

# 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)



# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

---

Legislative Document

No. 2253

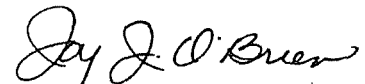
---

S.P. 884

In Senate, February 1, 1990

Reported by Senator THERIAULT of Aroostook for the Committee on Banking and Insurance pursuant to Public Law 1989, chapter 67.

Reference to the Committee on Banking and Insurance suggested and ordered printed pursuant to Joint Rule 18.

  
JOY J. O'BRIEN  
Secretary of the Senate

---

STATE OF MAINE

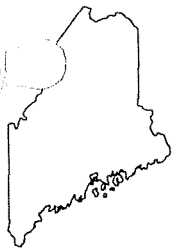
---

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

---

An Act to Improve Oversight of the Financial Condition of Insurers.

---



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

2

4

PART A

6

24-A MRSA §414, sub-§4 is enacted to read:

8

10

12

14

16

18

4. Insurance Regulatory Information System. Insurers required to file an annual statement must, as a condition to the issuance or continuance of a certificate of authority, provide the National Association of Insurance Commissioners with all information required for participation in the Insurance Regulatory Information System. Insurers shall provide written certification to the superintendent that they have complied with this subsection when they file their annual statements. This subsection does not apply to any insurer doing business under chapter 51.

20

PART B

22

Sec. B-1. 24-A MRSA §1106, sub-§1, ¶C, as enacted by PL 1969, c. 132, §1, is amended to read:

24

C. 1109 (investment grade corporate obligations);

26

28

Sec. B-2. 24-A MRSA §1106, sub-§2, ¶¶C and D, as enacted by 1969, c. 132, §1, are amended to read:

30

C. 1115 (stocks of subsidiaries); and

32

D. 1120, subsection 2 (mutual funds); and

34

Sec. B-3. 24-A MRSA §1106, sub-§2, ¶E is enacted to read:

36

E. 1109-A (high yield corporate obligations).

38

Sec. B-4. 24-A MRSA §1109, first ¶, as enacted by PL 1969, c. 132, §1, is amended to read:

40

42

44

46

48

An insurer may invest in obligations, other than those eligible for investment under section 1124 (mortgage loans), issued, assumed or guaranteed by any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, which provided that the obligations are not in default as to principal or interest, are investment grade corporate obligations as defined in section 1162, subsection 6, and which are qualified under any of the following:

50

52

Sec. B-5. 24-A MRSA §1109-A is enacted to read:

2            §1109-A. High-yield corporate obligations

4            Subject to the limitation set forth in section 1106,  
6            subsection 2, an insurer may invest in corporate obligations that  
8            are high-yield obligations as defined in section 1162, subsection  
          4, provided the obligations meet the requirements of section  
          1109, except the requirement that the obligation be an investment  
          grade obligation.

10    PART C

12            Sec. C-1. 24-A MRSA §221-A, sub-§3, as enacted by PL 1985, c.  
14            330, §1, is amended to read:

16            3.   Audits required. All insurers, excepting insurers  
18            transacting business in this State pursuant to the terms of  
20            chapter 51, shall cause to be conducted an annual audit by an  
22            independent certified public accountant and shall file an audited  
24            financial report with the superintendent on or before June 30th  
          for the year ending December 31st preceding. An extension of the  
          filing deadline may be granted by the superintendent upon a  
          showing by the insurer or its accountant that there exists valid  
          justification for such an extension. A firm of independent  
          certified public accountants engaged to perform an audit of an  
26            insurer shall substitute the appointed audit partner in charge  
28            with another audit partner in charge when an engagement has  
          lasted more than 7 years. An accountant substituted for pursuant  
          to this subsection may not serve as a partner in charge of that  
30            audit until 2 years from the date of substitution.

32            Sec. C-2. 24-A MRSA §221-A, sub-§8, ¶A, as enacted by PL 1985,  
34            c. 636, is amended to read:

36            A.   The accountant immediately notify in writing the  
38            ~~chairman~~ each member of the board of directors of the  
40            insurer and the superintendent upon any determination by the  
42            independent certified public accountant that the insurer has  
44            materially misstated its financial condition as reported in  
46            the annual statement required under section 423 for the year  
48            ending December 31st preceding; and

44            Sec. C-3. 24-A MRSA §414, sub-§5 is enacted to read:

50            5. The superintendent may require insurers subject to this  
52            section to make available any accountant's work papers created  
          during an audit.

A. The superintendent may review the accountant's work  
          papers upon timely notice to the insurer. The  
          superintendent may photocopy or otherwise record the  
          contents of work papers during the review.

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

B. Any work papers or copies of work papers under the superintendent's custody or control are confidential and are not subject to public inspection.

C. The work papers of an insurer's subsidiaries, parent or other corporate affiliates are deemed to be the insurer's work papers to the extent that the work papers reference transactions between the insurer and the subsidiary, parent or corporate affiliate and affect the insurer's final equity determination.

D. The insurer shall, as a condition of the accountant's engagement, require accountants:

(1) To retain any work papers prepared in connection with an audit of the insurer for at least 6 years after the close of a reporting period; and

(2) To provide the work papers, or a copy, to the insurer at the insurer's request.

E. For purposes of this subsection, the term "work papers" includes, but is not limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in conducting the examination of the insurer.

**PART D**

**Sec. D-1. 24-A MRSA §601, sub-§18 is enacted to read:**

**18. Third-party administrators license.**

**A. Application fee .....\$50**

**B. Annual fee .....\$25**

**Sec. D-2. 24-A MRSA c. 18 is enacted to read:**

**CHAPTER 18**

**INSURANCE ADMINISTRATORS**

**§1901. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. "Administrator" means any person who, on behalf of a plan sponsor or insurer, receives or collects charges, contributions or premiums for, or adjusts or settles claims on residents of this State in connection with any type of life, annuity, health or workers' compensation benefit provided in or as an alternative to insurance as defined by sections 702 to 704, or Title 39, other than any of the following:

A. An employer on behalf of the employer's employees or the employees of one or more subsidiary or affiliated corporations of the employer;

B. A union on behalf of its members;

C. A plan sponsor administering its own plan;

D. An insurance company that is:

(1) Authorized to transact insurance business in this State; or

(2) Acting as an insurer with respect to a policy lawfully issued and delivered by that company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business;

E. A health care services plan, health maintenance organization, professional service plan corporation, or person in the business of providing continuing care, possessing a valid certificate of authority issued by the Bureau of Insurance, and a sales representative of that person, plan, organization or corporation, if the activities of the plan, organization, corporation or person are limited to the activities permitted under the certificate of authority;

F. An insurance agent licensed in this State, whose activities are limited to the scope of that license;

G. An adjuster licensed in this State, whose activities are limited to the adjustment of claims;

H. A creditor on behalf of the creditor's debtors with respect to insurance covering a debt between the creditor and its debtors;

I. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 United States Code, Section 186;

J. A trust exempt from taxation under the federal Internal Revenue Code of 1986, Section 501(a), and the trustees and

2 employees acting pursuant to that trust, or a custodian and  
3 its agents and employees, including individuals representing  
4 the trustees in overseeing the activities of a service  
5 company or administrator, acting pursuant to a custodial  
6 account that meets the requirements of the federal Internal  
7 Revenue Code of 1986, Section 401(f);

8 K. A financial institution as defined in section 1514-A or  
9 a mortgage lender that collects and remits premiums to  
10 licensed insurance agents or authorized insurers  
11 concurrently or in connection with mortgage loan payments;

12 L. A credit card issuing company that advances for and  
13 collects premiums or charges from its credit card holders  
14 who have authorized that collection if the company does not  
15 adjust or settle claims;

16 M. A person who adjusts or settles claims in the normal  
17 course of that person's practice or employment as an  
18 attorney and who does not collect charges or premiums in  
19 connection with life or health insurance coverage; and

20 N. A person who administers only single-employer  
21 self-insured life, annuity or health benefit plans.

22 2. "ATF" means an administrator trust fund that is a  
23 special fiduciary account, established and maintained by an  
24 administrator under section 1909, in which contributions and  
25 premiums are deposited.

26 3. "CASA" means a claims administration services account  
27 that is a special fiduciary account, established and maintained  
28 by an administrator under section 1909, from which claims and  
29 claims adjustment expenses are disbursed.

30 4. "Charges" means any compensation paid by a plan sponsor  
31 or insurer for services performed by the administrator.

32 5. "Contributions" means any money charged a covered  
33 individual, plan sponsor or other entity to fund the self-insured  
34 portion of any plan in accordance with written provisions of the  
35 plan or contracts of insurance. Contributions include  
36 administrative fees charged to a covered individual.  
37 "Administrative fee" means any compensation paid by a covered  
38 individual for services performed by the administrator.

39 6. "Covered individual" means any individual eligible for  
40 life, annuity or health benefits under a plan.

41 9. "Plan" means any plan, fund or program established or  
42 maintained by a plan sponsor or insurer to the extent that the  
43 plan, fund or program was established or is maintained to provide  
44 benefits to or for the employees of the employer.

2 through insurance or alternatives to insurance any type of life,  
3 annuity, health or workers' compensation benefit within the scope  
4 of sections 702 to 704 or Title 39.

5  
6 8. "Plan sponsor" means any person, other than an insurer,  
7 who establishes or maintains a plan covering residents of this  
8 State, including, but not limited to, plans established or  
9 maintained by 2 or more employers or jointly by one or more  
10 employers and one or more employee organizations, the  
11 association, committee, joint board of trustees or other similar  
12 group of representatives of the parties that establish or  
13 maintain the plan. Notwithstanding the above, plan sponsor does  
14 not include:

15 A. The employer when a plan is established or maintained by  
16 a single employer; or

17 B. The employee organization when a plan is established or  
18 maintained by an employee organization.

19  
20 The provisions of this chapter apply to plan sponsors covered in  
21 whole by the federal Employee Retirement Income Security Act of  
22 1974 (ERISA) only to the extent that the provisions of this  
23 chapter are not inconsistent with or in conflict with any  
24 provisions of ERISA as now or hereafter amended.

25  
26 7. "Premium" means any money charged a covered individual,  
27 plan sponsor or other entity to provide life or accident or  
28 health insurance under a plan. The term "premium" includes  
29 amounts paid by or charged to a covered individual plan sponsor  
30 or other entity for stop loss or excess insurance.

31  
32  
33 10. "Quasi-resident" means a nonresident licensee who  
34 produces 50% or more of calendar year contributions and premium  
35 volume from residents of this State.

36  
37 **§1902. License required**

38  
39 A person may not act as or profess to be an administrator  
40 after July 1, 1990, unless licensed under this chapter. An  
41 administrator doing business in this State on July 1, 1990, shall  
42 apply for a license by October 1, 1990. In addition to any other  
43 penalty that may be imposed for violation of this Title, any  
44 person violating this section shall, upon conviction, be punished  
45 by a fine of not less than \$100 nor more than \$1,000 or by  
46 imprisonment for less than one year, or both.

47  
48 **§1903. Application**

49  
50



2 An applicant for a license shall file with the  
3 superintendent an application, on a form prescribed by the  
4 superintendent, that must include or have attached the following:

6 1. The names, addresses and official positions of the  
7 individuals who are responsible for the conduct of the affairs of  
8 the administrator, including, but not limited to, all members of  
9 the board of directors, board of trustees, executive committee,  
10 or other governing board or committee, the principal officers in  
11 the case of a corporation or the partners in the case of a  
12 partnership; and

14 2. An application fee, as specified in section 601, that  
15 the superintendent shall apply toward the initial administrator  
16 annual fee if an administrator's license is granted to the  
17 applicant.

18 **§1904. Bond requirements for administrators**

20 1. Every applicant for an administrator's license shall  
21 file with the application, and shall maintain in force while  
22 licensed, a fidelity bond in favor of the people of the State  
23 executed by a surety company and payable to any party injured  
24 under the terms of the bond. The bond must be continuous in form  
25 and in one of the following amounts:

26 A. For an administrator that maintains an ATF but does not  
27 maintain a CASA, the greater of \$50,000 or 5% of  
28 contributions and premiums projected to be received or  
29 collected in the ATF for the following plan year from  
30 residents of the State, but not to exceed \$1,000,000;

32 B. For an administrator that maintains a CASA but does not  
33 maintain an ATF, the greater of \$50,000 or 5% of the claims  
34 and claim expenses projected to be held in the CASA for the  
35 following year to pay claims and claim expenses for  
36 residents of the State, but not to exceed \$1,000,000; or

38 C. For an administrator that maintains an ATF and a CASA,  
39 the greater of the amounts determined under paragraph A or  
40 B, but not to exceed \$1,000,000.

42 This subsection applies to an administrator who is required to  
43 maintain funds in a fiduciary capacity as set forth in section  
44 1909, unless the administrator has contracted with the insurer as  
45 an administrator and the plan is fully insured by the insurer on  
46 whose behalf the funds are held.

48 2. The bond must remain in force and effect until the  
49 surety is released from liability by the superintendent or until  
50 the bond is cancelled by the surety. The surety may cancel the  
51 bond and be released from further liability under the bond upon  
52 the expiration of the term of the bond.

2 30 days' written notice in advance to the superintendent. The  
3 cancellation does not affect any liability incurred or accrued  
4 under the bond before the 30-day period expires. Upon receiving  
5 any notice of cancellation, the superintendent shall immediately  
6 notify the licensee.

7 3. The administrator's license automatically terminates if  
8 the bond required by this section is not in force. Within 30  
9 days after the bond ceases to be in force, the administrator  
10 shall return the license to the superintendent for cancellation.

11 **§1905. License**

12 1. The superintendent shall have a license issued to each  
13 applicant that complies with this chapter.

14 2. Unless revoked or suspended under section 1907, an  
15 administrator license remains in effect as long as the holder of  
16 the license maintains in force and effect the bond required by  
17 section 1904 and pays the annual fee required by section 601  
18 before the anniversary date of the license.

19 3. Each license must contain:

20 A. The name, business address and identification number of  
21 the licensee;

22 B. The date the license was issued; and

23 C. Any other information the superintendent considers  
24 proper.

25 **§1906. Administrator requirements**

26 1. Each administrator shall identify to the superintendent  
27 any ownership interest or affiliation of any kind with any plan  
28 sponsor or insurer responsible directly or through reinsurance  
29 for providing benefits to any plan for which the administrator  
30 provides services as an administrator.

31 2. An administrator shall provide services as an  
32 administrator only pursuant to a written agreement between the  
33 administrator and the plan sponsor or insurer. The administrator  
34 shall retain the written agreement as part of its records for the  
35 duration of the agreement and for 5 years after the agreement  
36 expires.

37 3. An administrator shall maintain, in its principal office  
38 for the duration of the written agreement with any plan sponsor  
39 or insurer and for 5 years after the agreement expires, adequate  
40 books and records of all transactions involving a plan sponsor or  
41 insurer and covered individuals and beneficiaries. These books  
42

2 and records must be maintained in accordance with generally  
4 accepted standards of business recordkeeping. An administrator  
6 is not required to maintain copies of books and records if the  
8 originals are returned to the plan sponsor or insurer before the  
10 end of the 5-year period. The administrator shall maintain  
12 evidence of the return of the originals for the balance of the  
14 5-year period.

16 4. The administrator shall file with the superintendent the  
18 names and addresses of the insurers and plan sponsors with whom  
20 the administrator has entered into written agreements. If an  
22 insurer or plan sponsor does not assume or bear the risk, the  
24 administrator must disclose the name and address of the ultimate  
26 risk bearer. This subsection applies to the initial application  
28 for an administrator's license and any renewal of a license.

30 5. An administrator may use advertising pertaining to the  
32 plan only if that advertising has been approved in advance by the  
34 plan sponsor or insurer.

36 6. Upon receiving instructions from the plan sponsor or  
38 insurer, an administrator shall deliver promptly to covered  
40 individuals or beneficiaries all policies, certificate booklets,  
42 termination notices or other written communications.

44 7. An administrator may not receive compensation from a  
46 plan sponsor or insurer that is contingent upon the loss ratio of  
48 the plan. This subsection does not, however, prevent the  
50 administrator from engaging in cost containment activities with a  
52 plan sponsor or insurer.

8. An administrator may not receive from any plan sponsor,  
insurer, covered individual or beneficiary under a plan any  
compensation or other payments except as expressly set forth in  
the written agreement between the administrator and the plan  
sponsor or insurer.

9. Upon request of the superintendent, an administrator  
shall make available for examination, either at the Bureau of  
Insurance or at the licensee's principal place of business, all  
basic organizational documents, including, but not limited to,  
articles of incorporation, articles of association, partnership  
agreements, trade name certificates, trust agreements,  
shareholder agreements and other applicable documents and all  
amendments to those documents, bylaws, rules and regulations or  
similar documents regulating the conduct of the administrator's  
internal affairs.

**§1907. License suspension, revocation or denial**

Any license issued under this chapter may be suspended or  
revoked after notice to the licensee and an opportunity for

2 hearing and any application for license may be denied after  
3 notice and opportunity for hearing:

4 1. For any of the grounds for suspension or revocation of a  
5 license set forth in section 1539; or

6 2. If the licensee or applicant:

7 A. Is using any methods or practices in conducting business  
8 that renders further transaction of business in this State  
9 hazardous or injurious to covered individuals or the public;

10 B Is affiliated with and is under the same general  
11 management as another administrator that transacts business  
12 in this State without being licensed under this chapter; or

13 C. Has failed to report a conviction as required by section  
14 1908.

15  
16  
17  
18  
19 **§1908. Criminal convictions**

20 Any administrator and any individual listed on the  
21 application, as required by section 1903, who is convicted of a  
22 crime punishable by imprisonment for more than one year shall  
23 report that conviction to the superintendent within 30 days after  
24 judgment is entered. Within that 30-day period, the  
25 administrator shall also provide the superintendent with a copy  
26 of the judgment and any commitment order and any other relevant  
27 documents relating to disposition of the criminal action.

28  
29 **§1909. Fiduciary accounts and duties**

30  
31 1. Administrators shall hold in a fiduciary capacity all  
32 contributions and premiums received or collected on behalf of a  
33 plan sponsor or insurer. These funds may not be used as general  
34 operating funds of the administrator. All contributions and  
35 premiums received or collected by the administrator from  
36 residents of this State that the administrator holds more than 15  
37 days or deposits into an account that is not under the control of  
38 the plan sponsor or insurer, must be placed in a special  
39 fiduciary account, designated as an ATF. All resident and  
40 quasi-resident licensees required to maintain an ATF under this  
41 section shall maintain the ATF with one or more financial  
42 institutions located within the State and subject to jurisdiction  
43 of the courts of this State. Funds belonging to 2 or more plans  
44 may be held in the same ATF, provided the administrator's records  
45 clearly indicate the funds belonging to each plan. Checks drawn  
46 on the ATF must indicate on the face of the checks that the  
47 checks are drawn on the administrator's ATF.

48  
49 2. The administrator may make the following disbursements  
50 from the ATF:  
51  
52

- 2           A. Contributions and premiums due insurers or other persons  
4           providing life, accident and health, or workers'  
              compensation coverage for a plan;
- 6           B. Return contributions and premiums to a plan or covered  
8           individual;
- 10          C. Commissions or administrative fees due to the  
              administrator when earned under a written agreement; and
- 12          D. Transfers into the CASA of the administrator.

14          3. For each plan for which an ATF is required, the balance  
16          in the ATF must at all times be the amount deposited plus accrued  
18          interest, if any, less authorized disbursements. If the balance  
20          at the financial institution, with respect to the ATF, is less  
22          than the amount deposited plus accrued interest, if any, less  
              authorized disbursements, the administrator is presumed, for  
              purposes of license revocation or suspension, to have  
              misappropriated funds and to have acted in a financially  
              irresponsible manner.

24          4. Before establishing an ATF that is interest bearing or  
26          income producing, the administrator shall disclose the nature of  
28          the account to the plan sponsor or insurer on whose behalf the  
30          funds are to be held. The administrator shall secure written  
32          consent and authorization from the plan sponsor or insurer for  
34          the investment of the money and disposition of the interest or  
36          earnings. An administrator may not make any investment that  
              assumes a risk other than the risk that the obligor might not pay  
              the principal when due. The administrator may not use  
              specialized techniques or strategies that incur additional risks  
              to generate higher returns or to extend maturities. Such  
              techniques include, but are not limited to, the use of financial  
              futures or options, buying on margins and pledging of ATF  
              balances.

38          5. Administrators may place ATF funds in interest bearing  
40          or income producing investments and retain the interest or income  
42          on the funds, provided the administrator obtains the prior  
44          written authorization of the plan sponsors or insurers on whose  
              behalf the funds are to be held. In addition to savings and  
              checking accounts, an administrator may invest in the following:

46          A. Direct obligations of the United States or government  
48          agency securities with maturities of not more than one year;

50          B. Certificates of deposit, with a maturity of not more  
52          than one year, issued by financial institutions insured by  
              the Federal Deposit Insurance Corporation (FDIC) or Federal  
              Savings and Loan Insurance Corporation (FSLIC), provided any

2 such deposit does not exceed the maximum level of insurance  
3 protection provided to certificates of deposit held by those  
4 institutions;

5 C. Repurchase agreements with financial institutions or  
6 government securities dealers recognized as primary dealers  
7 by the Federal Reserve System provided:

8 (1) The value of the repurchase agreement is  
9 collateralized with assets that are allowable  
10 investments for ATF funds;

11 (2) The collateral has a market value, at the time the  
12 repurchase agreement is entered into, at least equal to  
13 the value of the repurchase agreement; and

14 (3) The repurchase agreement does not exceed 30 days;

15 D. Commercial paper, provided the commercial paper is rated  
16 at least P-1 by Moody's Investors Service, Inc. or at least  
17 A-1 by Standard & Poor's Corporation; or

18 E. Money market funds, provided the money market fund  
19 invests exclusively in assets that are allowable investments  
20 pursuant to paragraphs A to D for ATF funds.

21 Each investment transaction must be made in the name of the  
22 administrator's ATF. The administrator shall maintain evidence  
23 of any such investments. Each investment transaction must flow  
24 through the administrator's ATF.

25 6. The administrator shall hold in a fiduciary capacity all  
26 money that the administrator receives to pay claims and claim  
27 adjustment expenses. All resident and quasi-resident licensees  
28 shall place all such money for claims and claim adjustment  
29 expenses for residents of this State, whether received from a  
30 plan sponsor or insurer or from the administrator's ATF, in a  
31 special fiduciary account in a financial institution located in  
32 this State. The account must be designated a CASA. Funds  
33 belonging to 2 or more plans may be held in the same CASA,  
34 provided the administrator's records clearly indicate the funds  
35 belonging to each plan. Checks drawn on the CASA must indicate  
36 on the face of the checks that the checks are drawn on the  
37 administrator's CASA.

38 7. No deposit may be made into a CASA and no disbursement  
39 may be made from a CASA except for claims and claim adjustment  
40 expenses. For each plan for which a CASA is required, the  
41 balance in the CASA must at all times be the amount deposited  
42 less claims and claims adjustment expenses paid. If the CASA  
43 balance is less than that amount, the administrator shall be  
44 presumed, for purposes of license revocation or suspension, to  
45

2 have misappropriated funds and to have acted in a financially  
3 irresponsible manner.

4 8. Administrators shall maintain detailed books and records  
5 that reflect all transactions involving the receipt and  
6 disbursement of:

7 A. Contributions and premiums received on behalf of a plan  
8 sponsor or insurer; and

9 B. Claims and claim adjustment expenses received and paid  
10 on behalf of a plan sponsor or insurer.

11 9. The detailed preparation, journalizing and posting of  
12 books and records required by subsection 8 must be maintained on  
13 a timely basis and all journal entries for receipts and  
14 disbursements must be supported by evidential matter that must be  
15 referenced in the journal entry so that receipts and  
16 disbursements may be traced for verification. Administrators  
17 shall prepare and maintain monthly financial institution account  
18 reconciliations of any ATF and CASA established by the  
19 administrator. The reconciliation must include, at a minimum,  
20 the following:

21 A. The source and amount of any money received and  
22 deposited by the administrator, and the date of receipt and  
23 deposit;

24 B. The date each disbursement was made, the person to whom  
25 the disbursement was made and a written explanation of any  
26 difference between the amount disbursed and the amount  
27 billed or authorized; and

28 C. A description of the disbursement in sufficient detail  
29 to identify the source document substantiating the purpose  
30 of the disbursement.

31 10. Failure to accurately maintain the required books and  
32 records in a timely manner is deemed to be untrustworthy,  
33 hazardous or injurious to participants in the plan or the public  
34 and financially irresponsible.

35 11. This section does not apply - to nonresident  
36 administrators who are subject to substantially similar  
37 requirements in their state of domicile.

38 **§1910. Unauthorized activities**

39 Nothing in this chapter may be construed to permit any  
40 person or entity to receive or collect charges, contributions or  
41 premiums for, or adjust or settle claims in connection with, any  
42 type of life or accident or health benefit, unless the person or  
43 entity is a member of the plan.

2 entity is authorized through the insurance laws of a state or the  
3 Employee Retirement Income Security Act of 1974, 29 United States  
4 Code, Section 1001 et seq. as amended, to provide those benefits.

6 PART E

8 Sec. E-1. 24-A MRSA §731, as amended by PL 1985, c. 330, §§7  
9 to 9, is repealed.

10 Sec. E-2. 24-A MRSA §§731-A to 731-D are enacted to read:

12 §731-A. Acceptance of reinsurance

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

20 §731-B. Credit for reinsurance

22 1. Credit for reinsurance is allowed a domestic ceding  
24 insurer as either an asset or a deduction from liability on  
26 account of reinsurance ceded only when the reinsurance is ceded  
28 to a solvent assuming insurer that:

30 A. Is licensed to transact insurance or reinsurance in this  
32 State, provided the insurer has surplus to policyholders in  
34 an amount not less than the paid-in capital stock required  
36 of an authorized foreign stock insurer transacting like  
38 kinds of insurance;

40 B. Is licensed in at least one state that employs standards  
42 regarding credit for reinsurance substantially similar to  
44 those applicable under this section, provided the insurer  
46 has surplus to policyholders in an amount not less than the  
48 paid-in capital stock required of an authorized foreign  
50 stock insurer transacting like kinds of insurance; or

52 C. Maintains a trust fund in a qualified United States  
financial institution for the payment of the valid claims of  
its United States policyholders and ceding insurers, their  
assigns and successors in interest.

(1) The assuming insurer shall report annually to the  
superintendent information substantially the same as  
that required to be reported on the National  
Association of Insurance Commissioners Annual Statement  
form by licensed insurers to enable the superintendent  
to determine the sufficiency of the trust fund.

(2) In the case of a single assuming insurer, the  
trust must consist of a trustee account representing



2 the assuming insurer's liabilities attributable to  
business written in the United States and, in addition,  
4 include a trusteed surplus of at least \$20,000,000.

6 (3) In the case of a group of individuals that  
constitutes a syndicate of unincorporated alien  
8 underwriters, the trust must consist of a trusteed  
account representing the group's liabilities  
10 attributable to business written in the United States  
and, in addition, include a trusteed surplus of at  
12 least \$100,000,000. The group shall make available to  
the superintendent an annual certification by the  
14 group's domiciliary regulator and its independent  
public accountants of the solvency of each underwriter.

16 (4) The trust must be established in a form approved  
by the superintendent. The trust instrument must  
18 provide that contested claims are valid and enforceable  
upon the final order of any court of competent  
20 jurisdiction in the United States. The trust must vest  
legal title to its assets in the trustees of the trust  
22 for its United States policyholders and ceding  
insurers, their assigns and successors in interest.  
24 The trust and the assuming insurer are subject to  
examination as determined by the superintendent. The  
26 trust must remain in effect for as long as the assuming  
insurer has outstanding obligations due under the  
28 reinsurance agreements subject to the trust.

30 (5) The trustees of the trust shall report to the  
superintendent in writing by February 28th of each  
32 year, setting forth the balance of the trust and  
listing the trust's investments at the end of the  
34 preceding year and certifying the date of termination  
of the trust, if so planned, or certifying that the  
36 trust does not expire before December 31st of the  
current year.

38 (6) The corpus of the trust is to be valued as any  
40 other admitted asset or assets.

42 2. The credit permitted by subsection 1 is not to be  
allowed unless the assuming insurer agrees in the reinsurance  
44 agreements:

46 A. That, if the assuming insurer fails to perform its  
obligations under the terms of the reinsurance agreement,  
48 the assuming insurer, at the request of the ceding insurer:

50 (1) Will submit to the jurisdiction of any court of  
competent jurisdiction in any state of the United  
52 States;

2                   (2) Will comply with all requirements necessary to  
3                   give the court jurisdiction; and

4  
5                   (3) Will abide by the final decision of the court or  
6                   of any Appellate Court in the event of an appeal; and

7  
8                   B. To designate the superintendent or an attorney as its  
9                   attorney upon whom may be served any lawful process in any  
10                   action, suit or proceeding instituted by or on behalf of the  
11                   ceding company, as required in section 421.

12  
13                   This provision is not intended to conflict with or override the  
14                   obligation of the parties to a reinsurance agreement to arbitrate  
15                   their disputes, if such an obligation is created in the agreement.

16  
17                   3. A reduction from liability for the reinsurance ceded to  
18                   an assuming insurer not meeting the requirements of subsection 1  
19                   is allowed in an amount not exceeding the liabilities carried by  
20                   the ceding insurer. The reduction must equal the value of funds  
21                   held by or on behalf of the ceding insurer, including funds held  
22                   in trust for the ceding insurer, under a reinsurance contract  
23                   with such assuming insurer as security for the payment of  
24                   obligations under the contract, if such security is held in the  
25                   United States subject to withdrawal solely by, and under the  
26                   exclusive control of, the ceding insurer or, in the case of a  
27                   trust, held in a qualified United States financial institution.  
28                   This security may be in the form of:

29                   A. Cash;

30  
31                   B. Securities listed by the Securities Valuation Office of  
32                   the National Association of Insurance Commissioners and  
33                   qualifying as admitted assets; or

34  
35                   C. Clean, irrevocable, unconditional letters of credit,  
36                   issued or confirmed by a qualified United States financial  
37                   institution, provided the Securities Valuation Office of the  
38                   National Association of Insurance Commissioners has  
39                   determined that the institution meets the standards that it  
40                   determines necessary and appropriate to the quality of a  
41                   financial institution issuing letters of credit for this  
42                   purpose.

43  
44                   (1) A letter of credit from an issuer determined to be  
45                   acceptable as of the date of issuance or the date of  
46                   confirmation of the letter, notwithstanding the issuing  
47                   or confirming institution's subsequent failure to meet  
48                   applicable standards of issuer acceptability, continues  
49                   to be acceptable as security until its expiration,  
50                   extension, renewal, modification or amendment,  
51                   whichever first occurs. The ceding insurer shall  
52

2 replace a nonqualifying letter of credit at its  
3 earliest opportunity.

4 (2) The letter of credit must indicate that it is not  
5 subject to any condition or qualification outside the  
6 letter of credit, and that the beneficiary need only  
7 draw a sight draft under the letter and present the  
8 letter to obtain funds and that no other document need  
9 be presented.

10 4. For purposes of this section, "qualified United States  
11 financial institution" means an institution that:

12 A. Is organized, or in the case of a United States branch  
13 or agency office of a foreign banking organization licensed  
14 under the laws of the United States or any state, and has  
15 been granted authority to operate with fiduciary powers; and

16 B. Is regulated, supervised and examined by federal or  
17 state authorities having regulatory authority over banks and  
18 trust companies.

19 5. Credit is allowed as an asset or deduction from  
20 liability to any ceding insurer only for reinsurance ceded to an  
21 assuming insurer qualified under this section, except that no  
22 credit is allowed, unless the reinsurance is payable by the  
23 assuming insurer on the basis of the liability of the ceding  
24 insurer under the contracts reinsured without diminution because  
25 of the insolvency of the ceding insurer.

26 6. This section does not apply to wet marine and  
27 transportation insurance.

28 7. The superintendent may adopt rules, subject to Title 5,  
29 chapter 375, to implement this section.

30 **§731-C. Bulk reinsurance**

31 The cession of bulk reinsurance by a domestic insurer is  
32 subject to section 3483.

33 **§731-D. Notification of reinsurance changes**

34 Upon request of the superintendent, an insurer shall  
35 promptly inform the superintendent in writing of the cancellation  
36 or any other material change of any of the insurer's reinsurance  
37 treaties or arrangements.

38 Sec. E-3. 24-A M RSA §3483, sub-§6 is enacted to read:

39 6. The superintendent may adopt rules, subject to Title 5,  
40 chapter 375, to effectuate this section.

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50  
52

**STATEMENT OF FACT**

This is one of 2 bills containing the recommendations of the Subcommittee to Study the Current Operation of State Insurance Guaranty Funds of the Joint Standing Committee on Banking and Insurance. This bill includes recommendations for improvements in the oversight of insurers.

Part A of this bill requires insurers to provide information to the National Association of Insurance Commissioners (NAIC) to enable that organization to operate the Insurance Regulatory Information System (IRIS). IRIS assists insurance regulators in overseeing the financial condition of insurers by collecting, analyzing and distributing certain financial information about all insurers in the United States. Although Maine insurers currently provide the necessary information to the NAIC, there is no statutory requirement that they do so. The subcommittee recommends that this requirement be added to Maine law.

Part B of this bill amends the law regulating investments by insurers, to include a limit on the amount of "junk bonds" that an insurer may invest in. The bill limits investment in bonds that are not rated by a nationally recognized rating agency, such as Standard & Poor's, but which otherwise meet the security requirements of Maine law, in the same way that it limits investment in stocks. Current law limits investment in stocks and other riskier investments so that the aggregate amount invested in such vehicles may not exceed the insurer's surplus as regards policyholders.

Part C of this bill relates to audits of insurers by certified public accountants (CPA). Although Maine law requires insurers to be audited annually by a CPA, and to submit an audited financial statement, Maine law does not require insurers to grant the Bureau of Insurance access to the working papers used in putting together the financial statement. This bill requires the insurer to provide access to the work papers, to enable the bureau to oversee the financial condition of the insurer more fully without having to perform a full bureau examination. Work papers in the custody of the superintendent are confidential and not subject to public inspection. The bill also requires the CPA firm to rotate the partner in charge of an audit every 7 years, and requires the CPA to notify all members of the board of directors of an insurer if the CPA determines that the insurer has materially misstated its financial condition on its annual statement. Current law requires notification of only the chair of the board.

Part D of this bill enacts a new chapter in the Maine Insurance Code to regulate 3rd-party administrators (TPA). TPAs

2 are persons or companies that provide administrative services to  
3 insurers and self-insurers in operation of health, life and  
4 annuity plans, and workers' compensation benefit programs.  
5 Depending on the agreement between the TPA and the insurer or  
6 plan sponsor, the TPA may collect and remit premiums to the  
7 insurer or assets manager of a self-insured plan, process and pay  
8 claims in accordance with the provisions of the plan or insurance  
9 contract, or any combination of these actions. Although the  
10 federal Employee Retirement Income Security Act (ERISA) regulates  
11 TPAs in some ways in their dealings with self-insured plans,  
12 there is no state law regulating TPAs or their actions with  
13 respect to insured plans.

14 This bill requires TPAs to be licensed by the Bureau of  
15 Insurance, and to file a bond with the State that is to be  
16 payable to any person injured by the TPAs actions. If the TPA is  
17 acting under a contract with an insurer, for a fully insured  
18 plan, and the TPA only handles money of the insurer, no bond is  
19 required. The bill requires the TPA to maintain a fiduciary  
20 account for the deposit of all premiums collected, and all money  
21 held by the TPA for the purpose of paying claims. The bill  
22 contains guidelines for recordkeeping of transactions and  
23 payments by the TPAs.

24 Part E of this bill amends the law relating to credit for  
25 reinsurance ceded by an insurer. The bill makes the following  
26 changes in the standards that must be met for a ceding insurer to  
27 obtain credit for insurance ceded to an assuming insurer: the  
28 assuming insurer must agree in a reinsurance agreement to submit  
29 to jurisdiction of any court in any state; the amount of the  
30 required trust for a single assuming insurer that is not licensed  
31 in Maine or a state with comparable standards is increased from  
32 \$10,000,000 to \$20,000,000; the trust form and reporting  
33 requirements are tightened; and the proposal explicitly provides  
34 for a reduction from liability for reinsurance ceded to insurers  
35 not meeting the requirements of law, under certain circumstances.  
36