

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1
2

SECOND REGULAR SESSION

3
4

ONE HUNDRED AND ELEVENTH LEGISLATURE

5
6

Legislative Document

No. 2333

7
8

H.P. 1767

House of Representatives, March 21, 1984

9

Submitted by the Department of Business, Occupational and Professional Regulation pursuant to Joint Rule 24.

10

Reference to the Committee on Business Legislation is suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Brannigan of Portland.

11

Cosponsors: Representative Murray of Bangor, Representative Stevens of Bangor and Representative Perkins of Brooksville.

12
13

STATE OF MAINE

14
15
16

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-FOUR

17
18
19

AN ACT to Establish a Maine Life and Health Insurance Guaranty Association.

20
21

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

22

24-A MRSA c. 62 is enacted to read:

23

CHAPTER 62

24

MAINE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

25

§4601. Short title

26
27

This chapter shall be known as the Maine Life and Health Insurance Guaranty Association Act.

28

§4602. Purpose

29
30
31

The purpose of this chapter is to maintain public confidence in the promises of insurers by providing a mechanism for protecting policyholders, insureds,

1 beneficiaries, annuitants, payees and assignees of
2 life insurance policies, health insurance policies,
3 annuity contracts and supplemental contracts against
4 failure in the performance of fair and equitable con-
5 tractual obligations due to the impairment of the in-
6 surer issuing these policies or contracts. To provide
7 this protection:

8 1. Creation of association. An association of
9 insurers is created to enable the guaranty of payment
10 of benefits and of continuation of coverages;

11 2. Assessment of members. Members of the associ-
12 ation are subject to assessment to provide funds to
13 carry out the purpose of this chapter; and

14 3. Assistance to superintendent. The association
15 may assist the superintendent, in the prescribed man-
16 ner, in the detection and prevention of insurer im-
17 pairments.

18 §4603. Scope

19 1. Application. This chapter shall apply to di-
20 rect life insurance policies, health insurance poli-
21 cies, annuity contracts and contracts supplemental to
22 life and health insurance policies and annuity con-
23 tracts issued by persons authorized to transact in-
24 surance in this State at any time.

25 2. Exceptions. This chapter shall not apply to:

26 A. That portion of a variable life insurance or
27 variable annuity contract not guaranteed by an
28 insurer;

29 B. Any such policies or contracts, or any part
30 of these policies or contracts, under which the
31 risk is borne by the policyholder;

32 C. Any such policy or contract or part thereof
33 assumed by the impaired insurer under a contract
34 of reinsurance, other than reinsurance for which
35 assumption certificates have been issued; and

36 D. Any such policy or contract issued by assess-
37 ment mutuals and nonprofit hospital and medical
38 service plans.

1 §4604. Construction

2 This chapter shall be liberally construed to ef-
3 fect the purpose under section 2 which shall consti-
4 tute an aid and guide to interpretation.

5 §4605. Definitions

6 As used in this chapter, unless the context oth-
7 erwise indicates, the following terms have the fol-
8 lowing meanings.

9 1. Account. "Account" means any of the 2 ac-
10 counts created under section 4606.

11 2. Association. "Association" means the Maine
12 Life and Health Insurance Guaranty Association cre-
13 ated under section 4606.

14 3. Contractual obligation. "Contractual obliga-
15 tion" means any obligation under covered policies.

16 4. Covered policies. "Covered policies" means
17 any policy or contract within the scope of section
18 4603.

19 5. Impaired insurer. "Impaired insurer" means:

20 A. An insurer who, after the effective date of
21 this chapter, is declared insolvent and placed
22 under a final order of liquidation, rehabilita-
23 tion or conservation by a court of competent ju-
24 risdiction; or

25 B. An insurer who, after the effective date of
26 this chapter, is deemed by the superintendent to
27 be unable to fulfill its contractual obligations.

28 6. Member insurer. "Member insurer" means any
29 person authorized to transact in this State any kind
30 of insurance to which this chapter applies under sec-
31 tion 4603.

32 7. Person. "Person" includes an individual,
33 firm, partnership, corporation, association, syndi-
34 cate, organization, society, business trust, attor-
35 ney-in-fact and every natural or artificial legal en-
36 tity.

1 8. Premiums. "Premiums" means direct gross in-
2 surance premiums and annuity considerations written
3 on covered policies, less return premiums and consid-
4 erations thereon and dividends paid or credited to
5 policyholders on such direct business. Premiums do
6 not include premiums and considerations on contracts
7 between insurers and reinsurers. As used in section
8 4609, premiums are those for the calendar year pre-
9 ceding the determination of impairment.

10 9. Resident. "Resident" means any person who re-
11 sides in this State at the time the impairment is de-
12 termined and to whom contractual obligations are
13 owed.

14 10. Superintendent. "Superintendent" means the
15 Superintendent of Insurance.

16 §4606. Creation of the association

17 1. Creation. There is created a nonprofit legal
18 entity to be known as the Maine Life and Health In-
19 surance Guaranty Association. All member insurers
20 shall be and remain members of the association as a
21 condition of their authority to transact insurance in
22 this State. The association shall perform its func-
23 tions under the plan of operation established and ap-
24 proved under section 4610 and shall exercise its pow-
25 ers through a board of directors established under
26 section 4607. For purposes of administration and as-
27 essment, the association shall maintain 2 accounts:

28 A. The health insurance account; and

29 B. The life insurance and annuity account.

30 2. Supervision of association. The association
31 shall come under the immediate supervision of the su-
32 perintendent and shall be subject to the applicable
33 provisions of the insurance laws of this State.

34 §4607. Board of directors

35 2. Membership. The board of directors of the as-
36 sociation shall consist of not less than 5 nor more
37 than 9 members serving terms as established in the
38 plan of operation. The members of the board shall be

1 selected by member insurers subject to the approval
2 of the superintendent. Vacancies on the board shall
3 be filled for the remaining period of the term in the
4 manner described in the plan of operation. To select
5 the initial board of directors and initially organize
6 the association, the superintendent shall give notice
7 to all member insurers of the time and place of the
8 organizational meeting. In determining voting rights
9 at the organizational meeting each member insurer
10 shall be entitled to one vote in person or by proxy.
11 If the board of directors is not selected within 60
12 days after notice of the organizational meeting, the
13 superintendent may appoint the initial members.

14 2. Appointments; representation of member insur-
15 ers. In approving selections or in appointing members
16 to the board, the superintendent shall consider,
17 among other things, whether all member insurers are
18 fairly represented.

19 3. Reimbursement. Members of the board may be
20 reimbursed from the assets of the association for ex-
21 penditures incurred by them as members of the board of
22 directors, but members of the board shall not other-
23 wise be compensated by the association for their ser-
24 vices.

25 §4608. Powers and duties of the association

26 In addition to the powers and duties enumerated
27 in other sections of this chapter:

28 1. Domestic impaired insurer; association action
29 prior to order of liquidation or rehabilitation. If a
30 domestic insurer is an impaired insurer, the associa-
31 tion may, prior to an order of liquidation or reha-
32 bilitation, and subject to any fair and equitable
33 conditions imposed by the association and approved by
34 the impaired insurer and the superintendent:

35 A. Guarantee or reinsure, or cause to be guaran-
36 teed, assumed or reinsured all the covered poli-
37 cies of the impaired insurer;

38 B. Provide such moneys, pledges, notes, guaran-
39 tees or other means as are proper to effectuate
40 paragraph A and assure payment of the appropriate

1 contractual obligations of the impaired insurer
2 pending action under paragraph A; and

3 C. Loan money to the impaired insurer.

4 2. Foreign or alien impaired insurer; associa-
5 tion action prior to order of liquidation, rehabili-
6 tation or conservation. If a foreign or alien insurer
7 is an impaired insurer, the association may prior to
8 an order of liquidation, rehabilitation or conserva-
9 tion, with respect to the covered policies of resi-
10 idents and subject to any fair and equitable condi-
11 tions imposed by the association and approved by the
12 impaired insurer and the superintendent:

13 A. Guarantee or reinsure, or cause to be guaran-
14 teed, assumed or reinsured, the impaired
15 insurer's covered policies of residents;

16 B. Provide such moneys, pledges, notes, guaran-
17 tees or other means as are proper to effectuate
18 paragraph A and assure payment of the impaired
19 insurer's appropriate contractual obligations to
20 residents pending action under paragraph A; and

21 C. Loan money to the impaired insurer.

22 3. Domestic impaired insurer under order of liq-
23 uidation or rehabilitation; association action. If a
24 domestic insurer is an impaired insurer under an or-
25 der of liquidation or rehabilitation, the association
26 shall, subject to the approval of the superintendent:

27 A. Guarantee, assume or reinsure or cause to be
28 guaranteed, assumed or reinsured the covered po-
29 licies of the impaired insurer;

30 B. Assure payment of the appropriate
31 contractual obligations of the impaired insurer;
32 and

33 C. Provide such moneys, pledges, notes, guaran-
34 tees or other means as are reasonably necessary
35 to discharge these duties. If the association
36 fails to act within a reasonable period of time,
37 the superintendent shall have the powers and du-
38 ties of the association under this chapter with
39 respect to the domestic impaired insurer.

1 4. Foreign or alien impaired insurer under order
2 of liquidation, rehabilitation or conservation; asso-
3 ciation action. If a foreign or alien insurer is an
4 impaired insurer under an order of liquidation, reha-
5 bilitation or conservation, the association shall,
6 subject to the approval of the superintendent:

7 A. Guarantee, assume or reinsure or cause to be
8 guaranteed, assumed or reinsured the covered po-
9 licies of residents;

10 B. Assure payment of the appropriate contractual
11 obligations of the impaired insurer to residents;
12 and

13 C. Provide such moneys, pledges, notes, guaran-
14 tees or other means as are reasonably necessary
15 to discharge these duties. If the association
16 fails to act within a reasonable period of time,
17 the superintendent shall have the powers and du-
18 ties of the association under this chapter with
19 respect to such foreign or alien impaired insur-
20 er.

21 5. Policy liens; contract liens; moratoriums on
22 payments. In carrying out its duties under subsec-
23 tions 3 and 4, the association may request that there
24 be imposed policy liens, contract liens, moratoriums
25 on payments or other similar means and these liens,
26 moratoriums or similar means may be imposed if the
27 superintendent:

28 A. Finds that the amounts which can be assessed
29 under this chapter are less than the amounts
30 needed to assure full and prompt performance of
31 the impaired insurer's contractual obligations,
32 or that the economic or financial conditions as
33 they affect member insurers are sufficiently ad-
34 verse to render the imposition of policy or con-
35 tract liens, moratoriums or similar means to be
36 in the public interest; and

37 B. Approves the specific policy liens, contract
38 liens, moratoriums or similar means to be used.

39 Before being obligated under subsections 3 and 4 the
40 association may request that there be imposed tempo-

1 rary moratoriums or liens on payments of cash values
2 and policy loans and such temporary moratoriums and
3 liens may be imposed if they are approved by the su-
4 perintendent.

5 6. Association liability. The association shall
6 have no liability under this section for any covered
7 policy of a foreign or alien insurer whose domicil-
8 iary jurisdiction or state of entry provides by stat-
9 ute for residents of this State protection substan-
10 tially similar to that provided by this chapter for
11 residents of other states, provided that the associa-
12 tion shall not be relieved of liability in either of
13 the following:

14 A. If any similar guaranty association in any
15 other state is not rendered operative under con-
16 ditions which would otherwise require action by
17 and obligate the Maine Life and Health Insurance
18 Guaranty Association pursuant to section 4608; or

19 B. If financial protections afforded by such
20 other associations in any other states are not at
21 least equal to protections contained in this
22 chapter.

23 7. Assistance and advice to superintendent. The
24 association may render assistance and advice to the
25 superintendent, upon his request, concerning rehabil-
26 itation, payment of claims, continuations of coverage
27 or the performance of other contractual obligations
28 of any impaired insurer.

29 8. Standing to appear before court. The associa-
30 tion shall have standing to appear before any court
31 in this State with jurisdiction over an impaired in-
32 surer concerning which the association is or may be-
33 come obligated under this chapter. This standing
34 shall extend to all matters germane to the powers and
35 duties of the association, including, but not limited
36 to, proposals for reinsuring or guaranteeing the cov-
37 ered policies of the impaired insurer and the deter-
38 mination of the covered policies and contractual ob-
39 ligations.

40 9. Subrogation rights. Any person receiving ben-
41 efits under this chapter shall be deemed to have as-

1 signed his rights under the covered policy to the as-
2 sociation to the extent of the benefits received be-
3 cause of this chapter whether the benefits are pay-
4 ments of contractual obligations or continuation of
5 coverage. The association may require an assignment
6 to it of these rights by any payee, policy or con-
7 tract owner, beneficiary, insured or annuitant as a
8 condition precedent to the receipt of any rights or
9 benefits conferred by this chapter upon that person.
10 The association shall be subrogated to these rights
11 against the assets of any impaired insurer.

12 The subrogation rights of the association under this
13 subsection shall have the same priority against the
14 assets of the impaired insurer as that possessed by
15 the person entitled to receive benefits under this
16 chapter.

17 10. Association's contractual obligation; im-
18 paired insurer. The contractual obligations of the
19 impaired insurer for which the association becomes or
20 may become liable shall be as great as but not
21 greater than the contractual obligations of the im-
22 paired insurer would have been in the absence of the
23 impairment. In no event may the aggregate liability
24 of the association exceed \$100,00 in cash values, or
25 \$300,000 for all benefits, including cash values,
26 with respect to any one life.

27 11. Other powers. The association may:

28 A. Enter into such contracts as are necessary or
29 proper to carry out the provisions and purposes
30 of this chapter;

31 B. Sue or be sued, including taking any legal
32 actions necessary or proper for recovery of any
33 unpaid assessments under section 4609;

34 C. Borrow money to effect the purposes of this
35 chapter;

36 D. Employ or retain such persons as are neces-
37 sary to handle the financial transactions of the
38 association and to perform such other functions
39 as become necessary or proper under this chapter;

1 E. Negotiate and contract with any liquidator,
2 rehabilitator, conservator or ancillary receiver
3 to carry out the powers and duties of the associ-
4 ation;

5 F. Take such legal action as may be necessary to
6 avoid payment of improper claims; and

7 G. Exercise, for the purposes of this chapter
8 and to the extent approved by the superintendent,
9 the powers of a domestic life or health insurer,
10 but in no case may the association issue insur-
11 ance policies or annuity contracts other than
12 those issued to perform the contractual obliga-
13 tions of the impaired insurer.

14 §4609. Assessments

15 1. Assessments; collection. For the purpose of
16 providing the funds necessary to carry out the powers
17 and duties of the association, the board of directors
18 shall assess the member insurers, separately for each
19 account, at such times and for such amounts as the
20 board finds necessary. The board shall collect the
21 assessments after 30 days' written notice to the mem-
22 ber insurers before payment is due.

23 2. Classes of assessments. There shall be 3
24 classes of assessments, as follows.

25 A. Class A assessments shall be made for the
26 purpose of meeting administrative costs and other
27 general expenses not related to a particular im-
28 paired insurer.

29 B. Class B assessments shall be made to the ex-
30 tent necessary to carry out the powers and duties
31 of the association under section 4608 with regard
32 to an impaired domestic insurer.

33 C. Class C assessments shall be made to the ex-
34 tent necessary to carry out the powers and duties
35 of the association under section 4608 with regard
36 to an impaired foreign or alien insurer.

37 3. Determination of assessments. Assessments
38 shall be determined as follows.

1 A. The amount of any Class A assessment for each
2 account shall be determined by the board. The
3 amount of any Class B or Class C assessment shall
4 be divided among the accounts in the proportion
5 that the premiums received by the impaired insurer
6 on the policies covered by each account bear
7 to the premiums received by the insurer on all
8 covered policies.

9 B. Class A and Class C assessments against member
10 insurers for each account shall be in the
11 proportion that the premiums received on business
12 in this State by each assessed member insurer on
13 policies covered by each account bear to such
14 premiums received on business in this State by
15 all assessed member insurers.

16 C. Class B assessments for each account shall be
17 made separately for each state in which the im-
18 paired domestic insurer was authorized to trans-
19 act insurance at any time, in the proportion that
20 the premiums received on business in that state
21 by the impaired insurer on policies covered by
22 the account bear to the premiums received in all
23 such states by the impaired insurer. The assess-
24 ments against member insurers shall be in the
25 proportion that the premiums received on business
26 in each such state by each assessed member insurer
27 on policies covered by each account bear to
28 the premiums received on business in each state
29 by all assessed member insurers.

30 D. Assessments for funds to meet the require-
31 ments of the association with respect to an im-
32 paired insurer shall not be made until necessary
33 to implement the purposes of this chapter. Clas-
34 sification of assessments under subsection 2 and
35 computation of assessments under this paragraph
36 shall be made with a reasonable degree of accura-
37 cy, recognizing that exact determinations may not
38 always be possible.

39 4. Abatement or deferral of assessments. The as-
40 sociation may abate or defer, in whole or in part,
41 the assessment of a member insurer if, in the opinion
42 of the board, payment of the assessment would endan-
43 ger the ability of the member insurer to fulfill its

1 contractual obligations. The total of all assessments
2 upon a member insurer for each account shall not in
3 any one calendar year exceed 4% of the insurer's pre-
4 miums in this State on the policies covered by the
5 account.

6 5. Additional assessment for abatements or de-
7 ferred. In the event an assessment against a member
8 insurer is abated or deferred, in whole or in part,
9 because of the limitations set forth in subsection 4,
10 the amount by which the assessment is abated or de-
11 ferred, shall be assessed against the other member
12 insurers in a manner consistent with the basis for
13 assessments set forth in this section. If the maximum
14 assessment, together with the other assets of the as-
15 sociation in either account, does not provide in any
16 one year in either account an amount sufficient to
17 carry out the responsibilities of the association,
18 the necessary additional funds shall be assessed as
19 soon thereafter as permitted by this chapter.

20 6. Refunds. The board may, by an equitable meth-
21 od as established in the plan of operation, refund to
22 member insurers, in proportion to the contribution of
23 each insurer to that account, the amount by which the
24 assets of the account exceed the amount the board
25 finds is necessary to carry out during the coming
26 year the obligations of the association with regard
27 to that amount, including assets accruing from net
28 realized gains and income from investments. A reason-
29 able amount may be retained in any account to provide
30 funds for the continuing expenses of the association
31 and for future losses if refunds are impractical.

32 7. Consideration of assessments in determining
33 premium rates and dividends. It shall be proper for
34 any member insurer in determining its premium rates
35 and policyowner dividends as to any kind of insurance
36 within the scope of this chapter, to consider the
37 amount reasonably necessary to meet its assessment
38 obligations under this chapter.

39 §4610. Plan of operation

40 1. Establishment of plan. A plan of operation
41 shall be established as follows.

1 A. The association shall submit to the superin-
2 tendent a plan of operation and any amendments
3 thereto necessary or suitable to assure the fair,
4 reasonable and equitable administration of the
5 association. The plan of operation and any amend-
6 ments thereto shall become effective upon approv-
7 al in writing by the superintendent.

8 B. If the association fails to submit a suitable
9 plan of operation within 180 days following the
10 effective date of this chapter or if at any time
11 thereafter the association fails to submit suit-
12 able amendments to the plan, the superintendent
13 shall, after notice and hearing, adopt and
14 promulgate such reasonable rules as are necessary
15 or advisable to effectuate the provisions of this
16 chapter. These rules shall continue in force un-
17 til modified by the superintendent or superseded
18 by a plan submitted by the association and ap-
19 proved by the superintendent.

20 2. Compliance. All member insurers shall comply
21 with the plan of operation.

22 3. Requirements of plan. The plan of operation
23 shall, in addition to requirements enumerated else-
24 where in this chapter:

25 A. Establish procedures for handling the assets
26 of the association;

27 B. Establish the amount and method of reimburs-
28 ing members of the board of directors under sec-
29 tion 4607;

30 C. Establish regular places and times for meet-
31 ings of the board of directors;

32 D. Establish procedures for records to be kept
33 of all financial transactions of the association,
34 its agents and the board of directors;

35 E. Establish the procedures whereby selections
36 for the board of directors will be made and sub-
37 mitted to the superintendent;

38 F. Establish any additional procedures for as-
39 essments under section 4609; and

1 G. Contain additional provisions necessary or
2 proper for the execution of the powers and duties
3 of the association.

4 4. Delegation of association powers and duties.
5 The plan of operation may provide that any or all
6 powers and duties of the association, except those
7 under section 4608, subsection 11, paragraph C and
8 section 4609, are delegated to a corporation, associ-
9 ation or other organization which performs or will
10 perform functions similar to those of this associa-
11 tion, or its equivalent, in 2 or more states. Such a
12 corporation, association or organization shall be re-
13 imbursed for any payments made on behalf of the asso-
14 ciation and shall be paid for its performance of any
15 function of the association. A delegation under this
16 paragraph shall take effect only with the approval of
17 both the board of directors and the superintendent
18 and may be made only to a corporation, association or
19 organization which extends protection not substan-
20 tially less favorable and effective than that pro-
21 vided by this chapter.

22 §4611. Duties and powers of the superintendent

23 In addition to the duties and powers enumerated
24 elsewhere in this chapter:

25 1. Powers and duties. The superintendent shall:

26 A. Notify the board of directors of the exist-
27 tence of an impaired insurer not later than 3
28 days after a determination of impairment is made
29 or he received notice of impairment;

30 B. Upon request of the board of directors, pro-
31 vide the association with a statement of the pre-
32 miums in the appropriate states for each member
33 insurer;

34 C. When an impairment is declared, pursuant to
35 section 4605, subsection 6, paragraph B, and the
36 amount of the impairment is determined, serve a
37 demand upon the impaired insurer to make good the
38 impairment within a reasonable time. Notice of
39 the impaired insurer shall constitute notice to
40 its shareholders, if any. The failure of the in-

1 surer to promptly comply with the demand shall
2 not excuse the association from the performance
3 of its powers and duties under this chapter; and

4 D. In any liquidation or rehabilitation proceed-
5 ing involving a domestic insurer, the superin-
6 tendent shall be appointed as the liquidator or
7 rehabilitator, pursuant to chapter 57. If a for-
8 foreign or alien member insurer is subject to a liq-
9 uidation proceeding in its domiciliary jurisdic-
10 tion or state of entry other than this State, the
11 superintendent may be appointed conservator or an
12 ancillary receiver.

13 2. Suspension or revocation of certificate of
14 authority to transact insurance. The superintendent
15 may suspend or revoke, after notice and hearing, the
16 certificate of authority to transact insurance in
17 this State of any member insurer which fails to pay
18 an assessment when due or fails to comply with the
19 plan of operation. In lieu of such suspension or rev-
20 ocation, any member insurer which fails to pay an as-
21 essment when due or fails to comply with the plan of
22 operation may be punished by a fine not to exceed the
23 greater of 5% of the unpaid assessment per month or
24 \$100 per month.

25 3. Appeal of actions of board of directors or
26 association. Any action of the board of directors or
27 the association may be appealed to the superintendent
28 by any member insurer if such appeal is taken within
29 30 days of the action being appealed. Any final ac-
30 tion or order of the superintendent shall be subject
31 to judicial review pursuant to chapter 3.

32 4. Notification of interested persons. The liq-
33 uidator, rehabilitator or conservator of any impaired
34 insurer may notify all interested persons of the ef-
35 fect of this chapter.

36 §4612. Prevention of impairments

37 To aid in the detection and prevention of insurer
38 impairments, the superintendent shall be notified
39 when:

1 1. Notification from board of directors; infor-
2 mation. The board of directors, upon majority ballot
3 vote to notify the superintendent of any information
4 indicating any member insurer may be unable or poten-
5 tially unable to fulfill its contractual obligations;

6 2. Request for examination of member insurer.
7 The board of directors, upon majority vote, request
8 that the superintendent order an examination of any
9 member insurer which the board in good faith believes
10 may be unable or potentially unable to fulfill its
11 contractual obligations. The superintendent may con-
12 duct this examination. The examination may be con-
13 ducted as a National Association of Insurance Commis-
14 sioners' examination or may be conducted by such per-
15 sons as the superintendent designates. The cost of
16 the examination shall be paid by the association and
17 the examination report shall be treated as are other
18 examination reports. In no event may the examination
19 report be released to the board of directors of the
20 association prior to its release to the public, but
21 this shall not excuse the superintendent from his ob-
22 ligation to advise the board of directors in a timely
23 fashion as required in this section. The superintend-
24 ent shall notify the board of directors when the ex-
25 amination is completed. The request for an examina-
26 tion shall be kept on file by the superintendent but
27 it shall not be open to public inspection prior to
28 the release of the examination report to the public
29 and shall be released at that time subject only if
30 the examination discloses that the examined insurer
31 is unable or potentially unable to meet its contrac-
32 tual obligations;

33 3. Reports and recommendations of board of di-
34 rectors. The board of directors, upon majority vote,
35 makes reports and recommendations to the superintend-
36 ent upon any matter germane to the solvency, liquidat-
37 ion, rehabilitation or conservation of any member
38 insurer. These reports and recommendations shall be
39 treated as confidential by the superintendent;

40 4. Recommendations of board of directors; detec-
41 tion and prevention of impairment. The board of di-
42 rectors, upon majority vote, makes recommendations to
43 the superintendent for the detection and prevention
44 of insurer impairments; and

1 5. Report of board of directors; history and
2 causes of impairment. The board of directors, at the
3 conclusion of any insurer impairment in which the as-
4 sociation carried out its duties under this chapter
5 or exercised any of its powers under this chapter,
6 prepared a report on the history and causes of the
7 impairment, based on the information available to the
8 association. The association shall submit that report
9 to the superintendent.

10 The superintendent shall report to the board of di-
11 rectors when he has reasonable cause to believe that
12 any member or licensed insurer subject to this chap-
13 ter may be unable or potentially unable to fulfill
14 its contractual obligations.

15 §4613. Appointment of association nominee

16 The association may recommend a natural person to
17 serve as a special deputy to act for the superintend-
18 ent and under his supervision in the liquidation, re-
19 habilitation or conservation of any member insurer.

20 §4614. Miscellaneous provisions

21 1. Liability for unpaid assessments of insureds
22 of an impaired insurer. Nothing in this chapter may
23 be construed to reduce the liability for unpaid as-
24 sessments of the insureds of an impaired insurer op-
25 erating under a plan with assessment liability.

26 2. Records. Records shall be kept of all negoti-
27 ations and meetings in which the association or its
28 representatives are involved to discuss the activi-
29 ties of the association in carrying out its powers
30 and duties under section 4608. Records of the negoti-
31 ations or meetings shall be made public only upon the
32 termination of a liquidation, rehabilitation or con-
33 servation proceeding involving the impaired insurer,
34 upon the termination of the impairment of the insur-
35 er, or upon the order of a court of competent juris-
36 isdiction. Nothing in this subsection limits the duty
37 of the association to render a report of its activi-
38 ties under section 4615.

39 3. Association deemed to be creditor of impaired
40 insurer. For the purpose of carrying out its obliga-

1 tions under this chapter, the association shall be
2 deemed to be a creditor of the impaired insurer to
3 the extent of assets attributable to covered policies
4 reduced by any amounts to which the association is
5 entitled as subrogee pursuant to section 4608, sub-
6 section 9. All assets of the impaired insurer attrib-
7 utable to covered policies shall be used to continue
8 all covered policies and pay all contractual obliga-
9 tions of the impaired insurer as required by this
10 chapter. Assets attributable to covered policies, as
11 used in this subsection, are to be construed as that
12 proportion of the assets which the reserves that
13 should have been established for these policies bear
14 to the reserve that should have been established for
15 all policies of insurance written by the impaired in-
16 surer.

17 4. Factors considered in distributing assets. In
18 distributing assets, the following factors shall be
19 considered.

20 A. Prior to the termination of any liquidation,
21 rehabilitation or conservation proceeding, the
22 court may take into consideration the contribu-
23 tions of the respective parties, including the
24 association, the shareholders and policy owners
25 of the impaired insurer and any other party with
26 a bona fide interest, in making an equitable dis-
27 tribution of the ownership rights of the impaired
28 insurer. In such a determination, consideration
29 shall be given to the welfare of the policyhold-
30 ers of the continuing or successor insurer.

31 B. No distribution to stockholders, if any, of
32 an impaired insurer shall be made until and un-
33 less the total amount of assessments levied by
34 the association with respect to the insurer have
35 been fully recovered by the association.

36 5. Unfair trade practice. It shall be a prohib-
37 ited unfair trade practice for any person to make use
38 in any manner of the protection afforded by this
39 chapter in the sale of insurance.

40 6. Recovery procedure; provisions. The recovery
41 procedure shall provide that:

1 A. If an order for liquidation or rehabilitation
2 of an insurer domiciled in this State has been
3 entered, the receiver appointed under that order
4 shall have a right to recover on behalf of the
5 insurer, from any affiliate that controlled it,
6 the amount of distributions, other than stock
7 dividends paid by the insurer on its capital
8 stock, made at any time during the 5 years pre-
9 ceding the petition for liquidation or rehabili-
10 tation subject to the limitations of paragraphs B
11 to D;

12 B. No such dividends shall be recoverable if the
13 insurer shows that when paid the distribution was
14 lawful and reasonable and that the insurer did
15 not know and could not reasonably have known that
16 the distribution might adversely affect the abil-
17 ity of the insurer to fulfill its contractual ob-
18 ligations;

19 C. Any person who was an affiliate that con-
20 trolled the insurer at the time the distributions
21 were paid shall be liable up to the amount of
22 distributions he received. Any person who was an
23 affiliate that controlled the insurer at the time
24 the distributions were declared shall be liable
25 up to the amount of distributions he would have
26 received if they had been paid immediately. If 2
27 persons are liable with respect to the same dis-
28 tributions they shall be jointly and severally
29 liable;

30 D. The maximum amount recoverable under this
31 section shall be the amount needed in excess of
32 all other available assets of the impaired insur-
33 er to pay the contractual obligations of the im-
34 paired insurer on a fair and equitable basis; and

35 E. If any person liable under paragraph C is in-
36 solvent, all its affiliates that controlled it at
37 the time the dividend was paid shall be jointly
38 and severally liable for any resulting deficiency
39 in the amount recovered from the insolvent affil-
40 iate.

41 §4615. Examination of the association; annual report

1 where insurers doing business in the State default on
2 their policy obligations or become insolvent.

3

6166031584