

# MAINE STATE LEGISLATURE

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(New Draft of H.P. 1767, L.D. 2333)

SECOND REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 2453

H.P. 1852

House of Representatives, April 9, 1984

Reported by Representative Racine from the Committee on Business Legislation and printed under Joint Rule 2.

Original bill presented by Representative Brannigan of Portland and cosponsored by Representative Murray of Bangor, Representative Stevens of Bangor and Representative Perkins of Brooksville.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

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

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

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

CHAPTER 62

MAINE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

§4601. Short title

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

§4602. Purpose

1       The purpose of this chapter is to maintain public  
2 confidence in the promises of insurers by providing a  
3 mechanism for protecting policyholders, insureds,  
4 beneficiaries, annuitants, payees and assignees of  
5 life insurance policies, health insurance policies,  
6 annuity contracts and supplemental contracts against  
7 failure in the performance of fair and equitable con-  
8 tractual obligations due to the impairment of the in-  
9 surer issuing these policies or contracts. To provide  
10 this protection:

11       1. Creation of association. An association of  
12 insurers is created to enable the guaranty of payment  
13 of benefits and of continuation of coverages;

14       2. Assessment of members. Members of the associ-  
15 ation are subject to assessment to provide funds to  
16 carry out the purpose of this chapter; and

17       3. Assistance to superintendent. The association  
18 is authorized to assist the superintendent, in the  
19 prescribed manner, in the detection and prevention of  
20 insurer impairments.

21       §4603. Scope

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

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

29       A. That portion of a variable life insurance or  
30 variable annuity contract not guaranteed by an  
31 insurer;

32       B. Any such policies or contracts, or any part  
33 of these policies or contracts, under which the  
34 risk is borne by the policyholder;

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

1           D. Any such policy or contract issued by assess-  
2           ment mutuals and nonprofit hospital and medical  
3           service plans.

4           §4604. Construction

5           This chapter shall be liberally construed to ef-  
6           fect the purpose under section 4602 which shall con-  
7           stitute an aid and guide to interpretation.

8           §4605. Definitions

9           As used in this chapter, unless the context oth-  
10          erwise indicates, the following terms have the fol-  
11          lowing meanings.

12          1. Account. "Account" means any of the 3 ac-  
13          counts created under section 4606.

14          2. Association. "Association" means the Maine  
15          Life and Health Insurance Guaranty Association cre-  
16          ated under section 4606.

17          3. Contractual obligation. "Contractual obliga-  
18          tion" means any obligation under covered policies.

19          4. Covered policies. "Covered policies" means  
20          any policy or contract within the scope of section  
21          4603.

22          5. Impaired insurer. "Impaired insurer" means:

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

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

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

1       7. Person. "Person" includes an individual,  
2 firm, partnership, corporation, association, syndi-  
3 cate, organization, society, business trust, attor-  
4 ney-in-fact and every natural or artificial legal en-  
5 tity.

6       8. Premiums. "Premiums" means direct gross in-  
7 surance premiums and annuity considerations written  
8 on covered policies, less return premiums and consid-  
9 erations thereon and dividends paid or credited to  
10 policyholders on such direct business. Premiums do  
11 not include premiums and considerations on contracts  
12 between insurers and reinsurers. As used in section  
13 4609, premiums are those for the calendar year pre-  
14 ceding the determination of impairment.

15       9. Resident. "Resident" means any person who re-  
16 sides in this State at the time the impairment is de-  
17 termined and to whom contractual obligations are  
18 owed.

19       10. Superintendent. "Superintendent" means the  
20 Superintendent of Insurance.

21 §4606. Creation of the association

22       1. Creation. There is created a nonprofit legal  
23 entity to be known as the Maine Life and Health In-  
24 surance Guaranty Association. All member insurers  
25 shall be and remain members of the association as a  
26 condition of their authority to transact insurance in  
27 this State. The association shall perform its func-  
28 tions under the plan of operation established and ap-  
29 proved under section 4610 and shall exercise its pow-  
30 ers through a board of directors established under  
31 section 4607. For purposes of administration and as-  
32 essment, the association shall maintain 3 accounts:

33       A. The health insurance account;

34       B. The life insurance account; and

35       C. The annuity account.

36       2. Supervision of association. The association  
37 shall come under the immediate supervision of the su-  
38 perintendent and shall be subject to the applicable  
39 provisions of the insurance laws of this State.

1     §4607. Board of directors

2           1. Membership. The board of directors of the as-  
3 sociation shall consist of not less than 5 nor more  
4 than 9 members serving terms as established in the  
5 plan of operation. The members of the board shall be  
6 selected by member insurers subject to the approval  
7 of the superintendent. Vacancies on the board shall  
8 be filled for the remaining period of the term in the  
9 manner described in the plan of operation. To select  
10 the initial board of directors and initially organize  
11 the association, the superintendent shall give notice  
12 to all member insurers of the time and place of the  
13 organizational meeting. In determining voting rights  
14 at the organizational meeting each member insurer  
15 shall be entitled to one vote in person or by proxy.  
16 If the board of directors is not selected within 60  
17 days after notice of the organizational meeting, the  
18 superintendent may appoint the initial members.

19           2. Appointments; representation of member insur-  
20 ers. In approving selections or in appointing members  
21 to the board, the superintendent shall consider,  
22 among other things, whether all member insurers are  
23 fairly represented.

24           3. Reimbursement. Members of the board may be  
25 reimbursed from the assets of the association for ex-  
26 penses incurred by them as members of the board of  
27 directors, but members of the board shall not other-  
28 wise be compensated by the association for their ser-  
29 vices.

30     §4608. Powers and duties of the association

31           In addition to the powers and duties enumerated  
32 in other sections of this chapter:

33           1. Domestic impaired insurer; association action  
34 prior to final order of liquidation or rehabilita-  
35 tion. If a domestic insurer is an impaired insurer,  
36 the association may, prior to a final order of liqui-  
37 dation or rehabilitation, and subject to any fair and  
38 equitable conditions imposed by the association and  
39 approved by the impaired insurer and the superintend-  
40 ent, employ any or all of the following actions:

1 A. Guarantee or reinsure, or cause to be guaran-  
2 teed, assumed or reinsured all the covered poli-  
3 cies of the impaired insurer;

4 B. Provide such moneys, pledges, notes, guaran-  
5 tees or other means as are proper to effectuate  
6 paragraph A and assure payment of the appropriate  
7 contractual obligations of the impaired insurer  
8 pending action under paragraph A; or

9 C. Loan money to the impaired insurer.

10 2. Foreign or alien impaired insurer; associa-  
11 tion action prior to final order of liquidation, re-  
12 habilitation or conservation. If a foreign or alien  
13 insurer is an impaired insurer, the association may  
14 prior to a final order of liquidation, rehabilitation  
15 or conservation, with respect to the covered policies  
16 of residents and subject to any fair and equitable  
17 conditions imposed by the association and approved by  
18 the impaired insurer and the superintendent, employ  
19 any or all of the following actions:

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

23 B. Provide such moneys, pledges, notes, guaran-  
24 tees or other means as are proper to effectuate  
25 paragraph A and assure payment of the impaired  
26 insurer's appropriate contractual obligations to  
27 residents pending action under paragraph A; or

28 C. Loan money to the impaired insurer.

29 3. Domestic impaired insurer under final order  
30 of liquidation or rehabilitation; association action.  
31 If a domestic insurer is an impaired insurer under a  
32 final order of liquidation or rehabilitation, the as-  
33 sociation shall, subject to the approval of the su-  
34 perintendent:

35 A. Guarantee, assume or reinsure or cause to be  
36 guaranteed, assumed or reinsured the covered po-  
37 licies of the impaired insurer;

1           B. Assure payment of the appropriate  
2           contractual obligations of the impaired insurer;  
3           and

4           C. Provide such moneys, pledges, notes, guaran-  
5           tees or other means as are reasonably necessary  
6           to discharge these duties. If the association  
7           fails to act within a reasonable period of time,  
8           the superintendent shall have the powers and du-  
9           ties of the association under this chapter with  
10           respect to the domestic impaired insurer.

11           4. Foreign or alien impaired insurer under final  
12           order of liquidation, rehabilitation or conservation;  
13           association action. If a foreign or alien insurer is  
14           an impaired insurer under a final order of liquida-  
15           tion, rehabilitation or conservation, the association  
16           shall, subject to the approval of the superintendent:

17           A. Guarantee, assume or reinsure or cause to be  
18           guaranteed, assumed or reinsured the covered po-  
19           licies of residents;

20           B. Assure payment of the appropriate contractual  
21           obligations of the impaired insurer to residents;  
22           and

23           C. Provide such moneys, pledges, notes, guaran-  
24           tees or other means as are reasonably necessary  
25           to discharge these duties. If the association  
26           fails to act within a reasonable period of time,  
27           the superintendent shall have the powers and du-  
28           ties of the association under this chapter with  
29           respect to such foreign or alien impaired insur-  
30           er.

31           5. Policy liens; contract liens; moratoriums on  
32           payments. In carrying out its duties under subsec-  
33           tions 3 and 4, the association may request that there  
34           be imposed policy liens, contract liens, moratoriums  
35           on payments or other similar means and these liens,  
36           moratoriums or similar means may be imposed if the  
37           superintendent:

38           A. Finds that the amounts which can be assessed  
39           under this chapter are less than the amounts  
40           needed to assure full and prompt performance of



1 the impaired insurer's contractual obligations,  
2 or that the economic or financial conditions as  
3 they affect member insurers are sufficiently ad-  
4 verse to render the imposition of policy or con-  
5 tract liens, moratoriums or similar means to be  
6 in the public interest; and

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

9 Before being obligated under subsections 3 and 4 the  
10 association may request that there be imposed tempo-  
11 rary moratoriums or liens on payments of cash values  
12 and policy loans and such temporary moratoriums and  
13 liens may be imposed if they are approved by the su-  
14 perintendent.

15 6. Association liability. The association shall  
16 have no liability under this section for any covered  
17 policy of a foreign or alien insurer whose domicil-  
18 iary jurisdiction or state of entry provides by statu-  
19 te for residents of this State protection substan-  
20 tially similar to that provided by this chapter for  
21 residents of other states.

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

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

39 9. Subrogation rights. Any person receiving ben-  
40 efits under this chapter shall be deemed to have as-  
41 signed his rights under the covered policy to the as-

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

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

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

26 11. Other powers. The association may:

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

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

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

35 D. Employ or retain such persons as are neces-  
36 sary to handle the financial transactions of the  
37 association and to perform such other functions  
38 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 E or Class C assessment shall  
4           be divided among the accounts in the proportion  
5           that the present value of the liabilities for  
6           each account of the impaired insurer bears to the  
7           total liabilities of the impaired insurer. This  
8           paragraph shall not be a factor in the determina-  
9           tion as to whether the protection provided by  
10           statutes for residents of this State by the domi-  
11           ciliary jurisdiction of a foreign or alien insurer,  
12           is or is not substantially similar to the  
13           protection provided by this chapter for residents  
14           of other states.

15           B. Class A and Class C assessments against mem-  
16           ber insurers for each account shall be in the  
17           proportion that the premiums received on business  
18           in this State by each assessed member insurer on  
19           policies covered by each account bear to such  
20           premiums received on business in this State by  
21           all assessed member insurers.

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

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

1           4. Abatement or deferral of assessments. The as-  
2 sociation may abate or defer, in whole or in part,  
3 the assessment of a member insurer if, in the opinion  
4 of the board, payment of the assessment would endan-  
5 ger the ability of the member insurer to fulfill its  
6 contractual obligations. The total of all assessments  
7 upon a member insurer for each account shall not in  
8 any one calendar year exceed 2% of the insurer's pre-  
9 miums in this State on the policies covered by the  
10 account.

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

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

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

1     §4610. Plan of operation

2             1. Establishment of plan. A plan of operation  
3 shall be established as follows.

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

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

23            2. Compliance. All member insurers shall comply  
24 with the plan of operation.

25            3. Requirements of plan. The plan of operation  
26 shall, in addition to requirements enumerated else-  
27 where in this chapter:

28            A. Establish procedures for handling the assets  
29 of the association;

30            B. Establish the amount and method of reimburs-  
31 ing members of the board of directors under sec-  
32 tion 4607;

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

35            D. Establish procedures for records to be kept  
36 of all financial transactions of the association,  
37 its agents and the board of directors;

1 E. Establish the procedures whereby selections  
2 for the board of directors will be made and sub-  
3 mitted to the superintendent;

4 F. Establish any additional procedures for as-  
5 essments under section 4609; and

6 G. Contain additional provisions necessary or  
7 proper for the execution of the powers and duties  
8 of the association.

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

27 §4611. Duties and powers of the superintendent

28 In addition to the duties and powers enumerated  
29 elsewhere in this chapter:

30 1. Powers and duties. The superintendent shall:

31 A. Notify the board of directors of the exis-  
32 tence of an impaired insurer not later than 3  
33 days after a determination of impairment is made  
34 or he received notice of impairment;

35 B. Upon request of the board of directors, pro-  
36 vide the association with a statement of the pre-  
37 miums in the appropriate states for each member  
38 insurer;

1           C. When an impairment is declared, pursuant to  
2 section 4605, subsection 6, paragraph B, and the  
3 amount of the impairment is determined, serve a  
4 demand upon the impaired insurer to make good the  
5 impairment within a reasonable time. Notice of  
6 the impaired insurer shall constitute notice to  
7 its shareholders, if any. The failure of the in-  
8 surer to promptly comply with the demand shall  
9 not excuse the association from the performance  
10 of its powers and duties under this chapter; and

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

20           2. Suspension or revocation of certificate of  
21 authority to transact insurance. The superintendent  
22 may suspend or revoke, after notice and hearing, the  
23 certificate of authority to transact insurance in  
24 this State of any member insurer which fails to pay  
25 an assessment when due or fails to comply with the  
26 plan of operation. In lieu of such suspension or rev-  
27 ocation, any member insurer which fails to pay an as-  
28 essment when due or fails to comply with the plan of  
29 operation may be punished by a fine not to exceed the  
30 greater of 5% of the unpaid assessment per month or  
31 \$100 per month.

32           3. Appeal of actions of board of directors or  
33 association. Any action of the board of directors or  
34 the association may be appealed to the superintendent  
35 by any member insurer if such appeal is taken within  
36 30 days of the action being appealed. Any final ac-  
37 tion or order of the superintendent shall be subject  
38 to judicial review pursuant to chapter 3.

39           4. Notification of interested persons. The liq-  
40 uidator, rehabilitator or conservator of any impaired  
41 insurer may notify all interested persons of the ef-  
42 fect of this chapter.



1        §4612. Prevention of impairments

2            To aid in the detection and prevention of insurer  
3 impairments, the superintendent shall be notified  
4 when:

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

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

37           3. Reports and recommendations of board of di-  
38 rectors. The board of directors, upon majority vote,  
39 makes reports and recommendations to the superintend-  
40 ent upon any matter germane to the solvency, liquida-  
41 tion, rehabilitation or conservation of any member  
42 insurer. These reports and recommendations shall be  
43 treated as confidential by the superintendent;

1           4. Recommendations of board of directors; detec-  
2 tion and prevention of impairment. The board of di-  
3 rectors, upon majority vote, makes recommendations to  
4 the superintendent for the detection and prevention  
5 of insurer impairments; and

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

15           The superintendent shall report to the board of di-  
16 rectors when he has reasonable cause to believe that  
17 any member or licensed insurer subject to this chap-  
18 ter may be unable or potentially unable to fulfill  
19 its contractual obligations.

20           §4613. Appointment of association nominee

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

25           §4614. Miscellaneous provisions

26           1. Liability for unpaid assessments of insureds  
27 of an impaired insurer. Nothing in this chapter may  
28 be construed to reduce the liability for unpaid as-  
29 sessments of the insureds of an impaired insurer op-  
30 erating under a plan with assessment liability.

31           2. Records. Records shall be kept of all negoti-  
32 ations and meetings in which the association or its  
33 representatives are involved to discuss the activi-  
34 ties of the association in carrying out its powers  
35 and duties under section 4608. Records of the negoti-  
36 ations or meetings shall be made public only upon the  
37 termination of a liquidation, rehabilitation or con-  
38 servation proceeding involving the impaired insurer,  
39 upon the termination of the impairment of the insur-  
40 er, or upon the order of a court of competent juris-

1 diction. Nothing in this subsection limits the duty  
2 of the association to render a report of its activi-  
3 ties under section 4615.

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

22 4. Factors considered in distributing assets. In  
23 distributing assets, the following factors shall be  
24 considered.

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

36 B. No distribution to stockholders, if any, of  
37 an impaired insurer shall be made until and un-  
38 less the total amount of assessments levied by  
39 the association with respect to the insurer have  
40 been fully recovered by the association.

41 5. Unfair trade practice. It shall be a prohib-  
42 ited unfair trade practice for any person to make use

1 in any manner of the protection afforded by this  
2 chapter in the sale of insurance.

3 6. Recovery procedure; provisions. The recovery  
4 procedure shall provide that:

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

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

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

34 D. The maximum amount recoverable under this  
35 section shall be the amount needed in excess of  
36 all other available assets of the impaired insurer  
37 to pay the contractual obligations of the im-  
38 paired insurer on a fair and equitable basis; and

39 E. If any person liable under paragraph C is in-  
40 solvent, all its affiliates that controlled it at  
41 the time the dividend was paid shall be jointly

1 and severally liable for any resulting deficiency  
2 in the amount recovered from the insolvent affil-  
3 iate.

4 §4615. Examination of the association; annual report

5 The association shall be subject to examination  
6 and regulation by the superintendent. The board of  
7 directors shall submit to the superintendent, not la-  
8 ter than May 1st of each year, a financial report for  
9 the preceding calendar year in a form approved by the  
10 superintendent and a report of its activities during  
11 the preceding calendar year.

12 §4616. Tax exemptions

13 The association shall be exempt from payment of  
14 all fees and all taxes levied by this State or any of  
15 its subdivisions, except taxes levied on real or per-  
16 sonal property.

17 §4617. Immunity

18 There shall be no liability on the part of and no  
19 cause of action of any nature shall arise against any  
20 member or its agents or employees, the association or  
21 its agents or employees, members of the board of di-  
22 rectors or the superintendent or his representatives,  
23 for any action taken by them in the performance of  
24 their powers and duties under this chapter.

25 §4618. Stay of proceedings; reopening default judg-  
26 ments

27 All proceedings in which the impaired insurer is  
28 a party in any court in this State shall be stayed 60  
29 days from the date an order of liquidation, rehabili-  
30 tation or conservation is final to permit proper le-  
31 gal action by the association on any matters germane  
32 to its powers or duties. As to a judgment under any  
33 decision, order, verdict or finding based on default,  
34 the association may apply to have the judgment set  
35 aside by the same court that made the judgment and  
36 shall be permitted to defend against the suit on the  
37 merits.

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STATEMENT OF FACT

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This new draft affords Maine resident policyholders and policyholders of Maine domestic insurers throughout the United States, a greater assurance of receiving insurance contract benefits in those instances where insurers doing business in the State default on their policy obligations or become insolvent, by instituting a life and health guaranty association, similar to the association which already exists for other types of insurers.

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