating to life insurance.

Blue Cross extended benefits endorsement providing indemnity as to services supplied by nonparticipants, and for certain cash benefits, is a contract of insurance. Associated Hospital Service of Maine vs. Mahoney, 161 Me. 391(1965)

Insurance contract is one to indemnify against an uncertain event, which, if it occurs, will cause insured loss or damage. Howard Fire Ins. Co., v. Chase, 72 U.S. 509(1866).

Comment: A precise, yet sufficiently comprehansive, definition of "insurance" is difficult to accomplish. The above suggested definition has evolved over the past 20 years, and has in general been found to be adequate. It is to be noted that there is a risk factor in all insurance. An "annuity" payable out of a given amount only until the money runs out is not insurance. Surety is specified, since for a long time in many states surety companies were regarded as engaged in a species of business not classified as insurance. They are now generally regarded as in the insurance business, and are so regulated.

§ 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.

Ref.: Me. 421: Corporations issuing annuity contracts are deemed to be engaged in life insurance business.

Comment: The definition of "insurance" in section 3 is very broad, and could include certain contingency aspects of contracts between private parties. The code intends to regulate only those who issue insurance contracts as a business, and this definition helps to so limit the code.

§ 5. "Commissioner," "department" defined

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

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

Ref.:

Comment: These short form identifications will be used throughout the code.

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

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

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

3. 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.

Ref.: Me. 2: "Domestic" means companies incorporated by this State; and "foreign" means companies not so incorporated.

Comment: These are traditional and useful classifications.

§ 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.

Ref.:

Comment: This definition serves throughout the code, and makes it unnecessary to spell out the exact meaning each time.

Eliminate per RDW

§ 8. "Domicile" defined

The "domicile" of an insurer is:

1. As to Canadian insurers, the province in which the insurer's head office is located.

2. As to other alien insurers authorized to transact insurance in one or more states, as provided in section 428 (retaliatory provision) of this title.

3. As to alien insurers other than those referred to in 1 or 2 above, the country under the laws of which the insurer was formed.

4. As to all other insurers, the state under the laws of which the insurer was formed.

Ref.:

Comment: This is a useful definition, and is generally self-explanatory.

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

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

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

Ref.: Me. 2501: "Authorized ins. co." means an ins. co. licensed to transact insurance business in this State. "Unauthorized ins. co." means a foreign ins. co. or an association as defined in sec. 651 which is not licensed to transact ins. business in this State.

Comment: These are standard, useful terms.

§ 10. "Transacting insurance" defined

In addition to other aspects of insurance operations to which provisions of this code 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.

Ref: Me. 63-2: "The transaction of insurance business means the issuance of contracts of insurance covering risks in this state, or the receipt of premiums for the continuation of contracts already in force."

532: Delivery of a policy in the State by mail or otherwise deemed an issuing of such policy.

Comment: This is a broad, basic provision. A similar provision in the California insurance code was one of the major factors in the recent U.S. Supreme Court decision affirming the jurisdiction of Calif. over solicitation of California business by use of the mails by foreign unauthorized insurers.

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

No provision of this code shall apply with respect to:

1. Domestic mutual fire insurers, as identified in chapter 51 of this code, except as stated in such chapter.

2. Fraternal benefit societies, except as stated in chapter _____ of this code.

3. Medical and hospital service corporations, as identified in chapter _____ of this code, except as stated in such chapter.

Ref.:

Comment: This is a practical way of handling unique types of insurers, or insurers for which otherwise numerous exceptions would have to be spread throughout the code. In the particular chapter dealing with such an insurer other applicable provisions of the code will be made applicable by a "reference" section.

Fraternal Benefit Societies are now in Title 13, ch. 89. They will be brought into the insurance code law and up-dated where advisable.

§ 12. Particular provisions prevail

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

Ref.:

Comment: There are many rules of interpretation of statutes, which apply as a matter of common law development. The above rule is carried as part of this chapter for the information of persons using the code, most of whom will not be attorneys. The rule assists in the understanding and construction of code provisions, and simplifies draftsmanship.

To be further discussed by RDW + HWS FMH

(Maine) Ch. 1
General Definitions

1. Section 13. General penalty; enforcement

Each violation of this title for which a penalty is not specifically provided by a provision of this title 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; 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 above provided for authorizing or knowingly participating in any such violation.

2. 1st sentence as outlined in pencil.

§ 13. General penalty; enforcement

1. Each violation of this code for which a different penalty consisting of fine and/or imprisonment is not provided by a provision of this code or other applicable laws of this State, in addition to or in lieu of any applicable prescribed denial, suspension, or revocation of certificate of authority or license, 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; 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 above provided for authorizing or knowingly participating in any such violation.

2. Any penalty for violation of this code may be recovered in a civil action in the name and to the use of the State or enforced by indictment. The county attorney for the county where the penalties are incurred shall prosecute therefor at the direction of the commissioner or may prosecute therefor on complaint made to him by any person. Prosecution may be commenced by complaint and warrant before any District Court Judge, as in the case of other offenses not within the final jurisdiction of such judge.

Ref.: Me. Constitution, Art. I, sec. 9: "All penalties and punishments shall be proportioned to the offense: excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted."

374: As in 2 above, except that above "person" has been substituted for "citizen" in the original law. "Citizen" is a vague and ambiguous term.

375: Violation of law requiring incorporated insurer, fine up to $5,000, prison up to 2 years, or both.

376: General penalty: fine up to $100, jail up to 10 days, or both, if an individual; up to $250 if an organization. Member of violating organization who authorizes or participated in violation - fine up to $250 or jail up to 30 days, or both.

501: Fine up to $5,000, prison up to 2 years, or both, for transacting insurance without certificate of authority.

530: "Forfeiture" of up to $200 for violation of injunction prohibiting issuance of new policies of unsafe insurer.

532: "Forfeiture" of up to $300 for each offense by officer or agent of insurer who issued new policy after notice of suspension of certificate of authority of the insurer.

811: Forfeiture of up to $500 for wilful violation of statutes or order relative to group, blanket A & H provisions. May be recovered in a civil action.

813: Fine of $100 to $500, jail 30 days to 11 months, or both, for wilful false, fraudulent representation in application for insurance, or for obtaining fee, commission, etc.

958: Fine $100 to $1,000, misdemeanor and on conviction, for violation of provisions relative to reciprocal insurers.

1214: Forfeiture of up to $250, recoverable in civil action, but if wilful - up to $1,000 - for violation of commissioner's order under credit life and health ins. law.

1258: Fine of up to $100 for violation of requirements as to foreign insurers.

1261: Commissioner shall report to Attorney General any violations relating to certain foreign insurers, coming to his knowledge, and Attorney General shall institute proper legal proceedings.

1405: Forfeiture of $50 to $200, each offense, for wilful violation of standard fire policy requirements.

2315: Fine up to $300, jail up to 6 months, or both, for violation of medical, hospital service corporation law.

2521: Fine to $500, jail up to 90 days, for violation of agent, broker, adjuster licensing laws.

Me.

2596: $500 fine, jail to 6 months, each violation a separate offense, as to life agents licensing.

2716: $500 maximum fine, each violation of rating law.

3109 Up to $1,000 fine and/or jail for less than 1 year for violation of order, rule or regulation of commissioner under emergency law.

Title 15, sec. 1702 (general law as to judgment and proceeding after judgment - MRSA -: "No person shall be punished for an offense until convicted thereof in a court having jurisdiction of the person and case." To same effect: State v. Blanchard (1960) 156 Me 30.

Comment: This general penalty is designed to be large enough to serve for most offenses throughout the code, and make unnecessary the sprinkling of various penalties for particular offenses. More severe penalties for more serious violations will be provided where called for. Administrative fines will be provided for in lieu of certain suspensions, revocations, of license or certificate of authority. In general present penalties - some of which are referred to above - are too small in the light of reduced purchasing power of the dollar. Apparently Title 15, sec. 1702 MRSA - above quoted - is not deemed to prohibit administrative fines or collection of penalties by civil action, since such fines and collections are liberally exemplified in the existing laws.

Should the Attorney General also be referred to in proposed 2?

CHAPTER 3

THE INSURANCE COMMISSIONER

§ 200. Department continued

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

Ref.: Me. 51: The Ins. Dept., as heretofore established .....

Comment: Self-explanatory.

Chapter 3
COMMISSIONER

§ 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.

Ref.: Me. 51: As above; may not at same time be Bank Commissioner.

Comment: This is present law. Restriction as to Bank Commissioner is omitted, for consideration.

Oath: Oath of office is provided by Me. Title 5, Ch. 1, sec. 5.

Removal of Commissioner is provided by Me. Title 5, Ch. 1, sec. 2 - may be removed at any time by Governor and Council.

Bond: Commissioner's bond is required by Me. Tit. 5, Ch. 1, sec.9.

§ 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.

Ref.:

Comment: The Commissioner now has a seal, but there is no existing authority therefor in the law.

(Maine)

Chapter 2
COMMISSIONER

§ 203. Compensation.

The State shall pay the commissioner an annual salary ~~of~~ ~~$14,000 as full compensation for all duties required of him as commissioner.~~ in pursuant to as provided by law

Ref.: Me. 51: He shall receive an annual salary of $14,000.

Comment: If the commissioner's salary is fixed by the budget, as adopted by the Legislature, this might suffice. It is not desirable to specify the salary in the statute, thereby avoiding possible frequent amendments. Is this practical in Maine?

§ 204. Principal Office.

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

Ref.: Me. 51: His office shall be at the State Capitol.

Comment: "Principal" office is inserted to open the way for service offices in other parts of the state, if desirable.

Is there now a service office in Portland?

(Maine)

Chapter 23
COMMISSIONER

§ 205. Departmental organization.

1. Within the department there shall be ~~a Division of~~ Rating and Examinations, together with such other divisions, not expressly provided for or prohibited by law, as the commissioner deems advisable for the discharge of his duties.

2. Subject to the supervision and direction of the commissioner, the Division of Rating and Examinations shall administer the laws relating to rates and rating organizations under chapter _____ of this code, and conduct examinations of insurers as required by law.

Ref.: Me. 51: Ins. Dept. includes Division of State Fire Prevention.
2713: Division of Rating and Examinations set up within the office of the commissioner, for the purposes above set forth.

Comment: Division of State Fire Prevention is omitted, as requested. The possibility of having this Division taken over by other State Department is being considered.

The commissioner usually has authority to organize his staff into such divisions as he deems advisable. Does the creation of a special "Division" - such as that of Rating and Examinations - vest special powers and status in the deputy? Isn't such a division still subject to the general supervision and direction of the Commissioner? Otherwise there could be a serious division of the responsibility and authority.

Should we provide for other particular divisions?

§ 206. Deputy commissioners.

1. Subject to the Personnel Law, the commissioner shall appoint a first deputy commissioner, and may appoint a deputy for supervision of the Division of Rating and Examinations.

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.

3. The commissioner shall have power to remove any deputy for cause.

Ref.: Me. 51: Subject to Personnel Law, commissioner may appoint not more than 2 deputies, one of whom shall be and perform all duties of the first deputy ins. commissioner. In event of vacancy in the Insurance Commissioner office or during absence or disability of the commissioner, the first deputy shall become during such vacancy, absence or disability the acting insurance commissioner.

2713: Division of Rating and Examinations shall be supervised by a deputy commissioner, who is subject to Personnel Law.

Comment: This maintains the present law, in substance, except that power of the first deputy to act for the commissioner only during latter's absence or disability is omitted. This is an inadvisable provision, since could leave in question any act of the deputy in the commissioner's name. It is to be noted that while appointment of a first deputy is mandatory, appointment of a deputy for the Division is permissive. Proposed 3 is added for clarification. Is this in order?

§ 207. Staff.

1. Subject to the Personnel Law, the commissioner may appoint and dismiss for cause:

A. A chief examiner, who shall have the qualifications of a senior examiner under standards, if any, promulgated by the National Association of Insurance Commissioners or its successor organization.

B. Such examiners, and such clerks and other assistants, as conduct of his office may require.

2. All such personnel, together with the deputy commissioners, shall be in the classified service of the State, and shall receive such compensation as is provided for under the rules and regulations of the Personnel Board for state employees in similar capacities.

Ref.: Me. 528: Commissioner may employ assistants for examination of foreign insurers.
2713: Deputy in supervision of Division of Rating and Examinations shall receive compensation as provided by rules and regulations of Personnel Board for state employees in similar capacities.
2713(6): Commissioner may appoint, subject to Personnel Law, a chief ins. examiner who has the qualifications of a senior examiner as prescribed by the Manual of the National Association of Ins. Commissioners' Examination Practice and Procedure.
Tit. 5, sec. 678: The appointing authority may dismiss, suspend or otherwise discipline a classified employee for cause.

Comment: This is an attempted rounding out of what appears to be the present law, with some changes. In A. reference to the Manual of Exam. Practice and Procedure is omitted, since the name of that manual may be changed in the future.

§ 208. Independent technical, professional services.

1. The commissioner may from time to time contract for and procure, on a fee or independently contracting basis, such additional actuarial, examination, rating, and other technical and professional services as he may require for discharge of his duties.

2. None of the individuals rendering such services shall be in the classified services of the State.

Ref.: Me. 701-6: May employ examiners including those employed by insurance departments of other states.

Comment: It is impossible for most states to afford a staff of full-time experts adequate to every responsibility and occasion. Many state insurance departments cutomarily use independently contracting examination, actuarial, and analysis services.

Are there any personnel board or budget problems here that we should cover?

§ 209. Prohibited interests, rewards.

1. The commissioner or his deputy, or any examiner, assistant, or employee of the department shall not be connected with the management or be a holder of a material number of shares stockholder 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 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 examiner, assistant, 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, examiner, assistant, employee, or technician, or in connection therewith.

Ref.:

Comment: This is a salutary provision, usually found; but brought up to date through recognition of desirable exceptions. Proposed A enables the department to secure the services of personnel of seasoned experience; C is an essential exception, since the investor has no way of preventing his mutual fund from buying insurance shares; C presents a similar problem. Life insurance companies are principal mortgage lenders, and personnel should not be barred from this market; further, a loan originally made by another institution might end up in the portfolio of a life insurance company.

§ 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 of 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.

Ref.

Comment: Power to delegate is almost indispensable, since the commissioner cannot in person attend the many duties of his office, sign all his mail, and perform all functions.

§ 211. General Powers, duties.

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

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

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

Ref.: American Fidelity Co. v. Mahoney, (1961) 157 Me. 507: The commissioner's powers are limited to the policy, standard and rule affirmatively established by the Legislature.

Comment: It is not practical to catalogue the commissioner's powers and duties in one section, or even in one chapter. This section serves as a general broad provision, to be detailed in subsequent chapters and provisions.

§ 212. Rules and regulations.

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

Ref.: Maine Constitution: Art. III, sec. 1: Powers of government shall be divided into three distinct departments, the legislative, executive and judicial.

Art. III, sec. 2: No person...belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

State v. Butler, 105 Me. 91: Entire legislative power is vested exclusively in the Legislature and no part of that power can be transferred or delegated by the Legislature to either of the other departments of the government.

Inhabitants of Town of Jonesport v. Inhabitants of Town of Beals (1932), 131 Me. 37: Any power not legislative in character which the Legislature may exercise it may delegate.

Me. 810: Commissioner may make reasonable rules, regulations necessary to effect purpose of law as to filing, approval of insurance contract forms.

1212: May, after notice and hearing, issue such regulations as deemed appropriate for supervision of credit life & A & H law.

2582: May establish and from time to time amend reasonable rules, regulations concerning life agent licensing law.

2713: May make reasonable r & r necessary to effect purposes of rating law.

3008: May make r & r as necessary for execution of functions vested under insider trading law.

Comment: By 5 MRSA §§ 2301 through 2354, procedures are set up for making and promulgation of rules and regulations by administrative agencies; requires notice of proposed adoption, submission of proposal to Attorney General for approval as to form and legality, filing of certified copy of the rule with the Secretary of State, and publication by the Secretary of State. Compilations of rules are to be made available on request by state official free of charge, at price fixed by Secretary of State to cover cost of publication and distribution. Interested person may petition agency for adoption, amendment or repeal of any rule.

This is general rule making power, and will suffice for most of the code without necessity to repeat. The restriction in the second sentence in proposed 1 is informative as to the legal limits on rule-making power. Too often the granting of rule-making power is viewed as a franchise to legislate.

§ 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. Except as otherwise expressly provided by law as to particular orders, 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 code 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. Except as provided as to particular procedures, 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.

Ref.:

Comment: This is a comprehensive basic provision which has worked well throughout the years in many states. It makes unnecessary specifications in connection with particular matters.

STATE OF MAINE

Inter-Departmental Memorandum

Date August 21, 1968

To Frank M. Hogerty, Jr. Dept. Insurance Commissioner

From Harry N. Starbranch, Assistant Dept. Attorney General

Subject

Forwarded herewith is my redraft of section 13 and my redraft of section 215. I would appreciate it if you would have them reproduced for distribution to the Commission members of the Commission for the revision of insurance laws.

Harry N. Starbranch
Assistant Attorney General

Section 215. Violation of rules, regulations, orders - penalty.

Any person who knowingly violates any rule, regulation or order of the commissioner shall, be except where other penalty is expressly provided, subject the violator to such suspension or revocation of certificate of authority or license, or administrative fine in lieu of such suspension or revocation, as may be applicable under this code for violation of the provision to which such rule, regulation, or order relates.

§ 215. Violation of rules, regulations, orders - Penalty

~~Wilful~~ violation of any rule, regulation, or order of the commissioner shall, except where other penalty is expressly provided, subject the violator to such suspension or revocation of certificate of authority or license, or administrative fine in lieu of such suspension or revocation, as may be applicable under this code for violation of the provision to which such rule, regulation, or order relates; but no penalty shall apply to any act done or omitted in good faith in conformity with any such rule, regulation, or order notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid.

Ref.: Me. 811: Person wilfully violating order of the commissioner under group insurance law shall forfeit up to $500, each violation, in addition to revocation of license.

1214: In addition to other penalty, violator of order of commissioner after it has become final, shall on proof satisfactory to court forfeit to the State up to $250, recoverable in civil action, but if wilful, fine is up to $1000, plus revocation or suspension of license. Credit life, a & h.

3109: Violation of rule, regulation or order as to emergency provisions punishable by fine to $1000, prinson less than 1 yr., or both.

Comment: A basic enforcement provision. Wilful violation is required for punishment, since there is no presumption of knowledge thereof.

§ 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 code 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.

Ref.: ME. 51: Commissioner shall keep correct account of all his doings and of all fees and moneys received by him by virtue of his office.

58: Shall preserve in proper form statements of condition of insurers, examined by or for him, and all statements rendered to him as required under this Title.

701: Following records are confidential: Complaint files; investigation files, but can release files of nonpersonal nature if no pending prosecution or disciplinary action; rate filings, until filing becomes effective; policy form and endorsement form filing, until they become effective; records and correspondence re admission of insurer to the state, pending such admission; insurer exam reports, prior to release; information of personal nature concerning licensing of agents, brokers, and adjusters.

702: As in 3, above.

1 MRSA 451: Provides for destruction of departmental records, on approval by Atty. General, State Auditor, Commissioner of Finance and Administration, and State Historian.

Comment: Maine has an unusually long list of confidential records. The various confidential matters referred to in existing sec. 701, above outlined, will be dispersed into the areas of the code where the related subjects are handled. It is difficult and impractical to attempt to bring and keep them all together in one section - a fact which existing sec. 701 well illustrates.

16 MRSA § 454 et seq contains general provisions for use of photographic and microfilm reproductions in evidence.

§ 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;

C. 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.

Ref.: Me. 1257: In his annual report the commissioner shall publish an abstract of the financial statement of certain foreign insurers.

Comment: The annual report is made permissive, as requested. Most states publish such a report annually. It is a useful source of information for the commissioner and others concerned with the insurance business.

§ 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.

Ref.: Me. 52: As above, in substance.

Query: How has this worked out? Should there be changes, based on this experience?

§ 219. Interstate cooperation.

1. The commissioner ~~shall~~ 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.

2. The commissioner may be a member of the National Association of Insurance Commissioners or any successor organization, and may participate in and support other cooperative activities of public officials having supervision of the business of insurance.

Ref.:

Comment: This is a general enabling provision designed to authorize participation in cooperative activities and organizations, and as a basis for the necessary appropriation therefor.

For consideration.

§ 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 three 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.

Ref.: Me. 59: Whenever he deems necessary and at least every 5 years, commissioner shall examine or cause examination of every domestic insurer, to ascertain ability to meet its engagements and do a safe insurance business; and make such other examinations as he regards necessary for safety of

public or policyholders. A domestic mutual insurer doing business solely within Maine shall be examined biennially.

528: Whenever he deems necessary for protection of policyholders, commissioner shall visit and examine any foreign insurer. May employ assistants. As to foreign U.S. insurer, optional to accept certificate of insurance commissioner or supt. of ins. of the domiciliary state as to its standing and condition, or to proceed to investigate it affairs himself.

1012: Assessment casualty insurers are subject to visitation and examination of the commissioner, same as for life insurers.

1260: Commissioner, personally or by a committee appointed by him consisting of one or more persons not directors, officers or agents of any such insurer, may at any time examine into affairs of foreign insurers.

2307: Commissioner, by deputy or examiner or other appointee, has power of visitation and exam. into affairs of medical, hospital service corporations (Blue Cross).

Comment: This is a comprehensive law, incorporating factors from the existing law, and with advisable supplementation. Present law calls for exam every 5 years of certain domestic insurers, and every 2 years as to others. Some states are finding that a mandatory 3 year exam is too burdensome. The mandatory period should not, however, be too great. A 3 year period is that most often found in other states. If the insurer does business in several states a "Convention examination" - participated in by all such states, is conducted.

§ 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, 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 subsidiary corporation of the insurer, whether or not 100% owned by the insurer.

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

4. 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.

5. 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.

Ref.: See references to proposed § 220.

Comment: This is a broad, modern examination authority keyed to the current movement of the insurance industry into the general field of financial services, either via holding companies or subsidiaries. In a sense this is an elaboration of implied power of the commissioner to administer and enforce the laws.

§ 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, ~~he~~ 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 wilfully 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.

Ref.: Me. 59: Commissioner may require officers to produce for examination all books and papers of the company, and to answer under oath all questions propounded to them as to its condition and affairs. Officer refusing to produce book or papers on demand, or to be sworn, or to answer any such question forfeits up to $200.

523: May examine holders of trusteed assets of alien insurer or its agents under oath, and examine its assets, books, etc. in same manner as to other authorized insurers.

529: Commissioner or his authorized representative shall have free access to books and papers of insurer, and may examine under oath its officers or agents relative to its business and condition. If refuse to submit to exam or comply with requirements, authority to do business in State may be revoked.

955: Books, records, assets, affairs of reciprocal insurer are subject to exam by commissioner or his authorized representative.

1260: Officers, agents of foreign insurers shall exhibit their books to the commissioner or examining committee and otherwise facilitate the examination, and may be examined under oath in relation to affairs of the insurer.

2307: Commissioner, or deputy or examiner or other appointee shall have free access to all books, papers, documents relating to the business of medical, hospital service corporations, and

may summon and qualify witnesses under oath to examine officers, agents or employees or other persons in relation to the affairs, transactions, conditions of the corporation.

Comment: This is a comprehensive, modern provision incorporating old and new factors, and factors designed for the protection of both the examinee and the State. Is generally self-explanatory. A substantial penalty is suggested for obstruction of the examination - for consideration. Examination is the indispensable tool of insurance supervision.

§ 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 ~~ten~~ ~~(10)~~ twenty (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.

Ref.:

Comment: This is a desirable facility.

§ 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 as ascertained from the sworn testimoney 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 or agents upon the facts stated therein.

Ref.:

Comment: Largely self-explanatory, and in accord with modern recommended practice. In 2 a "delinquency proceeding" is one for rehabilitation, conservation, or liquidation of the insurer, or a summary proceeding for correction of practices as to be provided in the subsequent chapter on the subject.

§ 226. Examination reports - Distribution, hearing

1. The commissioner shall deliver a copy of the examination report to the person examined, together with a notice affording such person 10 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 above, 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 for public inspection 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 State Treasurer pending final decision thereon.

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 for public inspection upon expiration of the review period provided for in subsection above. The report shall in any event be so accepted and filed within 6 months after final hearing thereon; except, that the commissioner may withhold from public inspection any examination report for so long as he deems such withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest.

4. The commissioner shall forward to the person examined a copy of the examination report as filed for public inspection, 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 for public inspection, or if withheld from public inspection under subsection 3 above, 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.

Ref.: Me. 701-6: Exam report and supplementaries thereto are confidential except that commissioner may communicate such information, prior to any release by the insurer, to the governor, the attorney general, state treasurer, or insurance commissioner of any other state in which the company is licensed. But prior to release by insurer or to insurance commissioners of other states, the insurer must be afforded a hearing as to facts, conclusions or recommendations in the report, for purpose of clarification, correction or amendment by the commissioner. Insurer may request by filing written request with commissioner within 10 days after receipt of the report from the commissioner. Pending final decision no release of the report shall be made other than to the governor, atty. general or state treasurer.

Comment: Examination reports are valuable sources of information for the commissioner, the insurer and its directors, other state

commissioners, and the public. The existing law, above cited, appears to require the report to be held confidential forever. This is probably not the practice; and delivery to other states would in all events destroy the confidential character of the report. Proposed 5 assists in making sure that those responsible for the control of management will be informed as to the insurer's condition. All of this is for consideration.

§ 227. Examination report - Publication

After an examination report has been placed on file for public inspection in the department, the commissioner may, if he deems advisable or proper in the public interest, publish the results of the examination in one or more newspapers of general circulation in the State.

Ref.: Me. 1260: As above, in substance, as to examination of foreign insurers.

Comment: Has this facility been used recently. Is it desirable to continue it? Without it the commissioner still has the implied right of publication.

§ 228. Examination expense

1. The expense of examination of an insurer, or of any person referred to in subdivision 1 (holding companies and persons holding voting stock or policyholder proxies), or 2 (subsidiaries), or 4 (managment or control of the insurer under contract), or 5 (promoters, etc.) of section 227 of this chapter, 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, 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 shall 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.

Ref.: Me. 373: Insurer shall pay all travel expense incurred by order of the commissioner in examining the company as required by law, except that domestic mutual insurer transacting direct business solely in Maine need not pay any exam expense.

1262: All exam expense of foreign insurer shall be paid to the commissioner by the co. examined.

955: The reasonable expense of examining a reciprocal insurer shall be borne by the insurer.

Comment: This is in accord with current practice, with desirable specifications. We perhaps cannot - for Constitutional reasons - make the NAIC scales mandatory.

§ 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 code.

2. The commissioner shall hold a hearing:

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

B. Upon written application for a hearing by a person aggrieved by any act or (threatened 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) ~~threatened~~ 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 by a person competent to be a witness in civil courts.

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 of this chapter.

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

Ref.: Me. 111: Commissioner shall hold hearing if required by statute. Application shall be in writing, specifying respects in which aggrieved and grounds to be relied on for relief to be demanded at the hearing.
In any case commissioner may require application be signed and sworn toby person competent to be a witness in civil courts. Must hold hearing within 30 days after receipt of application, unless commissioner requires application to be sworn to, in which case hearing within 30 days after application sworn to.

2715): Rating law: Aggrieved insurer or rate bureau may
2776) within 30 days after notice of the order request hearing in writing. Commissioner shall hear the party within 20 days after receipt of the request.

Comment: This is a general introductory provision to the administrative procedures sections of this chapter, incorporating material factors from the existing law, with desirable supplementation. The general plan of these sections will be to give anyone with a legitimate cause a chance to be heard, and to provide for appeals only from orders on hearing or for refusal to grant a hearing.

Query: Should we except rating hearings from this provision? There now are special hearings provisions in the rating laws. This will be given further consideration at that point.

§ 230. Notice of hearing

1. Except where a longer period is expressly provided in this code, 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 code 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 above, 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 of this chapter.

Ref.: Me. 54: At least 14 days notice of hearing shall be published or given in such manner as commissioner may determine to all persons to whom proposed to issue securities in such exchange.

Me.111: Commissioner shall give not less than 14 days advance notice of time, place of hearing, specifying the matters to be considered. If persons to be given notice are not specified in the provision pursuant to which hearing is held, commissioner shall give notice to all persons directly affected by the hearing. By mutual consent notice may be waived and hearing held at agreed time.

2715: Rating hearings are on 10 days notice.
2776: Same.

2910: 14 day notice of hearing under trade practices law.

Comment: "Show cause" notice is provided for in 2 as a useful facility. Notice by publication is provided for in 2, with "mailing list" provision as to those desiring direct notice.

§ 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 ~~deputy or assistant~~ 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 examine and cross-examine witnesses, to present evidence in support of his interest and to hav e 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 ~~stenographic~~ record to be made of the hearing proceedings by a competent ~~stenographic~~ 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.

Ref.: Me. 111: Hearing conducted by commissioner, deputy, or any competent salaried employee of the commissioner so authorized. Hearing held at place designated by commissioner, and open to public unless determined that private hearing in public interest, in which case shall be private. Formal rules of pleading or evidence not required, unless elected by party who communicates notice of such election to all other parties not less than 5 days prior to hearing date.

112: Commissioner or hearing officer may in any case cause complete stenographic record to be made. At expense and written request seasonably made by a party, commissioner or hearing officer shall cause complete steno record to be made by competent stenographic reporter; and such record shall be made a part of the commissioner's record of the hearing. Copy of the record shall be furnished to any other party upon written request and at expense of such party. Parties in interest shall be allowed to be present in person and by counsel during

due giving of all testimony and shall be allowed a reasonable opportunity to inspect all documentary evidence, to examine and cross-examine witnesses and to present evidence in their respective interests. Validity of any hearing held in accordance with the notice thereof shall not be affected by failure of any person to attend or to remain in attendance.

2519: Hearing on suspension, etc. of agent license shall be public.

2910: Under trade practices act, at time and place of the hearing the affected party shall have opportunity to be heard. On good cause shown, commissioner shall permit any person to intervene, appear and be heard by counsel or in person. Formal rules of pleading or evidence not required. Commissioner may, and on request of any party shall, cause steno record to be made of all evidence and proceedings. If no such record made and if judicial review sought, commissioner shall prepare a statement of the evidence and proceeding for use on review.

2715: Rating law: formal rules of pleading or evidence not required.

Comment: There are a number of changes here:

1) Stenographic record is required in all cases, as requested by Commissioner Hogerty and Atty. General Starbranch; but transcription only by request.

2) Hearing can be private only if consented to by all parties; this is designed to protect against "star chamber" proceedings.

3) Right of intervention is limited to parties having direct and immediate pecuniary interest.

Otherwise, the provision follows and consolidates what appears to be the substance of existing law, with supplementation.

§ 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 code 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.

Ref.: Me.51: Commissioner may administer oaths.

114: As in 2 and 3 above, in substance.

112: Commissioner or person conducting hearing may administer oaths, subpoena witnesses and require production of books, papers, records, correspondence and other relevant documents.

442: Commissioner or deputy or such magistrate as he appoints, shall summon and examine under oath, and require production of books, papers for investigation into insurance frauds.

2307: Commissioner, deputy, examiner or other appointee has power to summon and qualify witnesses under oath under Blue Cross law.

2910: Commissioner may administer oaths, subpoena witnesses and evidence in trade practice hearings.

Comment: This is the present law, with some editing, and addition of the perjury provision in 4 as a desirable warning.

§ 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, ~~deputy or assistant~~ or his designee, he is guilty of contempt and may be dealt with as provided in subsection 2 below.

2. The commissioner, ~~or deputy, or assistant~~ 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.

Ref.: Me. 115: As above, in substance, except as noted below.

> 2910: If person refuses to comply with subpoena or to testify, the Superior Court of Kennebec County or county where the party resides, on application of the commissioner may issue order requiring the person to comply with subpoena and to testify. Disobedience of such order may be punished by the court as a contempt thereof.

Comment: Sec. 115 is an interesting bit of Maine statute. About

the only change made, except as to minor editing, is to require punishment for contempt if the court finds the respondent guilty, rather than leaving it discretionary with the court as in present law. Of course, we can't deprive the court the right to determine what the punishment shall be. The procedure specified in § 2910, as to trade practices, is an alternative. Which should be preferred?

§ 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 investigation 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 code.

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.

Ref.: Me. 2916: Trade practices act, same in substance as above, except as noted below.

Comment: In the above provision - which is now found in substantially all states - granting of immunity is made only upon the direction of the Attorney General, since it has been found that immunity as to serious offenses may be inadvertently extended by the Commissioner or his staff.

§ 235. Order on hearing

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

2. Within 15 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 code as to particular proceedings, 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, affiliation or change of control of a domestic insurer as provided in chapter _____(organization and corporate procedures of domestic stock and mutual insurers) of this code, 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 code 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.

Ref.: Me.112: If hearing conducted by person other than the commissioner, such person shall report his findings as if taken by the commissioner. Such report, if accepted by the commissioner, may be the basis of any determination made by him or by his authority. Within 15 days after hearing commissioner shall make his order thereon, setting forth his action thereon, effective date of the order, together with such summary of his findings as may be necessary. Shall give a copy of the order to each person to whom notice of the hearing was given or required to be given.

1212: After hearing as to credit life, A & H provisions, commissioner set forth details of his findings together with an order for compliance by a specified date.

Commissioner's decision as to issuance of license requires a finding as to controversial facts and involves exercise or discretionary power and judgment, and such act is "quasi-judicial." Assoc. Hospital Service of Maine v. Mahoney, 161 Me. 391 (1965)

Comment: References in present law to hearings conducted by Commissioner's deputy, etc. are omitted as being internal departmental matter already covered under broad power of Commissioner to delegate duties and powers. Requirement that a copy of the order be given to every person entitled to notice of the hearing is unnecessary and unduly expensive in merger situations, where thousands of policyholders may be involved. 3 is "housekeeping" and self explanatory. By "quasi-judicial" is meant that Commissioner's order must be based upon evidence adduced at the hearing, and not upon private or undisclosed information.

§ 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 of this chapter, or as to a matter as to which the commissioner has failed to make his order on hearing as required by section 235 of this chapter.

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 of this chapter; or

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

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

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 of this chapter.

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 of this chapter. 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.

Ref.: Me. 56: Insurer may appeal Commissioner's disapproval of a policy form, etc., within 30 days, to Superior Court in Kennebec County, by filing compalint stating reasons and containing copy of the commissioner's notification, and the court, after such notice as it shall order and hearing, shall determine whether or not the reasons assigned by the commissioner are valid and thereupon sustain or annul the ruling. During pernancy of the appeal, policy form, etc. shall not be used.

113: Person aggrieved by order, rule, regulation of the commissioner may appeal to Superior Court within 30 days, unless shorter or different time is specified for a particular statute, but commissioner may for cause shown allow a longer time. Appellant shall file complaint with court, setting out grounds for appeal, and court shall fix time, place for hearing and cause notice thereof to be given the parties. Appeal shall be heard on legal evidence, and court may affirm, modify or reverse commissioner's decision, and shall remand cause to the commissioner for further proceeding in accordance with the court's decree.

524: If commissioner refused for 5 days to countermand his notice of intention not to renew insurer's Certif. of Authority, insurer has right to appeal as provided in sec. 533. On appeal the court may, after hearing, order that insurer have right to continue in business until final decision. If court reverses the commissioner, the commissioner shall forthwith issue the license.

533: Appeal from action of commissioner suspending operation of insurer is taken to the Superior Court by filing a complaint therefor. Court shall fix time, place of hearing which may be at chambers, and cause notice thereof to be given to commissioner. After hearing the court may affirm or reverse the commissioner. Decision of court is final.

815: Appeal from commissioner under A & H provisions law is taken within 15 days after date or order or decision, to Kennebec County Superior Court, at instance of any party in interest aggrieved by the order or decision. Appeal is by complaint, to which is annexed order or decision of the commissioner and the record on which order or decision is based, and complaint must set out substance of the reasons for the appeal. On presentation of the complaint, court order notice thereon. Hearing to be held not less than 7 days after notice. Upon the evidence the court may modify, affirm or reverse the commissioner in whole or in part in accordance with law and the weight of the evidence. Court determined whether filing the ap appeal operates as a stay of the order or decision pending final determination, and may impose such terms, conditions as deemed proper. An appeal may be taken to the law court as in other actions.

1207: Appeal under credit life, A & H law is as per sec.113.
1213: Same.

1214: Appeal from suspension or revocation under credit life, A & H law is as provided in sec. 1213.

2595: Appeal under life agent license law must be taken within 30 days after receipt of notice of commissioner's action, to "any court of competent jurisdiction". Thereafter the proceeding proceeds as in any other civil cause.

2715: Under rating laws. Appeal must be taken to Superior
2776: Court of Kennebec County within 15 days after date or commissioner's order or decision. Appeal is by complaint, etc. - same as in sec. 815, above summarized.

2912: Under trade practices law, appeal is to the Superior Court in Kennebec County, by filing complaint within 30 days from date of service of the commissioner's order. Complaint prays that commissioner's order be set aside. Copy of complaint must be served on the commissioner, and thereupon commissioner forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all evidence taken and the report and order of the commissioner. On such filing the court has jurisdiction, and shall determine whether the filing shall operate as stay of the commissioner's order or act; and court shall have power to make and enter upon the pleadings, evidence and proceedings a decree modifying, affirming or reversing the commissioner, in whole or in part. The findings of the commissioner as to the fact, if supported by substantial evidence, shall be conclusive.

Any person required by an order of the commissioner under sec. 2911 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in sec. 2905 or whose license has been suspended or revoked may obtain a review of such order or act by filing in the Superior Court in Kennebec County, within 30 days from the date of the service of such order, a complaint praying that the order of the commissioner be set aside. A copy of such complaint shall be forthwith served upon the commissioner, and thereupon the commissioner forthwith shall certify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner. Upon such filing of the complaint and transcript, such court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such complaint shall operate as a stay of such order or act of the commissioner and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in such transcript a decree modifying, affirming or reversing the order or act of the commissioner, in whole or in part. The findings of the commissioner as to the fact, if supported by substantial evidence, shall be conclusive.

To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedi-

ence to the terms of such order or act of the commissioner. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order such additional evidence to be taken before the commissioner and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commissioner may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings which, if supported by substantial evidence, shall be conclusive and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

Comment: Maine at present has an interesting variety of appeals provisions. The suggested provision is designed to operate throughout the code. Under several of the existing appeal provisions, the court has wide-open authority to reverse or modify the commissioner. Under the proposed provision, if the appeal is on the record the court would have to sustain the commissioner's action unless established that the commissioner acted unlawfully, arbitrarily or capriciously. This is an important distinction, and the desirability of the change should be given careful consideration. Generally appeals from administrative officials are subject to similar restrictions. The views of Maine counsel as to these matters would be helpful.

(Maine)

CHAPTER 5

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.

Ref.

Comment: A basic definition.

(Maine)

§ 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 by any reasonable combination of its policyholders, guaranty fund stockholders, or guaranty fund certificate holders.

or those policyholders specified in its charter

Ref.:

Comment: There are variations in plans and constitutions of mutual insurers among the states. The above definition is designed to be broad enough to encompass them. Does it fit as to Maine mutuals?

§ 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.

Ref.: Me. 951: The making of contracts between individuals, firms or corporations, providing indemnity among themselves from casualty or other cointingencies or from loss or damage to their property, shall constitute the business of insurance. Where such contracts are exchanged through an attorney, agent or other representative acting for such individuals, etc., certain filings to be made with the commissioner.

Comment: The "reciprocal" is one of the three major types of insurer organization operating in the United States. To my knowledge all such insurers now operate through such a common attorney-in-fact.

§ 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.

Ref.:

Comment: Because of differences in character and designation of the constituent documents of various types of insurer organizations as related to varying domiciles, it is convenient to use "charter" as a term for all.

§ 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 code and then in full force and effect, except as to such transactions as are expressly otherwise provided in this code.

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 wilfully 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.

Ref.: Me. 421: Annuity companies are subject to insurance laws.

501: Organization of any type may not transact ins.

business by issuing or delivering ins. contracts in this state without first obtaining license or certif. of qualification from the commissioner. Violation - fine to $5,000, and member of the organization who authorizes or participates in any act in violation of this section punished by fine up to $5,000 or by imprisonment for up to 2 years, or by both.

521: Foreign insurer must first obtain license from commissioner.

532: Delivery of policy in the state by mail or otherwise is deemed issuing the policy - and in effect, transaction of business in the state.

957: Reciprocal insurer shall procure annually a certificate of authority.

1209: Credit life, A & H policies shall be delivered or issued for delivery in this state only by insurer authorized to do business therein.

1251: Foreign insurer may transact business in Maine only upon complying with the law and not otherwise.

Comment: Subsection 2 results in part from experiences in which a foreign insurer establishes an operating office in a state without license therein and uses it only to solicit business in other states in which it is not authorized. The state of such an office bears an apparent responsibility which it otherwise cannot fulfill.

Subsection 3 is a part of the "California" approach to the control of mail-order nonadmitted insurers.

§ 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 subsection 2 of section 404 of this chapter, 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 ____ of this code.

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 ____ (delinquency proceedings; rehabilitation and liquidation) of this code.

Ref.: Me. 501: Certificate of authority requirement does not apply as to surplus lines, or as to reinsurers of an authorized insurer.

Comment: These are commonsense and self-explanatory.

§ 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 code and with its charter powers, and must be an incorporated stock or mutual insurer, or a reciprocal insurer, of the same general type as may be formed as a domestic insurer under this code; except that:

1. No foreign insurer shall be authorized to transact insurance in this State which does not maintain reserves as required by chapter 11 (assets and liabilities) of this code, as applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States; or which 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) of this code.

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.

Ref.: Me. 53: No insurer shall commence business until commissioner has ascertained that it has complied with its

charter and is otherwise qualified.

375: Must be an incorporated insurer, or be fined up to $5,000 or imprisoned for up to 2 years, or both; but this does not apply as to a reciprocal insurer.

519: Foreign incorporated factory mutual fire insurers may be authorized to transact business in the state.

651: Insurance business must be carried on only by duly incorporated insurers, who must act consistent with their charters. However, Lloyd's plan insurers formed for transaction of marine insurance business, may exercise all rights, powers and privileges granted under laws of this state.

1007: Foreign incorporated insurers doing health insurance business on the mutual assessment plan - may be admitted to the state.

Comment: The proposed section makes the following material changes from existing law: (1) Bars foreign mutual assessment insurers; (2) bars Lloyd's plan insurers, except as to surplus lines. I am informed that there are no such insurers authorized in Maine at this time. Proposed 3 is designed to bar "phoney" insurance plans. There is a broad "miscellaneous" category of coverages in the definition of casualty insurance - to appear in chapter 9 - which gives plenty of room for new coverages if deemed legitimate by the commissioner.

§ 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 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 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.

Ref.: Me. 501: Commissioner may refuse new or renewal license to insurer if he finds, after notice and hearing, that any person serving as officer, director or general manager, or owning controlling interest in stock insurer, has been convicted of any felony, larceny or other crime involving moral turpitude or is an untrustworthy person.

521: Applicant insurer must present evidence satisfactory to the commissioner to establish that its methods of operation are not such as would render its operation hazardous to public or its policyholders in this State.

Comment: Proposed 1 is a development of the past 20 years, arising somewhat out of operations of an insurer owned by the Province of Saskachewan. The Federal insurance organizations ignore state certificate of authority requirements.

Proposed subsection 2 was originated by us and has been widely adopted. It is designed to enable the commissioner to use his "nose" in sensing the types of illicit and fraudulent relationships involving insurers and reinsurers such as existed in the Hopps - Direll companies; and as may also possibly have existed in the midwestern ring with which commissioner Magnusson of Minnesota became concerned. This provision is often objected to at code hearings by certain insurance industry spokesmen, but is generally supported. A broad and general provision is called for if it is to be sufficiently effective for the purpose intended.

Proposed 2 also gives the commissioner the power to refuse authority if he finds management to be incompetent or lacking in essential experience.

§ 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, ~~without the written consent of such other insurer~~.

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 above, an insurer shall conduct its business in this State in its own corporate (if incorporated) or proper (if reciprocal insurer) name.

Ref.: Me. 510: Domestic insurer may adopt any name not previously in use by existing corporation. Commissioner may refuse authority, until adoption of different name, if in his judgment name adopted too closely resembles name of existing corporation or is likely to mislead the public.

Comment: In 2, is 10 years too long? It is designed to avoid confusion, especially in merger situations.

This is a comprehensive "name" provision which has evolved through the past ten years. The desirability of subsection 3 in Maine is for consideration. The section is generally designed to protect existing insurers and the public, and to discourage to the extent reasonably possible the formation of corporations having names similar to those of established foreign insurers not yet admitted to Maine.

§ 409. Combinations of insuring powers

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

Ref.: Me. 519: In addition to fire and marine, a stock or mutual insurer may be authorized to transact inland marine, tornado and sprinkler insurance and insurance on automobiles or damage caused thereby, and for loss of use and occupancy by fire or other cause.

Comment: The former stratifications between life insurance and the fire, casualty, surety and other "commercial" lines are beginning to give way. The proposed provision continues the existing situation in Maine as to absence of underwriting restrictions. Reciprocals are traditionally barred from life insurance - probably in part because historically they developed out of the fire insurance field. In principle there is no reason why a reciprocal insurer cannot write life insurance as well as a mutual insurer.

§ 410. Capital funds required

1. To qualify for authority to transact any one kind of insurance (as defined in chapter 9 of this code), 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:

	Stock Insurers		Foreign mutual, Reciprocal insurers	
Kind or Kinds of Insurance	Minimum Required Capital Stock	Initial Free Surplus	Minimum Required Basic Surplus	Initial Free Surplus
Life	$1,000,000	$1,000,000	$1,000,000*	$1,000,000*
Health	250,000	250,000	250,000	250,000
Life & Health	1,000,000	1,000,000	1,000,000*	1,000,000*
Casualty	500,000	500,000	500,000	500,000
Marine & 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	1,000,000	1,000,000	1,000,000	1,000,000
Life, and any one or more of Property, Casualty, Surety, Marine & Transportation	5,000,000	5,000,000	5,000,000*	5,000,000*

* Does not apply as to a reciprocal insurer.

Except:

A. An ~~domestic~~ insurer holding a valid certificate of

authority to transact insurance in this State immediately prior to 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 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 and surplus, as applied to all kinds of insurance it then proposes to transact, as provided by this code as to foreign insurers applying for original certificates of authority under this code.

B. An insurer which otherwise possesses funds as required under subsection 1 above, 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 insurers shall be governed by chapter 47 of this code.

Ref.: Me. 53: Insurer must have paid in its capital stock before commencing business.

503: Multiple line insurance: Foreign insurer authorized to transact fire, vessels, vehicle, accident & sickness, fidelity and surety, automobile, or workmen's compensation lines must have surplus to policyholders not less than that required by statute or regulation of the state of domicile, and may write all lines other than life and endowment and annuity contracts.

505: Domestic mutual insurer, if to write any line other than fire, marine or glass, shall either have been doing business for not less than 20 years, have surplus of at least 60% of its unearned prem. reserve, and have admitted assets of not less than $125,000 after deducting amount by which its net investment in real estate exceeds, if operates on cash premium basis, 10% of its premiums in force, or, if operates on assessment premium plan, 2% of the balance of its premium notes, or shall have a guaranty capital of not less than $100,000, if organized prior to Jan. 1, 1968, or $500,000 if organized on Jan. 1, 1968 or subsequent thereto, such guaranty capital to be divided into shares of $100 each, of which at least 1/4 of its guaranty capital has been paid in, in cash.

507: Domestic stock insurer if organized prior to Jan. 1, 1968 must have capital stock of not less than $100,000, or if organized after Jan. 1, 1968 must have capital stock of not less than $500,000.

508: Domestic mutual insurer must have guaranty capital not less than $100,000 if organized prior to Jan. 1, 1968, or $500,000 if organized thereafter, divided into shares of $100 each. Cannot issue policy until at least 1/4 of guaranty capital has been paid in, in cash.

519: Foreign fire or marine insurer must have unimpaired paid-in capital stock of at least $200,000; or if mutual, surplus of not less than $200,000, or $50,000 if transacts fire insurance only, plus contingent assets of $300,000, or net cash assets of $75,000 with contingent assets not less than $150,000, or net cash assets equal to its total liabilities and contingent assets of not less than $100,000, if all well-invested and immediately available for payment of losses in Maine.

519: Foreign life, casualty, accident, health, liability, plate glass, steam boiler, fly wheel, burglary and theft, or sprinkler insurer to be admitted unless paid-up inimpaired capital of at least $100,000 if a stock insurer, or net cash assets in same amount if a mutual insurer.

519: After July 9, 1943, foreign mutual fire insurer may write nonassessable policy if cash surplus is kept in excess of $200,000.

593: No ins. co. be incorporated with capital less than $100,000 if prior to Jan. 1, 1968, and $500,000 if organized then or thereafter, to be paid in at the periods and in the proportions required by the charter.

1254: To transact surety, or credit, or title insurance, insurer must have paid-up unimpaired capital not less than $250,000, exclusive of any obligations of the stockholders of any description, or if a mutual insurer, net cash assets of the same amount.

1262: To be accepted as surety on statutory bond, surety insurer must have paid-up capital not less than $250,000.

Comment: This is a key provision in the code. The amounts written in as required capital/surplus are intended as starting points for discussion, but do reflect some of the discussions of the subject in Maine. I am in doubt as to proper amounts for title insurers. My notes reflect that not much title insurance is written in Maine, since lawyers do most of the title work.

Proposed B reflects current concern among Insurance Commissioners with a proper balance between surplus as to policyholders and the volume of business being written. The NAIC is working on some formulas in this area.

The existing law is somewhat difficult to follow, especially as to domestic mutual insurers. It looks as though it was designed around particular insurers. The "grandfather" rights in "A" will permit these insurers to continue undisturbed in their present rights.

We should know more about how this schedule will affect foreign insurers already authorized in Maine, and whether we should extend "grandfather" rights to them or put them under an "escalator" clause through which they would be allowed a designed period within which to meet the higher requirements.

All of this is for discussion.

§ 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 of this code.

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 410-1-A of this chapter.

Ref.: Me. 421: Annuity companies are subject to all law relating to life insurance.

Comment: 1. is usual; 2 is new but perhaps useful; 3 is often found, and arises out of traditional operations of casualty insurers.

§ 412. Deposit requirement

1. The commissioner shall not authorize an insurer to transact insurance in this State, other than an alien insurer, unless it makes and thereafter continuously maintains on deposit in trust in this State through the commissioner for the benefit of all the insurer's policyholders, cash or securities eligible for such deposit under section ____ (securities eligible for deposit) of this code, in the amount of at least $100,000.

2. The commissioner shall not so authorize an alien insurer 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 code 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.

3. 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.

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

Ref.: Me. 325: Every domestic stock A & H insurer shall make and maintain a deposit with the Treasurer of State, of securities to market value of at least $100,000, to be held in trust for the benefit of all policyholders of the company, before has right to transact any business.

507: Domestic mutual shall deposit its guaranty capital or guaranty fund with the Treasurer of State, and deposit may be drawn on to pay losses, subject to replenishment by assessment levied upon contingent funds or notes.

522: Alien insurer must make deposit with Treasurer of State or with financial officer or insurance commissioner of some one other state, or sum not less than capital or assets required of like foreign cos. for admission to this state. Deposit is exclusive trust for benefit of insurer's policyholders and creditors in the United States.

523: All real estate, securities and assets of an alien insurer in the U.S. shall be held by trustees who are citizens of the U.S., for benefit of all the insurer's creditors in the U.S. These trustees shall be appointed by the insurer, and certified copy of the vote by which they are appointed and of the deed of trust shall be filed with the commissioner.

Comment: It appears that under existing law only alien insurers and domestic stock A & H insurers are required to have the usual type of statutory deposit. The "deposit" of domestic mutuals, as per sec. 507 above cited, appears to be more of a banking arrangement.

Are deposits now required of all insurers?

The provisions in existing 523, above summarized, appear to be obsolete.

The proposed provision is in modern form, and is intended as a vehicle for further discussion of the need for deposits in general. Except as to safekeeping of a modest portion of an insurer's assets, a deposit is apt to be of little value, and cannot mitigate the danger of insolvency. All this is for consideration.

§ 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) of this code, 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 ____ of this code.

4. A complete copy of its financial statement as of not earlier than the December 31 next preceding in form as customarily used in the United States by like insurers, sworn to by at least two 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 of this chapter 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 a foreign or alien insurer, certificate as to deposit if to be tendered pursuant to section 412 of this chapter, and if an alien insurer 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.

Ref.: Me. 521: To apply for certificate of authority insurer must furnish commissioner with:

1. Certified copy of its charter and bylaws;
2. Statement under oath, signed by president or secretary, showing its financial condition according to a form supplied by the commissioner. In lieu of his own examination of the insurer, the commissioner may accept the certificate of the commissioner of the domicile state as to an examination of the insurer completed within the 12 months immediately prior to date of application. Evidence satisfactory to the commissioner shall be presented that the insurer's condition and methods of operation are not such as would render its operation hazardous to the public or its policyholders in this state.
3. Power of attorney for service of process.

523: Alien insurer shall file a copy of the trust deed under which its U. S. deposit is held for the protection of its policyholders.

701: Records, correspondence concerning admission of an insurer are confidential until the insurer has been licensed.

951: Reciprocal insurer shall file declaration giving name of the attorney in fact, a copy of proposed policy, copy of the power of attorney, location of office.

952: Attorney-in-fact of reciprocal insurer must file power of attorney for service of process.

1007: Foreign assessment casualty insurer shall file certified copy of chapter; statement under oath of its president and secretary, in form required by the commissioner, of its business for preceding year; certificate under oath of its president and secty. that it has ability to pay and for the 12 months preceding has paid maximum amt. named in its policies in full; certificate from home state commissioner that the insurer is legally entitled to do business in home state; copy of policy and application, showing that benefits are provided for by assessment on policyholder; evidence satisfactory to commissioner that accumulates a fund equal to not less than proceeds of one assessment or periodical call on all policyholders, that such accumulation is permitted by home state law, and is trust.

1252: Foreign surety, credit, title insurer not to be admitted until has appointed commissioner process agent.

1256: Foreign surety, credit, title insurer must deposit with commissioner copy of its charter and statement signed and sworn to by president and secretary as to capital, investments in detail, outstanding policies or surety bonds in force, collateral therefor, premium, liabilities, claims, and attorneys in fact within the state.

Comment: What purpose is served by having application documents confidential, as per present sec. 7017: This is omitted from the new section for the time being.

Do we continue to want an actual copy of the trust deed of an alien insurer?

Is it practical to require lists of attorneys-in-fact of surety company in advance of admission?

This section should present a fairly complete listing of items to be required, and thus save correspondence. We should not require unessential things.

§ 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 code, 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 may, if he deems it advisable, 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 of this code.

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.

Ref.: Me. 53: Insurer not to commence business by issuing policies until commissioner has ascertained that has complied with terms of its charter, paid in its capital stock; he shall then issue his certificate of that fact.

521: On receiving papers, commissioner may, if he deems it advisable, grant license authorizing insurer to transact business in the state.

524: When foreign insurer has complied with requirements and is solvent in the U.S., he may issue to it a license to transact business in the state.

957: Upon compliance with requirements, commissioner shall issue to reciprocal insurer a certificate authorizing it to do business in the state.

1007: Upon compliance with requirements, commissioner may issue to assessment mutual casualty insurer authority to transact business.

1256: Upon compliance commissioner may grant license to surety, credit, title insurer.

Comment: This provision follows present law in giving the Commissioner broad and almost undefined authority to issue or not issue a certificate of authority. It would be better law if we could nail down the standards by which the Commissioner is to act, and not leave it to his personal discretion. The last sentence in 2 is because the definitions of the kinds of insurance of the insurer's domicile state may be different from those of Maine.

Note: We should nail down the standards above referred to, after discussion.

Query: Do we want to put a time-limit within which the Commissioner shall act on an application for certificate of authority?

§ 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 code, 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 1 of the continuation fee provided in section 601 (fee schedule) of this code.

B. Due filing by the insurer of its annual statement for the next preceding calendar year as required by section 423 of this chapter, 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 30 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 of this chapter. 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) of this code. 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.

Ref.: Me. 53: Certificate effective until July 1st of year following date of issuance. Certificate to be renewed annually so long as insurer found solvent and responsible.

521: License of insurer effective until July 1st next, and renewed annually so long as commissioner "regards the company as responsible and safe, but in all cases to terminate on the first day of the succeeding July."

524: License of foreign insurer to be renewed annually on July 1st so long as commissioner finds company solvent.

957: Certificate of reciprocal insurer expires July 1 and is renewable annually.

1256: License of foreign credit, surety, title insurer expires on July 1st, and may be renewed annually.

Comment: This is the heart of the permanent licensing system which has been enacted by many states. It saves the work of annual issuance of individual company licenses. Subsection 3 is designed to ameliorate inadvertent failures to renew.

§ 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 code; 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 code 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 this code.

2. Except in case of insolvency or impairment of required capital or surplus, or suspension or revocation by another state as referred to in subdivision D above, the commissioner shall give the insurer at least ~~10~~ 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 ~~10~~ 20 days, such request shall auto-

matically stay the commissioner's proposed action until his order is made on such hearing.

Ref.: The following references are to both this section and to section 417, which follows:

Me. 61: If assets less than liabilities commissioner shall suspend insurer's right to do business.

524: Commissioner shall not refuse to renew foreign insurer license unless he has on or before June 1 notified the insurer in writing by registered mail, of his intention not to renew the license, together with detailed statement of his reasons therefor.

527: May revoke foreign insurer license for violation of law.

529: May revoke insurer authority for refusal of insurer, its officers or agents, to submit to examination or comply with requirements relative thereto. Such revocation to exist until satisfactory proof furnished commissioner that it is in sound and solvent condition.

530: May suspend license of foreign insurer if in failing condition or unsafe.

532: Notifies insurer and agents to cease issuing policies in the state when commissioner learns that its net cash funds of foreign insurer do not equal its liabilities.

534: If insurer fails to pay judgment within 30 days after demand, commissioner may, on notice and hearing, suspend power to do business in this state until has paid.

811: May suspend or revoke license of insurer which wilfully violates laws as to group contract provisions.

957: Revocation of certificate of authority of reciprocal insurer for violation of law.

1003: Injunction against mutual assessment casualty insurer for exceeding charter powers, violation of law, or fraudulent conduct of business.

1007: Revocation of certificate of authority of mutual assessment casualty insurer - foreign - for failure to pay policy benefits in full or for violation of law. Commissioner shall publish notice thereof in state paper.

1262: Revocation of license of foreign surety, credit, title insurer for failure to comply with law or fraudulent conduct of business, or is insolvent. Publish notice thereof to be published in one or more newspapers in this State.

Comment: Suspension, revocation is made either mandatory - as above - or discretionary with the Commissioner, as in the next section.

§ 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 wilfully violated or wilfully failed to comply with any lawful regulation of the commissioner, or has violated any provision of this code other than those for violation of which suspension or revocation is mandatory; or, in lieu of such suspension or revocation, the commissioner may, in his discretion, levy upon the insurer, and the insurer shall pay forthwith, an administrative fine of not over $2,000.

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; ~~with respect to the liability of an insured to such 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 such 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.

Ref.: See references to sec. 416.

Comment: There are several new factors in the above provision: The grounds in proposed 1 are discretionary, generally for violation of an order, regulation, or law; the commissioner is allowed to impose an administrative fine of up to $2000 in lieu of suspension or revocation - thus being able to penalize the violation without putting the insurer out of business. In 2, if the commissioner finds that the referred-to grounds exist, revocation or suspension is mandatory - as it should be. There is still a measure of discretion in the commissioner, however, with respect to the finding. 2-A enables the commissioner to put the insurer out of business in the state well ahead of actual insolvency; 2-B is a useful and popular means for disciplining insurers with poor claims practices. Proposed 3 enables the commissioner to act at once without awaiting full details of receivership action against the insurer in another 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. The commissioner may, in his discretion, cause notice~~ of such suspension or revocation to be published in 1 or more ~~newspapers of general circulation in this State.~~

3. 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.

Ref.: Me. 530: After suspension and notice to agents, agent subject to forfeiture of up to $200 for issuance of new policies thereafter.

532: Insurer officer or agent issuing new policy after notice of suspension shall forfeit up to $300 for each offense.

534: Agent forfeits up to $200 for issuance of policy during suspension. New policy issued after revocation or suspension is not invalid as to the insured.

1007: On revocation of authority of foreign mutual assessment casualty insurer commissioner shall cause notice thereof to be published in the state paper.

1262: Commissioner shall cause notice of revocation of license of foreign surety, credit, title insurer to be published in one or more newspapers published in this State, and thereafter the agents of the insurer shall transact no further business for the insurer.

Comment: In view of the notice to agents provided for in proposed 3, the publication called for under present law - and continued in proposed 2 - could well be dispensed with. No

prohibition against issuance of new policies is provided here, since is already covered in general provisions - together with penalty for violation.

The provision of present law - sec. 534 - above cited, that new policy issued after suspension or revocation is not invalid as to the insured, is omitted. This is the law in all events, and it is difficult to express the matter in a short provision since to be accurate a long and detailed provision would be required which may not be justified by the subject.

§ 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 code, 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 code, 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.

Ref.: 529: Revocation of authority of insurer to continue until satisfactory proof furnished commissioner that it is in sound and solvent condition.

530: Suspension of license of foreign insurer in failing or unsafe condition to continue until such disability removed.

532: When commissioner satisfied that insurer is again solvent, he shall give notice to insurer and its agents that its business may be resumed.

534: Insurer or agent shall not issue any policy during suspension.

Comment: This clarifies the duration and effect of suspension, and is self-explanatory.

§ 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.

Ref.:

Comment: This is largely informative. Insurers qualify under the insurance code and not otherwise.

§ 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 attorney 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.

Ref.: Me. 521: Foreign insurer shall appoint commissioner its process agent, upon whom all lawful process in an action or proceeding may be served with same effect as if the company existed in this State. Authority to continue in force irrevocable as long as any liability remains against the company in this State. Certificate of the appointment, duly certified and authenticated, shall be filed with the commissioner, and copies certified by him shall be received in evidence in all courts of the state.

535: Notices and processes which under any law, bylaw or policy, any person has occasion to give or serve on the insurer, may be given to or served on its agent or on the commissioner, with like effect as if given or served on the principal.

952: Attorney-in-fact or reciprocal insurer shall appoint commissioner process agent of the insurer, irrevocably so long as any liability remains outstanding in this State against the subscribers.

1252: Foreign insurer - surety, title, credit - shall appoint commissioner process agent, on whom all lawful process in any action or proceeding against the insurer, may be served. To remain in force so long as any liability remains against the insurer in this State. Certificate of the appointment, duly certified and authenticated, shall be filed with commissioner. Certified copy to be received in evidence in all courts of this State.

Comment: This is a modern provision, incorporating the principles and some of the detail of the existing law. Proposed 3 makes it sure that the process reaches a responsible person. Proposed 5 expedites the handling of the process on the parts of both the Commissioner and the insurer. The insurer may want to designate a local person in order to save time. Proposed 6 is the same as the present law.

§ 422. Serving process

1. Service of process against an insurer for whom the commissioner is attorney 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, two copies of the process, together with fee therefor as specified in section 601 (fee schedule) of this code, 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 of this chapter. Service of process shall be complete when the same has been so mailed.

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.

Ref.: Me. 371: Fee for receiving service of process against foreign insurer or fraternal is $2, paid by plaintiff at time of service and recoverable as part of taxable costs in the action.

521: Process served on commissioner as process agent of foreign insurer has same legal force and validity as if served on the insurer.

534: Whenever lawful process against insurer served on commissioner, he shall forthwith notify the insurer of such service by letter and within a reasonable time forward a copy of the process, by mail, postpaid and directed to the officers of the insurer. Service so

made is deemed sufficient service on the insurer, and judgment rendered therein shall bind the insurer as valid in every respect, whether the defendants appear or not.

952: Service on commissioner as process agent of reciprocal insurer is valid and binding upon all subscribers. Three copies of process shall be so served, commissioner files one copy, forwards one to the attorney-in-fact of the insurer, and returns one copy with admission of service.

1252: Process served on commissioner under appointment of foreign surety, title, credit insurer has same legal force and validity as if served on the insurer. Service on such process agent, or on any duly appointed agent of the insurer in the state, is deemed sufficient service on the insurer.

1253: Commissioner shall forthwith forward copy of process, by mail, postpaid and directed to secretary of the insurer.

Comment: Are 3 copies required in all service of process Now? The fee for service is as high as $5 in some states. It will appear in the fee schedule in a subsequent chapter.

§ 423. Annual statement

1. Each authorized insurer shall annually on or before March 1, or within any reasonable extension of time therefor which the commissioner for good cause may have granted on or before such March 1, file with the commissioner a full and true statement of its financial condition, transactions and affairs as of December 31 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 two 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) of this code.

Ref.: Me. 57: Insurer shall annually by March 1st render to commissioner either an exact statement, under oath, of its condition as on Dec. 31st preceding, or its last exhibit, setting forth its condition as required by blanks approved by the commissioner. Except as to life insurers, commissioner may for good and sufficient cause shown, extend filing date for reasonable period.

955: Annual statement of a reciprocal insurer shall be made to commissioner on or before Jan. 31st. Attorney not required to furnish names, addresses of any subscribers. Must furnish additional information as commissioner may require.

1012: Assessment mutual casualty insurer shall on or before Jan. 31st annually return to commissioner, in such manner and form as he prescribes, statement of its affairs for year next preceding.

1257: Foreign credit, surety, title insurer shall in month of January deposit with commissioner a statement of its capital, assets and liabilities, investments and risks, as of Dec. 31 next preceding, signed and sworn to by president and secretary.

1259: Commissioner shall examine statements so filed, and if found obscure, defective or unsatisfactory, shall require answers under oath from officers of insurer to such interrogatories as he deems necessary to explain the return and exhibit a full and accurate view of the business and resources of the company. Failure to answer interrogatories for 30 days is ground for suspension of business until satisfactory answers made.

Comment: This is a modern provision, in keeping with actual practice. The form of annual statement is the subject of constant study by the National Association of Insurance Commissioners, and the forms require comprehensive and detailed disclosure of company affairs.

§ 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 of this chapter shall forfeit to the State ~~$5~~ $25 for each day of delinquency.

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.

Ref.: Me. 57: Forfeit $5 per day for each day's neglect to file annual statement.

Comment: The $5 per day forfeit is an unusually mild penalty. 2 is added for consideration. Falsification of the annual statement is a serious offense.

§ 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 and/or the parent corporation 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.

4. This section shall not apply as to transactions between an insurer and a subsidiary insurer of which it owns 100% of the outstanding capital stock.

Ref.:

Comment: This is a new and original section, and is largely a basis for further consideration and discussion. The "holding company problem" is much in the insurance press these days, and the NAIC is conducting a study of possible statutory controls. If this study produces tangible results in time for us, we may use them. The suggested provision is designed to catch the usual ploys, and is broad enough to vest desirable rule making power in the Commissioner through which he can spell out practical devices for effectuating the law. 4 is a commonsense exception since insurers are often operated as "shell" companies by the owner insurer, and since both are subject to examination and annual report requirements there is little chance of deception.

§ 426. Resident agent, countersignature law

1. Except as provided in section 427 of this chapter, 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 non-performance 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 ____ (countersignature of policies) of this code.

3. A nonresident agent or nonresident broker shall pay the countersigning agent countersignature fee as provided by section ____ (countersignature fee) of this code.

Ref.: Me. 525: As in 1 above.

803: Health policies must be countersigned by duly licensed resident agent.

1209: Credit life, A & H policies shall be issued only through holders of licenses issued by commissioner.

Comment: This is the present law. The countersigning details are to be placed in those chapters dealing with agents, since they are the agents' responsibility. Requirement that the policy be countersigned is imposed upon the insurers, and that is why this provision appears in this chapter. Countersignature laws are beginning to fade. At least one state - Oregon - has repealed its countersignature law at the request of the agents association.

§ 427. Same - Exceptions

Section 426 of this chapter 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 building or construction project;

6. Group insurance of a type permitted by this code issued to a nonresident policyholder, and any insurance certificate applicable to it; or

7. Insurance issued by insurers not operating on an agency system in the solicitation of business.

Ref.: Me. 525: As in 1 through 6, above, in substance.

951: Reciprocal insurers operating on salary basis and receiving no commissions are exempt from laws requiring insurer to do business through licensed resident agents.

Comment: This is the present law. In 7 existing 951 has been made generally applicable, since all insurers situated alike should have the same treatment.

§ 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 insurers, 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 trusteed 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 as provided in section 8 of this code.

Ref.: Me. 526: When by the laws of any other state of the United States or province of the Dominion of Canada, any fines, penalties, licenses, fees or deposits, or other obligations or prohibitions in excess of those imposed by the laws of the state upon foreign insurance companies and their agents are imposed on insurance companies of this State and their agents, the same fines, licenses, fees or deposits, penalties, obligations or prohibitions shall be imposed upon all insurance companies of such state of the United States or province of the Dominion of Canada and their agents doing business in or applying for admission to this State. All insurance companies incorporated by another country shall be regarded for the purposes of this section as though incorporated in the state where they have elected to make their deposit and establish their principal agency in the United States.

Comment: This is a modern provision with broad scope and flexibility, which has been adopted in most recent insurance code revisions. The retaliatory law serves as useful function, and has resulted in a good degree of standardization of insurance taxes and requirements throughout the nation.

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 $ ~~500.00~~ 300

B. Issuance, and each annual continuation ~~75.00~~ 100

C. Reinstatement (section 415 of this code), 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 ~~XXXX~~ 5.00

3. Annual statement of insurer, filing 50.00

4. Service of process

~~Filing power of attorney 5.00~~

Acceptance of service of process 5.00

5. Agents' licenses and appointments

A. Application for original resident agent license and issuance, if issued

Life agents	$ 5.00
Other agents	5.00
B. Appointment of resident agent, each insurer	
Life agent	5.00
Other agents	~~3.00~~
Annual continuation of appointment	
Life agent	5.00
Other agents	~~3.00~~
C. Temporary license	5.00
D. Limited license (section ____ of this code)	_____
E. Nonresident agent license, application and issuance, if issued	
Life agent	15.00
~~Other agents~~	~~10.00~~
Appointment of such agent, each insurer	
Life agent	5.00
Other agents	~~3.00~~
Annual continuation of appointment	
Life agent	5.00
Other agents	~~3.00~~
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	~~20.00~~ 25.00
Annual continuation	25.00

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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 ~~XXXX~~ 5.00

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A. Application for original resident agent license and issuance, if issued

Life agents	$ 5.00
Other agents	5.00
B. Appointment of resident agent, each insurer	
Life agent	5.00
Other agents	~~3.00~~
Annual continuation of appointment	
Life agent	5.00
Other agents	~~3.00~~
C. Temporary license	5.00
D. Limited license (section ____ of this code)	____
E. Nonresident agent license, application and issuance, if issued	
Life agent	15.00
~~Other agents~~	~~10.00~~
Appointment of such agent, each insurer	
Life agent	5.00
Other agents	~~3.00~~
Annual continuation of appointment	
Life agent	5.00
Other agents	3.00
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	~~20.00~~ 25.00 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	10.00
	Consultants, filing application, each examination	25.00
10.	Insurance vending machines	
	Filing application for license and issuance, if issued, each machine	~~10.00~~ 50.00
	Annual continuation of license, each machine	~~10.00~~ 50.00
11.	Certified copy of insurer certificate of authority or of any license issued under this code	2.00
12.	Copies of other documents on file in the department: Reasonable charges as fixed by the Commissioner per folio of ~~words~~ and for certifying and affixing official seal, $1.00.	

Ref.: ME. 371:	License to road or tourist service	$20.00
	Domestic mutual assessment fire insurer exempted from fee	
	Certificate of authority, foreign insurer, foreign surety co., foreign fraternal	50.00
	Certificate of qualification, domestic insurer, to act under its charter	50.00
	Hospital, medical service organization, annual license	20.00
	Certificate of authority, reciprocal insurer	50.00
	Agent, broker licenses, issuance and renewal	
	Resident agent, insurer, surety, fraternal	2.00
	Domestic mutual fire insurer exempted	
	Nonresident agent	10.00
	Resident broker	25.00
	nonresident broker	50.00
	Organization as agent, $2 each resident and $10 each nonresident named	
	Domestic mutual fire insurer exempted	
	Organization broker, $25 each resident and $50 each nonresident named.	
	Surplus line broker	20.00
	Adjuster license, issuance, renewal	2.00
	Exam of agents, brokers adjusters	10.00
	Filing annual statement of insurer	50.00
	Domestic mutual assessment insurer exempted	
	Receiving service of process	2.00
	Road, tourist service agent license	2.00
	Medical, hospital service agent license	2.00
	Lightning rod manufacturer license	20.00
	Salesman	2.00

1013. Assessment casualty co. fees are same as for Life insurer.

Comment: This is a tentative fee schedule, reflecting some changes: A new fee for filing application for original certificate of authority is provided, since the State must examine the application and often engage in extensive correspondence with the applicant insurer. The Certificate of Authority fee is increased from $50 to $75, but only one such Certificate is to be required of the same insurer; whereas under present law an additional certificate is required if the insurer also transacts surety insurance. A new fee for original license of agent is provided - $5.00, and the appointment fee is raised from $2 to $5 per year. A new license category - Consultants - is provided for, and the fee is set at $25, the same as for a resident broker. Perhaps the Consultant fee should be larger as a means of discouraging those not seriously involved as Consultants. Adjuster's license fee is raised from $2 to $5 per year. A new category of license exams is provided for - that of Consultant, at $25. This is a comprehensive exam, more so than for agent or broker. Insurance vending machine license is provided for at $10 per year - this is equal to an original agent license and one appointment.

In general the present Maine fee schedule is on the low side, in comparison with other states. The suggested schedule is for consideration.

Note: Items appearing in subdivision 5 - Agents license and appointments - reflects suggestions made to Commissioner Hogerty by the "advisory Board on Examinations of Life Insurance Agents," and are presented for consideration. In some instances the amounts shown are different than those so recommended, but the over-all effect will be similar under the permanent license system proposed.

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	10.00
Consultants, filing application, each examination	25.00

10. Insurance vending machines

Filing application for license and issuance, if issued, each machine	~~10.00~~ 50.00
Annual continuation of license, each machine	~~10.00~~ 50.00

11. Certified copy of insurer certificate of authority or of any license issued under this code 2.00

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	Agent, broker licenses, issuance and renewal	
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	Domestic mutual fire insurer exempted	
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	Organization as agent, $2 each resident and $10 each nonresident named	
	Domestic mutual fire insurer exempted	
	Organization broker, $25 each resident and $50 each nonresident named.	
	Surplus line broker	20.00
	Adjuster license, issuance, renewal	2.00
	Exam of agents, brokers adjusters	10.00
	Filing annual statement of insurer	50.00
	Domestic mutual assessment insurer exempted	
	Receiving service of process	2.00
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§ 602. Tax on premiums and annuity considerations

As to returns and taxes on premiums and annuity considerations refer to 36 MRSA Ch. 357, section 2511 et seq.

Ref.: Me. 421: Annuity companies are subject to taxation same as life insurers.

Comment: This is for information of those using the code.

§ 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 over the same to the Treasurer of State forthwith.

Ref.: Me. 51: As above.

Comment: This is the present law. Any refinement or supplementation desirable?

§ 604. Insurance regulatory fund

1. There is created in the State Treasury a dedicated account to be designated the "~~I~~nsurance 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 23 MRSA § 372;

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

~~C. An amount equal to 5% of the aggregate amount received by the State after the effective date of this Act pursuant to the tax on, or as measured by, insurance premiums and annuity considerations.~~ change

C. Administrative fines & penalties collected by the Commissioner under this Title.

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.

Ref.: ME. 372: Fees collected under sec. 371, subsections 1 and 8 (includes certificate of authority of insurer and annual statement filing fees only), shall be used solely to defray administrative expenses for examining companies, reviewing and audition annual statements, and regulating rates as required by this Title.
Art. V, Part 4, sec. 4 of State Constitution: Money to be drawn from treasury in consequence of appropriation authorized by law.

Comment: The problem of an adequate appropriation for maintenance of an effective Insurance Department is one which recurs each legislative session. The premium tax was originally designed for this purpose, but has instead, become a principal source of general revenue for the State. Many states now have special funds set aside for the financing of the Insurance Department. Commissioner Hogerty has requested that consideration be given to allocating a portion of the revenues from the tax on premiums and annuity considerations to a "dedicated account" for the support, etc. of the Department, or that there be a special premium tax for the same purpose, for which insurers would receive credit upon the general premium tax. All in all a "dedicated account" of the type above proposed would be the easiest to administer. A special tax would encounter problems of concurrency with the general premium tax. I am told that the premium tax is producing revenue of about $3,000,000 per year for the State, and that the Insurance Department budget runs about $130,000 per year, or about 4-1/3%. I have no figures as to income from fees and charges. On that basis 5% of premium taxes plus fees, etc. should provide a reasonably adequate fund.

This is all for consideration.

Is there a better name for this account?

§ 605. In lieu, pre-emption provision

1. The fees, charges and premium taxes imposed by the State shall be in lieu of all county and municipal license fees and taxes upon the business of insurance in this State, excepting property taxes.

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.

Ref.: 36 MRSA § 2511: Domestic life insurer, in lieu of all other taxation, shall pay premium tax and real estate tax.

Comment: This is a typical "in lieu and pre-emption" provision such as in force in many states. Do Maine municipalities now levy taxes of any kind on insurance premiums, or insurer, agents, etc. as such? Such municipal or county taxation may create serious problems of accounting, as well as of mobility for agents. This is for consideration, and enactment would be helpful if municipalities are not already taxing the business and those engaged therein.

CHAPTER 13

INVESTMENTS

§ 1101. Scope of chapter

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

2. Except as to sections 1102 (investments of insurers other than life) and 1115 (investments in subsidiaries) of this chapter, this chapter applies only as to:

A. Life insurance;

B. Annuity contracts; and

C. Health insurance, except where transacted by an insurer which also transacts casualty or property insurance.

Ref.:

Comment: A desirable provision so that it is not necessary to read entire chapter to find out who is governed thereby. The domestic non-life insurers appear to be well satisfied with the present law under which their investments are governed by the savings bank investment law. It is proposed to continue this arrangement in this draft. Investment in subsidiaries is, however, an area likewise of interest to non-life insurers. Where health insurance is transacted by a multiple line insurer it should be able to make all its investments under the same law.

Suggested change for Section 1102, Chapter 13, Investments, relating to non-life insurers:

(a) Not less than the total liabilities of a domestic non-life insurer shall be invested in cash funds, bonds and interest bearing obligations, mortgages, preferred stocks and agent's balances under 90 days.

(b) May invest not more than 80% of surplus in common stocks.

(c) May invest not over 15% of assets in real estate.

(d) Miscellaneous investments same as Section 1131 limited to 5% of assets.

Ch. 13 - Sec. 1102

Cmsr. Hogerty

STATE OF MAINE

COMMISSION ON REVISION OF INSURANCE LAWS
ROOM 409, STATE OFFICE BUILDING

AUGUSTA, MAINE 04330

August 14, 1968.

Mr. Robert D. Williams
Williams & Williams
Suite 33 White-Henry-Stuart Bldg.
Seattle, Washington 98101

Dear Mr. Williams:

At a recent Commission meeting we had some discussion on your Chapter 13, Investments. Commissioner Hogerty raised some objection to Section 1102 which would leave investment of non-life insurer's under the present Savings Bank law.

I enclose a suggested revision of Section 1102 which would bring the non-life insurer's under Chapter 13, but would take into consideration the many differences between life companies or fire and casualty companies. I am mailing this direct to you to give you a chance to consider prior to your visit August 26, and am also sending copies to the Secretary of the Commission and Commissioner Hogerty.

I cannot, of course, guarantee that the domestic companies would be satisfied with this but feel they might be willing to go along on some such suggestion.

Very truly yours,

George W. Scott
Member of Commission

GWS/b
cc: Claude N. Trask
Encl.

cc H/E.T
Mr Williams

Suggested Revision of Section 1102, Chapter 13 to bring regulation of non-life insurer's under the Insurance Department.

Sec. 1102

Investment of domestic insurer's other than life shall be invested in such manner as is subject to sections 1103, 1104, 1105, 1110, 1111 and may be diversified as set forth in section 1106A (in lieu of 1106).

Suggested 1106A Diversification by non-life insurer's.

... A non-life insurer's investment shall be subject to the following diversification requirements and limitations:

1. Not less than 50% of the insurer's assets in aggregate amount shall consist of cash funds, agent balances under 90 days and investments eligible under the following sections of this chapter:

A 1107
B 1108
C 1109
D 1112
E 1116
F 1117
G 1118
H 1119
I 1120
J 1124
K 1126

2. The insurer shall not invest more than 85% of surplus in aggregate amount in all investments eligible under the following sections of this chapter:

A 1113
B 1114
C 1115
D 1120-2

3. The insurer shall not invest over 15% of its assets in real estate as described in Section 1125-1A (in lieu of 10% for life companies).

4. The insurer shall not invest over 10% of its assets in the aggregate in so-called prudent man or miscellaneous investments.

Rec G.S. Ch 7 8/27/48

§ 1102. Investments of insurer other than life

Except as provided in section 1101 of this chapter the funds of domestic insurers shall be invested in such manner and in such assets as applies to investments of savings banks of this State under Title 9, chapter 51, Maine Revised Statutes Annotated, subject to the right of such insurers to invest not to exceed 5% of assets also in securities of subsidiary corporations as provided in section 1115 of this chapter. For the purpose of this provision, and except where context otherwise requires, "deposits" as used in such savings bank investment law shall be deemed to refer to the "assets" of an insurer, and "bank" shall be deemed to refer to "insurer."

Ref.: Me. 596: Paid-in capital stock of domestic insurer, and such part of surplus as commissioner may direct shall be invested in such manner and in such funds, stocks and bonds as savings banks of this State may invest, as provided in Title 9, chapter 51, and said insurance companies shall be restricted in their investments of the above amounts in the same manner as are the savings banks of this State.

2308: Medical, hospital service corporations restricted in investments in same manner as are savings banks in this State.

Comment: Self-explanatory.

It is noted that existing 596, above, governs only the investment of capital and surplus. What about the investment of reserves? Do we want a mandatory investment law as to the reserves of non-life insurers?

§ 1103. Eligible investments

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

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 31 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.

Ref.: Me. 519: Life, casualty, accident, health, liability, etc. insurer must have paid-up capital of at least $100,000 "well invested in or secured by real estate, bonds, stocks or securities other than names alone; of if a mutual company, net cash assets to the amount aforesaid."

1254: Foreign surety, credit, title insurer must have $250,000 paid-up capital, well invested in or well secured by real estate, fonds, stock or securities other than names alone, or if a mutual company, net cash assets of the amount aforesaid.

Comment: These are basic "ground rules".

§ 1104. General qualifications

1. No security or investment (other than real and personal property acquired under section 1125 (real estate) of this chapter), shall be eligible for acquisition unless it is interest bearing or interest accruing or entitled to dividends or is otherwise income-earning, 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 security or investment shall be eligible for purchase at a price above its fair value or market value.

3. 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 of this chapter if real estate, or pursuant to section 1134 of this chapter if personal property or securities.

REF.:

Comment: This is further basic "housekeeping."

§ 1105. 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.

Ref.:

Comment: Subsection 2 is concerned with conflict of interest situations, and supplements the annual statement in this respect.

§ 1106. Diversification

An insurer's investments shall 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 of this chapter:

A. 1107 (public obligations);

B. 1108 (obligations, stock of certain federal and international agencies);

C. 1109 (corporate obligations);

D. 1116 (trustees' or receivers' obligations);

E. 1117 (equipment trust certificates);

F. 1118 (acceptances, bills of exchange);

G. 1119 (savings institutions);

H. 1120-1 (bank's common trust fund);

I. 1121 (hydrocarbon production payments);

J. 1122 (policy loans);

K. 1124 (mortgage loans);

L. 1126 (housing developments); and

M. 1130 (investments in foreign countries).

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

A. 1112 (preferred or guaranteed stocks);

B. 1113 (common stocks);

C. 1114 (insurance stocks);

D. 1115 (stocks of subsidiaries) as to subsidiary insurance

corporations; and

E. 1120-2 (mutual funds).

3. The insurer shall not invest over 15% of its assets in aggregate amount in all investments eligible under section 1125 (real estate) of this chapter.

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

5. Notwithstanding any other provisions An insurer shall not invest in the aggregate an amount in excess of 35% of its surplus as to policyholders in all investments eligible under the section 1115 (stocks of subsidiaries) of this chapter. "Surplus as to policyholders" is as defined in section _____ of this code.

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 of this chapter:

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.

Ref.:

Comment: This is a basis for further consideration. A suitable diversification provision is desirable, but involves problems. Some of the limitations above presented are as suggested on behalf of Maine life insurers. The percentage in proposed 6 is left blank intentionally, in order to be open for discussion. Also for consideration is the desirability of limiting investment in voting shares of corporations other than subsidiaries of the insurer.

§ 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.

Ref.:

Comment: This is essentially N.Y. §81(1), with extension to Canadian public obligations - which might be of special interest to Maine insurers - and with addition of "unless adequate security is evidenced by the ratio of assessment to the value of the property" etc. at the end of the section relative to local improvement securities. These modifications are for consideration.
At the request of Maine life insurers, this chapter will make extensive use of the investment provision from, or based upon, the New York insurance code.

§ 1108 Obligations, stock of certain federal and international agencies

An insurer may invest in the obligations, and/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.

Ref.: 9 MRSA § 603: Savings bank may invest in securities of Federal Land Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Federal Home Loan Bank, International Bank for Reconstruction and Development, Inter-American Development Bank.

Comment: The list of the quasi-governmental institutions is constantly growing, and each likes to be included by specific designation. The Asian Development Bank is the most recent to be heard from.

§ 1109. Corporate obligations

An insurer may invest in obligations, other than those eligible for investment under section 1124 (mortgage loans) of this chapter, 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 (including also bonds, notes or other obligations of corporations engaged primarily in the business of owning or holding or leasing real property, secured by one or more mortgages on real estate and/or by assignment of one or more leases on real estate) 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 3nor 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 of this chapter, shall have been not less than one and one-quarter 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 one-third 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) of this chapter.

2. Fixed interest bearing obligations, other than those described in paragraph 1 above, 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 one and one-half 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 one and one-half times its fixed charges for such year.

3. 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 one and one-half 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 one and one-half times the sum of its fixed charges and maximum contingent interest for such year.

4. Fixed interest bearing obligations, other than those described in paragraphs 1 and 2 above, 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 one and one-quarter 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 one and one-quarter 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 one and one-quarter 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 paragraph 4, "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 paragraph 4, and readily marketable securities, in each case less applicable reserves and unearned income.

Ref.:

Comment: This is N.Y. 81(2), as amended in 1967, with minor editing, and with general definitions set up in subsequent sections. The provision has been extended to cover Canadian investments, and the parenthetical clause has been inserted in paragraph 1 pursuant to the ruling of 11-27-61 of the N.Y. Supt. of Insurance, and for consideration at the request of a Maine insurer.

§ 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, debenture, 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, amortization of debt discount, and rentals for leased properties.

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 chages 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.

Ref.:

Comment: This is N. Y. 81(2), part, as amended.

§ 1111. 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 statements of parent and subsidiary ~~institutions~~ institutions, A. the provisions of this paragraph 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.

Ref.:

Comment: This is part of N.Y. sec. 81(2) as amended, and is supplemental to the preceding sections.

§ 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 paragraph 1 or paragraph 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 one and one-half 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 one and one-half 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 paragraph 2 of section 1109 (corporate obligations) of this chapter, 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.

Ref.:

Comment: This is N.Y. sec 81(3), extended to Canadian institutions as well as U. S.

§ 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 of 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.

Ref.:

Comment: This section is offered for consideration, in lieu of N.Y. sec. 81(13),which is somewhat complex. Certain of the standards of the N.Y. section may be used for diversification purposes. The common stock investment area is one difficult to delimit in view of changing market conditions and changing investment objectives. As to common stocks many states use what amounts to a "prudent man" investment rule. It is to be noted that under the proposed provision a corporation must have an operating history of at least 7 years, and must have had earnings available for dividends on the common stock (but not necessarily paid) in at least 5 of the last 7 years.

The N.Y. provision requires: (1) That all obligations and preferred stock, if any, of the issuer be eligible investments under the chapter, (2) that the issuer must have earned during the preced-

ing 7 fiscal years an aggregate sum applicable to dividends on its common stock equal to dividends of at least 4% per annum on par or stated value of such common stock outstanding during the 7 year period, and (3) that the common stock (other than bank, trust, co., or insurance co. shares) is registered on a national securities exchange under the Securities Exchange Act of 1934.

It has been suggested that the N.Y. provision, as now or hereafter amended, be incorporated in the Maine investment chapter by reference. I doubt that we can constitutionally do this, since it may constitute an unconstitutional delegation of legislative power.

§ 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 sections 1112 (preferred or guaranteed stocks) or 1113 (common stocks) of this chapter.

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.

Ref.:

Comment: Self-explanatory. Acquisition of a controlling stock interest in another insurer via an exchange of stock will be covered in the chapter dealing with corporate powers and procedures - mergers and acquisitions.

§ 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;

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 and/or principal underwriter of a management company or management companies (mutual funds), 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 100% of its outstanding stock, or of which the insurer owns sufficient stock to give it effective control, ~~if the subsidiary does not itself have one or more subsidiaries.~~

Ref.:

Comment: The provisions in 1 - first paragraph, and in subdivision A have been around for a long time in other states; the remainder of the section reflects current interest in expanding the business possibilities of insurers through investment in and operation of ancillary services through subsidiaries. Items A, F, H, I and J are, at least in principle and at places in terminology, reflected in the recommendations of the "Report of the Special Committee on Insurance Holding Companies" to the New York Insurance Department, dated February 15, 1968. The remainder advanced for consideration.

§ 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.

Ref.:

Comment: This is N.Y. sec. 81(4)(a).

§ 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.

Ref.:

Comment: This is N.Y. sec. 81(4)(b).

§ 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.

Ref.:

Comment: This is N.Y. sec. 81(5).

§ 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.

Ref.:

Comment: This is based on N.Y.sec. 81(12), which is ambiguous as to whether all such investments and accounts must be insured under National Housing Act. This ambiguity is removed above, put possibly in the wrong direction. For consideration.

Federal S & L Ins. Corp. insures both federal (mandatory) and state (optional) chartered savings institutions.

§ 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.

Ref.:

Comment: This is for consideration. Investment in mutual fund investment adviser and/or principal underwriter subsidiaries is a current trend in the movement of insurers into the general financial services field.

§ 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 1109-1 (corporate obligations) of this chapter 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.

Ref.:

Comment: This is N.Y. sec. 81(15) with minor editing.

§ 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.

Ref.:

Comment: This is a standard provision.

§ 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.

Ref.:

Comment: A standard provision.

§ 1124. Mortgage loans

1. An insurer may invest in bonds, notes or evidences of indebtedness other than those described in section 1109 (corporate obligations) of this chapter, 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 re-entry 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 four-fifths 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 above, 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 of this chapter. Subsection 4 of this section shall not apply as to such investments.

Ref.:

Comment: This is based upon N.Y. sec. 81(6), but with the following modifications:

(1) Canadian loans authorized, as well as U.S. loans.

(2) Proposed subsection 3 is added for consideration as a proposed authorization of "wrap around" loans, as requested by a domestic life insurer. Such a loan enables the insurer to supplement an existing mortgage owned by another, so long as the security for both is adequate and the investing insurer itself collects and disburses the funds necessary for payment of the other mortgage loan in accordance with its terms.

(3) Maximum loan percentage to value is raised from 75% to 80%, as suggested, and maximum amortization period is raised from 30 to 40 years on loans on fee interests.

(4) Provisions as to participation in a series or issue secured by the same mortgage are omitted.

(5) Percentage of assets and dollar amount limitations are omitted, since these are covered under the diversification provision, sec. 1106 of this chapter.

§ 1125. Real estate

1. 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.

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 code.

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 two-thirds 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 of this chapter 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, other than real estate to be used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement, hotel, motel, or club purposes, 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 sections 1124 (mortgage loans) and this section 1125, "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, institutional, commercial or industrial use, are situated; and

C. Real estate to be developed for the use or uses set forth in paragraph B, above, 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.

Ref.:

Comment: This is for consideration. IT is substantially the same as that contained in the proposed new Delaware code.

Proposal 2. is from Oregon §235 (new insurance code).

§ 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.

Ref.:

Comment: This is based upon essential factors of N.Y. sec. 81(9).

§ 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) of this chapter.

Ref.:

Comment: This is an attempt to reflect a suggestion made by Union Mutual Life Insurance Company. The provision requires amplification. For discussion.

§ 1128. Special investments of pension, profit sharing or annuity funds

The amounts allocated to each separate account established by the insurer in connection with a pension, retirement or profit-sharing plan or annuity pursuant to section _____ (pension, profit-sharing, annuity agreements - separate accounts) of this code, 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 (1) benefits guaranteed as to amount and duration, and (2) 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.

Ref.:

Comment: This will be tied in with a provision authorizing variable annuities in a subsequent chapter.

(me)

§ 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.

Ref.:

Comment: Although there are no domestic title insurers as yet, there may be in the future.

§ 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 county 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 aggregated 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 one and one-half 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.

Ref.:

Comment: This is N.Y. sec. 81(b) and (c), modified to fit the pattern of the chapter.

§ 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 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 1109 (general qualifications) of this chapter 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) of this code, 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.

Ref.:

Comment: This is a convenient provision, since it enables the making of investments of reasonable size in good loans or securities which, because new or otherwise difficult to classify, may not be expressly provided for in other sections. This type of provision is now in use in several states. It makes unnecessary the frequent amending of investment provisions of this code to take care of some new type of good investment.

§ 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 and shall be disposed of by the insurer under the applicable provisions of sections 1133 (time limit for disposal of real estate) or 1134 (time limit for disposal of other ineligible property and securities).

Ref.:

Comment: This is essentially N.Y. sec. 81(14), with some clarifications and correlations with rest of the chapter.

§ 1133. Time limit for disposal of real estate

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

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

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.

Ref.:

Comment: This is a traditional requirement, correlated with other sections of the chapter.

§ 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 ___ of this code. 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.

Ref.:

Comment: This is likewise a traditional requirement.

§ 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 of this chapter, 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 investment within such reasonable time as the commissioner may, by his order, specify.

Ref.:

Comment: This clarifies the result of ineligibility, and provides sanctions for the investments chapter.

§ 1136. Prohibited investments and investment underwriting

1. In addition to investments excluded pursuant to other provisions of this code, 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 section _____ of this code, 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 1114-2 and 1115 of this chapter are not subject to this provision.

C. Any note or other evidence of indebtedness of any director, officer, employee 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 of this chapter.

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 the acquisition and ownership by the insurer of its subsidiary corporation acting as investment adviser and/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.

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.

Ref.:

Comment: Largely self-explanatory. In A. there may be legitimate reasons why an insurer would want to buy shares of its own stock: For purposes of an employee stock option plan, for example. Such stock cannot, in all events, be carried as an "asset" by the insurer under other provisions of the code.

§ 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.

Ref.: Me. 1254: Capital of foreign surety, credit, title insurer must be invested in or secured by real estate, bonds, stocks or securities other than names alone.

Comment: An adequate and workable provision governing investments of foreign insurers is difficult to arrive at, and the above provision has evolved out of recent insurance code revisions in other states. It is designed to give the Commissioner the authority to measure the over-all quality of the portfolio. For consideration.

Note: Respondentia or bottomry

There is omitted from this chapter at this time sec. 597 of the Maine insurance code which provides as follows:

"§ 597. Loans on respondentia or bottomry

Stock companies may loan to citizens of the State any portion not exceeding 1/2 of its capital stock, on respondentia or bottomry; but not unless at least 3/4 of all the directors agree to such loan and enter their consent thereto at large on the records of the corporation, to be laid before the stockholders at their next meeting."

Although the history of this section shown in the current Maine Revised Statutes Annotated goes back only to 1954, it is likely that the provision is somewhat older. It is possibly obsolete. Are any such loans now being made? Is there any interest in maintaining this evident relic of Maine's maritime interests?

CHAPTER 17

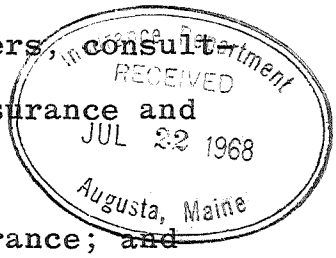
AGENTS, BROKERS, CONSULTANTS, AND ADJUSTERS

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 fire insurers is as provided in section 3631 of this code.

Ref.: Me. 2502: Following types of licenses may be issued:

Resident agent	Resident organization agent
Nonresident agent	Nonresident " "
Resident broker	Resident " "
Nonresident broker	Nonresident " "
Surplus line broker	Adjuster

Comment: This is an informative introductory provision. The chapter will be divided into 5 subchapters: I - licensing procedures and general requirements; II - general lines agents and general lines brokers; III - life agents; IV - consultants; V - adjusters. This will make it possible to so organize the law as to avoid unnecessary repetition of procedural provisions. Reinsurance is between insurers, and licensed representatives are not necessary or used. Domestic mutual fire insurers will have their own exclusive chapter, in order to avoid the need otherwise offrequent exceptions to general provisions.

§ 1502. "Agent" defined, in general

As used in this code, 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.

Ref.:

Comment: For convenience it is desirable to refer merely to "agent" in some provisions without distinguishing between or naming the respective categories.

§ 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.

Ref.: Me. 1255: Person who represents foreign credit, surety, title insurer, as to receive or transmit applications, or receive for delivery bonds or policies founded on applications forwarded from this State or otherwise to procure suretyship to be effected upon bonds of persons or corporations in this State, or otherwise to procure such insurance in this State, shall be deemed to be acting as agent for the insurer, and is subject to restrictions and penalties applicable to agents of such insurers.

1455: Domestic mutual fire insurance agent is "any person who solicits ins. on behalf of any domestic mutual fire ins. co. or transmits for a person other than himself an application for, or a policy or insurance to or from such company, 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 such company....."

Palmetto Fire Ins. Co. v. Commissioner, 272 U.S. 295 (1926); Chrysler Sales Corp. v. Spencer, 9 F2d 674 (1926): Auto dealers selling cars covered by "open" policy are held to be insurance agents.

Comment: "General lines" agent is a designation coming into general use to distinguish the fire-casualty-surety agent from the life agent. Such distinction is sometimes required in connection with licensing qualifications and requirements.

Query: Are agents now licensed in Maine as to title insurance?

§ 1504. "Life agent" defined

A life agent is an individual authorized or appointed by an insurer to solicit applications for, or negotiate the ~~making or~~ 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.

Ref.: Me. 2581: A "life ins. agent" is any authorized or acknowledged agent of an insurer and any sub-agent of such agent, who acts as such in the solicitation or, negotiation for, or procurement or making of a life insurance or annuity contract.

Comment: The existing definition is somewhat ambiguous and unnecessarily broad. "Acknowledged" agent is the same as "authorized" agent; many persons act for the insurer in the making of an insurance contract who are not required to be licensed - such as underwriters and home office clerical personnel.

The Life Insurance Agent Exam Advisory Board recommends that no organization license be issued as to life insurance, and the proposed definition follows this suggestion.

§ 1505. "Health agent" defined

A "health" agent is any person authorized or appointed by an insurer to solicit applications for, or negotiate ~~the making or~~ 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) of this chapter.

Ref.

Comment: This makes use of the basic definition used in sec. 1504 as to life agents. There are yet insurers which write health insurance only, and agents who desire to write only health insurance. In general these agents will be treated much the same as life agents.

§ 1506. "Broker" defined

1. A "broker" is any person who, not being an agent of the insurer, as an independent contractor and on behalf of the insured solicits, negotiates, or procures insurance or annuity contacts or the renewal or continuation thereof for 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.

Ref.:

Comment: This is a traditional definition of broker. Because of distinctive qualifications and treatment, brokers are divided into the two classes shown. Would it be desirable to have a single broker license covering all kinds of insurance? As to be presented in this tentative chapter, two licenses would be required for operation in all lines.

no change in HHS's book

§ 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) requried to be licensed as such.

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

Ref.:

Comment: A definition of service representatives was requested by Commissioner Hogerty, and the above is a fairly standard definition.

§ 1508. "Consultant" defined

1. A "consultant" is any person 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.

Ref.:

Comment: This is a new category of licensee, as requested. The definition reflects those of some other states for "analysts" or "counselors", with necessary exclusions.

§ 1509. "Adjuster" defined

An adjuster is any person who on behalf of the insurer for compensation as an independent contractor or for fee 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.

3. A licensed resident agent of the insurer as to whom the insurer has filed with the commissioner in advance written notice of the agent's name and address and authority to adjust.

Ref.: Me. 2510: License to adjust losses of insurer by whom employed or retained not required of a resident company employee, licensed ins. agent or attorney at law admitted to practice in this State. Insurer must notify commissioner of name, address of person not licensed as adjuster or agent whom it has authorized to adjust, before that person can adjust.

2517: Person licensed as adjuster may investigate and negotiate settlement of claims arising under insurance contracts issued by an insurance company.

Comment: This is a basic definition, designed to exclude merely reporting services such as Retail Credit. Exclusions 1 and 3 might call for further clarification: Is an attorney who devotes his entire practice to insurance adjusting now required to be licensed as an adjuster?

The adjuster above defined is the so-called "independent" adjuster.

§ 1510. "Organization" defined

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

Ref.: Me. 2501(2): "Organization" means a partnership, company or corporation.

Comment: Firms (partnerships) and corporations are generally the only types of organization that will be licensed in any state. The term "company" is ambiguous, and is not listed in the general index to Maine Statutes.

§ 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.

Ref.: Me. 2501(3): "Resident" means a person who has his domicile or his principal place of business in this State or an organization which has an established place of business in this State.

Comment: This is a generous definition - beyond that usually found. In many states "resident" status conferred only upon individuals who are actual residents of the State (or of continguous border towns), or firms whose members are residents of the State, or corporations formed under the laws of the State. If the definition has been working satisfactorily as far as Maine is concerned, there is no desire to change it.

It is noted that the countersignature law - sec. 426 of this revision - requires countersignature by an agent "resident in this State." Is there an ambiguity here?

§ 1512. License required; liability; 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 code. 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 code, except as provided in section 1856 (nonresident adjusters of special, catastrophe losses) of this chapter.

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 code. 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 code.

3. Except as provided in section 1676 (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 code.

4. An agent is personally liable under any insurance contract made by or through him outside the scope of his licensed authority.

5. In addition to or in lieu of any applicable denial, suspension, or revocation of license or administrative fine, 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 1 year, or by both such fine and imprisonment.

Ref.: Me. 951: Agency system reciprocals must use licensed agents.

1209: Credit life, A & H policies must be delivered or issued for delivery through licensees.

1255: Representatives of domestic mutual fire insurer must be licensed as agent.

1258: Person not to act as agent for foreign title, surety, credit insurer until has complied with requirements of law relating to such agents; penalty of fine to $100 for non-compliance.

2502: License to be procured before performing any act as agent or broker or adjuster.

2514: Person licensed as broker may negotiate ins. contracts covering risks in this State with any auth. insurer within scope of his license.

2517: Licensed adjuster may adjust.

2518(2): Agent personally liable under any ins. contract made by or through him outside the scope of his authority.

2521: For acting as agent or broker without proper license, fine of up to $500 and prison for up to 90 days, or both; acting as adjuster without license, same penalty.

2581: Life "sub-agent" must be licensed.

2584: No person, partnership or corporation shall act as a life ins. agent within this State until he shall have procured a license as required by the laws of this State.

Comment: Subsection 4 is the same as the present law, but is a dubious provision. Failure of the agent to comply with license requirements and limitations does not relieve the insurer of liability; and the ability of many agents to respond in damages - if any can ever be established - might be questionable.

The penalty has been somewhat stiffened, in view of inflation and the larger interests involved.

§ 1513. Exceptions to license requirement

In addition to persons otherwise excluded thereform 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, other than a service representative, 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.

Ref.: Me. 951: Salaried traveling home office representatives of reciprocal insurers operating on salary basis and receiving no commissions, exempt from licensing, but if the insurer operates on agency system and appoints agents on commission basis, are subject to licensing laws.

2518: Employee who does only clerical work in office of agent or broker need not obtain license.

2581: Life Ins. agent does not include regular salaried officer or employee of licensed insurer or of licensed agent who does not solicit or accept from public apps for life or annuity contracts. Regular salaried officer or employee of insurer authorized to do business in this State not deemed to

be a "life ins. agent" by reason of rendering assistance to or on behalf of a licensed life agent, if such officer or employee devotes substantially all his time to activities other than solicitation of apps for life ins. or annuity contracts and receives no commission or other compensation directly dependent upon amount of business obtained.

Comment: This is a broad exception provision continuing and supplementing present law. Service representatives are already excluded from licensing under proposed sec. 1507. Salaried clerical and administrative employees cover a broad range, including those who negotiate and administer insurance of the employer's interests on behalf of the employer.

§ 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 25% 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.

Ref. 2504: Agent, broker or adjuster must intend to hold self out in good faith as agent, broker or adjuster.

2519-1-F: Agent, broker, adjuster license may be suspended or revoked if licensee has obtained or attempted to obtain the license, not for purpose of holding self or his company out to general public as insurance agent, but primarily for purpose of soliciting, negotiating or procuring ins. contracts covering himself or members of his family, or officers, directors, stockholders, partners or employees of a partnership, assn., or corporation of which he or a member of his family is an officer, director, stockholders, partner or employee.

2593: As to life agent: Obtained or attempted to obtain license not for purpose of holding self out to general public as a life ins. agent, but primarily for the purpose of soliciting, etc. life ins. or annuity contracts covering himself or members of his family, or officers, directors, stockholders, partners, employees or debtors of a partnership, association, or corporation of which he or a member of his family is an officer, director, stockholder, partner or employee.

Comment: This is a broad "controlled business" provision, with the percentage of allowable controlled business fixed at 25% as a basis of discussion. The percentage - as well as the basic definition - varies from state to state, ranging from 10% in Mass, and N.Y. up to 50% in many states and to 75% in Texas - according to data furnished by the Independent Mutual Insurance Agents of New England via Marshall Cobleigh, General Manager. The exceptions are self explanatory and are for consideration. Without them most auto dealers and real estate mortgage lenders would be out of the

insurance business. What can be done on this section is largely a matter of politics. This is all for consideration.

"Controlled business" problem does not appear to exist as to adjusters.

§ 1515. Licensing forms

The commissioner shall prescribe, consistent with the applicable requirements 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.

Ref.: 2585: Life agent license app. form to be furnished by the commissioner.

Comment: This avoids necessity of frequent repetition in connection with particular forms.

§ 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.

Ref.:

Comment: This is in order to avoid repitition as to each class of license.

§ 1517. Licensing of organizations

1. A firm or corporation shall be licensed ~~only~~ as an ~~general lines~~ agent, ~~or as a general lines~~ broker or as an 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 licenses shall be subject to the applicable standards of section 407-2 (ownership, management) of this code.

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.

Ref.: Me. 2506: As in 3, above; each individual authorized to transact business for the licensee must comply with individual license requirements. On request of organization, an employee licensed as agent or broker may be authorized to act for the organization and his name shall be listed in the organization license.

2581: Organizations may be licensed as life agent.

Comment: This general provision avoids repetition of the same idea in other subchapters.

Query: Are organizations now licensed as adjuster?

Present 2506 - as to employees already licensed as agent or broker - is omitted for the time being. Such a license would run to the insurer and not the organization. One already so qualified could be licensed as to the organization without examination.

2581: Firms, corporations located in this State may be licensed as life agent, if articles authorize the same to engage in such business. Application for license shall name members or officers, directors or stockholders authorized to act as agents thereunder, and each must qualify as for individual licenses.

§ 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) of this code, and the investigation cost, if applicable, referred to in section 1519 of this chapter. The application shall be signed and duly sworn to by the applicant.

2. The application form shall require full answers to questions reasonably 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.

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 of this chapter, 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 a ~~life~~ 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 back-ground 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 a ~~life~~ agent.

8. No applicant for license under this chapter shall wil-

fully 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.

Ref.: Me. 701: Information of a personal nature concerning licensing of agents, brokers and adjusters is confidential.

2504: Application for agent, broker or adjuster license must be filed with commissioner showing name, date of birth, residence, present occupation, occupation for preceding 5 years and other pertinent information required by commissioner. Must pay license fee to commissioner.

2581: Each life sub-agent shall individually file an application for license.

2585: Each applicant for license as life agent must file with commissioner his written application on forms furnished by commissioner. Application signed and duly sworn to by applicant. Form shall require applicant to state full name, residence, age, occupation and place of business for 5 years preceding application date; whether has ever held license to solicit life or any other ins. in any state; whether has been refused or has had suspended or revoked a license to solicit insurance in any state; what insurance experience, if any, he has had; what instruction in life ins. and in the ins. law of this state has had or expects to have; whether any insurer or general agent claims he is indebted under an agency contract or otherwise, and if so, name of claimant and nature of claim and applicant's defense; whether has had agency contract canceled and, if so, when, by what co. or gen. agent and reasons therefor; whether will devote all or part of his efforts to acting as a life agent and, if part only, how much time will devote to such work and in what other business or businesses he is engaged or employed; whether, if applicant is married woman, her husband has ever applied for or held a license to solicit ins. in any state and whether the license has been refused, suspended or revoked; and such other information as commissioner may require.

Application to be accompanied by insurer's certificate that insurer has investigated character, background of applicant and is satisfied that he is trustworthy and qualified to act as its agent and to hold self out in good faith to general public as life agent and that insurer desired to license applicant as its agent in this State.

Comment: This provision summarizes the basic application requirements as to all licenses, and relies heavily upon factors contained in present 2585, summarized above, as to life agents. Present provision as to confidential nature of personal information as to applicants - as in sec. 701 - above summarized, is included as proposed 9, although it is difficult to know just what the provision means, and such a provision might handicap the administration of the chapter. For consideration.

§ 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 code 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. The cost 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.

Ref.:

Comment: Several states now use such credit reports. The cost is reported to average about $7. Such a credit report is recommended by the Life Agent Exam Advisory Board.

Query: How is the commissioner to rely on a credit report in refusing a license if he must keep contents confidential?

§ 1520. Examination for license; application for examination

1. After completion and filing of application with the commissioner as required by section 1518 of this chapter the commissioner shall subject each applicant for license as agent, broker, consultant, or adjuster, unless exempted therefrom under section 1521 of this chapter, 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 of this chapter.

3. 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 of this chapter, and shall be accompanied by the fee for such application as specified in section 601 (fee schedule) of this code. This application fee is earned when paid, and is not subject to refund.

Ref.: Me. 371: Exam fee not returnable after applicant takes the exam.

2504: Applicant for agent, broker, adjuster license must take written exam as to his ability to perform his duties in a satisfactory manner under the license applied for. Must pay exam fee.

2581: Life sub-agent license applicant must submit to written exam for life agent license.

2586: Life agent license applicant must submit to written exam to determine his competence as to life ins. and annuity contracts and familiarity with pertinent laws of this State.

§ 1520 -2

Comment: Nonrefundability of exam application fee is as requested by Commissioner Hogerty. A similar policy is now followed by many other states. If the applicant fails to show up for the exam the State has nevertheless gone to some trouble and expense to prepare the exam.

§ 1521. Exemption from examination

Section 1520 of this chapter 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, 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.

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 of this chapter, 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.

Ref.: Me. 371: Exam fee not payable if exempted from exam.

2504: Exam not required for agent license when annual premium of each policy to be sold not over $2; or for sale only of baggage or accident ins. covering travel risks, and if applicant is employed primarily for a purpose other than sale of ins.; or for sale of ins. written on assessment basis

by domestic mutual fire insurer.

2511: After lapse of 2 years, previously licensed agent, broker or adjuster must re-qualify (by exam) before being relicensed....

2586: Exam for life agent license not required of applicant for renewal license, unless commissioner determines that exam necessary to establish competency or trustworthiness of the licensee; or as to applicants licensed as such within 2 years prior; applicants for agent license only for sale of accident insurance covering travel risks, as in sec. 2504, above cited; in commissioner's discretion, applicant whose life agent license was suspended less than one year prior to date of application.

Comment: This covers much the same field of exemptions as the present law, with some generalizations. The suspension of a license should not terminate the license. Proposed 3 covers three categories in the present law. The $2 annual premium of the present law probably applies to travel accident ticket policies? Are title insurance agents now subject to licensing? Is proposed 4 advisable?

§ 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 life agent license shall be based upon agent training courses commonly used by life insurers.

3. The examination for a broker license shall be more difficult than that for an agent license; the examination for a consultent 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.

4. 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.

Ref.: Me. 2586: Life agent exam is to determine his competence as to life and annuity contracts and his familiarity with pertinent laws. Commissioner may make rules, regulations as to scope and type of each exam.

2504: Exam is as to applicant's ability to perform his duties in a satisfactory manner under the license applied for.

Comment: Proposed subsection 4 has worked well in those states which have adopted similar plans. Some Insurance Departments sell these exam books and thus reimburse the cost thereof.

Note: Proposed 2 is suggested, in substance, by the Life Agent Exam Advisory Board. The advisability of this provision is for consideration; it may not be desirable to specify in the law that the standards for measuring the competence of agents for the protection of the public must be the same as those used by the insurance business itself. Such a standard could, however, be adopted by the Commissioner on recommendation of the Board, and without spelling it out in the statute.

§ 1523. Conduct of examination

1. All examinations of license applicants shall be conducted by the commissioner or by ~~an independent agency~~ his designee so authorized by him and using examinations prepared by him.

2. The commissioner shall make examination available to applicants at least ~~once in each week~~ bi-weekly 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 the applicant proposes to transact under the license applied for shall be included in the same examination.

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. Applicants must earn a grade of not less than 70, based upon an examination evaluation scale running from zero to 100, in order to pass the examination.

6. Within 30 days after the examination the commissioner shall inform the applicant as to whether or not he has passed.

7. The commissioner shall keep each examination paper on file for at least 6 months.

Ref.: Me. 2504: Applicant must appear for exam at time and place designated by the commissioner. Must pass exam with a grade indicating his ability to perform his duties in a satisfactory manner under the license for which he applies.

2507:-1: As in 7, above.

2586: Applicant for life agent license must pass exam to the satisfaction of the commissioner. Commissioner may determine times and places within this State where exams are to be held. Applicants shall be permitted to take exam at least once each week at the principal office of the commissioner.

Comment: In some states the Commissioner uses independent examination agencies for conduct of examinations - often in remote parts of the state. Is this desirable in Maine? Otherwise, the provision sets up definite standards for the conduct and grading of examinations, and incorporates provisions of existing law, as above cited.

Possibility of use of an independent exam agency as in 1 is suggested by the Life Agent Exam Advisory Board.

§ 1524. Re-examination

1. 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.

2. An applicant who has failed to pass the first two examinations for the license applied for shall not be permitted by the commissioner to take a third or subsequent examination until expiration of 6 months after the last previous examination. Except as provided in subsection 1, above, the applicant shall pay a new examination application fee with respect to each examination after the first examination for the license applied for.

3. A different set of examination questions than any theretofore used as to the same applicant shall be used on each re-examination.

Ref.: Me. 371: Exam fee need not be paid for first re-examination but must be paid for each further re-examination.

2507-3: If applicant fails to pass his first exam as to general lines agent, broker, or adjuster license, he may take another with no waiting period or exam fee. If fails the 2nd or any subsequent exam, must pay another exam fee and wait 6 months before retaking.

2586: As to life agent license applicants - if has taken and failed to pass 2 exams shall not be entitled to take further exam until after expiration of 6 months from date of last exam in which he failed; if thereafter fails to pass 2 more exams, not eligible to take further exam until after expiration of one year from date of last unsuccessful exam. No exam fee shall be paid for a 2nd exam within any 6 month period.

Comment: The proposed provision suggests a uniform system as to all applicants.

Note: Life Agents Exam Advisory Board recommends that additional exam fee be required as to each exam taken. This is for consideration, and if adopted, the above provision would be modified accordingly.

§ 1525. Examination advisory boards - Designation, appointment

1. The commissioner shall continue to appoint two 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 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.

Ref.: Me. 2505: As above, as to fire, casualty surety agent board.

2586: As above, as to life board.

Comment: Obsolete material has been omitted; composition, etc. of the respective boards has been retained. Material is being divided into 2 sections for easier presentation, use, and amendment.

Query: Should these boards also be concerned with examinations for broker or consultant licenses in the respective categories?

§ 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 by the commissioner.

Ref.: Me. 2505: as above, as to general lines agents.
2586: As above, as to life agents.

Comment: This is the present law, with minor editing and correlation.

§ 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.

Ref.: Me. 421: If applicant complies with requirements, commissioner shall issue him the license applied for.

2587: If applicant has passed his written examination and commissioner satisfied that he is trustworthy and competent, a license shall be issued forthwith...Otherwise, the commissioner shall notify applicant and insurer in writing that license will not be issued.

Comment: Self-explanatory.

§ 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. Except as provided in section 1530 of this chapter, an agent license must cover one or more complete kinds of insurance as defined in chapter 9 of this code, ~~(but an organization license shall not be issued as to life insurance or annuity contracts.)~~

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 of this code, ~~(except that an organization license shall not be issued as to life insurance or annuity contracts)~~

3. Consultant license:

A. ~~Resident~~ 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. ~~Resident~~ adjuster, individual or organization.

Ref.: Me. 2502: Following types of licenses may be issued:

Resident, nonresident agent; resident, nonresident broker; surplus line broker; resident, nonresident organization agent or broker; adjuster.

2503: Agent or broker license may be restricted to fire, casualty, inland marine, ocean marine, fidelty, surety or other kind of insurance.

Comment: this provision is based upon existing law, above cited, but correlated with the proposed "kinds" of insurance and licensing pattern of the new code. The life agent licensing advisory board has recommended that organization licenses be not issued as to life insurance or annuity contracts, and the proposed chapter incorporates this suggestion for consideration. In some states a broker license will not be issued except as to all general lines, or life insurance and annuity contracts.

Query: Do we want nonresident consultants?

§ 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, below, as to limited licenses; and the licensee may, subject to section 1530 of this chapter as to life/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 of this chapter shall show also the name of the insurer so represented, and a separate license shall be required as to each such insurer.

Ref.: Me. 2506-4: License issued to organization must contain its name, location of each place of business, and name and residence of each person authorized to transact business for it.

Comment: Proposed 2 is part of the proposed permanent license system, in which the licensee agent holds his own license independent of a particular insurer. Other aspects of this system will appear in subsequent proposed provisions.

§ 1530. Multiple licensing, life or health insurance agents

1. A life or health insurance agent may concurrently be licensed as to as many life 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 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 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.

Ref.: Me. 2589: Life agent may apply for additional licenses to act as agent for additional insurers. App shows each insurer applicant already licensed to represent; certificate from the insurer named in each additional license applied for that it desires to appoint the applicant as its agent; and other information required by the commissioner. Commissioner may issue the additional license without examination or further investigation. Any life insurer may file request with commissioner for notification that any life agent representing it has been appointed to represent another life insurer, and the commissioner shall so notify.

Comment: This carries present law a bit further, and is geared to the proposed permanent license system. This is aimed at so-called "advance artists" who operate in the life-health insurance field, who move from insurer to insurer securing as much of an "advance" against promised future production as is possible, and sometimes attempting to re-write former business or submitting "phoney" applications to prolong the advance.

§ 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 section 1521-3 of this chapter; 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) of this code.

Ref.:

Comment: This suggested provision takes care of several narrow specialties: "A" takes care of auto dealers, and makes it unnecessary for them to qualify for, or compete for business of, other property or casualty lines; "B" covers transportation ticket policy salesmen; "C" covers people interested only in credit life and A&H. These are for consideration.

Note: On behalf of the Independent Insurance Agents Assn. of Maine, Attorney Robert A. Marden, Counsel, recommends abolishing limited licenses. This is for consideration of the Commission.

§ 1532. Continuation, expiration of licenses

1. Each broker (resident or nonresident), consultant, and adjuster license issued under this code 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) of this code, 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 agent license 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 reisuance, 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.

3. 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.

4. This section does not apply to temporary licenses issued under section 1536 of this chapter.

Ref.: Me. 2508: Agent license expires July 1st next following issue; broker license expires one year from date of issue; adjuster license expires Dec. 31 following issue.

2590: Life agent license expires July 1st, unless prior revoked or suspended or terminated by insurer. Renewals may be issued from year to year on request of insurer; renewal request shall show whether agent devotes all or part of his efforts to acting as life agent, and if part only, how much time he devotes to such work and in what other business or businesses he is engaged or employed. On filing renewal request and payment of required fees prior to expiration date, current license remains in force until renewal license issued or refused and notice thereof given insurer and agent.

Comment: This is the heart of the permanent license system. Expiration dates are set at Dec. 31 and July 1st, since those are dates used under present law, except as to brokers. Is it difficult to administer broker expirations on present random expiration basis? Would other expiration dates be desirable?

§ 1533. Appointment of agents; continuation

1. Each insurer appointing an agent in this State shall file with the commissioner the appointment in writing, specifying the kinds of insurance to be transacted by the agent for the insurer, and pay the appointment fee, or license fee in the case of limited licenses, as specified in section 601 (fee schedule) of this code.

2. Subject to annual continuation by the insurer as provided in subsection (3) below, 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 of this chapter.

3. Annually on or before July 1st each 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 for which the respective agents are currently so appointed, 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) of this chapter. 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 licenses in this State are not to remain in effect, or whose appointment as to certain kinds of insurance are not to remain in effect and as designated in such list. Any appointment or license not so continued and not otherwise expressly terminated shall be deemed to have expired at midnight on July 1st. As to life agents the insurer shall also file the information called for in section 1534 of

this chapter.

Ref.: Me. 2504: Agent license applicant must be authorized by each insurer he is to represent, and insurer must file certificate with commissioner authorizing applicant to act as its agent.

Comment: This is the second half of the permanent licensing system as to agents. It is self-explanatory. It saves much work for both the Insurance Department, insurers, and agents, and yet produces equal - if not larger - revenues for the State as compared with the old system.

Eliminate

§ 1534. Same - Supplemental information as to life agents

As to life agents, the request of the insurer for continuation of its appointment, as referred to in section 1533 of this chapter, shall be supplemented by the insurer as to each such agent in such manner as to show whether the agent devotes all or part of his efforts to acting as a life agent, and, if part only, how much time he devotes to such work and in what other business or businesses he is engaged or employed.

Ref.: Me. 2590 - 3: As above, in substance.

Comment: This is present law. How has it worked? Is the information dependable? Is it worth preserving? Note that under proposed section 1532-3 the commissioner is authorized to get this information from the licensee.

§ 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 1533 of this chapter 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 unless so consented in writing by the insurer.

Ref.: Me. 2592: Life insurer terminating appointment of agent shall immediately file with commissioner statement of facts relative to the termination and date and cause thereof. Commissioner thereupon terminates the license of the agent as to that insurer; any information, document, record or statement so disclosed to commissioner is privileged communication and shall not be used as evidence in any court action or proceeding.

Comment: Proposed subsection 2 follows the present law, above cited, with a modification deemed practical to enable the information to be used with the insurer's consent.

§ 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 may 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 covering the same kinds of insurance.

Ref.: 2509: The commissioner may issue a temporary license without examination as follows:

1. Agent's or broker's license. On the death, disability,

termination of employment or transfer out of State of a licensed agent or broker, the commissioner may issue a temporary license to a suitable person appointed by an insurance company to act as its agent, or to a person capable of transacting the business of a broker, when the license is necessary to continue the business of the agent or broker for the protection of the public.

2. License restricted. A license issued under this section may be effective for not more than 6 months and may not be renewed.

3. License fee. The applicant for a temporary license must pay the same license fee to the commissioner as provided in section 371 for a regular license.

2591: The commissioner, if he is satisfied with the honesty and trustworthiness of the applicant, may issue a temporary life insurance agent's license without requiring the applicant to pass a written examination, as follows:

1. Executor or administrator. To the executor or administrator of the estate of a deceased person who at the time of his death was a licensed life insurance agent;

2. Next of kin. To a surviving next of kin of such a deceased person, if no administrator or executor has been appointed and qualified, but any license issued under this subsection shall be revoked upon issuance of a license to an executor or administrator under subsection 1;

3. Expiration. A license issued under this section may be effective for not more than 6 months, and it may not be renewed.

Comment: This somewhat expands the categories of the present law, but in circumstances found to be useful in other states. Proposed 3 is designed to encourage acquisition of a permanent license. This is for consideration.

Noted that present law does not provide for temporary life broker license.

§ 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.

Ref.: See references to proposed § 1536.

Comment: This clarifies the nature and uses of a temporary 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 and practical 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) of this code 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.

Ref.:

Comment: This is substantially a "standard" provision governing vending machines and licensing thereof. Is it desirable to limit these machines to personal travel accident insurance?
For consideration.

§ 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 code, or for wilful 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 wilful 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.

3. In lieu of such suspension, revocation, or refusal to continue, the commissioner may levy an administrative fine upon the licensee of not less than $25 and not more than $500. The order levying the fine shall specify the date before which the fine shall be paid. Upon failure to pay the fine when due, the commissioner shall revoke the licenses of the licensee and the fine may be recovered in a civil action brought on behalf of the commissioner by the Attorney General. Fines so collected shall be paid by the commissioner forthwith to the Treasurer of State for the account of the insurance regulatory fund.

Ref.: Me.811: Suspend or revoke license of agent for wilful violation of law.

2519: As to general lines agents, brokers, adjuster license, may suspend, revoke or refuse to renew for:
A. Violation of ins. laws;
B. Wilfully over-insuring property;
C. " misrepresenting ins. contract;
D. Dealing unjustly with or wilfully deceiving a resident of this State as to any ins. contract;
E. Failure to pay over to ins. co. on request any money or property in his hands belonging thereto;
F. Violation of "controlled business" provision;
G. Holding resident agent or broker license in this or any other state at same time;
H. Becoming unfit for the position in any other way.

Commissioner must hold hearing before any such action, and in case commissioner finds that license should be suspended, revoked or not renewed, shall give licensee 10-day written notice of that fact, and also notify insurer in case of agent license.

2593: As to life agent:
A. Wilful violation of ins. laws;

B. Intentional making of material misstatement in application for the license;
C. Obtained or attempt to obtain license by fraud or misrepresentation;
D. Misappropriation or conversion to own use or illegal withholding of money of insurer, insured or beneficiary;
E. Demonstrated untrustworthiness or incompetence to act as life ins. agent;
F. Fraudulent or dishonest practices;
G. Material misrepresentation of terms of life ins. policy;
H. "Twisting;"
I. Violation of controlled business provision.

Must hold hearing before such suspension, revocation, refusal.

2596: Life agent license may be suspended or revoked for violation of this law.

Comment: This is a catalogue of grounds for suspension, etc., incorporating existing grounds and adding new grounds. The existing law is quite weak in requiring a "wilful" violation or misrepresentation, etc. Wilfulness is difficult to prove; agents and others dealing in insurance matters - and upon whom the public is required to rely - should know what they are talking about. The Commissioner has broad discretion in all these matters and is unlikely to punish for an innocent mistake. Administrative fine is provided at Commissioner Hogerty's request. It enables the Commissioner to punish for an offense without depriving the licensee of the means of livelihood.

§ 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 ~~10~~ 20 days after the notice was given or mailed as provided in subsection 1 above.

Ref.: Me. 2519: Commissioner shall give licensee and insurer 10-days written notice of suspension, revocation or nonrenewal of license.

Comment: This is based on existing law, above cited. Desirability of the 10-day notice is for further thought. The hearing procedure has already put all concerned on notice that the license is in jeopardy. If the grounds for suspension or revocation are established at the hearing the advisability of permitting the licensee to continue in operation for an additional 10 days after notice is for consideration. Presumably, it is designed to permit the licensee to "phase out" his business - close pending cases, and achieve an orderly shutdown; or it would give time for preparation of an appeal to the courts from the Commissioner's order. Even without the 10-day requirement the Commissioner can always use his discretion as to the effective date of the order.

Required use of certified or registered mail is expensive. Can we get along without it here?

§ 1541. Return of license to commissioner

1. All licenses issued under this code, 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.

Ref.:

Comment: Self-explanatory.

§ 1542. Re-licensing after revocation, refusal of license

1. The commissioner shall not again issue license under this code 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 code. 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 code.

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.

Ref.: Me. 2593: As to life agents, licensee whose license has been revoked not entitled to file another application for license as life agent within 1 year from effective date of

revocation or, if judicial review sought, within 1 year from date of final court order or decree affirming such revocation. Application, when filed, may be refused by commissioner unless applicant shows good cause why revocation of license shall not be deemed bar to issuance of new license.

Comment: This is based on present law as to life agents, rounded out and clarified as to organization license.

SUBCHAPTER II

GENERAL LINES AGENTS AND BROKERS - QUALIFICATIONS AND REQUIREMENTS

§ 1601. Short title

Subchapter II of this chapter may be referred to as the "general lines agent and broker law."

Ref.:

Comment: For convenience.

(Maine)

§ 1602. Scope of subchapter

1. Subchapter II of this chapter applies only as to:

A. General lines agents, as defined in section 1503 of this chapter.

B. General lines brokers, as defined in section 1506 of this chapter.

2. As used in this subchapter II "agent" means general lines agent, and "broker" means general lines broker.

Ref.:

Comment: For convenience and information.

§ 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 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 of this chapter.

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 of this chapter.

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, 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.

Ref.: Me. 2504: Must be 21 or more of age; resident of this State if for resident agent, broker license; may not be licensed as resident agent or broker in another state; must have good moral character; must intend to hold self out in good faith as agent or broker.

Comment: This listing incorporates existing factors and adds new ones deemed desirable. The opening purpose clause assists in the construction of the law, as being one for protection of public and not for revenue. The "moral character" of existing law has been - I trust - made more definite in the proposed provision.

§ 1604. Educational requirement

1. An applicant for license as agent or broker who is required, under sections 1520 and 1521 of this chapter, 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 full-time 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 subdivision 8 of section 1603.

2. If qualification is based upon fulfillment of the requirements of paragraph B, above, the applicant shall file with the commissioner an affidavit by his employer stating the period of employment, that it was substantially full-time, and the nature of the duties performed by the applicant.

3. An applicant for re-licensing as agent or broker and

who has once fulfilled the above educational requirement, need not again fulfill them.

Ref.: Me. 2504(8): As in 1 and 2 above, in substance.

2511: As in 3, above, in substance.

Comment: This is the present law. Has it worked satisfactorily?

§ 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 through 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.

Ref.: Me. 2512: As in 1 A & B above.

2518(4): As in 2 above, except as commented on below.

Comment: This is the present law, but in 2 we have added a prohibition against sharing in commissions on such bond business. A similar prohibition will be carried in the chapter dealing with surety contracts. Should there be a prohibition against appointing any of these as an agent as to surety business?

We have also added, in A - that the license gives authority throughout the state.

§ 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.

Ref.:

Comment: Since the broker is representing the insured and not the insurer, the insurer is not responsible for his financial transactions. Bond is usually required of brokers through the country.

Chapter 17
Subchapter II
AGENT-BROKER LAW,
GENERAL LINES

§ 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) of this chapter.

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.

Ref.: Me. 2514: As in 1, above.

Comment: This is clarification of the broker status.

§ 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.

Ref.:

Comment: This is further clarification of the broker status.

(Maine)

Chapter 17
Subchapter II
AGENT - BROKER LAW,
GENERAL LINES

§ 1609. Place of business; display of license

~~1.~~ 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 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 licenses of the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

Ref.:

Comment: Such agents and brokers are customarily required to have places of business as a convenience to their insureds - who usually look to the agent or broker for service when a problem arises under the policy. Display of the license in the place of business has aided in discouraging use of such licenses for writing principally of "controlled business."

(Maine)

§ 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/or through countersigned by ~~xxxxxxxxxx~~ 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; and

D. Name of insurer, coverage, date, time, Insured etc. - RDW

~~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.

Ref.:

Comment: Such records are customarily kept in all events.

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Subchapter II
AGENT - BROKER LAW,
GENERAL LINES

§ 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 of this chapter.

4. A facsimile signature may be used on endorsements attached to policies at the time of issue.

Ref.: Me. 803(1)(A)(8): As in 3 above.

2522: Requires original signature, and not facsimile, except as to air travel insurance sold through vending machines. Authorizes power of attorney, as per proposed 2, in substance.

Comment: General right to use of facsimile signature was requested by Commissioner Hogerty, and is for consideration. 4 was suggested by the Independent Insurance Agents Association of Maine, via letter of June 13, 1968 from G. Cecil Goddard, Chairman, Special Study Committee of the Association. In 2 the power of attorney has specifically been extended also to countersignature, since that appears to be the general intent of the existing law.

§ 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 of this code, subject to exceptions stated in section 427 of this code, 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, imposed upon a Maine agent or broker a requirement to pay a greater countersignature fee of a specific amount or 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.

Ref.: Me. 2514(2): As above, in substance.

Comment: This is present law.

§ 1613. Reporting and accounting for premiums; fiduciary fund; penalty

1. 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.

2. Every agent and broker shall establish and maintain in a commercial bank in this State one or more trust accounts, separate from accounts holding his personal, firm, or corporate funds, and shall forthwith deposit and shall retain therein pending due transmittal to such insured or insurer, all such premiums and return premiums. The licensee may deposit and commingle in the same such trust account all such funds belonging to others so long as the amount so held for each respective other person is reasonably ascertainable from the licensee's records.

3. Any agent or broker who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use, shall upon conviction be guilty of embezzlement and shall be punished as provided by law.

Ref.:

Comment: This provision is widely used, and is suggested for consideration. It assists the agent or broker in remaining "financially responsible." Embezzlement is defined in Title 17, sec. 2107 MRSA, and is inserted above for its admonitory value.

§ 1614. Commissions - Payment, acceptance

1. No insurer shall pay or allow to any person, either directly or indirectly, any commission or compensation for solicitation, 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 of this chapter. This provision shall not apply as to business placed pursuant to section 1615 of this chapter or pursuant to any assigned risk plan.

2. No person other than one entitled to the same as provided in subsection 1 above, shall receive or accept any such commission or compensation.

Ref.:

Comment: Self-explanatory; is to "nail down" the law as to the matter.

Chapter 17
Subchapter II
AGENT - BROKER LAW,
GENERAL LINES

§ 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 agents is licensed as to the kinds of insurance involved.

Ref.: Me. 2512(3): Agent may place business which he is licensed to solicit with agent of another insurer transacting the same kind of ins. business, when necessary for the adequate protection of a risk.

Comment: This is based on existing law, above cited. We have added that the originating agent may also share in the commission, since this is probably the practice.

§ 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; except that the nonresident licensee may maintain the separate trust account referred to in section 1613 of this chapter in a commercial bank, whether located within or outside this State, and under reasonable terms, all as approved by the commissioner and designed to effectuate the purposes of such section 1613.

Ref.: Me. 2513: Licensed nonresident agent may represent auth. insurer and commissioner may accept, in lieu of examination, the certificate of the ins. dept. of his home state for types of insurance to be sold. Exam fee shall be paid with the application for such licenses in all instances. Must place Maine business through Maine resident agent of the insurer.

Comment: Self-explanatory. Present requirement that exam fee be paid in all instances - even where exam not to be required - is omitted for consideration. This would impose similar obligation on Maine residents seeking nonresident licenses in other jurisdictions.

§ 1617. Same - Service of process

1. Every nonresident licensed in this State as an agent or broker under section 1616 of this chapter 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) of this code. Upon receiving such service the commissioner shall promptly forward a copy thereof by registered or certified mail (with return receipt requested) to the nonresident licensee at his business address last of record with the commissioner.

3. Process served and copy thereof forwarded as in this section provided shall for all purposes constitute personal service thereof upon the licensee.

Ref.:

Comment: This is necessary for preserving jurisdiction of the licensee.

Chapter 17
Subchapter II
AGENT - BROKER LAW,
GENERAL LINES

§ 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 incident to the performance or non-performance 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, except as provided in section 427 (exceptions to countersignature law) of this code.

Ref.: Me. 2513: Nonresident agent must place all applications for insurance covering risk in Maine through Maine resident agent of the insurer.

2514(1): As above, with correlation.

Comment: This is the present law.

(me)

SUBCHAPTER III

LIFE AGENTS AND BROKERS QUALIFICATIONS AND REQUIREMENTS

§ 1671. Short title

Subchapter III of this chapter may be referred to as the "life agent and broker law."

Comment: For convenience.

(me)

§ 1672. Scope of Subchapter III

1. Subchapter III of this chapter applies only as to:

A. Life agents as defined in section 1504 of this chapter.

B. Life brokers as defined in section 1506 of this chapter.

2. As used in this subchapter III "agent" means life agent, and "broker" means life broker.

Comment: For convenience and information.

(me)

Chapter 17
Subchapter III
LIFE AGENT - BROKER LAW

GENERAL NOTE as to this subchapter:

"Step-licensing": It is suggested by the Life Agent Exam Advisory Board that a special category of licensee - a "sub-agent" - and a special license - a "Certificate of Convenience" - be provided for, under a plan in which new-comers to the life agency field would first qualify by examination for a "Certificate of Convenience," and then in a year take a more rigorous examination for license as a full life agent.

This is, I believe, sometimes referred to as "step-licensing," and although I believe that such a plan has been enacted in a state or states, I am informed that it is a subject of substantial controversy among life agents and as between life insurers and agent associations.

We will, of course, prepare such provisions as may reflect policy decisions of the Commission, but will await instructions as to this suggestion.

In the meantime, the definition of "Sub-agent" which appears in existing section 2581 - 2 is omitted, since it otherwise appears to serve no necessary purpose.

(me)

§ 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 person unless qualified therefor as follows:

1. Individual, age. Must be an individual of age 21 years or more, ~~except as to life agents of age 18, 19, or 20 years under direct supervision of a licensed life agent of age 21 years or more.~~ Requirement that the licensee be an individual shall not be deemed to prohibit the licensee from being associated with an agency/firm or broker or corporation.

Did not change further

2. Residence. If to be licensed as a resident agent or resident broker, must be a resident of 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 of this chapter.

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.

Ref.:

Comment: This parallels proposed sec. 1603 as to general lines agents, brokers, except as to age and education. The provision as to age is suggested as a reasonable compromise - already enacted in some other states - between those desiring a flat 21 year minimum, and those believing that agents of 18 years and over have a useful possibility.

The Life Agent Exam Advisory Board has suggested that no firm or corporation be licensed as a life agent, but that only individuals be so licensed. This suggestion is reflected in proposed 1.

(me)

§ 1674. Brokers - Bond, authority, commissions, combinations

The following sections of subchapter II of this chapter shall also apply as to life brokers:

1. Section 1606 (broker's bond);

2. Section 1607 (broker's authority, commissions), except that the requirement 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).

Ref.:

Comment: This avoids repetition of basic provisions.

(me)

Chapter 17
Subchapter III
LIFE AGENT - BROKER LAW

§ 1675. 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 above, even though at the time of such payment or receipt such person had ceased to hold a license as life agent or life broker.

Ref.: Me. 2584: No insurer or licensed life insurance agent or insurance broker doing business in this State shall pay directly or indirectly any commission, brokerage or other valuable consideration to any person, partnership or corporation for services as a life insurance agent within this State, unless such person, partnership or corporation shall hold a current valid license to act as a life insurance agent or an insurance broker as required by the laws of this State; nor shall any person, partnership or corporation, other than a duly licensed life insurance agent or insurance broker, accept any such commission, brokerage or other valuable consideration. This section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person, partnership or corporation solely because such person, partnership or corporation has ceased to hold a license to act as a life insurance agent.

Comment: This is, I believe, the present law; but we have clarified it to make it clear that the license must have been held at the time the services were performed.

Chapter 17
Subchapter III
LIFE AGENT - BROKER LAW

§ 1676. 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.

Ref.: Me. 2589 - 2: "Agents of duly authorized life insurance companies may place risks with agents of other duly authorized life insurance companies when necessary for the adequate insurance of persons or interests."

Comment: The above is proposed for consideration in lieu of the existing provision quoted above. The existing provision parallels a similar facility for fire, casualty agents. The proposed provision has been adopted by many states, and enables the writing agent to place the risk direct under the circumstances outlined, and receive the commission thereon without going through another agent.

(me)

§ 1677. Reporting and accounting for premiums; penalty

Subsections 1 and 3 of section 1613 of subchapter II of this chapter shall likewise apply as to life agents and life brokers.

Ref.:

Comment: The separate trust fund requirement of section 1613 is omitted as to life agents and brokers, since "cash with the application" is the general rule in the life insurance business and it may not be desirable to provide for or encourage the holding of funds by the agent or broker for any reason. Return premiums - where returned through the agent or broker - are usually by check made payable to the insured, and which the agent or broker cannot divert except by forgery of an endorsement. This has been done, but a trust fund would be of no assistance here. The fire, casualty agent receives the entire premium and remits often only the net premium - deducting his commission in advance. The fire, casualty agent handles much "fungible" money, in contrast with the life agent, broker. For consideration.

§ 1678. Countersignature of health policies

Sections 1611 (signature, countersignature of policies) and 1612 (countersignature fee) of subchapter II of this chapter shall also apply as to countersignature of health policies by a life agent licensed as to health insurance.

Ref.: See reference to the sections referred to, and also to sections (proposed) 426, 427.

Comment: This appears to be the present law.

(me)

§ 1679. 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 brokerage; 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) of subchapter II of this chapter shall also apply as to nonresidents licensed under this section.

Ref.: Me. 2588: Same as above, subsections 1 and 2, in substance, except as noted in comment below.

Comment: This facility has also been extended to Canadian provinces, in the above provision, and C has been modified to tie in with the idea that although individual agents and brokers may be associated with an agency or brokerage firm or corporation, the firm or corporation itself will not be licensed as to life insurance.

§ 1680. 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.

Ref.: Me. 2594: "Every licensed life ins. agent shall inform the commissioner promptly in writing of a change of his principal business address."

Comment: This is present law, a bit clarified, and extended to brokers. Life agents and brokers are not required to have an office in this State, as is the case with fire, casualty agents.

(me)

SUBCHAPTER IV

INSURANCE CONSULTANTS
QUALIFICATIONS AND REQUIREMENTS

§ 1801. Short title

Subchapter IV of this chapter may be referred to as the "insurance consultant law."

Ref.:

Comment: This is a new category of licensee, suggested by Commissioner Hogerty, the Life Agent Examination Advisory Board, and by individual Maine agents and brokers. A substantial number of states now provide for this category, in whole or in part, as "counselors," or "analysts" or under other title.

In starting this subchapter with sec. 1801, a substantial block of unused numbers remains between this subchapter and the end of subchapter III to accommodate possible future development of additional insurer representative licensee categories or subcategories.

Query: Should we "skip-number" the subchapters in order to leave room for insertion of new subchapters with regular numerical designations?

(me)

§ 1802. Scope of subchapter IV

1. Subchapter IV of this chapter applies only as to general lines consultants and life consultants, as defined in section 1508 of this chapter.

2. Unless context otherwise requires, "consultant" as used in this subchapter means both general lines consultants and life consultants.

(me)

Chapter 17
Subchapter IV
INS. CONSULTANT LAW

§ 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 be a resident of this State;~~

~~3.~~ 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;

~~5.~~ 3. Must have a thorough knowledge of insurance and annuity contracts of the kinds proposed to be covered under the license;

~~6.~~ 4. Must pass all written examinations required for the license under this chapter;

~~7.~~ 5. Must be competent, trustworthy under highest fiduciary standards, financially responsible, and of good personal and business reputation; and

~~8.~~ 6. Must have filed the bond required by section 1804 of this chapter.

Comment: Minimum age is set at 25 years to allow for accumulation of necessary experience. It is believed that education - that is, book study and class work - alone would not be an adequate preparation for work as a consultant, and should not take the place of field experience in meeting actual problems. The fiduciary character of the licensee is referred to in proposed 7.

(me)

Query: Are nonresident consultants desirable? The role of a consultant is much like that of other professionals - doctors and attorneys - and the fiduciary nature of his function would suggest that status as a resident would be desirable.

§ 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 or unlawful 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.

Comment: The bond should be substantial in amount and broad in its protection, since the consultant is acting as an independent contractor and not on the responsibility of any insurer. Is $5000 enough?

§ 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 licenses 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 as 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.

Comment: A consultant should not be a transient, but should have a definite place of business. The exact content of his records is left open, and may be covered - if desired - by rules and regulations of the commissioner under general rule-making authority.

(me)

Chapter 17
Subchapter IV
INS. CONSULTANT LAW

§ 1806. Combined licensing

A licensed consultant ~~may~~ shall not at the same time be licensed as an agent or broker under this code, ~~but shall keep distinctly separate his transactions under the respective licenses.~~ but not have a pecuniary interest in any insurance agency or broker.

Comment: In some states such consultants or analysts are prohibited from at the same time being licensed as agent or broker or having any pecuniary interest in any agency, broker, or insurer.

§ 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 as consultant.

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 not more than 1 year, or by both such fine and imprisonment.

Comment: This is the area of greatest potential difficulty, and the proposed provision is designed to make it clear that the licensee cannot serve more than one interest at the same time. The penalty for violation should be substantial.

§ 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 to 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.

Comment: This is a sort of declaration of faith to assist in establishing a standard for performance and behavior of such licensees.

(me)

SUBCHAPTER V

INSURANCE ADJUSTERS
QUALIFICATIONS AND REQUIREMENTS

§ 1851. Short title

This subchapter V may be referred to as the "insurance adjuster law."

Comment: This parallels similar references in preceding subchapters.

(me)

§ 1852. Scope of this subchapter

This subchapter V shall apply only to insurance adjusters, as defined in section 1509 of this chapter.

Comment: This is for convenience, particularly since it gives a reference to the definition of "adjuster."

(me)

Chapter 17
Subchapter V
INS. ADJUSTER LAW

§ 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 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 a resident of this State, and not licensed as an adjuster or otherwise as a resident of another state or jurisdiction.

3. Must be competent, trustworthy, financially responsible, and of good personal and business reputation.

4. Must pass any written examination required for the license under this chapter.

5. 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 of 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. Grandfather clause to be added

6. Must post the bond required under section 1854 of this chapter.

Ref.: Me. 2504: For adjuster license must be at least 21 years

of age; resident of this State if to be licensed as resident adjuster; have good moral character; intend in good faith to hold self out as an adjuster.

Comment: This fleshes out a bit the qualifications of an adjuster, paralleling in general terms those of an agent or broker, and requiring special conditions as to experience, etc., as in proposed 5. For consideration.

Query: Should there be "grandfather" rights as to existing adjusters who may not meet all the above qualifications?

§ 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.

Comment: The adjuster is an independent contractor handling large sums of money at times in connection with claim settlements, and a bond is customarily required.

(me)

§ 1855. Records

1. Each adjuster shall keep at his business address shown on his license a record of all transactions consummated 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.

Ref.:

Comment: This is mere housekeeping.

(me)

Chapter 17
Subchapter V
INS. ADJUSTER LAW

§ 1856. Nonresident adjusters of special, catastrophe losses

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 particular unusual or extraordinary loss, or of a series of losses resulting from a catastrophe common to all such losses.

Ref.: Me. 2510: Commissioner may suspend adjuster license requirement for not over 6 months when an emergency makes it necessary for an adjuster from another state to adjust losses in this State.

Comment: The proposed provision is somewhat different from existing law, above cited, but fulfills the usual requirements of such a waiver. "Emergency" under the present law can be extremely broad and difficult to interpret. For consideration.

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.

3. To each such insurer heretofore organized by special Act of the Legislature, except where inconsistent with such special Act as heretofore amended.

Ref.: Me. 538: Title not affect provisions enacted before June 1, 1967, in life insurer charters created by private and special law inconsistent with this Title.

Maine Constitution, Art. IV, sec. 14: "Corporations shall be formed under general laws, and shall not be created by special Acts of the Legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the State." (Emphasis supplied)

Comment: Domestic insurers organized under special Acts have only such rights and obligations as are stated in the Act under which organized, and new obligations cannot be imposed upon them except by amendment of the respective Acts under which organized - and this only with the consent of the respective insurers.

In State v. Noyes (1859), 47 Me. 189 it was held that such a corporate charter is a private contract between the Government, acting in its sovereign capacity, and the corporation, binding on both, and cannot be changed or impaired by the Legislature, and is to be construed

exclusively by the courts upon the same principles as apply to contracts between private individuals. This rule follows that laid down by the U. S. Supreme Court in the Dartmouth College case, (1819), 4 Wheat (U.S.) 518.

General laws do not apply to charters previously granted: 98 Me. 114 (1903)

Query: Can an insurer organized under a special Act, by amendment of such Act subsequent to enactment of this code, modify the application of the code as to it? Presumably this can done.

§ 3302. Insurers to be organized under this code

All domestic stock and mutual insurers hereafter organized shall be organized under the provisions of this code, and not otherwise.

Ref.:

Comment: Declaration of public policy.

§ 3303. Reservation of power

The Legislature shall have power to amend, repeal or modify this code at pleasure.

Ref.: Maine Const., Art. IV sec. 1: Legislature shall have full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State.

Comment: Self-explanatory.

§ 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 code and the reasonable implications thereof, and in which case the provisions of this code shall govern.

Ref.:

Comment: The present general corporation statutes of Maine are in obvious need of revision, and I am informed that this is now being done by Professor Halperin of the Law School of the University of Maine, under the auspices of the Bar Association. There should be a high degree of uniformity in procedures for organization, etc., of all types of corporations, and we will in this chapter provide for insurer corporations in respects which should differ from treatment to be accorded ordinary corporations, or where the general corporation statutes are apt to be silent.

§ 3305. "Stock," "mutual" insurers defined

1. A "stock" insurer is as defined in section 400 of this code.

2. A "mutual" insurer is as defined in section 401 of this code.

Ref.:

Comment: For convenience of those using the code.

§ 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) of this code; 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 code, 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 1 year.

G. If a mutual corporation, the amount, if any, of its guaranty capital, 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) of this chapter.

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 1 year after date of incorporation.

I. The city or town, and county in this State in which the corporation's home office and principal place of business are 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.

Ref.: Me. 502: 10 or more residents of Maine may incorporate an insurer.

507: Incorporation agreement shall show name, class or classes of insurance to be transacted, plan or principle upon which to conduct business, town or city in which is established or located; if a stock co., amt. of capital stock; if mutual with guaranty capital, the amount thereof. Capital stock of stock insurer organized after January, 1968, must have stated par value. Mutual insurer may fix contingent liability of member for payment of losses and expenses not provided for by its cash funds, which contingent liability shall be not less than an amount equal to and in addition to the cash premium written in the policy and in no case less than 1% of the maximum liability of the co. under the policy.

510: Any name not previously used by existing corporation may be adopted, but must use one or more words "insurance," "surety," "fidelity," "casualty," "bonding" or "fire" in name; and "mutual" if company is to operate on mutual plan. Commissioner may refuse certificate if name adopted too closely resembles name of existing corporation or likely to mislead public.

514: President, secretary and majority of directors sign and swear to a certificate setting forth copy of Articles of Association, with the names of the subscribers thereto, date of first meeting and any adjournment thereof.

652: Stockholders shall have one vote per share.

Comment: This is a somewhat standard provision as to contents of articles of incorporation of an insurer, with special adaptation to Maine. Requirement that incorporators must be residents of Maine has been omitted; it is a fairly meaningless requirement.

(Me)

§ 3306 - p. 3

Co. can organize at 1/10 per share & split later if found desirable.

A one class of stock capital structure is provided for, with par value not less than $1 per share, as per request of Commissioner Hogerty. A certificate of organization prepared under the above provision will give essential information and safeguards. "Treasury stock" is stock which has been issued and is outstanding, but has been re-acquired by the corporation. The contingent liability of mutual policyholders has, I trust, been somewhat clarified and modernized. It should operate equitably for all members, whether premium is payable on a quarterly, annual, or less frequent basis. The 1% of maximum liability could be harsh under modern high limit liability policies.

§ 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 commissioner 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 stock, 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, above.

Ref.: Me. 53: Upon organization every domestic insurance company shall inform the commissioner thereof.

514: Certificate and records of corporation shall be submitted to the inspection of the commissioner, who shall examine the same, and may require other evidence as he deems necessary. If it appears that requirements

have been complied with, commissioner shall so certify and his approval of the certificate by indorsement thereon. Certificate then filed with Secretary of State, to whom shall be paid the fees or duties required by law.

Comment: The proposed section uses a procedure now commonly used in the incorporation of insurers, which is generally consistent with existing Maine law.

§ 3308. Certificate of Secretary of State

1. Upon filing with him of the certificate of organization of a proposed insurer as provided in subsection 2 of section 3307 of this chapter 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 related to capital stock shall be omitted.)

2. The Secretary of State shall sign the same, and cause

the seal of the State to 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.

Ref.: Me. 514: as above, in substance.

Comment: This is the present law, adapted to proposed changes in terminology.

§ 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 of this chapter; 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 code.

Ref.: Me. 502: Upon complying with sec. 514, corporation becomes and remains a corporation with all powers, rights and privileges and be subject to all the duties, liabilities and restrictions set forth in all the general laws relative to insurance corporations.

Comment: This is mostly housekeeping, but serves the useful purpose of stating exactly when the corporate existence commences.

§ 3310. Amendment of certificate of organization

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 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 insurers 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 of this chapter. 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.

Ref.: Me. 505: Mutual insurer may at annual or special meeting of which notice contained notice of proposed action, change or enlarge purposes, or alter certif. of organization, in any lawful way. Certificate of such changes submitted to commissioner for his approval, endorsed thereon. Certificate thereupon filed with Secretary of State, fee $20, who will record same and issue a certif. as provided in § 514.

518: Mutual fire insurer may change location of principal office at any legal meeting of members. Amendment of certificate of organization not required.

Comment: This is largely necessary because of mutuals, and to cover the requirement of quadruplicate originals.

Query: Should we provide for change of principal place of business without amendment of certificate of organization?

§ 3311. Insurance business exclusive; exceptions

1. No domestic insurer heretofore or hereafter formed shall engage directly or indirectly 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, and to the full utilization of its facilities; and

C. An insurer may own subsidiaries which may engage in such businesses all as provided for in section 1115 (stocks of subsidiaries) of this code.

Ref.:

Comment: This clarifies and makes definite the powers of insurer corporations.

(Me)

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, below.

2. When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this code, 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 the one kind of insurance the insurer proposed 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	Minimum Amt. Ins. Ea. Subj.	Max.Amt. Ins. Ea. Subject (5)	Deposit Min.Surpls.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 (weekly indem.)	$ 50 (weekly 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

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. The following provisos are respectively applicable to the foregoing schedule and provisions as indicated by like numerals appearing in such schedule:

(1) No group insurance or term policies for terms of less than 10 years shall be included.

(2) No group, blanket or family plans of insurance shall be included. In lieu of weekly indemnity a like premium value in medical, surgical, and hospital benefits may be provided. Any accidental death or dismemberment benefit provided shall not exceed $5,000.

(3) Only insurance of the owner's interest in real property may be included.

(4) Must include insurance of legal liability for bodily injury and property damage, to which the maximum and minimum insured amounts apply.

(5) The maximums provided for in this column (F) are net of applicable reinsurance.

(6) 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) of this code.

§ 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 ~~from~~ 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 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.

Ref.:

Comment: Since no "Blue Sky" regulations ordinarily apply to solicitation of qualifying applications for insurance in a proposed new mutual insurer, this provision - as well as those which follow - are designed to provide some protection to the public.

§ 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 applicants 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 paragraph C above 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 of this code.

Ref.: Me. 509: Purely mutual insurer not to issue policy until applications have been made in good faith for insurance to the amount of $50,000.

Comment: This provides essential protection to the public.

§ 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 subsection 3, paragraph C of section 3352. 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 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.

Ref.:

Comment: Self-explanatory.

(Me)

§ 3356. Failure to complete and qualify

If the proposed domestic 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 premiums offers held in trust under section 3355.

Ref.:

Comment: A year should be long enough for completion of such an organization; and premiums should not be held longer.

§ 3357. Authority to transact additional kinds of insurance

After being authorized to transact one kind of insurance 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) of this code, while otherwise in compliance with this code and while maintaining surplus and/or guaranty capital unimpaired/funds in an amount not less than the amount of paid-in capital stock ~~and surplus~~ required to be maintained by a/like domestic stock insurer transacting the same kinds of insurance.

Ref.:

Comment: The plan of these provisions is to enable formation of a new domestic insurer for transaction of a basic kind of insurance on a reasonable financial basis; but not permit such an insurer to spread into other kinds of insurance until it is able to qualify therefor on the same basis as a like stock insurer. This provides some assurance that the insurer will be operated successfully in its basic field before spreading out.

For consideration.

§ 3358. Guaranty capital

1. A mutual insurer formed to transact or transacting any kind of insurance shall have the right to establish by provision therefor in its certificate of organization a guaranty capital in an amount at aggregate par value not exceeding the minimum amount of basic surplus required to be maintained by the insurer for authority to transact such kind or kinds of insurance as provided in section 410 (capital funds required) of this code.

2. Shares of guaranty capital stock shall have a par value of $100 each, and shall be paid for in cash. Nothing in this code 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 account.

5. If the guaranty capital becomes impaired, the impairment shall be cured as provided in section 3423 (impairment of capital funds) of this chapter.

6. The insurer shall retire and cancel the guaranty capital in part and in whole as soon as is reasonably possible, out of expendable surplus resulting from net realized earnings from its operations. The insurer shall retire and cancel the guaranty capital in its entirety when such retirement would, in the commissioner's opinion, leave the ~~guaranty~~ 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.

Ref.: Me. 505: Guaranty capital certificate holders shall have novoting rights. If mutual has been in business 20 yrs or more and maintains surplus at least 60% of its unearned premium reserve and has assets at least $125,000 after deducting excess of its real estate investment over 10% or premiums in force if on cash premium plan or 2% of balance of premium notes, if on the assessment plan, may establish guaranty capital, paid in cash, divided into $100 shares, and holders have voting rights so long as surplus 60% of unearned premium reserve and assets of $125,000 maintained. Dividends not exceed 7% in any one year, out of earnings above expenses, losses, reserves

and incurred liabilities. Guaranty capital may be retired by vote of policyholders when surplus funds, over all liabilities including guaranty capital, equal or exceed guaranty capital. Net of risk on any one subject by such an insurer not exceed 5% of policyholders' surplus.

507: Mutual transacting insurance other than fire, marine or glass shall have guaranty capital. Dividends not exceed 7% any one year, only out of earnings over all liabilities. Mutuals not limiting risk retention to $200 until assets exceed $2,000, and thereafter 10% of gross assets, shall establish guaranty fund or capital of not less than $10,000, in shares not less than $100. Dividend not over 7% may be paid any one year from net earnings. Shall be deposited with Treasurer of State. When cash and other assets exhausted, guaranty fund may be used, with commissioner's approval, to pay losses. Directors must make good amount so drawn by assessment on contingent funds or notes, and unless so restored in 6 months, shareholders shall be assessed in proportion to amt of stock owned by them, to restore capital. Shareholders and members subject to same provisions relative toright to vote as apply to stockholders in stock insurers and members in mutuals, respectively. Guaranty capital may be retired, by vote of policyholders, when surplus funds over all liabilities, including guaranty capital, equals or exceeds the guaranty capital, on any part thereof, provided the net surplus and guaranty fund shall not be less than $10,000. Guaranty capital shall be retired when net cash assets are 3 times amount of guaranty capital.

508: Holders of guaranty capital may receive dividends and may be retired as provided in sec. 507.

515: Mutual insurer with guaranty capital may increase guaranty capital by payment of stock dividend.

Comment: Much of the present law, above summarized, is obviously obsolete. The proposed provision attempts to provide a reasonable basis for use of guaranty capital by mutuals. This is especially desirable in view of the increased financial requirements for the qualification of a mutual. Guaranty capital is one method by which the insurer can acquire its required capital funds; the other method is through use of guaranty fund certificates or "surplus" certificates as provided for in section 3415 of this chapter. The provision clarifies use of guaranty capital, and rights and retirement thereof.

We should determine whether the proposed provision will do violence as to any existing domestic insurer.

In a sense use of guaranty capital could provide a mutual with a built-in device for converting either to pure mutual or to a pure 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 code, 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/~~xxxxxxxx~~ 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.

Ref.:

Comment: Protection of the interests of mutual policyholders is a special province of the State.

§ 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, and 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.

Ref.: Greenlaw v. Aroostook County Patrons' Mutual Fire Ins. Co., 117 Me. 514 (1918): One insuring in a mutual thereby becomes a member thereof.

Comment: In some jurisdictions mutual policyholders may be divided into members (generally those holding "participating" policies) and nonmembers (those holding nonparticipating policies). Only members have voting, etc. rights. In the 1930's, when Mr. Pink was Supt. of Insurance of New York he liquidated a mutual casualty company with business in many states, and brought suit against policyholders for collection of their contingent liability for payment of losses and expenses. The Supreme Court of one of the Southern States - I believe Louisiana, held that the defendant was a policyholder, but was not a "member." Since then it has been advisable to express the nature of the policyholder's relationship to the insurer in the statute. This proposed provision is consistent with Maine law, above cited.

§ 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 order, 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.

Ref.: Me. 518: Notice of meeting of members to vote on change of principal place of business is to be mailed to all policyholders of record, postage prepaid, to last known post office address at least 30 days prior to meeting date.

Comment: This is a further rounding out of provisions designed for protection of mutual members and guidance of both the insurer and the commissioner in these matters.

For consideration.

16. Chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers), except as to the following sections:

A. Sections 3352 through 3358 (initial qualification, qualifying applications for insurance, guaranty capital, and related subjects); and

B. Sections 3364 through 3367 (provisions relative to contingent liability and nonassessable policies).

17. Chapter 49 (continuity of management),

18. Chapter 59 (delinquent insurers; rehabilitation and liquidation).

19. Chapter 69 (transitory provisions).

Comment: Self-explanatory. Many of these inclusions give domestic mutuals the advantages of accelerated insurance services and corporate mobility which are among objectives of the revised code.

§ 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 States 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.

Ref. Me. 504: Notice of special meeting of members to consider merger is given by publishing once weekly on 3 successive weeks in newspaper printed in each county of this State in which insurer chartered to operate, last publication to be at least 7 days prior to the meeting.

Comment: Self-explanatory.

§ 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 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.

Ref.:

Comment: Voting rights related strictly to the face amount of insurance may be quite unfair, in view of the differences in premiums, reserves, and earning possibilities under varying plans of insurance. There have been instances in other states where cheap term insurance in "balloon" amounts was suddenly procured by management to affect an important policyholder vote under such a face amount vote plan. The proposed provision provides for necessary flexibility.

For consideration.

§ 3364. Contingent liability of members

1. Except as provided otherwise in section 3367 of this chapter with respect to nonassessable 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 nor 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 filing 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.

Ref.: Me. 507.: "The total amount of the liability of the policyholder shall be plainly and legibly stated upon the filing-back of each policy." See also reference to this section in connection with proposed sec. 3306.

Comment: This is consistent with existing law. Proposed 4 is informative and results from attempts in some other states to carry such contingent liability as an "asset" of the insurer.

(me)

§ 3365. Levy of contingent liability

1. If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under this code 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.

Ref.:

Comment: This is an up-dated provision, making reasonable arrangements for use of contingent liability, and with desirable clarifications.

§ 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.

Ref.:

Comment: Self-explanatory. Because of the possible small amounts involved, such suits may be impratical in given circumstances.

§ 3367. Nonassessable policies

1. A domestic mutual insurer, by depositing through the commissioner and thereafter maintaining unimpaired surplus funds not less in amount than the minimum paid-in capital stock required of a like domestic stock insurer for authority to transact the same kind or kinds of insurance, may, upon receipt of the commissioner's order so authorizing, extinguish the contingent liability to assessment of its members as to all its policies in force and, so long as such surplus and deposit are maintained, may omit provisions imposing contingent liability in all policies currently issued. Any deposit of the insurer made through the commissioner as prerequisite to its certificate of authority may be included as part of the deposit required under this section.

2. The commissioner shall not authorize a domestic insurer to extinguish the contingent liability of any of its members or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its members and in all such policies for all kinds of insurance transacted by it.

3. The commissioner shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if

A. At any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or

B. The insurer, by resolution of its board of directors requests that the authority be revoked.

4. Notwithstanding the foregoing provisions, mutual

insurers heretofore issuing nonassessable policies under laws heretofore in force shall have the right to continue such issuance so long as qualified therefor under the same standards and requirements as pertained under such laws.

Ref.: Me. 520: Secs. 519, 1452 and 1454 shall not be construed as limiting any rights existing on July 9, 1943, of any mutual companies, other than mutual fire insurance companies, to issue nonassessable policies.

Comment: Is the grandfather clause in proposed 4 necessary?

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 below.

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 code, 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 or 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 59 of this code.

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.

Ref.: Me. 517: All ins. cos. incorporated and organized under the laws of this State shall have their principal place of business in some city or town in the State.

538: "This title shall not be held to affect provisions enacted before June 1, 1967, in life insurance company charters created by private and special law inconsistent with this Title, but their principal place of business shall be located within the State, unless prior written consent otherwise is given by the commissioner....."

Comment: This is a comprehensive provision providing desirable safeguards. In some states attempts of the Commissioner to safeguard assets of a company in financial difficulty have been frustrated by a night-time dash of officers across the state boundary with the company's records and moveable assets. A felony basis is used in order to assist in extradition. It appears from existing sec. 538 - above - that some Maine insurer home offices may already be located outside the State, or that there may be plans in that direction. Some states - such as Delaware - do not require either home office or records or assets to be kept within the state. There is no objection to such an arrangement so long as it is for a proper purpose and does not deprive the domicile state of reasonable control and access.

Should we provide for location of a home office outside Maine on Commissioner's consent - with applicable standards for decision?

§ 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 the disbursement is in connection with any matter pending before any legislature or public body or before any public official, the voucher or other document shall also correctly describe the nature of the matter and of the insurer's interest therein.

4. 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 particular of such expenditure as otherwise hereinabove required.

Ref.

Comment: A "standard" provision.

§ 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 ~~5~~ 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.

Ref.:

Comment: The desirability of a section dealing with destruction of records was suggested by Mr. Robert D. Russ, of Union Mutual Life Insurance Company, in his letter of March 29, 1968. The above is presented as a basis of further discussion. The Maine statute of limitations on contract actions is 6 years. (Title 14, sec. 752) and this should be taken into consideration by the insurer before disposing of possibl evidence.

Should we provide that the insurer shall prepare a proposed schedule of various classes of records and the period after which they could be destroyed, for consideration and approval by the Commissioner? Might be desirable - especially - to have the Chief Examiner take part in any such consideration.

§ 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 1 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 shall be filled for the remainder of the term.

3. A director of a stock insurer shall be a stockholder thereof, and a director of a mutual insurer shall be a policyholder thereof.

4. As to an insurer operating as an authorized insurer only in the State of Maine, a majority of the members of the insurer's board of directors shall be residents of and shall actually reside in this State.

Ref.: Me. 517: Majority of directors shall be citizens of this State.

538: Majority of directors of companies chartered under special legislative Act shall at all times be citizens of this State.

652: Incorporated insurers to be managed by not less than

7 directors, chosen by stockholders as provided in bylaws. Must be stockholders and hold office for one year and until others chosen and qualified. Vacancies filled at a meeting called for purpose.

653: Both stock and mutual insurers may, by bylaws, divide their directors into 2 or 3 classes, to hold office for 2 or three years, according to number of classes and until others chosen in their stead, in such manner that one class thereof shall go out of office annually. Vacancies shall be filled for the remainder of the term of the class in which they occur.

Comment: This summarizes material features of the present law and leaves procedural matters to the general statutes or bylaws. It has been suggested that the requirement that a majority of directors be "citizens" of Maine be dispensed with. I do not believe that there is state "citizenship." We have used "resident" instead. We have modified the majority requirement so that it would apply only to an insurer transacting business solely in Maine.

For consideration.

§ 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.

Ref.: 513: Directors shall elect president, secretary and other officers which under the bylaws they are authorized to choose.

591: Stock co. or its directors, as often as once a year shall, by ballot, elect a secretary, who shall be the clerk of the co. and be sworn to faithful discharge of his duty. (certain duties outlined) Directors may appoint such other officers as they think necessary.

652: Business of incorporated insurers shall be managed by not less than 7 directors, chosen by stockholders at time, place, manner provided by bylaws. They shall be stockholders and hold offices for one year and until others are chosen and qualified in their stead. Vacancies may be filled at a meeting called for the purpose. The directors shall choose one of their number president.

Comment: Self-explanatory.

(Me)

§ 3413. Prohibited pecuniary interest of officials and others

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 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 insurer shall guarantee the financial obligation of any of its officers or directors.

3. 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.

4. The commissioner may, by regulation from time to time, define and permit additional exceptions to the prohibition contained in subsection 1 of this section 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.

Ref.:

Comment: This ties in with conflict of interest concern reflected in the annual statement form. Similar provisions are now in force in many states.

§ 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 above.

5. This section does not apply as to contracts entered into prior to the effective date of this Act, ~~or to extensions~~ or amendment of such contracts other than extensions thereof.

Ref.:

Comment: Such contracts have a useful function under proper circumstances and terms. Because of past abuses some states prohibit them entirely. The proposed provision has safeguards to prevent abuse.

It has been suggested that such contracts not extend over 2 years and provide for compensation only out of profits - not out of the gross. I believe that both these requirements would be difficult to apply and still permit such contracts to fulfill an often necessary and useful purpose. For discussion.

§ 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 6% per annum, 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 ~~public~~ offering and sale is made ~~except~~ through established securities brokers or by of the loan securities, the insurer may pay the reasonable costs thereof approved by the commissioner.

public offering

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 dis-

approve 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 shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made by a mutual insurer 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, nor to loans secured by pledge or mortgage of assets.

Ref.: Me. 1454: Any domestic mutual insurance company may, without pledging any of its assets, receive advances or borrow funds necessary for the purpose of its business or to enable it to comply with any surplus requirement or to make good any impairment or deficiency or other requirement of the laws of this State, or to defray the reasonable expenses of its organization, or to provide any fund to be voluntarily contributed to surplus, upon an agreement that such moneys and such interest thereon as may be agreed upon, said interest not exceeding 6% per year, shall be repaid only out of free and divisible surplus of such insurer with the approval of the commissioner whenever, in his judgment, the financial condition of such insurer warrants it. Any such sum or sums so advanced or so borrowed shall not form a part of the legal liabilities of such insurer and shall not be a basis of any counterclaim; but until repaid all statements published by such insurer or filed with the commissioner shall show, as a footnote thereto, the amount thereof then remaining unpaid. No such contract or agreement shall be valid unless first approved by the commissioner in writing as not unfair, misleading or contrary to any law of this State.

Comment: This is an amplified and more precise presentation of the law as to this useful financing device. It is extended to stock insurers as well as mutual insurers. In fact, such financing could probably be effectuated by either type of insurer in the absence of such a provision; but the provision does establish desirable safeguards and removes possible questions. Securities of this type can be desirable investments. As to a stock insurer they would ordinarily represent a lien upon the capital stock. These securities can be made convertible into stock of the insurer, and many variations are possible to fit particular needs and circumstances.

§ 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/realized net 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 of this chapter.

Ref.: Me. 516: Stock insurer may pay cash dividends on stock; and may pay stock dividends out of its profits and income after providing for liabilities, expenses and reserves. Stock dividend increase of capital requires certificate thereof to be filed with commissioner, who shall certify to the amount of capital stock so increased.

601: Directors, at such times as charter or bylaws prescribe, shall make dividends of so much of profits as think advisable, but moneys received and notes taken for premiums on risks, which are undetermined at time of making dividends, shall not be part of said profits.

602: If capital stock diminished by losses, depreciation or otherwise, no dividend to be made until diminution is cured.

603: Marine insurer may, by bylaws or votes duly passed for the purpose, divide among the stockholders and the persons insured therein, in proportion to stock owned and amount of premiums paid on risks terminated, all clear profits above 6% a year on its capital stock. Before such division is made, all arrearages of dividends to stockholders required to make their annual dividends equal to 6% a year shall first be paid.

Comment: This is a precise dividend provision compatible with insurance corporate requirements. Proposed 2 answers a common question. A stock insurer must start business with a large amount of contributed surplus resulting from sale of its shares at a premium. It invests most of this surplus in acquiring business. When that business starts to show a net profit to the insurer, as demonstrated by an increase of current surplus, the insurer may pay a dividend out of the increase without waiting for restoration of the entire contributed surplus.

Most of the existing Maine law, above cited, appears to be obsolete. Are any insurers now using the sec. 603 facilities? This would ordinarily be taken care of by issuance of participating policies.

Modern insurance accounting makes unnecessary detailing in the statute just how existence of net earned surplus is to be determined.

§ 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, shall be made contingent upon the payment of renewal premium on any policy or contract; except, that a participating life or health insurance policy providing for participation at the end of the first and/or second policy year may provide that the dividend or dividends will be paid subject to payment of premium for the next ensuing year.

Ref.: Me. 503: Apparently authorizes marine insurers to share profits between stockholders and policyholders.

Comment: In principle there is no reason why both stock and mutual insurers should not be able to issue either participating or nonparticipating policies, or both. There are stock fire-casualty insurers which have issued participating policies for many years; many stock life insurance companies issue participating policies. Conversely, a mutual insurer should be allowed to issue nonparticipating policies. The above provision provides basic regulation and safeguards.

§ 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 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.

Ref.:

Comment: Under the above proposed provision stock insurers are permitted to pay policy dividends out of contributed surplus because the insurer has usually added a "loading" to the premium to cover the dividend, and because further the stockholders, rather than the policyholders, provide the necessary financial "cushion" for the insurer's operations.

Query: Do we want to prohibit payment of participation "dividends" out of profits from nonparticipating business? This is being done in some states as a means of discouraging "special" and "profit sharing" life insurance policies.

§ 3419. Pension 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.

Ref.: Me. 1801: As in 1 above, in substance.

Comment: Proposed 2 is added in order to provide necessary standards for the Commissioner's approval or disapproval. It is recognized that such plans would probably have to meet federal standards for favorable income tax treatment, but this does not dispense with the advisability of having standards also in the statute.

§ 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 life insurance, sickness, accident, hospitalization, medical, surgical and related insurance benefits, 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.

Ref.: Me. 1802: As above, in substance.

Comment: This is the present law, with some editing.

§ 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 line insurance, 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 jurisidction 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 _____ of this code (policies issued for delivery in another state).

Ref.: Me. 225: No insurance company domiciled in this State will be permitted to insure persons, property or other risks in any other state unless such company is authorized pursuant to the laws of such state to transact such insurance therein. This section shall not apply:

1. Class or kind of insurance written. To insurance companies organized in compliance with the insurance laws of this State, which cannot be properly authorized in other states because the laws of such states do not permit the writing of the class or kind of insurance written by such companies;

2. Person insured is present. To contracts entered into where the person insured or proposed to be insured is, when he signs the application, personally present in a state in which the insurer is authorized to transact business;

3. Group life, accident. To the issuance of certificates under any lawfully transacted group life, group accident or other group disability policy, entered into in a state in which the insurer is then authorized to transact business;

4. Contracts otherwise lawful. To the renewal, reinstatement, conversion or continuance in force, with or without modification, of contracts otherwise lawful and which were not originally executed in violation of this section;

5. Similar provision in other state. To insurance written in any state which does not have a similar provision in its insurance laws.

The commissioner shall annually mail to each domestic insurance company of this State notice specifying those states having a similar law.

Comment: This somewhat more explicit and rounded provision is offered in substitution for the existing law, above quoted. The proposed provision covers the same area, except as to existing subsection 1, and adds other facilities. Existing subsection 1 is highly ambiguous. Requirement that commissioner annually notify all domestic insurers a list of reciprocating states is also omitted. It is easy for the insurer to make the inquiry when the question arises.

§ 3422. Purchase of own shares by stock insurer

A domestic 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 of this chapter.

5. For retirement 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.

Ref.:

Comment: This is a desirable facility, for the purposes above stated. Market value of shares of some insurers has been so low in relation to liquidation value that some major insurers have purchased and retired substantial blocks of stock.

For consideration.

(Me)

§ 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 surplus required to be maintained by it under this code 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) of this code for the investment of the insurer's funds or by amendment of the insurer's certificate of organization to coyer 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 code; 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 certfficate 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 (a) above, the insurer shall be deemed insolvent and the commissioner shall institute

delinquency proceedings against it under chapter 59 of this code.

Ref.: Me. 55: Any stock insurer, which does not within 3 months after notice from the commissioner that its capital is impaired, satisfy him that has fully complied with the law relating yhereto, shall be proceeded against as per sec. 60 (Injunction and receivership).

605: If insurer sustains losses equal to capital stock, and president or directors after knowing the same make any new or further insurance, estates of all who made such insurance or consented thereto shall be jointly and severally liable for the amount of any loss which occurs under such insurance.

594: If net assets of stock insurer do not amount to more than 3/4 of its capital stock, the insurer shall restore its capital to legal amount. If capital impaired, insurer may by majority vote of the stock, and stockholder meeting legally called, reduce its capital by canceling its shares pro rata to the number thereof, or it may reduce par value of its shares; but shall not reduce its capital more than 20% thereof nor to less than $100,000 if organized prior to Jan. 1, 1968; and $500,000 if organized Jan. 1, 1968, or subsequently.

Comment: This is a comprehensive provision which follows the general principle of the existing law. Existing sec. 605 deals with insolvency, rather than impairment, and will be considered in connection with a subsequent chapter.

§ 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 of this chapter, 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 1 year, or to both such fine and imprisonment.

Ref.:

Comment: Self-explanatory. Adherence to reasonable restrictions may make unnecessary revocation or suspension of certificate of organization or commencement of delinquency proceedings.

(Me)

SUBCHAPTER IV

CONVERSION, AMALGAMATION, DISSOLUTION

§ 3471. Scope of subchapter

The applicable provisions of this subchapter IV 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.

Ref.:

Comment: This is probably unnecessary in view of the general "scope" provision contained in proposed section 3301, but is inserted for whatever it may be worth as an aid especially to insurers formed under legislative charters. We cannot permit or require them to do anything prohibited by their charters, but there may be an undefined area of general law to which they may have access where not in conflict.

§ 3472. Mutualization of stock insurer

1. A stock insurer other than a title insurer may become a 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 two-thirds of the insurer's outstanding capital stock having voting rights, and by not less than two-thirds 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. 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.

4. This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 59 of this code.

Ref.:

Comment: Mutualization is not an uncommon occurrence, and some of the major mutual life insurers originally started out as stock companies. A major Canadian life company - Manufacturers Life - is now in process of mutualization.

§ 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 of this chapter. The agreement of bulk reinsurance may be made contingent upon approval of stockholders as provided in paragraph D below;

C. The insurer must set aside funds in a special reserve and 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 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 through D above, 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.

Ref.:

Comment: There is a bit of Alice in Wonderland here, in the light of insurance tradition. But the ability to make such a conversion could be advantageous. Where both insurance corporations and ordinary corporations are formed under the same general law there is little to prevent such a conversion. Here we are, in a sense, providing for the movement of a corporation formed under special insurance laws to a corporation governed by other laws. In a sense, this is an "incorporation by adoption." However, since corporations are completely the creatures of statute, and can be or do whatever the statutes provide for, there is really no violation of the basic principles of corporation law.

It would be handy if we could provide for conversion of an ordinary business corporation to an insurer, by a similar process. One could thereby secure an ancient corporate charter.

The facility of this section would not be available to specially chartered insurers, since they are bound in this respect by the Acts under which formed.

All this is for consideration. No public interest is jeopardized by such conversions, since in any event the corporation must meet the requirements of the laws under which it proposes to operate.

§ 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 below. 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 such plan or agreement:

A. Is contrary to law; or

B. 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 such 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 such plan or agreement.

4. If the commissioner does not approve any such plan or agreement, he shall so notify the insurer in writing specifying his reasons therefor.

Ref.

Comment: Title 13, sec. 241 et seq. MRSA has merger and consolidation provisions applying to ordinary business corporations, and these provisions will probably be replaced by a more precise and comprehensive set in the revised corporation statutes now in process. The proposed provision contains desirable safeguards, and has worked well in actual practice in those states with similar provisions.

§ 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) of this code.

Ref.: Me. 54: As above, in substance, except as noted below.

Comment: This is a widely-adopted provision designed, in part, to exempt such transactions from the registration requirements of the Securities Act of 1933, administered by the Securities and Exchange Commission. It hereby can save substantial time and money for the issuing insurer. The provision has been extended to exchanges of insurance shares for shares of any corporation.

§ 3476. Acquisition of controlling stock

1. Any person proposing to acquire the controlling capital stock 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 sections 3474 and 3475 of 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 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 the provisions of section 407 (ownership,) (management) of this code; 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.

Ref.:

Comment: Commissioners have become increasingly concerned with such changes of control, which in some instances have been followed by a substantial "looting" of the acquired insurer. It is recognized that the problem is deepening in this era of holding company and conglomerate acquisitions of insurers.

Query: Should this also be made applicable as to the guaranty capital stock of a mutual?

§ 3477. Conversion of mutual to stock insurer

1. A mutual insurer may become a stock 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 three-fourths 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 (insertion), including all voluntary reserves but excluding contingently repayable funds, 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 subdivision E below, a pre-emptive right to acquire his proportionate part of all of the proposed capital stock 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 subdivision C above;

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 pre-emptively 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 as an owner of 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 one-half 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. Subsection 2 shall not be deemed to prohibit the inclusion in the mutualization 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 pre-emptive offering to members, in accordance with such reasonable classification of such individuals as may be included in the plan and approved by the commissioner.

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 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.

Ref.:

Comment: A number of states now provide for conversion of mutuals into stock insurers, using procedures somewhat similar to the above. A basic practical problem in such a conversion is disposed of in the proposed provision through valuing the policyholder's equity and hence the shares of proposed stock, on the basis only of the insurer's surplus. If a value is placed upon insurance in force such a conversion in many cases would be practically impossible. Permitting management to acquire some of the stock is only fair, since management has been responsible for the growth of the insurer. The shares or cash equity received by the policyholder is usually a windfall for the policyholder, whose ownership of the mutual is otherwise

only theoretical and one not convertible into actual cash. I am informed that some states are now definitely encouraging such conversions.

§ 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 through 3485 of this chapter.

2. Nothing in this section shall authorize the merger or consolidation of a mutual insurer with a stock insurer.

Ref.: Me. 504-A: As above, in substance.

Comment: This is the existing law, boiled down somewhat, and authorizing in addition merger or consolidation with another insurer qualified for admission but not admitted. Usually the surviving insurer will be an admitted insurer, but there can be circumstances where this is not practical or necessary. At any rate, the commissioner can require admission if deemed desirable.

The extensive following sections dealing with merger, consolidation of mutuals are necessary because the general corporation statutes deal only with merger, etc. of stock corporations.

Sec. 504 of Maine insurance code was apparently superseded by 504-A, enacted in 1966.

(Me)

§ 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 of this chapter 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 2/3 of such policyholders of the respective insurers who are entitled to vote thereon in person or by proxy at a special meeting of such members called 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 ~~in which the domestic insurer or insurers are respectively chartered to operate~~, 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.

Ref.: Me. 504-A: As above, in part, except as noted below.

(Me)

Chap. 47
Subchap. IV
CONV., AMALG./DISS.

Comment: This is an edited version of part of the above existing law, changed to permit acknowledgment of a signature to be made [redacted]also in a foreign jurisdiction, which may be necessary where a foreign insurer is involved.

Proposed 3 is added as a desirable clarification of the law.

§ 3480. Same - Approval by commissioner

1. The plan and agreement referred to in section 3479 of this chapter 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 is:

A. Contrary to law; or

B. 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. 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.

Ref.: Me. 504-A: Part, as above, except as noted below.

Comment: This is a continuation of present law, above cited. To the grounds for failure of approval, we have added proposed C, D, and E. These parallel like grounds as to stock insurer mergers, etc., and are desirable vis-a-vis federal antimonopoly considerations.

§ 3481. Same - Review by Attorney General; filing with Secretary of State

1. Upon approval by the commissioner as provided in section 3480 of this chapter, 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 code.

Ref.: Me. 504-A: In part, as above.

Comment: We have edited the existing provisions. Proposed 4, taken in substance from existing law, indicates that under the existing law merger or consolidation with a non-admitted foreign insurer was probably intended under the present law, as we have provided in proposed section 3478.

§ 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 through 3481 of this chapter, 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.

Ref.: Me. 504-A: As above, in substance.

Comment: We have edited this existing material, without attempting to change it much as to general style - realizing that this law was enacted in 1966 and probably represents an extensive understanding of the requirements of Maine law and practice in such matters.

§ 3483. Bulk reinsurance

1. A domestic insurer may reinsure 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;

B. That the reinsurance, if effectuated, would substantially reduce the protection or service to the policyholders of any domestic insurer involved;

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 does not require the reinsuring insurer to furnish each such insured with a certificate evidencing such assumption of liability;

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;

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;

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 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 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.

Ref.:

Comment: A bulk reinsurance is a form of merger or consolidation, or could be a prelude to conversion of the insurer to an ordinary business corporation, or to liquidation and dissolution. Provision is largely self-explanatory.

§ 3484. Voluntary dissolution

1. A solvent domestic stock or mutual insurer, which then is not the subject of a delinquency proceeding under chapter 59 of this code, may voluntarily dissolve under a plan therefor in writing authorized by its board of directors 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 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 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 adoption 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 two 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 above, 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.

Ref.: Me. 506: Whenever at any meeting of the policyholders of a domestic mutual insurance company, except life, called for the purpose by notice published once weekly on 3 successive weeks in a newspaper printed in each county of the State in which the company is chartered to operate, the last publication being at

at least 7 days prior to such meeting, the majority of the policyholders and shareholders present and voting, vote to dissolve such company, a complaint against the same for dissolution thereof may be filed by any officer, shareholder, member or creditor in the Superior Court in the county in which it has its principal place of business. Upon said complaint, notice shall be given by the clerk of courts to the Attorney General and the commissioner and such notice shall be given to others as may be ordered by the court, and upon proof thereof, such proceedings may be had according to the usual course of civil actions that said corporation be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation and no existing assets thereof requiring distribution among the shareholders, said court may dissolve said company without the appointment of trustees or receivers. Assets remaining after payment of the costs of dissolution, claims against the company and repayment of the guaranty capital shall be paid to the Treasurer of State for the use of the State.

Comment: This is in response to Commissioner Hogerty's suggestion for a voluntary dissolution provision under which the dissolution could be effectuated without court intervention - as at present required. The proposed trustee procedure is similar to voluntary dissolution procedures now authorized under general corporation statutes in many states.

Should we provide for recording of a certified copy of the Certificate of Dissolution in the county register of deeds also?

§ 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 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.

Ref.: Me. 506: Assets remaining after payment of costs of dissolution, claims against the company and repayment of the guaranty capital shall be paid to the Treasurer of State for the use of the State.

Comment: The proposed provision is presented for consideration, and for use in lieu of the existing escheat provision, above quoted. Escheat was possibly resorted to in the beginning in view of the complications of determining who is to share in the assets and on what basis. However, in principle the State is no more entitled to the residual assets of a mutual insurer than to those of a stock corporation.

Chapter 47 - Organization, corporate powers, etc.

NOTES AS TO OMISSIONS

(1) Increase, decrease of capital. Provisions of present sec. 515 are omitted from this chapter since they deal with matters already handled in the general corporation statutes, and certainly to be handled in the revision of those statutes in progress. Between these general statutes - by which the corporate procedure is covered - and the routine reporting of the insurer via its annual financial statement together with power of the commissioner to examine and require special reports - we do not need this law.

(2) Procedural provisions. Sections 518 and 592 relative to the meetings, etc. procedure for change of location of its principal place of business from one town to another, and to special meetings of stockholders of stock insurers, are omitted, since will be covered under general provisions in this chapter or under general statutes applying to stock corporations.

(3) Reports to stockholders. Section 604 of the existing insurance code is omitted, for consideration. It requires triennial reports, or oftener, to stockholders of the company's affairs and of profits after losses and dividends. Federal proxy regulations now cover this same area as to most insurers, and usual corporate procedure calls for annual reports to stockholders. The insurer's annual statement filed with the commissioner must disclose whether such information has been furnished stockholders.

See also Ch. 1 §11 - cross reference

CHAPTER 51

DOMESTIC MUTUAL PROPERTY INSURERS

§ 3601. Scope of chapter

1. This chapter applies only as to:

A. Domestic mutual insurers heretofore organized and authorized to transact and transacting fire and related insurances in this State on the cash premium plan, as defined in section 3603 of this chapter;

B. Domestic mutual insurers heretofore or hereafter organized and authorized to transact and transacting fire and related insurances in this State on the assessment plan, as defined in section 3603 of this chapter.

2. Domestic mutual insurers hereafter organized to transact insurance on the cash premium plan shall be formed under and governed by chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers) and other applicable chapters and provisions of this code.

3. The insurers which are subject to this chapter may in this chapter be referred to as "mutual property insurers."

Ref.:

Comment: We will attempt in this chapter topreserve essential rights and privileges of the existing insurers above referred to, and provide for the continuing formation of new mutual assessment property insurers, likewise to be governed by this chapter. There is some confusion in the existing statutes, and it is not clear from the present law just what lines of demarkation exist between cash premium and assessment plan insurers. Although referred to in various statutes as "mutual fire insurance companies" or "mutual assessment fire insurance companies" it is not clear whether they may not also be writing additional lines of insurance. The statute appears to authorize all lines, other than life.

Although cash premium mutuals now write all kinds of insurance throughout the country, mutual assessment companies usually restrict themselves to the property insurance field, where they have been quite successful - especially as to insurance of farm, town residential and small business properties. This chapter, as presented, will be as a basis of discussion and consideration, and without any intent or desire to impose a prejudged pattern of law. Most of all we will want a clear enunciation of the law - whatever it may be.

§ 3602. Chapter exclusive

Nothing in this code shall either directly or indirectly apply to such mutual property insurers except as contained or referred to in this chapter.

Ref.:

Comment: Because of the somewhat unique character and possibilities of such insurers under existing law, and the various exemptions granted them from fees, etc. applicable to insurers in general, it is desirable to present for them a chapter in which all provisions applicable to them are contained or referred to. This makes it more convenient for the insurers, as well as for the commissioner and others interested, and is an aid to the organization of the code.

Note: We need to know much more about the present character and operations of these companies, in order to provide a suitable law. This tentative chapter will, therefore, provide an initial basis for consideration, with the expectation that we will make such further provisions and adaptations as may be desirable when more is known and the matter has been more fully discussed.

§ 3603. Cash premium or assessment plans; definitions

1. An insurer may transact business either on the cash premium plan altogether, or on the assessment plan altogether, whichever plan is provided for in its certificate of organization or bylaws. An insurer shall not transact part of its business on one such plan and the remainder of its business on the other such plan.

2. If transacting business on the cash premium plan, the insurer shall collect from each member before or at the time of effectuation of the member's insurance the premium in cash in such amount as the insurer deems adequate to cover losses and expenses to be incurred in the class or classes of risk insured and during the term of such insurance. Such an insurer is referred to as a "cash premium insurer."

3. If transacting business on the assessment plan, the insurer shall depend for payment of losses and expenses principally or in part upon assessments from time to time levied upon members either before or after such losses or expenses have been incurred; and whether or not the liability of the member for such payment is represented in whole or part by a promissory note or other form of obligation. This provision shall not be deemed to prohibit the acquisition, accumulation and maintenance of surplus or unallocated funds. Such an insurer is referred to as an "assessment plan insurer."

4. An insurer transacting business on the cash premium plan may nevertheless provide in its bylaws and policies for the contingent liability to assessment of its members for the curing of any impairment of the insurer's required surplus or assets. The bylaws shall provide a specific limit of the amount so assessable as to any one policy year, such amount to be not less than one or

more than 6 times the premium charged on the member's policy at the annual rate for a term of one year. This provision shall not prohibit issuance by the insurer of nonassessable policies, as provided in section 3622 of this chapter.

Ref.:

Comment: This is to establish clear definitions of the two basic plans for transacting insurance on the mutual plan, and to provide convenient terms of reference for the remainder of the chapter.

Under present law we appear to have "mixed mutuals" - issuing nonassessable policies as to some classes and contingent liability policies as to others. Is this true?

Sec. 7604 left out

- intentionally?

§ 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) through 3309 (completion of incorporation; general powers, duties) of this code; 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.

Ref.:

Comment: There should be substantial uniformity in the procedures for incorporation of domestic insurers of all types.

Query: Are such insurers to be limited to transaction of insurance in particular counties of the State?

§ 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.

Ref.: See references to proposed section 404.

Comment: Certificate of authority procedures as contained in chapter 5 of proposed code will be made applicable to these insurers under the final reference section of this chapter. It is better to avoid duplication of these provisions both to save space and to avoid unintended divergencies in the future.

§ 3607. Capital funds required - Existing insurers

1. Mutual insurers 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 on every risk shall not exceed 10% of its gross assets, including the amount at any time due on its premium notes.

2. Mutual insurers heretofore organized to transact and transacting kinds of insurance other than fire, marine and glass shall have a guaranty capital of not less than $100,000 if organized prior to January 1, 1968, and $500,000 if organized on or after January 1, 1968. Such an insurer shall not be authorized to transact insurance until at least one-fourth of its guaranty capital has been paid in, in cash, and invested in such manner and in such funds, stocks and bonds as savings banks of this State may invest, as provided in Title 9, chapter 51, Maine Revised Statutes Annotated.

3. Any mutual insurer other than an insurer referred to in subsection 2 above, which changes its purpose to include the writing of any class or kind of insurance other than fire, marine or glass shall either

A. have been doing business for not less than 20 years, and

B. have a surplus of at least 60% of its unearned premium reserve as appears in its last annual statement filed with the commissioner, and

C. have admitted assets of at least $125,000, after deducting therefrom the amount by which the net investment of the insurer in real estate owned exceeds, if it operates on the cash premium

basis, 10% of its premiums in force or, if it operates on the assessment plan, 2% of the balance of its premium notes, both as appear in such statement, or

D. in lieu of the requirements under paragraphs A, B, and C above, have a guaranty capital of not less than $100,000 if organized prior to January 1, 1968, and $500,000 if organized on or after January 1, 1968. Such an insurer shall not be authorized to transact such insurance until at least one-fourth of its guaranty capital has been paid in, in cash, and invested in the same manner as provided in subsection 2, above. If an insurer operating under this subsection fails to comply with the commissioner's request to increase its paid-in guaranty capital, 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.

Ref.: Me. 505: As last amended in 1967: As in proposed 3, in part.

507: Part, as in proposed 1 and 2, in substance.

508: Fixes amount of guaranty capital, as in proposed 2.

Comment: It is most difficult to untangle the present law for determination of just what the law is. Complete copies of present sections 505, 507, and 508 follow this section. The proposed provision is an attempt to present the existing law without change of substance or intent, but in more usable short provisions.

The subject is treated as though existing 508 - fixing amount of guaranty capital - is the controlling provision, except as to proposed 1.

PRESENT SECTIONS 505, 507, and 508

Because of the importance of these sections to this chapter they are here presented in full for reference, for the convenience of the members of the Commission.

§ 505. Change of purposes

Any mutual insurance company organized for one or more of the purposes set forth in section 502 may at an annual meeting, or at a special meeting the call for which shall give notice of the proposed action, change its purposes by altering or abridging the same or by enlarging the same to include one or more of the purposes set forth in section 502, or make any other change or alteration in its certificate of organization as originally filed or subsequently amended that may be desired, provided such change or alteration is not otherwise specifically provided for and would be proper to insert in an original certificate of organization. A certificate of such changes shall be submitted to the commissioner who, if it appears that the provisions hereinafter recited have been complied with, shall certify that fact and his approval of the certificate by endorsement thereon. Such certificate shall thereupon be filed with the Secretary of State together with a fee in the sum of $20 for the use of the State, whereupon the secretary shall cause the same with his endorsement thereon to be recorded and shall issue a certificate as provided in section 514. Any such mutual company which changes its purposes to include the writing of any class or kind of insurance other than fire, marine or glass shall either have been doing business for a period of not less than 20 years, have a surplus of at least 60% of its unearned premium reserve as appears in its last annual statement filed with the commissioner and have admitted assets of not less than $125,000 after deducting therefrom the amount by which the net investment of such company in real estate owned exceeds, if it operates on the prepaid basis, 10% of its premiums in force, or, if it operates on the assessment plan, 2% of the balance of its premium notes, both as appear in such statement, or shall have a guaranty capital of not less than $100,000, if organized prior to January 1, 1968 and $500,000 if organized on January 1, 1968 or subsequent thereto, divided into shares of $100 each, and no policy shall be issued until 1/4 at least of its guaranty capital has been paid in, in cash, and invested as provided in section 596. If a company operating under this section fails to comply with a request of the commissioner to increase its paid-in guaranty capital, 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.

Whenever any such mutual company shall be required by this Title to have a guaranty capital, the holders of certificates of such guaranty capital shall have no voting rights.

Any such mutual insurance company which shall have been doing business for a period of not less than 20 years, and shall maintain a surplus of at least 60% of its unearned premium reserve as appears in its last annual statement filed with the commissioner and shall maintain admitted assets of not less than $125,000 after deducting therefrom the amount by which the net investment of such company in real estate owned exceeds, if it operates on the prepaid basis, 10%

of its premiums in force or, if it operates on the assessment plan, 2% of the balance of its premium notes, both as appear in such statement, may establish a guaranty capital, paid in, in cash, and invested as provided in section 596, divided into shares of $100 each, and the holders of these certificates of guaranty capital shall have voting rights so long as such mutual insurance company shall continue to maintain a surplus of at least 60% of its unearned premium reserve as above provided and continues to have admitted assets of at least $125,000 as provided in this section.

The holders of certificates of guaranty capital shall not receive dividends in excess of 7% in any one year and in no case unless such dividends are properly earned after providing for all expenses, losses, reserves and liabilities then incurred. Said guaranty capital may be retired by vote of the policyholders when the surplus funds of the company, over and above all liabilities including guaranty capital, shall equal or exceed the amount of such guaranty capital. The net retention of liability on any one risk written by any company operating under this section shall not exceed 5% of its policyholders' surplus.

1966, c. 467, §§ 2, 3; 1967, c. 92, § 1.

§ 507. Articles of agreement; capital and guaranty fund; liability of policyholders and stockholders

The agreement described in section 502 shall set forth the fact that the subscribers thereto associate themselves with the intention to constitute a corporation, the name by which it shall be known, the class or classes of insurance for the transaction of which it is to be constituted, the plan or principle upon which its business is to be conducted, the town or city in which it is established or located, and if a stock company, the amount of its capital stock, and if a mutual company with a guaranty capital, the amount thereof. The capital stock of a stock company organized for any of the purposes mentioned shall not be less than $100,000, if organized prior to January 1, 1968 and $500,000 divided into shares with a stated par value if organized on January 1, 1968 or subsequent thereto. A mutual company incorporated to transact any class or kind of insurance other than fire, marine or glass shall have a guaranty capital as provided in section 508 and holders of certificates of such guaranty capital shall not receive dividends in excess of 7% in any one year, and in no case unless such dividends are properly earned after determining all liability as required by the commissioner. Mutual companies may be incorporated to transact fire, marine and glass insurance and may operate in accordance with section 1454 and other laws of this State relating to such companies, provided the net retention of liability by any company on any one risk shall not exceed $200 until its gross assets exceed $2,000, after which its net retention of liability on every risk shall not exceed 10% of its gross assets, companies which do not so limit their business may incorporate for any of the foregoing purposes but before doing any business

they shall establish a guaranty fund or capital of not less than $10,000 which may be divided into shares of not less than $100 and certificates issued therefor. A dividend not exceeding 7% in any one calendar year may be paid from the net earnings of the company after providing for all expenses, losses, reserves and liabilities then incurred. Such guaranty fund or capital shall be invested as provided in section 596 and shall be deposited with the Treasurer of State. When the cash and other available assets of the company are exhausted such part of said 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 shall make good the amount so drawn by assessments upon the contingent funds or notes of the company and unless such fund is restored within 6 months from date of withdrawal, the shareholders shall be assessed in proportion to the amount of stock owned by them for the purpose of restoring said capital. Shareholders and members of such companies shall be subject to the same provisions of law relative to their right to vote as apply respectively to shareholders in stock companies and policyholders in purely mutual companies. Said guaranty capital may be retirned, by vote of the policyholders, when the surplus funds of the company over and above all liabilities, including guaranty capital, shall equal or exceed the amount of such guaranty capital, or any part of said guaranty capital may be retired, provided the amount of net surplus and guaranty fund shall not be less than $10,000. Said guaranty capital shall be retired when the net cash assets of the company are equal to 3 times the amount of guaranty capital. Any mutual fire, marine or glass insurance company, which has established a guaranty capital as provided and has obtained applications for insurance as required by section 509, shall be authorized by the commissioner to write business and such company may take a premium note as provided in section 1454, or in lieu of said note it may charge and collect a premium in cash and 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 an amount equal to and in addition to the cash premium written in his policy and in no case less than 1% of the maximum liability of the company under said policy. The total amount of the liability of the policyholder shall be plainly and legibly stated upon the filing-back of each policy. Whenever any reduction is made in the contingent liability of members, such reduction shall apply proportionally to all policies in force.

1967. c. 92, § 2.

§ 508. Organization of mutual companies; policies

Any mutual insurance company may be organized under sections 502 to 517 with a guaranty capital of not less than $100,000, if organized prior to January 1, 1968 and $500,000 if organized on January 1, 1968 or subsequent thereto, divided into shares of $100 each. No policy shall be issued by such corporation until 1/4, at least, of its guaranty capital has been paid in, in cash, and invested as provided in section 596. The remainder of the guaranty capital shall be paid in and invested as provided in section 596, in such amounts and at such times as in the opinion of the commissioner is necessary for the adequate protection of the policyholders. The holders of such guaranty capital may receive dividends for the like amount provided for the guaranty capital of mutual fire insurance companies in section 507, and said guaranty capital may be retired in the same manner as provided in said section.

1967, c. 92, § 3.

§ 3608. Capital funds required - New assessment plan insurers

A mutual insurer hereafter organized to transact property insurance on the assessment premium plan shall not be authorized to transact insurance unless it:

1. Establishes and maintains a guaranty capital of at least $25,000, 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.

Ref.: Me. 507: Apparently authorizes new mutual fire, marine, glass insurer to commence with $10,000 of guaranty capital.

509: No policy shall be issued by a purely mutual company until applications have been made in good faith for insurance to the amount of $50,000.

Comment: This is an attempt to provide for formation of new assessment plan insurers on a modest basis. The existing law - above cited, is apparently quite old. The higher amounts are suggested for consideration in view of the higher monetary values now being dealt with.

§ 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 insurer hereafter organized under chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers) of this code, and by appropriate amendment to its certificate of organization converts to such a legal reserve insurer.

Ref.:

Comment: This is an attempt to separate the new insurers into assessment plan and cash premium (legal reserve) companies. Under the present law it is difficult to tell which is which, if any.

(Me)

§ 3610. Guaranty capital - Shares, Dividends, investment, deposit, voting rights

1. Where the insurer is permitted or required to have a guaranty capital, 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% in any one calendar year from the net earnings of the insurer after providing for all expenses, losses, reserves and liabilities then incurred.

3. The guaranty capital shall be invested in such manner and in such funds, stocks and bonds as savings banks of this State may invest, as provided in Title 9, Chapter 51, Maine Revised Statutes Annotated, and be deposited through the commissioner with the Treasurer of State.

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; except, that the holders of guaranty capital shares issued by an insurer referred to in subsection 3 of section 3607 (capital funds required - existing insurers) of this chapter shall have voting rights only so long as the insurer maintains a surplus of at least 60% of its unearned premium reserve and has admitted assets of at least $125,000, as provided in such subsection 3 of section 3607.

Ref.: Me. 505: When mutual insurer required by this Title to have a guaranty capital, holders thereof have no voting rights; but if insurer maintains surplus of at least 60% of unearned premium reserve and admitted assets of not less than $125,000, holders have voting rights. Holders not receive dividends over 7% any one year and in no case unless properly earned after providing for all expenses, losses, reserves, and liabilities then incurred.

507: Insurer incorporated to transact any class or kind of insurance other than fire, marine or glass shall have a guaranty capital, holders of which not to receive over 7% dividends in any one year, out of earnings after determining all liability as required by the commissioner; mutuals which do not so limit their insuring powers, may have guaranty capital and pay dividend not exceeding 7% in any one calendar year after providing for all expenses, losses, reserves and liabilities then incurred. Fund shall be invested as provided in sec. 596 (same as savings banks) and shall be deposited with the Treasurer of State. Shareholders and members of such companies shall be subject to the same provisions of law relative to their right to vote as apply respectively to shareholders in stock companies and policyholders in purely mutual companies.

Comment: The existing law is much confused on this subject, and the proposed section is designed to bring some uniformity into the treatment of the subject - without - it is hoped - doing violence to any existing situation.

§ 3611. Guaranty capital - Increase of paid-in capital

If an insurer heretofore or hereafter has been authorized to transact insurance upon the basis of guaranty capital not 100% paid-in, the unpaid portion of such guaranty capital or so much thereof as the commissioner deems necessary, shall be paid in at auch times as in the opinion of the commissioner is necessary for the adequate protection of the policyholders.

Ref.: Me. 508: as above in substance.

Comment: This appears to be the present law.

§ 3612. Guaranty capital - Deficiency and assessment

When the cash and other available assets of an insurer with guaranty capital 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; 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.

Ref.: Me. 507: As above, in part.

Comment: This is lifted from the above existing section, but I am not sure that it is intended to apply to guaranty capital in general, or just to the particular insurers permitted formerly to do business with only $10,000 of guaranty capital. This $10,000 provision appears to have been superseded by sec. 508, as amended in 1967, raising the guaranty capital to $100,000. At any rate, we should be clear on the matter. Where the holders of guaranty capital have only paid in part of the $100 per share par value, it is easy to justify an assessment where necessary. Where the shares have been paid for in full, it would seem that the responsibility for losses should fall upon policyholders. All for consideration.

(me)

§ 3613. Guaranty capital - Retirement

Guaranty capital 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. The guaranty capital 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. The guaranty capital shall be retired when the insurer's net cash assets are equal to 3 times the amount of guaranty capital.

Ref.: Me. 505: As in first and second sentences above.

507: As in third sentence above.

Comment: This is further effort to standardize treatment of guaranty capital under existing law.

§ 3614. Premium plans; notes, cash premiums and contingent liability; acceptance of contract

1. An insurer may take a premium note, and the insured, before receiving his policy, shall deposit his note for the sum determined by the directors, which shall not be less than 5% of the amount insured, and such part of it as the bylaws require shall be immediately paid and indorsed thereon. The remainder shall be assessed in such installments as the directors from time to time require for the payment of losses, accrued expenses and a reasonable overlay, to be assessed on all who are members when such losses or expenses happen, in proportion to the amounts of their notes.

2. In lieu of a premium note, the insurer may charge and collect a premium in cash and by its bylaws and policies fix the contingent liability of its members for the payment of losses and expenses not provided for by its cash funds.

3. In lieu of the note referred to in subsections 1 or 2 above, the insurer may provide in the policy, as a condition of the insurance thereunder, that the insured and legal representatives shall pay in addition to the stipulated premium of the policy such sum as may be assessed by the insurer's directors pursuant to the contingent liability of the insured and as provided in this chapter.

4. A mutual insurer which collects a cash premium of not less than the tariff rate charged by stock insurers may take a

premium note for an equal amount.

5. Where contingent liability of policyholders is provided for, such liability shall not be less than an amount equal and in addition to the cash premium written in the member's policy, and in no case less than 1% of the maximum liability of the insurer under the policy. The total amount of liability of the policyholder shall be plainly and legibly stated upon the filing back of each policy. Whenever any reduction is made in the contingent liability of members, the reduction shall apply proportionally to all policies in force.

6. The delivery of the policy and payment of the premium by the insured shall be deemed an acceptance of the contract.

Ref.: Me. 507: As in proposed 2, 5, and 6, in substance.

1454: As in proposed 1, 3 and 4, in substance.

Comment: This is an effort to consolidate and reconcile somewhat similar, yet divergent, provisions of the two sections of the existing law above cited.

It is to be noted that all of the premium plans are optional with the insurer.

The minimum contingent liability of 1% of the maximum liability of the insurer under the policy - as in proposed 5, taken from existing sec. 507 as amended - may be quite unrealistic - expecially when dealing with high-limit auto liability policies. No such minimum is expressed in existing sec. 1454. Which should govern?

(me)

§ 3615. Endorsements on policies

Except as to nonassessable policies, insurer shall have printed or written on the outside of every policy issued by it, under the policy number, name of the insured and date of expiration, the words "Total liability to assessment" and the figures showing such liability.

Ref.: Me. 1452: As above, except as noted below.

Comment: The existing law applies to "mutual fire insurance company." Under the structure of the present law it appears that such an insurer could be writing other lines as well; and whatever kinds of insurance is being written, the policy should carry notice of the total liability.

(me)

§ 3616. Assessment - Remedy if not paid

If any assessment made as provided in section 3614 (premium plans; notes, cash premiums and contingent liability; acceptance of contract) of this chapter, is not paid by some person liable to pay the note, 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 note. The full amount collected may remain in the treasury of the insurer subject to the payment of such sums as might otherwise be assessed on the note. The overplus at the termination of the policy shall be returned to the insured. Forwarding such notice to the insured by mail to his last known address, or delivering it to him in hand by an authorized agent or officer of the insurer, shall be deemed conclusive proof that notice has been duly given.

Ref.: Me. 1458: As above, in substance.

Comment: This is the present law.

§ 3617. Assessment - Court review; adjustment of claims where no assessment made

1. Whenever the directors of a mutual fire insurer or a mutual marine 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.

Ref.: Me. 1462: As above.

Comment: Present law.

(me)

§ 3618. Same - Order of notice to parties interested, and proceedings

The court before which the complaint described in section 3617 of this chapter 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.

Ref.: Me. 1463: As above.

Comment: This is present law.

(me)

§ 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.

Ref: Me. 1464: As above.

Comment: Present law.

§ 3620. Same - When assessment final; control of funds and payment of assessments

When an assessment or call has been ratified, ascertained or established as provided for in sections 3617 to 3619 of this chapter, 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. All proceedings shall be at the cost of the insurer, unless the court for cause otherwise orders. 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.

Ref.: Me. 1465: As above.

Comment: Present law.

§ 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 of this chapter 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.

Ref.: Me. 1466: As above.

Comment: Present law.

§ 3622. Nonassessable policies; assessable, nonassessable liability

1. A mutual insurer transacting only property insurance, from and after July 9, 1943 may issue nonassessable advance cash premium policies in this State upon compliance with either of the following requirements, notwithstanding any special law or charter previously enacted by the Legislature:

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.

3. If the insurer issues both assessable and nonassessable advance cash premium policies, any assessment levied under the contingent liability provisions of this chapter shall be for the exclusive benefit of 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.

Ref.: Me. 1454: The last four paragraphs of sec. 1454 are as above, in substance.

Comment: This is the present law. Is it proper to limit this provision to property insurers? On what basis can these insurers issue nonassessable automobile liability policies? Are any such policies being issued?

(me)

§ 3623. Limit of risk

1. An insurer transacting property insurance and other kinds of insurance, pursuant to subsection 3 of section 3607 (capital funds required - existing insurers) of this chapter, shall not have net retention of liability on any one risk in excess of 5% of the insurer's surplus as to policyholders.

2. Except as provided in subsection 1 of section 3607 of this chapter, any insurer other than an insurer which is subject to subsection 1, above, shall not accept insurance of any one risk in an amount exceeding 25% of its gross assets, including the amount at any time due on its premium notes, and shall not retain liability as to any one risk in an amount exceeding 10% of such gross assets.

3. Valid reinsurance ceded by the insurer and then in force shall be deducted from the gross risk assumed in determining net risk retained.

Ref.: Me. 505: As in 1, above, in substance.

507: As in 2, above, as to the 10% net retention limit.

1454: As in 2, above, as to the 25% gross assets limit, and as to the 10% net retention by reference to sec. 507.

Comment: Under proposed 1 - how is surplus as to policyholders computed? Are premium notes or contingent liability considered as assets?

Proposed 3 is added for information.

Could we have a uniform provision?

(me)

§ 3624. Unearned premium reserve

An insurer which collects a cash premium of not less than the tariff rate charged by stock insurers for like coverage shall maintain a premium reserve equal to 50% of the cash premium on its policies in force.

Ref.: Me. 1454, as above, in substance.

Comment: This is similar to the usual unearned premium reserve, but could be less if much business is written for terms of more than one year, or written on marine transportation risks.

§ 3625. Insured a member

Other than under reinsurance accepted by the insurer, every person insured by a mutual insurer, or his legal representatives or assigns, continuing to be insured therein, is a member of the insurer and subject to its bylaws during the term of insurance specified in the policy.

Ref.: Me. 1453: As above, in substance, except as to reinsurance.

Comment: Persons insured pursuant to reinsurance accepted are not usually thereby deemed to be members.

(me)

§ 3626. Voting rights of members; proxy limit

1. Members of an insurer shall have such voting rights, but not less than one vote, as may be fixed by the insurer's bylaws.

2. No person shall be allowed more than 15 votes by proxy.

Ref.: Me. 1461: As in 2, above, in substance.

Comment: Proposed 1 is added for consideration. It is presumed that all members have at least one vote.

(me)

§ 3627. 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.

Ref.: Me. 517: A majority of the directors shall be citizens of this State.

1461: As in 2, above.

(me)

§ 3628. 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.

Ref.: Me. 1460: As above.

(me)

§ 3629. 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 company, 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.

Ref.: Me. 1455: As above, in substance.

Comment: This is the present law.

Query: Do these agents also represent other insurers? Should we provide a special license for them - outside the proposed permanent agent licensing system? Should the exemption from fee extend only to the appointment fee, or should it extend to all charges for such an agent's licensing and appointment? If so, we should qualify the licensing system to prohibit use of such an agent's license to represent other insurers. For consideration.

(me)

§ 3630. Agents - Licensing

All agents of insurers subject to this chapter shall be subject to the applicable requirements of chapter 17 (agents, brokers, consultants, adjusters) of this code, except that:

1. No personal examination shall be required of the applicant and no examination fee shall be charged, as to an applicant for an agent's license only for the sale of insurance written on the assessment basis.

2. No fee shall be required by the commissioner for license as resident agent issued as to any insurer which is subject to this chapter.

Ref.: Me. 371: No agent (individual or organization) license fee to be paid by agent of domestic mutual fire insurer.

1455: "Said companies shall procure licenses for their agents as provided in section 2502, but no fee shall be required by the commissioner for licenses issued to the agents of such companies."

2504 - 7 - C: "A personal examination and examination fee are not required of an applicant for an agent's license for the sale of insurance written on the assessment basis by a domestic mutual fire insurance company."

Comment: This is apparently the present law. Do the agents now representing cash premium mutuals have to take the examination and pay exam fees?

(me)

§ 3631. Other provisions applicable

The following chapters and provisions of this code, where and to the extent not inconsistent with the provisions of this chapter and the reasonable implications thereof, also apply as to domestic mutual 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) of this code, 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 412 (deposit requirement);

D. 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 only on the assessment plan.

E. 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 only on the assessment plan.

F. Section 423 (annual statement), to the extent that payment of a fee for filing the annual statement is required of an insurer transacting insurance only on the assessment plan.

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 only on the assessment plan.

5. Chapter 9 (kinds of insurance), except the following sections:

A. Section 702 ("life insurance" defined).

B. Section 709 ("title insurance"defined).

C. Section 721 (limits of risk).

6. The following sections of chapter 11 (assets & liabilites:

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. Section 1102 (investments of insurer other than life).

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).

13. Chapter 39 (casualty insurance contracts).

14. Chapter 41 (property insurance contracts).

15. Chapter 43 (surety insurance contracts).