

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 861

S. P. 288

In Senate, January 30, 1963

Referred to Committee on Business Legislation. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Mr. Johnson of Somerset.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-THREE

AN ACT Relating to Continuity of Management of Insurance Companies.

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

R. S., c. 60, §§ 356 - 362, additional. Chapter 60 of the Revised Statutes is amended by adding 7 new sections, to be numbered 356 to 362, to read as follows :

'Continuity Management Act.

Sec. 356. Continuity of Management Act, short title. Sections 356 to 362 may be cited as the "Continuity Management Act."

Sec. 357. Purposes and necessity. Enemy attack could seriously disrupt the management functions of an insurance organization. Prompt resumption of insurance operations following attack is in the public interest and requires provision for the continuity of management. It is essential that advance corporate action be taken to provide for the reconstitution of the board of directors or substitute governing body, for the succession of key personnel and for the designation of alternate headquarters.

Sec. 358. Definitions; interpretation of act. When used in sections 356 to 362 the following terms shall mean and include the following :

- I. Acting director.** Acting director means an acting director elected or appointed in accordance with sections 356 to 362.
- II. Acting officer.** Acting officer means an acting officer appointed in accordance with sections 356 to 362.
- III. Acute emergency.** Acute emergency means a period in which, by reason of loss of life, epidemic disease, destruction or damage of property, con-

tamination of property by radiological, chemical or bacteriological means, or disruption of the means of transportation or communication, resulting from an attack, it is impossible or impractical for the business of insurance in this State to be conducted in strict accord with the provision of law or charters applicable thereto.

IV. **Attack.** Attack means any attack, actual or imminent, or series of attacks by an enemy or a foreign nation upon the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, shell fire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.

V. **Board.** Board means the board of directors, board of trustees, committee or similar body having control of the affairs of an insurance organization.

VI. **Charter.** Charter means the certificate of organization or incorporation or special law incorporating a corporation together with its bylaws, or the agreement establishing a fund or association together with its constitution and bylaws.

VII. **Commissioner.** Commissioner means the State Insurance Commissioner or person duly designated to exercise the powers of that office during an attack or acute emergency.

VIII. **Director.** Director means the director, trustee or member of a board.

IX. **Domestic organization.** Domestic organization means any insurance organization which is domiciled in this State, including, insofar as sections 356 to 362 may appropriately apply thereto, any welfare or pension fund or United States branch of alien insurer.

X. **Insurance organization.** Insurance organization means any insurer, rating organization, service or advisory organization, joint underwriting association, welfare or pension fund, which is subject, in whole or in part, to the insurance laws of this State.

XI. **Officer.** Officer means an officer of a domestic insurance organization.

XII. **Quorum.** Quorum means the minimum number of directors required by charter and law, other than sections 356 to 362, to be present for valid action to be taken at a meeting of a board with respect to each particular item of business which may come before such meeting.

Sections 356 to 362 do not and shall not be construed to limit the powers of any organization, or permit or require any insurance organization which is not domiciled in this State or any branch, office or agency of such insurance organization or the directors, officers, members, policyholders or stockholders of any such organization to act, or fail to act, in such fashion as would violate the laws or the jurisdiction wherein such organization has its domicile.

Sec. 359. **Emergency bylaws.** With the approval of the commissioner, any domestic organization may, at any time, adopt, in the same manner as in the case of ordinary bylaws, emergency bylaws to become operative during a period of acute emergency. Emergency bylaws may contain provisions with respect

to the number of directors capable of acting which shall constitute its board, the number of such directors which shall constitute a quorum at a meeting of the board, the number of votes necessary for action by such board, the manner in which vacancies on the board shall be filled, the line of succession of its officers, and the interim management of the affairs of the insurance organization; such provisions, if approved by the commissioner, need not comply with the requirement of the charter of such domestic organization or of the insurance or incorporation laws of this State.

Except as provided in section 362, section 361, subsections II to VI, shall not be applicable, during the period of acute emergency to any domestic organization operating in accordance with emergency bylaws approved by the commissioner to the extent that the procedures set forth in such emergency bylaws relate to subject matter contained in section 361, subsections II to VI.

Sec. 360. Change of location; emergency boards of directors. Notwithstanding any provision of its charter, any domestic insurance organization, without complying with any provision of law requiring approval, or application for approval, of a change of location of its principal office may, from time to time change the location thereof during an acute emergency to a suitable location within the United States, and may carry on its business at such new location during such acute emergency, and for a reasonable time thereafter. Any insurance organization which changes the location of its principal office during an acute emergency shall notify the commissioner thereof in writing as soon as practical, stating the address of the new location, the address of the former location, and the dates when business is ceasing at the former location and commencing at the latter location.

Notwithstanding any contrary provision of law or with its charter, if at any time during an acute emergency affecting any domestic insurance organization, no person otherwise empowered to call meetings of the board is capable of acting, a meeting thereof may be called by any director or acting director or if no director or acting director is capable of acting, by any officer or acting officer. If it shall be impracticable or impossible to give notice of a meeting of the board in the manner prescribed by charter and law, other than sections 356 to 362, the person calling such a meeting may give notice thereof by making such reasonable efforts as circumstances may permit to notify each director and acting director of the time and place of the meeting, but need not specify the purposes thereof. Failure of any director or acting director to receive actual notice of a meeting of directors and acting directors shall not affect the power of the directors and acting directors present at such meeting to exercise the powers of an emergency board of directors as prescribed in this section. Nothing contained in sections 356 to 362 shall be construed as requiring a meeting of the board of such an organization to be convened in any manner different from that prescribed by its charter and by the provisions of law other than sections 356 to 362.

If 3 or more directors and acting directors of any domestic insurance organization are present at any meeting of its board duly convened during an acute emergency affecting such domestic insurance organization, they shall constitute its emergency board of directors which, notwithstanding any contrary provision

of law or of its charter, shall have the power, subject to the limitations prescribed in sections 356 to 362, by a majority of those present, to take any and every action which may be necessary to enable such domestic insurance organizations to meet the exigencies of the acute emergency and conduct its business during such period, but no other powers. The powers of an emergency board of directors shall include but shall not be limited to the following powers:

I. Fill vacancies and absentees. At any meeting, to elect such acting directors as it may deem necessary, without regard to the number of directors which would otherwise be required, to serve in any positions on such board which are vacant or in place of any directors or acting directors who are absent from such meeting, but not to elect any director on a permanent basis.

II. Acting directors and duties. To elect such acting directors as it may deem necessary, without regard to the number of officers which would otherwise be required, to serve in any offices which are vacant or in place of any officers or acting officers who fail to appear and assume their duties, to fix the compensation and determine the powers and duties of acting officers and to remove acting officers but not to remove any officer or to fill any vacancy on a permanent basis or to cause the insurance organization to enter into any contract of employment for a term in excess of one year.

III. Change of location. To cause the insurance organization to change the location of its principal office, pursuant to this section, or any of its places of business, and to authorize such action as it may deem appropriate to acquire space and facilities at new locations, but not to acquire for use as its principal office property in fee or for a term in excess of one year.

IV. Postpone meetings. To postpone any meeting of the stockholders, policyholders or members or directors of such organization if, in the judgment of majority of the members of such emergency board of directors, it would be impracticable to hold such meeting at the time it would otherwise have been held or conducted.

V. Call meetings. If it shall appear to an emergency board of directors that a quorum of the board cannot be assembled within a reasonable time, to call a meeting of the stockholders, policyholders or members of the insurance organization to be held as soon as the circumstances may reasonably permit, at a place to be designated by the emergency board of directors within this State or a contiguous state, for the purpose of electing directors to fill vacancies on the board, but for no other purpose, and to propose nominees for such election. Any such meetings of stockholders, policyholders or members shall be held upon notice given in accordance with the charter of the organization and applicable law other than this article.

As soon as practicable after each meeting of an emergency board of directors, the person who presided thereat shall notify the commissioner in writing of the time and place of such meeting, of the manner in which notice thereof was given, of the persons present and of all actions taken at such meeting.

No person prohibited by law or by the charter of a domestic insurance organization from serving as a member of its board shall be eligible to serve as an

acting director except that no person shall be disqualified to serve as an acting director by reason of his not being a stockholder, policyholder or member of such insurance organization, by reason of his not being a resident of this State or of a contiguous state, or by reason of the number of directors or acting directors who are officers, acting officers or employees of the insurance organization. Any person may serve as an acting director of a fund who is a director, acting director, officer or acting officer of an organization which is a party to the agreement creating the fund. No oath of acting directors shall be required.

Acting directors elected pursuant to this section or appointed pursuant to section 362 shall be entitled to vote at all meetings of emergency board of directors equally with directors. Acting directors shall not be entitled to take part in the deliberations or to vote at any meeting of the board which is duly convened in accordance with the applicable provisions of its charter and of law other than sections 356 to 362 and at which a quorum is present. Each acting director shall serve until the director or acting director in whose place he was elected or appointed shall attend the meeting of the board or until the director is duly elected to fill the vacancy in which such acting director has been serving, whichever event occurs earlier. An acting director shall be entitled to the compensation, if any, payable to a director.

Acting officers elected pursuant to this section shall have powers and duties and receive such compensation as may from time to time be determined by the emergency board of directors. Each acting officer shall serve until the officer in whose place he was elected shall appear and assume his duties or until his successor officer or acting officer shall be elected, whichever event occurs earlier.

Sec. 361. Powers of the commissioner.

I. Designate additional acting directors. If at any time during an acute emergency, the number of directors or acting directors of a domestic insurance organization who are capable of acting shall be less than 3, the commissioner shall have the power to designate additional acting directors in such number as will bring to 3 the number of directors and acting directors who are capable of acting.

II. Resolve controversies. To resolve controversy as to the power of any group of persons purporting to act as an emergency board of directors so to act, the commissioner shall, upon a determination that such action will tend to promote the safe and sound and orderly conduct of the business of any domestic insurance organization, have power to issue orders declaring that any such group shall or shall not have the powers of an emergency board of directors, or confirming, modifying or vacating in whole or in part any action taken or purportedly taken by any such group or by removing any acting director.

III. Declare provisions of law operative or inoperative. At any time after an attack, upon his determination that such action will tend to promote certainty as to the powers of insurance organizations or individuals pursuant to sections 356 to 362 or that such action is desirable to enable insurance organization to take preparatory precautions prior to the occurrence of an acute emergency, the commissioner shall have power to declare that any provision of sections 356 to 362 which he may specify shall be operative with

respect to any domestic insurance organization or to the Maine business of any other insurance organization which he may designate. Upon such declaration such organization and its directors, officers, acting directors and acting officers shall have all powers conferred by such provisions of sections 356 to 362. The failure of the commissioner so to declare shall not be deemed to limit the powers of any organization or its directors, officers, acting directors or acting officers where an acute emergency exists in fact.

A. At any time after the commencement of an acute emergency or after the commissioner shall have declared any provision of sections 356 to 362 operative pursuant to this subsection upon his determination that an insurance organization is able, in whole or in part, to carry on its business in compliance with its charter and the laws, other than sections 356 to 362, the commissioner shall have power to declare that any provision of sections 356 to 362 which he may specify shall be inoperative with respect to any domestic insurance organization or to the Maine business of any other insurance organization which he may designate. Upon such declaration, such organization shall be governed by its charter and the provisions of law other than sections 356 to 362, except insofar as they remain inoperative.

IV. Possession of business and property. Upon his determination that, as a result of an acute emergency, the business and affairs of an insurance organization cannot otherwise be conducted in a safe and sound manner, the commissioner may forthwith take possession of the business and property of the insurance organization within this State or, if a domestic insurance organization, its business and property wherever situated. This chapter shall be applicable in any case in which the commissioner takes possession of an insurance organization pursuant to this subsection as though the insurance organization were an insurer of which the commissioner had taken possession pursuant to this chapter, except that no such provision shall be applicable which the commissioner shall have declared inapplicable pursuant to this subsection. The commissioner shall have power to declare inapplicable any such provision upon his determination that the same is inappropriate or unnecessary to protect the interest of the public or the stockholders or creditors of the insurance organization, in view of the acute emergency and the nature of the organization.

V. When powers exercised. The powers given the commissioner by subsections II and IV shall be exercised by him only in the event that there is no court of competent jurisdiction available to which an application can be made for an order permitting him to exercise such powers with respect to a particular insurance organization. The powers conferred by subsection IV shall not be exercised in a case of an insurance organization which is not insolvent within the meaning of this chapter, unless the commissioner finds that such insurance organization lacks personnel able to manage its business in the interest of the public, stockholders and policyholders.

VI. Regulations. The commissioner shall have power to issue general and specific regulations, directives and orders consistent with and in furtherance of the purposes of sections 356 to 362.

Sec. 362. General provisions.

I. Presumption. In any action or proceeding it shall be presumed that an acute emergency existing within any city or county within this State constitutes an acute emergency affecting every insurance organization doing business within such city or county.

II. Powers of board. During an acute emergency the board of a domestic insurance organization which has adopted emergency bylaws approved by the commissioner shall have the powers conferred by such bylaws and, except as limited by sections 356 to 362 shall to the extent that such bylaws relate to the subject matter contained in sections 356 to 362 have no other or different powers with respect to such subject matter, and the board of a domestic insurance organization which has not adopted emergency bylaws approved by the commissioner shall have all the powers of an emergency board of directors pursuant to sections 356 to 362.'