

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2425

S.P. 957

In Senate, March 18, 1992

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRAUN of Knox (GOVERNOR'S BILL).

Cosponsored by Representative GARLAND of Bangor, Representative MITCHELL of Vassalboro and Senator KANY of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Ensure Financial Solvency of Insurers through Accreditation.



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

2
3 **Sec. 1. 24-A MRSA §221, sub-§1**, as amended by PL 1973, c. 585,
4 §12, is further amended to read:

6 1. For the purpose of determining its financial condition,
7 fulfillment of its contractual obligations and compliance with
8 the law, the superintendent shall examine the affairs,
9 transactions, accounts, ~~records~~ records and assets of each
10 authorized insurer, and of any person as to any matter relevant
11 to the financial affairs of the insurer or to the examination, as
12 often as ~~he--deems~~ the superintendent determines advisable.
13 Except as otherwise expressly provided, ~~he--shall--so--examine--each~~
14 ~~domestic--insurer--not--less--frequently--than--every--5--years~~ domestic
15 insurers must be examined at least once every 3 years, unless the
16 superintendent defers making an examination for a longer period;
17 but in no event may domestic insurers be examined less frequently
18 than once every 5 years. Examination of an alien insurer shall
19 be is limited to its insurance transactions, assets, trust
20 deposits and affairs in the United States, except as otherwise
21 required by the superintendent.

22 **Sec. 2. 24-A MRSA §221, sub-§3**, as amended by PL 1973, c. 585,
23 §12, is further amended to read:

26 3. In lieu of the superintendent making ~~his--own~~ an
27 examination, the superintendent may, ~~in his discretion,~~ accept a
28 full report of the last recent examination of a foreign or alien
29 insurer, certified to by the insurance supervisory official of
30 another state.

32 **Sec. 3. 24-A MRSA §222, sub-§2, ¶D-1** is enacted to read:

34 D-1. "Net gain from operations" or "net operating loss"
35 means the net income or loss, as the case may be, after
36 dividends to policyholders and federal income taxes but
37 before the inclusion of net realized capital gains or
38 losses, except that if the insurer is not a life insurer,
39 all realized capital losses but no capital gains are
40 included.

42 **Sec. 4. 24-A MRSA §222, sub-§3**, as amended by PL 1987, c. 399,
43 §1, is further amended to read:

44 3. Subsidiaries of insurers; investments to acquire
45 interest. This subsection pertains to insurers and their
46 subsidiaries and affiliates.

2 A. Any domestic insurer may invest in or otherwise acquire
one or more subsidiaries as authorized in section 1115 or
section 1157.

4
6 A-1. A domestic insurer shall notify the superintendent in
writing within 30 days after any investment by the insurer
8 or any of its affiliates in any one corporation if the
insurer has invested in that corporation and the total
10 investment in that corporation by the insurance holding
company system exceeds 10% of the corporation's voting
12 securities.

14 B. If an insurer ceases to control a subsidiary, it shall
dispose of any investment therein made pursuant to this
16 section within 3 years from the time of the cessation of
control or within such further time as the superintendent
18 may prescribe, unless at any time after such the investment
shall-have-been was made, such the investment shall-have met
20 the requirements for investment under any other section of
this Title and the insurer has notified the superintendent
thereof.

22 **Sec. 5. 24-A MRSA §222, sub-§9**, as amended by PL 1991, c. 548,
24 Pt. B, §3, is further amended to read:

26 **9. Transactions with affiliates; standards.** ~~Material~~
28 ~~transactions--by--registered--insurers~~ Transactions by insurers
subject to registration with their affiliates ~~occurring that~~
30 ~~occur~~ after the effective date of this chapter are subject to the
following standards+.

32 A. The terms, including any charges or fees for services
34 performed, must be fair and reasonable+.

36 B. The books, accounts and records of each party must be so
maintained as to disclose clearly and accurately the nature
38 and details of the transaction, including all accounting
information necessary to support the reasonableness of any
40 charges or fees+and.

42 C. The insurer's surplus to policyholders following any
dividends or distributions to stockholder affiliates must be
44 reasonable in relation to the insurer's outstanding
liabilities and adequate to its financial needs.

46 D. Expenses incurred and payment received must be allocated
48 to the insurer in conformity with customary insurance
accounting practices consistently applied.

2 E. A domestic insurer must notify the superintendent in
4 writing at least 30 days in advance, unless the
6 superintendent authorizes a shorter period, before entering
8 into any of the following kinds of transactions with any
10 member of its holding company system:

12 (1) Sales, purchases, exchanges, loans or extensions
14 of credit, guarantees or investments that are equal to
16 or exceed:

18 (a) With respect to nonlife insurers, the lesser
20 of 3% of the insurer's admitted assets as of
22 December 31st of the preceeding year or 25% of
24 surplus to policyholders; or

26 (b) With respect to life insurers, 3% of the
28 insurer's admitted assets as of December 31st of
30 the preceding year;

32 (2) Loans or extensions of credit to any person who is
34 not an affiliate, if the insurer makes the loan or
36 extension of credit with the agreement or understanding
38 that the proceeds in whole or in substantial part, are
40 to be used to make loans or extensions of credit to,
42 purchase assets of or make investments in any affiliate
44 of the insurer if the loan, extension of credit,
46 purchase or investment is equal to or exceeds:

48 (a) With respect to nonlife insurers, the lesser
50 of 3% of the insurer's admitted assets as of
December 31st of the preceding year or 25% of
surplus to policyholders; or

(b) With respect to life insurers, 3% of the
insurer's admitted assets as of December 31st of
the preceding year;

(3) Reinsurance agreements or modifications to the
agreements in which the reinsurance premium or a change
in the insurer's liabilities equals or exceeds 5% of
the insurer's surplus to policyholders, as of December
31st of the preceding year, including those agreements
that may require as consideration the transfer of
assets from an insurer to a nonaffiliate if an
agreement or understanding exists between the insurer
and nonaffiliate that any portion of the assets will be
transferred to one or more affiliates of the insurer;

(4) Management agreements, cost-sharing arrangements
and service contracts that:

- 2 (a) Delegate authority to effectuate reinsurance;
4 (b) Provide for delegated corporate governance;
6 (c) Provide for servicing of claims liabilities;
8 or
10 (d) In any other way contribute an element of
12 expense that is material when related to
14 operations of the insurer;
16 (5) Any transactions that are part of a plan or series
18 of like transactions with persons within the holding
20 company system if the purpose of those separate
22 transactions is to avoid the statutory threshold amount
24 and thus avoid the review that would occur otherwise.
26 If the superintendent determines that those separate
 transactions were entered into over any 12-month period
 for such a purpose, the superintendent may exercise
 authority under this subsection; and
 (6) Any other material transactions specified by rule
 that the superintendent has determined may adversely
 affect the interests of the insurer's policyholders.

28 The superintendent shall disapprove any such transaction if
30 it violates the standards of this section or other
32 applicable law or adversely affects the interests of
34 policyholders. The superintendent's failure to make a
 determination on a proposed transaction within 30 days after
 it has been submitted for review has the effect of an
 approval, unless the superintendent has issued a notice of
 adjudicatory hearing on the proposal in accordance with
 section 230.

36 ~~Any material transaction not in conformity with violation of this~~
38 ~~subsection constitutes a violation of this Title and chapter and,~~
40 in addition to the penalties contained in subsection 14, renders
42 the transactions voidable at the initiative of the superintendent
44 or otherwise under applicable law. The superintendent's approval
46 of a transaction in accordance with this section, whether actual
 or by acquiescence, may not override any applicable law and does
 not operate to authorize any transaction that would be contrary
 to law if it involved an insurer not a member of the same holding
 company system.

48 **Sec. 6. 24-A MRSA §222, sub-§11, ¶E, as enacted by PL 1991, c.**
50 **37, §2, is amended to read:**

2 E. Is declared at any time when the insurer has, in any one
of the previous 3 years, paid a dividend that exceeded the
operating net gain from operations for the calendar year
4 that preceded the payment; or

6 **Sec. 7. 24-A MRSA §223, sub-§1**, as amended by PL 1973, c. 585,
§12, is further amended to read:

8
1. Whenever the superintendent determines to examine the
10 affairs of any person, he the superintendent shall designate one
or more examiners and instruct them as to the scope of the
12 examination. The superintendent may designate an examiner
outside the bureau if the designee is a competent public
accountant or an actuary who is a member of the American Academy
of Actuaries and is in active practice. The examiner shall, upon
14 demand, exhibit his the examiner's official credentials to the
16 person under examination.

18
A. An examiner may not be designated by the superintendent
if the examiner directly or indirectly has a conflict of
interest or is affiliated with the management of or owns a
pecuniary interest in any person subject to examination
under sections 221 and 222. This section may not be
construed to preclude automatically an examiner from being:

20
22
24
26 (1) A policyholder or claimant under an insurance
policy;

28
30 (2) A grantor of a mortgage or similar instrument on
the examiner's residence to a regulated entity if done
under customary terms and in the ordinary course of
business;

32
34 (3) An investment owner in shares of regulated
diversified investment companies; or

36
38 (4) A settlor or beneficiary of a "blind trust" into
which any otherwise impermissible holdings have been
placed.

40
42 **Sec. 8. 24-A MRSA §223, sub-§4**, as amended by PL 1973, c. 585,
§12, is further amended to read:

44
46 4. Every person being examined, its officers, attorneys,
employees, agents and representatives shall make freely available
48 to the superintendent or his designated examiners the accounts,
records, documents, files, information, assets and matters of
50 such that person in his that person's possession or control
relating to the subject of the examination and shall facilitate
the examination. The refusal of any insurer to submit to

2 examination is grounds for revocation or refusal of a license or
3 renewal license.

4 **Sec. 9. 24-A MRSA §224, sub-§1**, as amended by PL 1973, c. 585,
5 §12, is further amended to read:

6
7 1. If the superintendent ~~deems~~ considers it necessary to
8 value any asset involved in such an examination, ~~he may make~~
9 ~~written request of the person being examined to appoint one or~~
10 ~~more appraisers who by reason of education, experience or special~~
11 ~~training, and disinterest, are competent to appraise the asset~~
12 the superintendent may appoint one or more competent
13 disinterested persons as appraisers with authority to appraise
14 the real property of an insurer or any real property on which it
15 holds security. Selection of any such appraiser shall be subject
16 to the written approval of the superintendent. If no such
17 appointment is made within 20 days after the request therefor was
18 delivered to such person, the superintendent may appoint the
19 appraiser or appraisers.

20
21 **Sec. 10. 24-A MRSA §225, sub-§3** is enacted to read:

22
23 3. All working papers, recorded information, documents and
24 copies of any of these media produced by, obtained by or
25 disclosed to the superintendent or any other person in the course
26 of an examination made under this chapter must be given
27 confidential treatment, are not subject to subpoena and may not
28 be made public by the superintendent or any other person, except
29 to the extent provided in sections 226 and 227. Access may be
30 granted to the National Association of Insurance Commissioners.
31 Any parties granted access must agree in writing prior to
32 receiving the information to provide the information with the
33 same confidential treatment as required by this section unless
34 prior written consent of the insurer to which the information
35 pertains has been obtained.

36
37 **Sec. 11. 24-A MRSA §226, sub-§7** is enacted to read:

38
39 7. The Maine Insurance Code does not prevent and may not be
40 construed to prohibit the superintendent from disclosing the
41 content of an examination report, preliminary examination report
42 or the results, or any matter related to a report or results, to
43 the Bureau of Insurance of this State or the insurance department
44 of any other state or country, or to law enforcement officials of
45 this State, any other state agency or the federal government at
46 any time. Any such disclosure must be subject to a protective
47 order of confidentiality issued by the superintendent.

48
49 **Sec. 12. 24-A MRSA §227**, as amended by PL 1973, c. 585, §12,
50 is further amended to read:

2 **§227. Examination report**

4 The report of examination of those persons, partnerships,
6 corporations or other business associations which that are
8 subject to examination by the ~~Insurane~~---Superintendent
10 superintendent as provided for in sections 221 and 222 shall,
12 upon satisfaction of the requirements of section 226 and so long
 as no court of competent jurisdiction has stayed its publication,
 be filed in the bureau as a public record, except for any
 information relating to an individual insured or individual
 applicant for insurance, which ~~shall-be~~ is deemed confidential.

14 **Sec. 13. 24-A MRSA §414, sub-§4,** as enacted by PL 1989, c.
16 846, Pt. A and affected by Pt. E, §4, is amended to read:

18 4. Insurers required to file an annual statement must, as a
20 condition to the issuance or continuance of a certificate of
22 authority, provide the National Association of Insurance
24 Commissioners with all information required for participation in
26 the Insurance Regulatory Information System. This filing must
28 contain the insurer's current annual statement convention blank
30 and, if requested by the superintendent or the National
32 Association of Insurance Commissioners, publicly available
34 financial reports of any affiliated insurers or other entities
36 necessary for analyzing any insurer licensed in this State. Each
 statement furnished by an insurer must be manually executed by
 those persons who are required by section 423 to verify an annual
 statement utilizing the prescribed jurat. Any amendments and
 addendums to the annual statement subsequently filed with the
 superintendent must also be filed with the National Association
 of Insurance Commissioners. 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.

38 In the absence of bad faith, fraud or intentional act, an officer
40 or an employee of the National Association of Insurance
42 Commissioners may not be subject to civil liability for libel,
44 slander or any other cause of action in tort as a result of
46 processing data or other information filed by insurers under this
48 subsection or distribution of reports prepared on the basis of
50 that information to insurance regulatory officials of any state
 that has subscribed to and used the Insurance Regulatory
 Information System through the National Association of Insurance
 Commissioners. Information provided to the superintendent that
 is held confidential by the National Association of Insurance
 Commissioners must be held confidential by the superintendent
 unless that information is relevant to any hearing conducted by

2 the superintendent pursuant to section 229 or an order requiring
3 disclosure is issued by the Superior Court.

4 **Sec. 14. 24-A MRSA §423, sub-§5** is enacted to read:

6 5. The superintendent may adopt rules that prescribe
7 accounting standards applicable to statements filed pursuant to
8 this section. These rules may permit or require any class or
9 classes of insurers domiciled or authorized to do business in
10 this State to conform its financial presentations to the
11 standards of preparation prescribed in the accounting practices
12 and procedures manual of the National Association of Insurance
13 Commissioners.

14 **Sec. 15. 24-A MRSA §601, sub-§21** is enacted to read:

16 21. Reinsurance intermediary. Reinsurance intermediary
18 application and issuance fees are:

20 A. Application and issuance fee, \$50; and

22 B. Biennial continuation, \$50.

24 **Sec. 16. 24-A MRSA §731-B, sub-§1, ¶¶A and B,** as enacted by PL
25 1989, c. 846, Pt. E, §2 and affected by §4, are amended to read:

26 A. Is licensed to transact insurance or reinsurance in this
27 State, provided the assuming insurer has maintains surplus
28 to as regards policyholders in an amount not less than the
29 sum of paid-in capital stock required--of--an--authorized
30 foreign-stock-insurer-transacting-like-kinds-of-insurance,
31 if any, and surplus as otherwise required for a certificate
32 of authority for the kinds and amount of insurance and
33 assumed reinsurance the insurer has in force net of any
34 applicable ceded reinsurance;

35 B. Is domiciled and licensed in a state that employs
36 standards regarding credit for reinsurance substantially
37 similar to those applicable under this section, provided if
38 the insurer has--surplus--to--policyholders--in--an--amount--net
39 less--than--the--paid-in--capital--stock--required--of--an
40 authorized--foreign--stock--insurer--transacting--like--kinds--of
41 insurance;:

42 (1) Submits to the authority of this State to examine
43 its books and records; and

44 (2) Except where reinsurance is ceded and assumed
45 pursuant to pooling arrangements among insurers in the

2 same holding company system, maintains a surplus
3 regarding policyholders in an amount not less than
4 \$20,000,000;

6 Sec. 17. 24-A MRSA §731-B, sub-§4, as enacted by PL 1989, c.
7 846, Pt. E, §2 and affected by §4, is amended to read:

8 4. For purposes of this section, a "qualified United States
9 financial institution" means an institution that:

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

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

18 C. Has been determined by the superintendent or the
19 Securities Valuation Office of the National Association of
20 Insurance Commissioners to meet standards of financial
21 condition and standing that are considered necessary and
22 appropriate to regulate the quality of financial
23 institutions whose letters of credit will be acceptable to
24 the superintendent.

25 Sec. 18. 24-A MRSA §731-B, sub-§4-A is enacted to read:

26 4-A. "Qualified United States financial institution" means
27 for purposes of those provisions of this section specifying those
28 institutions that are eligible to act as a fiduciary of a trust
29 an institution that:

30 A. Is organized or in the case of a United States branch or
31 agency office of a foreign banking organization licensed
32 under the laws of the United States or any state of the
33 United States and has been granted authority to operate with
34 fiduciary powers; and

35 B. Is regulated, supervised and examined by federal or
36 state authorities having regulatory authority over banks and
37 trust companies.

38 Sec. 19. 24-A MRSA §§732 to 734 are enacted to read:

39 §732. Deposits and funds withheld under reinsurance treaties

2 Any ceding insurer must report in its annual statement all
3 funds withheld and deposit funds established pursuant to
4 contracts of ceded reinsurance. Ceding insurers must report this
5 and related information as required by reporting rules
6 established by the National Association of Insurance
7 Commissioners.

8 **§733. Examination of reinsurance agreements**

10 The superintendent may examine the reinsurance agreements or
11 deposit arrangements of a ceding insurer at any time.

12 **§734. Minimum surplus regarding policyholders to assume property**
13 **and casualty reinsurance**

16 1. Prohibition. Notwithstanding section 731-B, subsection
17 1, paragraph B, a domestic property or domestic casualty insurer,
18 other than mutual assessment insurers operating pursuant to
19 chapter 51, possessing less than \$10,000,000 in surplus regarding
20 policyholders may not, without the prior written approval of the
21 superintendent, assume reinsurance on any risk that it is
22 otherwise permitted to assume except when the reinsurance is:

24 A. Required by applicable law or rule; or

26 B. Assumed pursuant to pooling arrangements among members
27 of the same holding company system.

28 2. Application. This section applies to contracts of
29 reinsurance entered into or renewed after the effective date of
30 this section.

31 3. Effect. The performance of an activity prohibited by
32 this section does not invalidate any reinsurance contract between
33 the parties to the contract.

34 **Sec. 20. 24-A MRSA c. 9, sub-c. IV is enacted to read:**

36 **SUBCHAPTER IV**

38 **REINSURANCE INTERMEDIARIES**

40 **§741. Definitions**

42 As used in this subchapter, unless the context otherwise
43 indicates, the following terms have the following meanings.

44 1. Actuary. "Actuary" means a person who is a member in
45 good standing of the American Academy of Actuaries.

2 2. Cession. "Cession" means a transfer by a policy
3 originating insurer to a reinsurer of the whole or a portion of a
4 single risk, defined policy or defined division of business as
5 set out in a reinsurance contract.

6 3. Controlling person. "Controlling person" means any
7 person who directly or indirectly has the power to direct or
8 cause to be directed the management, control or activities of the
9 reinsurance intermediary.

10 4. Insurer. "Insurer" means every person engaged as
11 principal and as indemnitor, surety or contractor in the business
12 of entering into contracts of insurance who holds an existing
13 certificate of authority to transact insurance in this State
14 pursuant to section 404.

15 5. Reinsurance intermediary. "Reinsurance intermediary"
16 means a reinsurance intermediary-broker or a reinsurance
17 intermediary-manager as these terms are defined in subsections 6
18 and 7.

19 6. Reinsurance intermediary-broker. "Reinsurance
20 intermediary-broker" means any person, other than an officer or
21 employee of the ceding insurer who solicits, negotiates or places
22 reinsurance cessions or retrocessions on behalf of a ceding
23 insurer without the authority or power to bind reinsurance on
24 behalf of the insurer.

25 7. Reinsurance intermediary-manager. "Reinsurance
26 intermediary-manager" means any person who has authority to bind
27 or manages all or part of the assumed reinsurance business of a
28 reinsurer, including the management of a separate division,
29 department or underwriting office, and acts as an agent for such
30 a reinsurer whether known as a reinsurance intermediary-manager,
31 manager or other similar term. The term does not include:

32 A. An employee of the reinsurer;

33 B. A manager of a branch of an alien reinsurer that is
34 located in the United States;

35 C. An underwriting manager that, pursuant to contract,
36 manages all the reinsurance operations of the reinsurer, is
37 under common control with the reinsurer subject to section
38 222 and whose compensation is not based on the volume of
39 premiums written; and

40 D. The manager of a group, association, pool or
41 organization of insurers that engages in joint underwriting
42 or joint reinsurance and who is subject to examination by

2 the public insurance regulatory official of the state or
3 country in which the manager's principal business office is
4 located.

6 8. Reinsurer. "Reinsurer" means any person who operates as
7 an insurer in any manner under applicable provisions of this
8 Title in the assumption of reinsurance risks.

10 9. Retrocession. "Retrocession" means a transfer by a
11 reinsurer to another reinsurer of those risks defined in
12 subsection 2.

14 10. Retrocessionaire. "Retrocessionaire" means an insurer
15 or reinsurer assuming reinsurance risks under a retrocession.

16 11. Qualified United States financial institution. For
17 purposes of this section, a "qualified United States financial
18 institution" means an institution that:

20 A. Is organized or, in the case of a United States branch
21 or agency office of a foreign banking organization, is
22 licensed under the laws of the United States or any state of
23 the United States and has been granted authority to operate
24 with fiduciary powers;

26 B. Is regulated, supervised and examined by federal or
27 state authorities having regulatory authority over banks and
28 trust companies; and

30 C. Has been determined by the superintendent or the
31 Securities Valuation Office of the National Association of
32 Insurance Commissioners to meet standards of financial
33 condition and standing that are considered necessary and
34 appropriate to regulate the quality of financial
35 institutions whose letters of credit will be acceptable to
36 the superintendent.

38 12. Qualified United States financial institution.
39 "Qualified United States financial institution" means for the
40 purposes of those provisions of this section specifying those
41 institutions that are eligible to act as a fiduciary of a trust
42 an institution that:

44 A. Is organized or in the case of a United States branch or
45 agency office of a foreign banking organization licensed
46 under laws of the United States or any state of the United
47 States and has been granted authority to operate with
48 fiduciary powers; and

2 B. Is regulated, supervised and examined by federal or
3 state authorities having regulatory authority over banks and
4 trust companies.

6 **§742. Licensure**

8 1. Qualifications for license. For the protection of the
9 people of this State, the superintendent may not issue, continue
10 or permit to exist any reinsurance intermediary license except in
11 compliance with this subchapter, and as to any individual, unless
12 the individual is an agent or broker in this State duly licensed
13 pursuant to chapter 17.

14 2. License requirement. A person may not act as a
15 reinsurance intermediary-broker in this State unless licensed
16 pursuant to this subchapter. A person may not act as a
17 reinsurance intermediary-manager in this State unless licensed
18 pursuant to this subchapter.

20 3. License forms. The superintendent shall prescribe,
21 consistent with the applicable requirements of this subchapter,
22 and furnish all printed forms required under this subchapter in
23 connection with application for and issuance of licenses.

24 4. Application for license. Application for licensure is
25 governed by this subsection.

28 A. Written application for a reinsurance intermediary
29 license must be made to the superintendent by the applicant
30 and be accompanied by the applicable license application and
31 issuance fee shown in section 601. The application must be
32 signed and duly sworn to by the applicant.

34 B. If the applicant is an individual and if the application
35 is not submitted simultaneously with an application for an
36 agent or broker license pursuant to chapter 17, the
37 application must include full answers to questions
38 reasonably necessary to determine the following: the
39 applicant's identity; age; residence; present occupation and
40 occupations over the 5 years preceding the date of the
41 application; financial responsibility; insurance experience;
42 and education in insurance and insurance laws of this State
43 the applicant has had or expects to receive. The
44 application must be accompanied by an imprint of the
45 applicant's fingerprints and a recent photograph of the
46 applicant. The application must include full answers to
47 questions necessary to understand the purpose for which the
48 license is to be used, whether the applicant will devote all
49 or part of the applicant's efforts to transactions under the
50 license and, if part only, how much time the applicant will

2 devote to transactions and in what other business or
3 businesses the applicant is or will be engaged or employed.
4 The application must contain any other facts as the
5 superintendent may require relative to the applicant's
6 qualifications for the license as those qualifications are
7 stated in this subchapter.

8 C. If the applicant is a firm, association, partnership or
9 corporation, the application must include, in addition, the
10 names and residence addresses of all members, officers and
11 directors and designate the name and residence address of
12 each individual who is to exercise the license powers. Each
13 individual shall furnish information with respect to the
14 individual as for an individual license.

15 D. If the application is not submitted simultaneously with
16 an application for an agent or broker license, the
17 application must indicate whether any insurance license was
18 ever refused, suspended, revoked or continuance refused and
19 whether any insurer, general agent, individual or
20 organization claims that the applicant is indebted to it,
21 and if so, the details of the indebtedness and applicant's
22 defense to that indebtedness.

23 5. Additional requirements. The superintendent may require
24 a reinsurance intermediary-manager to:

25 A. File a surety bond issued by a licensed insurer, in an
26 amount and format acceptable to the superintendent, for the
27 protection of the reinsurer; or

28 B. Maintain an errors and omissions policy issued by an
29 insurer licensed in this State in an amount acceptable to
30 the superintendent.

31 6. Nonresident applicant. If the applicant for a
32 reinsurance intermediary license is a nonresident, the applicant,
33 as a condition precedent to receiving or holding a license, must
34 designate the superintendent as agent for service of process in
35 the manner and with the same legal effect provided for by this
36 Title for designation of service of process upon unauthorized
37 insurers. The applicant shall furnish the superintendent with
38 the name and address of a resident of this State upon whom
39 notices or orders of the superintendent or process affecting the
40 nonresident reinsurance intermediary may be served. If a
41 nonresident applicant becomes licensed, the licensee shall
42 promptly notify the superintendent in writing of every change in
43 its designated agent for service of process. Such a change is
44 not effective until acknowledged by the superintendent.

45

2 7. Attorneys exempted. Licensed attorneys-at-law of this
State when acting in their professional capacity are exempt from
this section.

4 §743. Issuance of license

6 The superintendent may issue a reinsurance intermediary
8 license to any person that complies with the requirements of this
subchapter.

10 1. Licensing; persons that are not individuals. Licensing
12 of a firm, association, partnership or corporation is subject to
this subsection.

14 A. A license issued to a firm, association, partnership or
16 corporation authorizes all the members of the firm,
association, partnership or corporation and any employees of
18 those entities to act as reinsurance intermediaries if each
individual is also licensed. Those individuals exercise the
20 license power only for and in the name of the organization.
This paragraph does not prevent an individual from being
22 separately licensed and acting in that individual's own
behalf and name.

24 B. The superintendent may not license a firm, association,
26 partnership or corporation unless the license is within
purposes stated in the partnership agreement or certificate
28 of organization. All licensees are subject to the
applicable standards of section 407, subsection 2.

30 C. All licensees under this subsection are subject to the
32 same restrictions with regard to deceptively similar names
as applied to insurers under section 408, subsection 1.

34 2. Advertising. Licensees may advertise only in the name
36 under which they are licensed.

38 3. Notice of change. Licensees shall promptly notify the
superintendent of every change in address and notify the
40 superintendent of every change among its members, directors and
officers and of other individuals designated in or registered as
42 to the license.

44 4. Refusal. The superintendent may refuse to issue a
license to a reinsurance intermediary if, in the
46 superintendent's judgment, the applicant, any one named on the
application, or any member, principal, officer or director of the
48 applicant, is not trustworthy, has given cause for revocation or
suspension of such license or has failed to comply with any
50 prerequisite for the issuance of such license, or that any

2 controlling person of an applicant is not trustworthy to act as a
reinsurance intermediary.

4 5. Superintendent review. If the superintendent finds that
6 the application is complete and that the applicant is otherwise
8 qualified for the license applied for, the superintendent shall
promptly issue the license. Otherwise, the superintendent shall
refuse to issue the license, promptly notify the applicant of the
refusal and state the grounds for refusal.

10 6. Refund. If the license is refused, the superintendent
12 shall promptly refund to the applicant all fees received for
application for a reinsurance intermediary license.

14 7. Duration. Unless revoked or suspended, a reinsurance
16 intermediary license remains in effect as long as the licensee
18 continues to hold a valid Maine broker or agent license and the
licensee pays the biennial fee required by section 601 before the
anniversary date of the license.

20 §744. Required contract provisions; reinsurance
22 intermediary-broker

24 Transactions between a reinsurance intermediary-broker and
26 the insurer it represents in such a capacity may be entered into
28 only pursuant to a written authorization specifying the
responsibilities of each party. The authorization must, at a
minimum, provide that:

30 1. Termination. The insurer may terminate the reinsurance
32 intermediary-broker's authority at any time upon 5 days' written
notice to the reinsurance intermediary-broker;

34 2. Accounting. The reinsurance intermediary-broker shall
36 render timely accounts to the insurer accurately detailing all
38 material transactions, including information necessary to support
all commissions, charges and other fees received by or owed, to
the reinsurance intermediary-broker and remit all funds due to
the insurer within 30 days of receipt;

40 3. Bank as fiduciary. All funds collected for the
42 insurer's account must be held by the reinsurance
44 intermediary-broker in a fiduciary capacity in a bank that is a
qualified United States financial institution;

46 4. Compliance with law. The reinsurance
48 intermediary-broker shall comply with section 745;

50 5. Compliance with standards. The reinsurance
intermediary-broker shall comply with the written standards

2 established by the insurer for the cession or retrocession of all
3 risks; and

4 6. Disclosure. The reinsurance intermediary-broker shall
5 disclose to the insurer any relationship with any reinsurer or
6 insurer to which business will be ceded or retroceded.

8 **§745. Books and records; reinsurance intermediary-brokers**

10 1. Records required. For at least 10 years after
11 expiration of each contract of reinsurance transacted by the
12 reinsurance intermediary-broker, the reinsurance
13 intermediary-broker shall keep a complete record for each
14 transaction showing:

16 A. The type of contract, limits, underwriting restrictions,
17 classes of risks and territory;

18 B. Period of coverage, including effective and expiration
19 dates, cancellation provisions and notice required of
20 cancellation;

22 C. Reporting and settlement requirements of balances;

24 D. Rate used to compute the reinsurance premium;

26 E. Names and addresses of assuming reinsurers;

28 F. Rates of all reinsurance commissions, including the
29 commissions on any retrocessions handled by the reinsurance
30 intermediary-broker;

32 G. Related correspondence and memoranda;

34 H. Proof of placement;

36 I. Details regarding retrocessions handled by the
37 reinsurance intermediary-broker, including the identity of
38 retrocessionaires and percentage of each contract assumed or
39 ceded;

42 J. Financial records, including, but not limited to,
43 premium and loss accounts; and

44 K. When the reinsurance intermediary-broker procures a
45 reinsurance contract on behalf of a licensed ceding insurer:

48 (1) Directly from any assuming reinsurer, written
49 evidence that the assuming reinsurer has agreed to
50 assume the risk; or

2 (2) Placed through a representative of the assuming
4 reinsurer that is not an employee, written evidence
6 that the reinsurer has delegated binding authority to
 the representative.

8 2. Access. The insurer must have access and may copy and
10 audit all accounts and records maintained by the reinsurance
 intermediary-broker related to its business in a form usable by
 the insurer.

12 §746. Duties of insurers utilizing the services of a reinsurance
14 intermediary-broker

16 1. License requirements. An insurer may not engage the
18 services of any person to act as a reinsurance
 intermediary-broker on the insurer's behalf unless that person is
 licensed as required by this subchapter.

20 2. Status of intermediary-broker. An insurer may not
22 employ an individual who is employed by a reinsurance
24 intermediary-broker with which the insurer transacts business,
 unless such reinsurance intermediary-broker is under common
 control with the insurer and subject to section 222.

26 3. Financial statements. The insurer shall annually obtain
28 a copy of statements of current origin of the financial condition
30 of each reinsurance intermediary-broker with which the insurer
 transacts business. These statements must be certified reports
 or reviews performed by a certified public accountant.

32 §747. Required contract provisions; reinsurance
34 intermediary-managers

36 Transactions between a reinsurance intermediary-manager and
38 the reinsurer it represents in such capacity may be entered into
40 only pursuant to a written contract, specifying the
42 responsibilities of each party, that must be approved by the
44 reinsurer's board of directors. At least 30 days before the
 reinsurer assumes or cedes business through the reinsurance
 intermediary-manager, a true copy of the approved contract must
 be filed with the superintendent for approval. The contract
 must, at a minimum, contain the following terms and conditions.

46 1. Termination. The reinsurer may terminate the contract
48 for cause upon 5 days' written notice to the reinsurance
 intermediary-manager. The reinsurer may immediately suspend the
 authority of the reinsurance intermediary-manager to assume or
 cede business during the pendency of any dispute regarding the
50 cause for termination.

2 2. Accounting. The reinsurance intermediary-manager shall
4 render accounts to the reinsurer accurately detailing all
6 material transactions, including information necessary to support
8 all commissions, charges and other fees received by or owed, to
 the reinsurance intermediary-manager and remit all funds due
 under the contract to the reinsurer on not less than a monthly
 basis.

10 3. Bank as fiduciary. All funds collected for the
12 reinsurer's account must be held in trust by the reinsurance
14 intermediary-manager in a fiduciary capacity in a bank that is a
16 qualified United States financial institution. The reinsurance
 intermediary-manager may retain no more than 3 months' estimated
 claims payments and allocated loss adjustment expenses. The
 reinsurance intermediary-manager shall maintain a separate bank
 account for each reinsurer that it represents.

18 4. Compliance with law. The reinsurance
20 intermediary-manager shall comply with section 748.

22 5. Access. The reinsurer must have access to and may copy
24 all accounts and records maintained by the reinsurance
 intermediary-manager related to its business in a form usable by
 the reinsurer.

26 6. Nonassignable. The contract may not be assigned in
28 whole or in part by the reinsurance intermediary-manager.

30 7. Compliance with standards. The reinsurance
32 intermediary-manager shall comply with the written underwriting
 and rating standards established by the insurer for the
 acceptance, rejection or cession of all risks.

34 8. Commissions; fees. The contract must set forth the
36 rates, terms and purposes of commissions, charges and other fees
38 that the reinsurance intermediary-manager may levy against the
 reinsurer.

40 9. Settlement. If the contract permits the reinsurance
42 intermediary-manager to settle claims on behalf of the reinsurer:

44 A. All claims must be reported to the reinsurer in a timely
 manner;

46 B. A copy of each claim file must be sent to the reinsurer
48 at its request or as soon as it becomes known that the claim:

- 2 (1) Has the potential to exceed the lesser of an
3 amount determined by the superintendent or the limit
4 set by the reinsurer;
- 6 (2) Involves a coverage dispute;
- 8 (3) May exceed the reinsurance intermediary-manager's
9 claims settlement authority;
- 10 (4) Is open for more than 6 months; or
- 12 (5) Is closed by payment of the lesser of an amount
13 set by a court of competent jurisdiction or an amount
14 agreed by the reinsurer;

16 C. All claim files must be the joint property of the
17 reinsurer and the reinsurance intermediary-manager; except
18 that, upon an order of liquidation of the reinsurer, the
19 files become the sole property of the reinsurer or its
20 estate. The reinsurance intermediary-manager must have
21 reasonable access to and may copy the files on a timely
22 basis; and

24 D. Any settlement authority granted to the reinsurance
25 intermediary-manager may be terminated for cause upon the
26 reinsurer's notice to the reinsurance intermediary-manager
27 or upon the termination of the contract. The reinsurer may
28 suspend the settlement authority during the pendency of the
29 dispute regarding the cause of termination.

30 10. Interim profits. If the contract provides for a
31 sharing of interim profits by the reinsurance
32 intermediary-manager, interim profits may not be paid until one
33 year after the end of each underwriting period for property
34 business and 5 years after the end of each underwriting period
35 for casualty business or other period set by the superintendent
36 for other specified kinds of insurance and not until the adequacy
37 of reserves on remaining claims has been verified pursuant to
38 section 750, subsection 3.

40 11. Financial statements. The reinsurance
41 intermediary-manager shall annually provide the reinsurer with a
42 statement of current origin of its financial condition prepared
43 by an independent certified accountant. These statements must be
44 certified reports or review statements prepared by a certified
45 public accountant.

48 12. On-site review. The reinsurer shall periodically and
49 no less than semiannually conduct an on-site review of the

2 underwriting and claims processing operations of the reinsurance
3 intermediary-manager.

4 13. Disclosure. The reinsurance intermediary-manager shall
5 disclose to the reinsurer any relationship the reinsurer has with
6 any insurer prior to ceding or assuming any business with the
7 insurer pursuant to this contract.

8
9
10 14. Scope of authority. Within the scope of its actual or
11 apparent authority the acts of the reinsurance
12 intermediary-manager are deemed to be the acts of the reinsurer
13 on whose behalf it is acting.

14 §748. Books, records and powers; reinsurance
15 intermediary-managers

16
17 1. Records required. For at least 10 years after
18 expiration of each contract of reinsurance transacted by the
19 reinsurance intermediary-manager, the reinsurance
20 intermediary-manager shall keep a complete record for each
21 transaction showing:

22
23 A. The type of contract, limits, underwriting restrictions,
24 classes of risks and territory;

25
26 B. Period of coverage, including effective and expiration
27 dates, cancellation provisions and notice required for
28 cancellation, and status of disposition of outstanding
29 reserves on covered risks;

30
31 C. Reporting and settlement requirements of balances;

32
33 D. Rate used to compute the reinsurance premium;

34
35 E. Names and addresses of reinsurers;

36
37 F. Rates of all reinsurance commissions, including the
38 commissions on any retrocessions handled by the reinsurance
39 intermediary-manager;

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41 G. Related correspondence and memoranda;

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43 H. Proof of placement;

44
45 I. Details regarding retrocessions handled by the
46 reinsurance intermediary-manager including the identity of
47 retrocessionaires and the percentage of each contract
48 assumed or ceded;

2 J. Financial records, including but not limited to, premium
3 and loss accounts; and

4 K. When the reinsurance intermediary-manager places a
5 reinsurance contract on behalf of a ceding insurer:

6 (1) Directly from any assuming reinsurer, written
7 evidence that the assuming reinsurer has agreed to
8 assume the risk; or

9 (2) If placed through a representative of the assuming
10 reinsurer, other than an employee, written evidence
11 that the reinsurer has delegated binding authority to
12 the representative.

13 **§749. Prohibited acts**

14 The reinsurance intermediary-manager may not:

15 **1. Retrocession.** Retrocede business on behalf of the
16 reinsurer; except that, the reinsurance intermediary-manager may
17 facultatively retrocede business pursuant to obligatory
18 facultative agreements if the contract with the reinsurer
19 contains reinsurance underwriting guidelines for any such
20 retrocession. The guidelines must include a list of reinsurers
21 with which automatic agreements are in effect, commission
22 schedules and for each reinsurer, the coverages and amounts or
23 percentages that may be reinsured;

24 **2. Use of syndicates.** Commit the reinsurer to participate
25 in reinsurance syndicates;

26 **3. Use of other licensees.** Make use of any agent or broker
27 without ensuring that the agent or broker is lawfully licensed to
28 transact the kind of reinsurance for which the agent or broker is
29 being used;

30 **4. Claim payment.** Without prior approval of the reinsurer,
31 pay or commit the reinsurer to pay a claim, net of retrocessions,
32 that exceeds the lesser of an amount specified by the reinsurer
33 or one percent of the reinsurer's policyholder surplus as of
34 December 31st of the next preceding calendar year;

35 **5. Claim recovery.** Collect any payment from a
36 retrocessionaire or commit the reinsurer to any claim settlement
37 with a retrocessionaire, without prior approval of the
38 reinsurer. If prior approval is given, a report must be promptly
39 forwarded to the reinsurer;

2 6. Joint employment. Jointly employ an individual who is
employed by the reinsurer unless the reinsurance
4 intermediary-manager is under common control with the reinsurer
subject to section 222; or

6 7. Subcontract. Assign duties under a contract to a
subcontracting manager.

8
10 §750. Duties of reinsurers utilizing the services of a
reinsurance intermediary-manager

12 1. License required. A reinsurer may not engage the
services of any person to act as a reinsurance
14 intermediary-manager on its behalf unless that person is licensed
as required by this subchapter.

16 2. Financial statements. The reinsurer shall annually
obtain a copy of statements of the financial condition of each
18 reinsurance intermediary-manager that the reinsurer has engaged
prepared by an independent certified public accountant in a form
20 acceptable to the superintendent.

22 3. Actuarial review. If a reinsurance intermediary-manager
establishes loss reserves, the reinsurer shall annually obtain
24 the opinion of an actuary who specializes in the type of
insurance under consideration attesting to the adequacy of loss
26 reserves including losses incurred and outstanding on business
produced by the reinsurance intermediary-manager. This opinion
28 is in addition to any other required loss reserve certification.

30 4. Binding authority. Binding authority for all
retrocessional contracts or participation in reinsurance
32 syndicates rests with an officer of the reinsurer who may not be
affiliated with the reinsurance intermediary-manager.
34

36 5. Notice of termination. Within 30 days of termination of
a contract with a reinsurance intermediary-manager, the reinsurer
38 shall provide written notification of termination to the
superintendent.

40 6. Board member qualifications. A reinsurer may not
appoint to its board of directors, any officer, director,
42 employee, controlling shareholder or subproducer of its
reinsurance intermediary-manager. This subsection does not apply
44 to relationships governed by section 222 or chapter 77.

46 §751. Examination authority

48 1. Authority. A reinsurance intermediary is subject to
examination by the superintendent. The superintendent must have
50

2 access to all books, bank accounts and records of the reinsurance
3 intermediary in a usable form.

4 2. Status. A reinsurance intermediary-manager may be
5 examined as if it were the reinsurer.

6 **§752. Penalties and liabilities**

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8
9
10 1. Violation. A reinsurance intermediary, insurer or
11 reinsurer found by the superintendent, after a hearing conducted
12 in accordance with the Maine Administrative Procedure Act, to be
13 in violation of any provision of this Title, is subject to the
14 following.

15 A. For each separate violation, a violator must pay a
16 penalty of not less than \$5,000 and not more than \$100,000
17 for each separate violation.

18 B. A violator is subject to revocation or suspension of its
19 license.

20
21 C. If a violation was committed by the reinsurance
22 intermediary, the reinsurance intermediary shall make
23 restitution to the insurer, reinsurer, rehabilitator or
24 liquidator of the insurer or reinsurer for the net losses
25 incurred by the insurer or reinsurer attributable to such
26 violation.

27
28
29 2. Final agency action. The decision, determination or
30 order of the superintendent pursuant to this section is a final
31 agency action and may be appealed pursuant to section 236.

32
33 3. Nonexclusivity of penalties. Nothing contained in this
34 section affects the right of the superintendent to impose any
35 other penalties provided in this Title.

36
37 4. Rights of others. Nothing contained in this subchapter
38 limits or restricts the rights of policyholders, claimants,
39 creditors or other 3rd parties or confers any rights to those
40 persons.

41 **§753. Rules**

42
43 The superintendent may adopt reasonable rules for the
44 implementation and administration of the provisions of this
45 subchapter.

46
47 **§754. Effective date**

2 This subchapter takes effect January 1, 1993. An insurer or
3 reinsurer may not continue to utilize the services of a
4 reinsurance intermediary on and after February 1, 1993 unless
5 utilization is in compliance with this subchapter.

6 Sec. 21. 24-A MRSA §901, sub-§11, as amended by PL 1973, c.
7 585, §12, is further amended to read:

8
9 11. All assets, whether or not consistent with this
10 section, as may be allowed pursuant to the annual statement form
11 approved by the superintendent for the kinds of insurance to be
12 reported upon therein in that statement; except that unless a
13 standard of valuation of those assets allowed under this
14 subsection is prescribed pursuant to other provisions of this
15 Title, the superintendent may require that valuation standards
16 promulgated by the National Association of Insurance
17 Commissioners be used in determining the value of these assets;

18
19 Sec. 22. 24-A MRSA §981, sub-§1, as amended by PL 1973, c.
20 585, §12, is further amended to read:

21 1. All bonds or other evidences of debt having a fixed term
22 and rate of interest held by an insurer may, if amply secured and
23 not in default as to principal or interest, be valued as follows:

24 A. If purchased at par, at the par value; *i*

25 B. If purchased above or below par, on the basis of the
26 purchase price adjusted so as to bring the value to par at
27 maturity and so as to yield in the meantime the effective
28 rate of interest at which the purchase was made, or in lieu
29 of such method, according to such accepted method of
30 valuation as is approved by the superintendent; *i*

31 C. Purchase price shall may in no case be taken at a higher
32 figure than the actual market value at the time of purchase,
33 plus actual brokerage, transfer, postage or express charges
34 paid in the acquisition of such securities; *i*

35 C-1. The superintendent may require the use of standards of
36 valuation promulgated by the National Association of
37 Insurance Commissioners in determining value to be ascribed
38 to securities subject to this section; and

39 D. Unless otherwise provided by valuation established or
40 approved by the superintendent, no such security shall may
41 be carried at above the call price for the entire issue
42 during any period within which the security may be so called.

43 Sec. 23. 24-A MRSA c. 17, sub-c. VII is enacted to read:

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SUBCHAPTER VII

MANAGING GENERAL AGENTS

§1881. Short title

This subchapter may be known and cited as the "Managing General Agents Act."

§1882. Definitions

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

1. Actuary. "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

2. Insurer. "Insurer" means a person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance who holds an existing certificate of authority to transact insurance in this State pursuant to section 404.

3. Managing general agent or MGA. "Managing general agent" or "MGA" means a person who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for the insurer, whether known as a managing general agent, manager or other similar term; and who, with or without the authority, either separately or together with affiliates, directly or indirectly, produces and underwrites an amount of gross direct written premium equal to or more than 5% of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter of the year following the last annual statement and adjusts or pays claims in excess of an amount determined by the superintendent or negotiates reinsurance on behalf of the insurer, or both. The term does not include:

- A. An employee of the insurer;
- B. A manager of a branch of an alien insurer that is located in the United States;
- C. An underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to section 222 and whose compensation is not based on the

2 volume of premiums written or the profitability of the
3 business written. An agent otherwise subject to section
4 1885, subsection 6 is not exempt from provisions of this
5 subchapter; and

6 D. The attorney-in-fact authorized by and acting for the
7 subscribers of a reciprocal insurer or interinsurance
8 exchange under powers of attorney.

10 4. Underwrite. "Underwrite" means the authority to accept
11 or reject risk on behalf of the insurer.

12 **§1883. License and registration requirement**

14
15 1. In-state risks. A person may not act in the capacity of
16 an MGA with respect to risks located in this State for an insurer
17 licensed in this State unless that person holds a valid Maine
18 agent license and appointment authorizing the agent to sell the
19 applicable kinds of insurance and unless registered with the
20 superintendent as a managing general agent pursuant to subsection
21 5.

22
23 2. Out-of-state risks. A person may not act in the
24 capacity of an MGA representing an insurer domiciled in this
25 State with respect to risks located outside this State unless
26 that person holds a valid Maine agent license and appointment in
27 this State and unless registered with the superintendent as a
28 managing general agent pursuant to subsection 5.

30 3. Bond. The superintendent may require a bond in an
31 amount acceptable to the superintendent for the protection of the
32 insurer.

34 4. Errors and omissions policy. The superintendent may
35 require the MGA to maintain an errors and omissions policy.

36
37 5. Application. Each managing general agent shall file
38 with the superintendent an application for registration as a
39 managing general agent.

40
41 A. The superintendent shall prescribe, consistent with the
42 applicable requirements of this subchapter, and furnish
43 forms required under this subchapter in connection with
44 application for and issuance of registration certificates
45 and for notification of termination of contracts pursuant to
46 section 1885.

48 B. The application for registration must include the name
49 and address of the insurer with whom the agent has an
50 appointment pursuant to section 1533 and with whom the agent

2 has a written contract pursuant to section 1884, a statement
3 of the duties that the agent is expected to perform on
4 behalf of the insurer, the lines of insurance for which the
5 agent is to be authorized to act, and any other information
6 the superintendent may request.

7 C. If the superintendent finds that the application is
8 complete, the superintendent shall promptly issue a
9 certificate of registration to the agent; otherwise, the
10 superintendent shall refuse to issue the registration and
11 promptly notify the agent and the insurer of the refusal,
12 stating the grounds for refusal. The agent may request a
13 hearing on the superintendent's denial pursuant to section
14 229.

15 6. Duration. Unless notification of termination of
16 contract is received pursuant to section 1885, the certificate of
17 registration remains in effect as long as the registrant
18 continues to hold a valid Maine agent license and as long as the
19 registrant complies with the provisions of this subchapter. A
20 certificate of registration expires upon receipt by the
21 superintendent of notification of termination of contract
22 pursuant to section 1885, and the registrant shall promptly
23 deliver the certificate of registration to the superintendent.

24 **§1884. Required contract provisions**

25 A person acting in the capacity of an MGA may not place
26 business with an insurer unless there is in force a written
27 contract between the parties that sets forth the responsibilities
28 of each party and, when both parties share responsibility for a
29 particular function, specifies the division of those
30 responsibilities. The contract must contain the following
31 minimum provisions.

32 1. Termination. The insurer may terminate the contract for
33 cause upon written notice to the MGA. The insurer may suspend
34 the underwriting authority of the MGA during the pendency of any
35 dispute regarding the cause for termination. However, the
36 suspension of an MGA does not relieve the MGA of the
37 responsibility to service business in existence at the time of
38 the suspension.

39 2. Accounting. The MGA shall render accounts to the
40 insurer detailing all transactions and remit all funds due under
41 the contract to the insurer on not less than a monthly basis.

42 3. Bank as fiduciary. All funds collected for the account
43 of an insurer must be held by the MGA in a fiduciary capacity in
44 a bank that is a member of the Federal Reserve System. This
45 is subject to the provisions of section 1885.

2 account must be used for all payments on behalf of the insurer.
3 The MGA may retain no more than 3 months' estimated claims
4 payments and allocated loss adjustment expenses.

6 4. Records. Separate records of business written by the
7 MGA must be maintained. The insurer must have access and may copy
8 all accounts and records related to its business in a form usable
9 by the insurer. The superintendent must have access to all
10 books, bank accounts and records of the MGA in a form usable to
11 the superintendent. These records must be retained according to
12 section 3408.

14 5. Nonassignable. The contract may not be assigned in
15 whole or part by the MGA.

16 6. Guidelines. The contract must include appropriate
17 underwriting guidelines including:

- 18 A. The maximum annual premium volume;
- 20 B. The basis of the rates to be charged;
- 22 C. The types of risks that may be written;
- 24 D. Maximum limits of liability;
- 26 E. Applicable exclusions;
- 28 F. Territorial limitations;
- 30 G. Policy cancellation provisions; and
- 32 H. The maximum policy period.

34 The insurer has the right to cancel or not to renew any policy of
35 insurance subject to all applicable laws and rules regarding the
36 cancellation and nonrenewal of insurance policies.

38 7. Settlement authority. If the contract permits the MGA
39 to settle claims on behalf of the insurer:

- 42 A. All claims must be reported to the insurer in a timely
43 manner;
- 44 B. A copy of the claim file must be sent to the insurer at
45 its request or as soon as it becomes known that the claim:

48 (1) Has the potential to exceed an amount determined
49 by the superintendent or exceeds the limit set by the
50 insurer, whichever is less;

- 2 (2) Involves a coverage dispute;
4 (3) May exceed the MGA's claims settlement authority;
6 (4) Is open for more than 6 months; or
8 (5) Is closed by payment of an amount awarded as a
10 result of a judicial proceeding or an amount set by the
 insurer, whichever is less;

12 C. All claim files must be the joint property of the
14 insurer and MGA; except that, upon an order of liquidation
16 of the insurer, the files become the sole property of the
 insurer or its estate. The MGA must have reasonable access
 to and may copy the files on a timely basis; and

18 D. Any settlement authority granted to the MGA may be
20 terminated for cause upon written notice by the insurer to
22 the MGA or upon the termination of the contract. The
24 insurer may suspend the settlement authority during the
26 pendency of any dispute regarding the cause for
28 termination. Upon termination of the MGA's authority to
30 settle claims, the MGA shall desist from any draw on funds
 of the insurer and shall immediately forward to the insurer
 all claims files within the MGA's immediate possession and
 any claims received thereafter. The MGA shall promptly
 transfer to the insurer any funds owed to the insurer or to
 any policyholder and shall transfer to the insurer any
 property of the insurer that is within the MGA's actual or
 constructive possession.

32 8. Transmission. Where electronic claims files are in
34 existence, the contract must address the timely transmission of
 the data.

36 9. Interim profits. If the contract provides for a sharing
38 of interim profits by the MGA and the MGA has the authority to
40 determine the amount of the interim profits by establishing loss
42 reserves or controlling claim payments or in any other manner,
44 interim profits may not be paid to the MGA until one year after
 they are earned for property insurance business and 5 years after
 they are earned on casualty business and not until the profits
 have been verified pursuant to section 1885.

46 10. Prohibitions. The MGA may not:

48 A. Bind reinsurance or retrocessions, as defined in section
50 771, subsection 9, on behalf of the insurer, except that the
 MGA may bind facultative reinsurance contracts pursuant to

2 obligatory facultative agreements if the contract with the
3 insurer contains reinsurance underwriting guidelines
4 including, for reinsurance both assumed and ceded, a list of
5 reinsurers with which such automatic agreements are in
6 effect, the coverages and amounts or percentages that may be
7 reinsured and commission schedules;

8 B. Commit the insurer to participate in insurance or
9 reinsurance syndicates;

10 C. Make use of any agent or broker without ensuring that
11 the agent or broker is lawfully licensed in this State to
12 transact the kind of insurance for which the agent or broker
13 is used;

14 D. Without prior approval of the insurer, pay or commit the
15 insurer to pay a claim over an amount specified by the
16 insurer, net of reinsurance, which may not exceed one
17 percent of the insurer's policyholder surplus as of December
18 31st of the preceding year;

19 E. Collect any payment from a reinsurer or commit the
20 insurer to any claim settlement with a reinsurer without
21 prior approval of the insurer. If prior approval is given,
22 a report must be promptly forwarded to the insurer;

23 F. Make use of any agent or broker who serves on the
24 insurer's board of directors;

25 G. Jointly employ an individual who is employed with the
26 insurer; or

27 H. Assign specific duties under a contract with an insurer
28 to other parties.

29 **§1885. Duties of insurers**

30 1. Records for each MGA. The insurer shall require and
31 maintain on file an independent financial examination of current
32 origin prepared on the basis of statutory accounting prescribed
33 or permitted by the superintendent respecting each MGA with which
34 the insurer has done business.

35 2. Actuarial review. If an MGA establishes loss reserves,
36 the insurer shall annually obtain the opinion of an actuary or
37 actuaries who specialize in the type of insurance under
38 consideration, attesting to the adequacy of loss reserves
39 established for losses incurred and outstanding on business
40 produced by the MGA. This requirement is in addition to any
41 other required loss reserve certification.

2 3. On-site review. The insurer shall periodically and at
3 least semiannually conduct an on-site review of the underwriting
4 and claims processing operations of the MGA.

6 4. Binding authority. Binding authority for all
7 reinsurance contracts or participation in insurance or
8 reinsurance syndicates rests with an officer of the insurer, who
9 may not be affiliated with the MGA.

10 5. Notice of termination. Within 30 days of termination of
11 a contract with an MGA, the insurer shall provide written
12 notification of that termination to the superintendent.

14 6. Quarterly review. An insurer shall review its books and
15 records each quarter to determine if any agent as defined by
16 section 1882, subsection 3 has become, by operation of section
17 1882, subsection 3, a MGA as defined in that section. If the
18 insurer determines that its agent has become a MGA, the insurer
19 shall promptly notify the agent and the superintendent of that
20 determination and the insurer and agent must fully comply with
21 the provisions of this subchapter within 30 days.

24 7. Board member qualifications. An insurer may not appoint
25 to its board of directors an officer, director, employee,
26 subproducer or controlling shareholder of its managing general
27 agents. This subsection does not apply to relationships governed
28 by section 222 or chapter 77 to the extent that control of an
29 insurer is permissible under section 222 or chapter 77.

30 **§1886. Acts of MGA considered acts of insurer; examination**
31 **authority**

34 The acts of the MGA are deemed to be the acts of the insurer
35 on whose behalf it is acting. An MGA may be examined as if it
36 were the insurer.

38 **§1887. Penalties and liabilities**

40 1. Penalties. If the superintendent finds after a hearing
41 conducted in accordance with section 229 that any person has
42 violated any provision of this subchapter, the superintendent may
43 order:

44 A. For each separate violation, any penalty provided for by
45 section 12-A;

48 B. Revocation or suspension of the agent's license or the
49 insurer's certificate of authority; and

50

2 C. The MGA to reimburse the insurer, the rehabilitator or
4 liquidator of the insurer for any losses incurred by the
insurer caused by a violation of this subchapter committed
by the MGA.

6 2. Effect of order. The decision, determination or order
8 of the superintendent pursuant to subsection 1 is subject to
judicial review as provided by section 236.

10 3. Nonexclusivity of penalties. Nothing contained in this
12 section affects the right of the superintendent to impose any
other penalties provided for in this Title.

14 4. Rights of others. Nothing contained in this subchapter
16 limits or restricts the rights of policyholders, claimants and
auditors.

18 **§1888. Rules**

20 The superintendent may adopt reasonable rules for the
22 implementation and administration of this subchapter.

24 **§1889. Effective date**

26 This subchapter takes effect January 1, 1993. An insurer
28 may not continue to utilize the services of an MGA on and after
February 1, 1993 unless the utilization is in compliance with
this subchapter.

30 **Sec. 24. 24-A MRS §4353, sub-§§16 to 19** are enacted to read:

32 **16. Fair consideration.** "Fair consideration" is given for
34 property or an obligation:

36 A. When in exchange for that property or obligation, as a
38 fair equivalent for the property or obligation and in good
faith, property is conveyed, services are rendered, an
obligation is incurred or an antecedent debt is satisfied; or

40 B. When that property or obligation is received in good
42 faith to secure a present advance or antecedent debt in an
amount not disproportionately small as compared to the value
44 of the property or obligation obtained.

46 **17. Guaranty association.** "Guaranty association" means the
48 Maine Insurance Guaranty Association established by chapter 57,
subchapter III, the Life and Health Insurance Guaranty
Association established by chapter 62 and any other similar

2 entity created by the laws of this State for the payment of
3 claims of insolvent insurers.

4 18. Foreign guaranty association. "Foreign guaranty
5 association" means a guaranty association created by the
6 legislature of any other state.

8 19. Transfer. "Transfer" includes the sale and every other
9 direct or indirect method of disposing of or of parting with
10 property or an interest in property or with the possession of
11 property or of fixing a lien upon property or upon an interest in
12 property, absolutely or conditionally, voluntarily or by or
13 without judicial proceedings. The retention of a security
14 interest in property delivered to a debtor is a transfer suffered
15 by the debtor.

16 **Sec. 25. 24-A MRSA §4354, sub-§1, as enacted by PL 1969, c.**
17 **132, §1, is amended to read:**

18 **1.** The Superior Court shall have has original jurisdiction
19 of delinquency proceedings under this chapter, and any court with
20 jurisdiction is authorized to make all necessary or proper orders
21 to carry out the purposes of such sections this chapter. A
22 delinquency proceeding may not be commenced under this chapter by
23 anyone other than the superintendent.

24 **Sec. 26. 24-A MRSA §4355, sub-§1, ¶¶B and C, as enacted by PL**
25 **1969, c. 132, §1, are amended to read:**

26 **B.** Reinsurers of the insurer, and their representatives; and

27 **C.** Past or present officers, managers, trustees, directors,
28 organizers and promoters of the insurer, and other persons
29 in positions of similar responsibility with the insurer;

30 **Sec. 27. 24-A MRSA §4355, sub-§1, ¶¶D and E are enacted to read:**

31 **D.** Persons served who are or were at the time of the
32 institution of the delinquency proceeding against the
33 insurer holding assets in which the receiver claims an
34 interest on behalf of the insurer, in any action concerning
35 the assets; and

36 **E.** Persons served who are obligated to the insurer in any
37 way whatsoever, in any action on or incident to the
38 obligation.

39 **Sec. 28. 24-A MRSA §4366, sub-§1, as enacted by PL 1969, c.**
40 **132, §1, is amended to read:**

2 1. In a delinquency proceeding begun in this State against
4 a domestic insurer, claimants residing in reciprocal states may
6 file claims either with the ancillary receivers, if any, in their
8 respective states, or with the domiciliary receiver, but
10 claimants residing in foreign countries or in states not
12 reciprocal states must file claims in this State. All such
14 claims must be filed on or before the last date fixed for the
16 filing of claims in the domiciliary delinquency proceedings.

18 **Sec. 29. 24-A MRSA §4375**, as amended by PL 1973, c. 585, §12,
20 is repealed.

22 **Sec. 30. 24-A MRSA §4375-A** is enacted to read:

24 **§4375-A. Voidable property transfers and liens**

26 **1. Fraudulent transfers prior to petition.** Fraudulent
28 transfers prior to petition are governed by this subsection.

30 A. A transfer made or suffered and an obligation incurred
32 by an insurer within one year prior to the filing of a
34 successful petition for rehabilitation or liquidation under
36 this chapter is fraudulent as to then existing and future
38 creditors if made or incurred without fair consideration, or
40 with actual intent to hinder, delay or defraud either
42 existing or future creditors. A transfer made or an
44 obligation incurred by an insurer ordered to be
46 rehabilitated or liquidated under this chapter that is
48 fraudulent according to the terms of this section may be
50 avoided by the receiver except as to a person who in good
faith is a purchaser, lienor or obligee for a present fair
equivalent value, but any purchaser, lienor or obligee who
in good faith has given a consideration less than fair for
such transfer, lien, or obligation may retain the property,
lien or obligation as security for repayment. The court
may, on due notice, order any such transfer or obligation to
be preserved for the benefit of the estate, and in that
event, the receiver succeeds to and may enforce the rights
of the purchaser, lienor or obligee.

 B. The determination of when a transfer is made is governed
by the following rules.

 (1) A transfer of property other than real property is
deemed to be made or suffered when it becomes so far
perfected that no subsequent lien obtainable by legal
or equitable proceedings on a simple contract may
become superior to the rights of the transferee.

2 (2) A transfer of real property is deemed to be made
4 or suffered when it becomes so far perfected that no
 subsequent bona fide purchaser from the insurer may
 obtain rights superior to the rights of the transferee.

6 (3) A transfer that creates an equitable lien may not
8 be deemed to be perfected if there are available means
 by which a legal lien could be created.

10 (4) Any transfer not perfected prior to the filing of
12 a petition for liquidation is deemed to be made
 immediately before the filing of the successful
14 petition.

16 (5) A lien obtainable by legal or equitable
18 proceedings upon a simple contract is one arising in
20 the ordinary course of such proceedings upon the entry
22 or docketing of a judgment or decree, or upon
24 attachment, garnishment, execution, or like process,
 whether before, upon, or after judgment or decree and
 whether before or upon levy, but does not include
 liens that under applicable law are given a special
 priority over other liens that are prior in time.

26 (6) A lien obtainable by legal or equitable
28 proceedings may become superior to the rights of a
30 transferee, or a purchaser may obtain rights superior
32 to the rights of a transferee within the meaning of
34 this paragraph if those consequences would follow only
36 from the lien or purchase itself, or from the lien or
 purchase followed by any step wholly within the control
 of the respective lienholder or purchaser, with or
 without the aid of ministerial action by public
 officials, but not if any acts subsequent to the
 obtaining of the lien or subsequent to the purchase
 require the agreement or concurrence of any 3rd party
 or require any further judicial action or ruling.

38 (7) The provisions of this paragraph apply whether or
40 not there are or were creditors who might have obtained
42 any liens or persons who might have become bona fide
 purchasers.

44 C. Any transaction of the insurer with a reinsurer is
46 deemed fraudulent and may be avoided by the receiver under
 paragraph A if:

48 (1) The transaction consists of the termination,
50 adjustment or settlement of a reinsurance contract in
 which the reinsurer is released from any part of its

2 duty to pay the originally specified share of losses
3 that had occurred prior to the time of the transaction
4 unless the reinsurer gives a present fair equivalent
5 value for the release; and

6 (2) Any part of the transaction takes place within one
7 year prior to the date of filing of the petition
8 through which the receivership is commenced.

10 D. A person receiving any property from the insurer or a
11 benefit from possession or use of the property that is
12 fraudulently transferred is personally liable for the value
13 of the preference and shall account to the liquidator.

14 2. Fraudulent transfers after petition. Fraudulent
15 transfers after petition are governed by this subsection.

18 A. After a petition for rehabilitation or liquidation has
19 been filed, a transfer of any of the real property of the
20 insurer made to a person acting in good faith is valid
21 against the receiver if made for a present fair equivalent
22 value or, if the transfer was not made for a present fair
23 equivalent value, then it is valid only to the extent of the
24 present consideration actually paid for the property, for
25 which amount the transferee has a lien on the property so
26 transferred. Constructive notice of the commencement of a
27 proceeding in rehabilitation or liquidation is deemed to be
28 given upon the recording of a copy of the petition for or
29 order of rehabilitation or liquidation with the register of
30 deeds in the county where any real property in question is
31 located. The exercise by a court of the United States or
32 any state or jurisdiction to authorize or effect a judicial
33 sale of real property of the insurer within any county in
34 any state is not impaired by the pendency of such a
35 proceeding unless the copy is recorded in the county prior
36 to the consummation of the judicial sale.

38 B. After a petition for rehabilitation or liquidation has
39 been filed and before either the receiver takes possession
40 of the property of the insurer or an order of rehabilitation
41 or liquidation is granted the following rules apply.

42 (1) A transfer of any of the property of the insurer,
43 other than real property, made to a person acting in
44 good faith is valid against the receiver if made for a
45 present fair equivalent value or, if not made for a
46 present fair equivalent value, then the transfer is
47 valid only to the extent of the present consideration
48 actually paid, for which amount the transferee has a
49 lien on the property so transferred.
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2 (2) A person acting in good faith who is indebted to
4 the insurer or holding property of the insurer may pay
6 the indebtedness or deliver the property or any part of
 the property to the insurer with the same effect as if
 the petition were not pending.

8 (3) A person having actual knowledge of the pending
10 rehabilitation or liquidation who effectuates a
12 transfer of any of the property of the insurer or who
 benefits by the transfer is deemed not to act in good
 faith.

14 (4) A person asserting the validity of a transfer
16 under this section has the burden of proof. Except as
18 elsewhere provided in this section, a transfer by or on
 behalf of the insurer after the date of the petition
 for liquidation by any person other than the liquidator
 is not valid against the liquidator.

20 C. A person receiving any property from the insurer or a
22 benefit from possession or use of the property that is
24 fraudulently transferred under this subsection is personally
 liable for the value of the preference and shall account to
 the liquidator.

26 3. Voidable preferences. Voidable preferences and liens
28 are governed by this subsection.

30 A. A preference is a transfer that is made or suffered by
32 the insurer of any of the property of an insurer to or for
34 the benefit of a creditor for or on account of an antecedent
36 debt if the effect of the transfer may be to enable the
38 creditor to obtain a greater percentage of this debt than
40 another creditor of the same class would receive and the
42 transfer is made within one year before the filing of a
 successful petition for liquidation under this chapter or,
 if a liquidation order is entered while the insurer is
 already subject to a rehabilitation order, if made or
 suffered within one year before the filing of the successful
 petition for rehabilitation or within 2 years before the
 filing of the successful petition for liquidation, whichever
 time is shorter.

44 B. Any preference may be avoided by the liquidator if:

46 (1) The insurer was insolvent at the time of the
48 transfer;

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(2) The transfer was made within 4 months before the filing of the petition;

(3) The creditor receiving it or to be benefitted by it or the creditor's agent had reasonable cause to believe that the insurer was insolvent or was about to become insolvent when the transfer was made; or

(4) The creditor receiving it was an officer of the insurer or any employee or attorney or other person who was in fact in a position of comparable influence with the insurer whether or not that person held such a position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer, or any other person, firm, corporation, association or aggregation of persons with whom the insurer did not deal at arm's length.

C. Where the preference is voidable, the liquidator may recover the property or its value if it has been converted from any person who received or converted the property, except that, where a bona fide purchaser or lienor has given less than fair equivalent value, that person is deemed to have a lien upon the property to the extent of the consideration actually given. When a preference by way of lien or security interest is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator.

D. The determination of when a transfer is made is governed by subsection 1, paragraph B.

E. A transfer of property for or on account of a new and contemporaneous consideration, which is considered under subsection 1, paragraph B to be made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous consideration.

F. If any lien considered voidable under paragraph B is dissolved by the furnishing of a bond or other obligation,

2 the surety that was indemnified directly or indirectly by
4 the transfer of or the creation of a lien upon any property
6 of an insurer before the filing of a petition under this
8 chapter that results in a liquidation order, the
10 indemnifying transfer or lien is also voidable.

12 G. The property affected by any lien considered voidable
14 under this subsection must be discharged from the lien, and
16 that property and any of the indemnifying property
18 transferred to or for the benefit of a surety must pass to
20 the liquidator; except that, the court may on due notice
22 order a lien to be preserved for the benefit of the estate
24 and the court may direct that a conveyance be executed as
26 may be proper or adequate to evidence the title of the
28 liquidator.

30 H. The court has summary jurisdiction of any proceeding by
32 the liquidator to hear and determine the rights of any
34 parties under this section. Reasonable notice of any
36 hearing in the proceeding must be given to all parties in
38 interest, including the obligee of a releasing bond or other
40 like obligation. Where an order is entered for the recovery
42 of indemnifying property in kind or for the avoidance of an
44 indemnifying lien, the court, upon application of any party
46 in interest, shall in the same proceeding ascertain the
48 value of the property or lien. If the court finds that the
50 value is less than the amount for which the property is held
as indemnity or the amount of the lien, the transferee or
lienholder may elect to retain the property c. lien upon
payment to the liquidator of its value as ascertained by the
court within a reasonable time as fixed by the court.

I. The liability of the surety under a releasing bond or
other like obligation must be discharged to the extent of
the value of the indemnifying property recovered or the
indemnifying lien nullified and avoided by the liquidator
or, when the property is retained under paragraph H, to the
extent of the amount paid to the liquidator.

J. If a creditor has been preferred and afterward in good
faith gives the insurer further credit for property that
becomes a part of the insurer's estate without security of
any kind, the amount of the new credit remaining unpaid at
the time of the petition may be set off against the
preference that would otherwise be recoverable.

K. If, within 4 months before the filing of a successful
petition for liquidation under this chapter or at any time
in contemplation of a proceeding to liquidate an insurer,
the insurer pays money or transfers property, directly or

2 indirectly, to an attorney-at-law for services rendered or
3 to be rendered, the transactions may be examined by the
4 court on its own motion and must be examined by the court on
5 petition of the liquidator and may be held valid only to the
6 extent they are reasonable in amount as determined by the
7 court. Any excess may be recovered by the liquidator for
8 the benefit of the estate; except that, where the attorney
9 is in a position of influence in the insurer or an affiliate
10 of the insurer, payment of any money or the transfer of any
11 property to the attorney for services rendered or to be
12 rendered is governed by the provisions of paragraph B,
13 subparagraph (4).

14 L. An officer, manager, employee, shareholder, member,
15 subscriber, attorney or any other person acting on behalf of
16 the insurer who knowingly participates in giving any
17 preference when that person has reasonable cause to believe
18 the insurer is or is about to become insolvent at the time
19 of the preference is personally liable to the liquidator for
20 the amount of the preference. If the transfer was made
21 within 4 months before the date of filing of a successful
22 petition for liquidation, a presumption arises that there
23 was reasonable cause to believe the insurer was or was about
24 to become insolvent.

25 M. A person receiving any property from the insurer or a
26 benefit from possession or use of the property as a
27 preference voidable under this subsection is personally
28 liable for the value of that preference and shall account to
29 the liquidator.

30 N. Nothing in this subsection prejudices any other claim by
31 the liquidator against any person.

32 4. Claims of holders of void or voidable rights. Claims of
33 holders of void or voidable rights are governed by this
34 subsection.

35 A. A claim of a creditor who has received or acquired a
36 preference, lien, conveyance, transfer, assignment or
37 encumbrance voidable under this section is not allowed
38 unless the claimant surrenders the preference, lien,
39 conveyance, transfer, assignment or encumbrance. If the
40 avoidance is effected by a proceeding in which a final
41 judgment is entered, the claim is not allowed unless the
42 money is paid or the property is delivered to the liquidator
43 within 30 days from the date of the entering of the final
44 judgment; except that the court having jurisdiction over the
45 liquidation may allow further time if there is an appeal or
46 other continuation of the proceeding.

2 B. A claim allowable under paragraph A by reason of the
4 avoidance, whether voluntary or involuntary, of a
6 preference, lien, conveyance, transfer, assignment or
8 encumbrance may be filed as an excused late filing if filed
 within 30 days from the date of the avoidance or within any
 further time allowed by the court under paragraph A.

10 5. Negotiable instruments. Nothing in this section impairs
 the negotiability of currency or negotiable instruments.

12 **Sec. 31. 24-A MRSA §4385, sub-§1, as amended by PL 1973, c.**
14 **585, §12, is further amended to read:**

16 1. Whenever in the ~~superintendent~~ superintendent's opinion
18 liquidation of a domestic insurer or an alien insurer domiciled
20 in this State would be facilitated by a federal receivership, and
22 when any ground exists upon which the superintendent might
24 petition the court for an order of rehabilitation or liquidation
26 of the insurer under this chapter, or if such an order has
28 already been entered, the superintendent may request another
30 superintendent or other resident of another state to petition any
32 appropriate federal district court for the appointment of a
34 federal receiver. The superintendent may intervene in any such
36 action to support or oppose the petition, and may accept
 appointment as the receiver if so designated. ~~So much of this~~
 This chapter shall apply applies to the receivership as ~~may be~~
 applicable and appropriate except to the extent that the court
 determines that the insurance rehabilitation and liquidation laws
 of another state are applicable in any part. Upon the
 ~~superintendent~~ superintendent's motion, the courts of this State
 shall relinquish all jurisdiction over the insurer for purposes
 of rehabilitation or liquidation. No federal law governing
 proceedings in bankruptcy may be applied to proceedings under
 this section.

38 **Sec. 32. 24-A MRSA c. 77 is enacted to read:**

40 CHAPTER 77

42 BUSINESS TRANSACTED WITH BROKER-CONTROLLED
 PROPERTY OR CASUALTY INSURER

44 §6401. Short title

46 This chapter may be known and cited as the "Maine Business
48 Transacted with Broker-Controlled Insurer Act."

50 §6402. Definitions

2 As used in this Act, unless the context otherwise indicates,
3 the following terms have the following meanings.

4 1. Accredited state. "Accredited state" means a state in
5 which the insurance department or regulatory agency has qualified
6 as meeting the minimum financial regulatory standards promulgated
7 and established by the National Association of Insurance
8 Commissioners.

10 2. Broker. "Broker" means any person who is not an agent
11 of the insurer and as an independent contractor solicits,
12 negotiates or procures insurance or annuity contracts or the
13 renewal or continuation of those contracts on behalf of insureds
14 or prospective insureds other than the broker.

16 3. Control or controlled. "Control" or "controlled" has
17 the same meaning as set out in section 222, subsection 2,
18 paragraph B.

20 4. Controlling broker. "Controlling broker" means a broker
21 who directly or indirectly controls an insurer.

22 5. Controlled insurer. "Controlled insurer" means a
23 licensed insurer that is controlled directly or indirectly by a
24 broker.

26 6. Licensed insurer or insurer. "Licensed insurer" or
27 "insurer" means any person licensed to transact a property or
28 casualty insurance business, or both, in this State. The
29 following, inter alia, are not licensed insurers for the purposes
30 of this chapter:

32 A. All risk retention groups as defined in the federal
33 Superfund Amendments Reauthorization Act of 1986, Public Law
34 No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention
35 Act, 15 United States Code, Section 3901 et seq. and the
36 Maine Liability Risk Retention Act;

38 B. All residual market pools and joint underwriting
39 authorities or associations; and

42 C. All captive insurers, which for the purposes of this
43 chapter are insurance companies owned by another
44 organization whose exclusive purpose is to insure risks of
45 the parent organization and affiliated companies or, in the
46 case of groups and associations, insurance organizations
47 owned by the insureds whose exclusive purpose is to insure
48 risks to member organizations or group members and their
49 affiliates.

2 7. Producer. "Producer" means an insurance agent or broker
licensed pursuant to chapter 17.

4 8. Subproducer. "Subproducer" means a producer who, for
shared commission or other recompense, places business with a
6 controlled insurer through a controlling broker.

8 **§6403. Applicability**

10 This Act applies to licensed insurers as defined in section
12 6402, either domiciled in this State or domiciled in a state that
is not an accredited state with a substantially similar law in
14 effect. Section 222, to the extent not modified by this chapter,
continues to apply to all parties within holding company systems
16 subject to this chapter.

18 **§6404. Minimum standards**

20 1. Applicability. This section applies as follows.

22 A. This section applies if, in any calendar year, the
aggregated amount of gross written premium on business
24 placed with a controlled insurer by a controlling broker is
equal to or greater than 5% of the admitted assets of the
26 controlled insurer as of September 30th of the preceding
year, as reported in the controlled insurer's quarterly
28 statement.

30 B. Notwithstanding paragraph A, this section does not apply
if:

32 (1) The controlling broker:

34 (a) Places insurance only with the controlled
insurer, only with the controlled insurer and a
36 member or members of the controlled insurer's
holding company system or only with the controlled
38 insurer's parent, affiliate or subsidiary and
receives no compensation based upon the amount of
40 premiums written in connection with such
insurance; and

42 (b) Accepts insurance placements only from
44 nonaffiliated subproducers and not directly from
insureds; and

46 (2) The controlled insurer, except for insurance
48 business written through a residual market facility
such as the workers' compensation residual market
50 mechanism or the State's automobile assigned risk plan,

2 accepts insurance business only from a controlling
3 broker, a producer controlled by the controlled insurer
4 or a producer that is a subsidiary of the controlled
5 insurer.

6 2. Required contract provisions. A controlled insurer may
7 not accept business from a controlling broker and a controlling
8 broker may not place business with a controlled insurer unless
9 there is a written contract between the controlling broker and
10 the controlled insurer specifying the responsibilities of each
11 party. The contract must be approved by the board of directors
12 of the insurer and must contain the following minimum provisions.

13 A. The controlled insurer may terminate the contract for
14 cause upon written notice to the controlling broker. The
15 controlled insurer shall suspend the authority of the
16 controlling broker to write business during the pendency of
17 any dispute regarding the cause for the termination.

18 B. The controlling broker shall render timely accounts to
19 the controlled insurer detailing all material transactions
20 including information necessary to support all commissions,
21 charges and other fees received by or owed to the
22 controlling broker.

23 C. The controlling broker shall remit all funds due under
24 the terms of the contract to the controlled insurer on at
25 least a monthly basis. The due date must be fixed so that
26 premiums or installments of premiums collected are remitted
27 no later than 90 days after the effective date of any policy
28 placed with the controlled insurer under the contract.

29 D. All funds collected for the controlled insurer's account
30 must be held in trust by the controlling broker in a
31 fiduciary capacity, in one or more appropriately identified
32 bank accounts in banks that are members of the Federal
33 Reserve System, in accordance with applicable insurance
34 laws. Funds of a controlling broker not licensed in this
35 State must be maintained in compliance with the requirements
36 of the controlling broker's domiciliary jurisdiction.

37 E. The controlling broker shall maintain separately
38 identifiable records of business written for the controlled
39 insurer. The controlled insurer must have access and may
40 copy all accounts and records related to its business in a
41 form usable by the insurer. The records must be retained
42 according to section 3408.

43 F. The contract may not be assigned in whole or in part by
44 the controlling broker.

2 G. The controlled insurer shall provide the controlling
4 broker with its underwriting standards, rules, procedures,
6 rates and conditions. The standards, rules, procedures,
8 rates and conditions must be the same as those applicable to
 comparable business placed with the controlled insurer by a
 producer other than the controlling broker.

10 H. The rates of the controlling broker's commissions,
12 charges and other fees may not be greater than those
14 applicable to comparable business placed with the controlled
16 insurer by producers other than controlling brokers. For
 purposes of this paragraph and paragraph G, examples of
 "comparable business" include the same lines of insurance,
 the same kinds of insurance, the same kinds of risks,
 similar policy limits and similar quality of business.

18 I. If the contract provides that the controlling broker, on
20 insurance business placed with the insurer, must be
22 compensated contingent upon the insurer's profits on that
24 business, then that compensation may not be determined and
26 paid until at least 5 years after the premiums on liability
 insurance are earned and at least one year after the
 premiums are earned on any other insurance. The commissions
 may not be paid until the adequacy of the controlled
 insurer's reserves on remaining claims are independently
 verified pursuant to subsection 3.

28 J. The controlled insurer shall place a limit on the
30 controlling broker's writings in relation to the controlled
32 insurer's surplus and total writings. The insurer may
34 establish a different limit for each line or subline of
36 business. The controlled insurer shall notify the
 controlling broker when the applicable limit is approached
 and may not accept business from the controlling broker if
 the limit is reached. The controlling broker may not place
 business with the controlled insurer if notified by the
 controlled insurer that the limit has been reached.

40 K. The controlling broker may negotiate but may not bind
42 reinsurance on behalf of the controlled insurer on business
44 the controlling broker places with the controlled insurer,
46 except that the controlling broker may bind facultative
48 reinsurance contracts pursuant to obligatory facultative
50 agreements. All such contracts with the controlled insurer
 must contain underwriting guidelines including, for
 reinsurance both assumed and ceded, a list of reinsurers
 with which the automatic agreements are in effect, the
 coverages and amounts or percentages that may be reinsured
 and schedules of the commissions allowed.

2 3. Audit committee. Every controlled insurer must have an
3 audit committee of the board of directors composed of independent
4 directors. The audit committee shall annually meet with
5 management, the insurer's independent certified public
6 accountants and an independent casualty actuary acceptable to the
7 superintendent to review the adequacy of the insurer's loss
8 reserves.

10 4. Reporting requirements. A controlled insurer shall make
11 the following reports.

12 A. In addition to any other required loss reserve
13 certification, by April 1st of each year, the controlled
14 insurer shall file with the superintendent an opinion of an
15 independent casualty actuary acceptable to the
16 superintendent reporting loss ratios for each line of
17 business written and attesting to the adequacy of loss
18 reserves established for losses incurred and outstanding at
19 the preceding year end, including incurred but not reported
20 losses, on business placed by the controlled broker.

21 B. The controlled insurer shall report annually to the
22 superintendent the amount of commissions paid to the
23 controlling broker, the percentage that amount represents of
24 the net premiums written and comparable amounts and
25 percentage paid to noncontrolling producers for placement of
26 the same kinds of insurance.

27 **§6405. Disclosure**

28 Prior to the effective date of the policy, the controlling
29 insurer shall cause the controlling broker, to deliver written
30 notice to the prospective insured disclosing the relationship
31 between the broker and the controlled insurer, except that if the
32 business is placed through a subproducer who is not a controlling
33 broker, the controlling insurer shall cause the controlling
34 broker to retain a signed commitment from the subproducer that
35 the subproducer is aware of the relationship between the insurer
36 and the controlling broker and that the subproducer has notified
37 or will notify the insured.

38 **§6406. Penalties**

39 1. Superintendent. The superintendent may take the
40 following actions.

41 A. If the superintendent finds, after a hearing held in
42 conformity with the Maine Administrative Procedure Act, that
43 the controlling broker or any other person has not complied
44 with the requirements of this section, the superintendent may
45 take any of the following actions:

2 with this chapter or any rule or order made under this
3 chapter, the superintendent may order the controlling
4 insurer to cease placing business through that controlled
5 broker.

6 B. If the superintendent further finds that because of that
7 noncompliance the controlled insurer or any policyholder of
8 the controlled insurer has suffered any loss or damage, the
9 superintendent may maintain a civil action or intervene in
10 an action brought by or on behalf of the insurer or
11 policyholder for recovery of compensatory damages or other
12 appropriate relief for the benefit of the insurer or
13 policyholder.

14 2. Civil action. If an order for liquidation or
15 rehabilitation of the controlled insurer is entered pursuant to
16 chapter 57 and a receiver is appointed, and the superintendent
17 finds pursuant to subsection 1 that the controlling broker or any
18 other person has not complied with this chapter or any rule or
19 order made under this chapter and that the insurer suffered any
20 loss or damage because of that noncompliance, the receiver
21 appointed under that order may maintain a civil action for
22 recovery of damages or other appropriate sanctions for the
23 benefit of the insurer.

24 3. Other action. Nothing contained in this section affects
25 the right of the superintendent to impose any other penalties
26 provided for in this Title.

27 4. Other parties. Nothing contained in this section in
28 any manner alters or affects the rights of policyholders,
29 claimants, creditors or other 3rd parties.

30 **§6407. Effective date**

31 This Act takes effect January 1, 1993. Controlled insurers
32 and controlling brokers who are not in compliance with section
33 6404 on that date have 60 days to come into compliance and shall
34 comply with section 6405 beginning with all policies written or
35 renewed on or after March 1, 1993.

36 **STATEMENT OF FACT**

37 The provisions of the bill modify or add to the regulatory
38 standards contained in the Maine Insurance Code, the Maine
39 Revised Statutes, Title 24-A. The changes proposed affect
40 several sections of the insurance code, and are intended to
41 conform insurance law in Maine to uniform standards prescribed on
42 a national basis for accreditation by the National Association of
43 Insurance Regulators.

2 Insurance Commissioners, or NAIC. That organization has mandated
a legal framework for insurance departments in the several states
4 sufficient to effectively regulate insurers doing business across
those jurisdictions. This bill permits the Maine Bureau of
6 Insurance to apply for such accreditation by the National
Association of Insurance Commissioners. The bill accomplishes
the following.

8
10 1. The bill requires that the Superintendent of Insurance
examine insurers domiciled in Maine, not less frequently than
12 once every 3 years. The superintendent, however, may defer such
an examination for up to 5 years for good cause.

14 2. The bill adjusts existing language in the Maine
Insurance Code to make it gender neutral.

16
18 3. The bill defines an insurer's net gain from operations
or its net operating loss. This definition is applied elsewhere
20 in the bill to determine that level of earnings, both current and
retained, that may be declared for distribution through dividends
or otherwise to shareholders of a domestic insurance company.

22
24 4. The bill establishes a reporting standard whereby a
domestic insurer must notify the superintendent within 30 days
26 after investing in a corporation if, directly or indirectly, the
insurer will hold through its holding company affiliates, 10% or
more of the other entity's voting securities.

28
30 5. The bill sets standards that will set limitations upon
transactions between insurers operating in Maine and their
32 closely aligned affiliates to assure that insurers are not
disadvantaged by unreasonable or unscrupulous dealings among
closely affiliated insurers and other such entities.

34
36 6. The bill conforms existing language of the Maine
Insurance Code to the new definition of net gain from operations
contained in the bill.

38
40 7. The bill permits the superintendent to utilize expert
consultants in the examination of insurance companies. It also
42 sets standards defining conflicts of interest in order to
preclude an examiner from participating in an examination if the
examiner is not disinterested in the outcome of the examination.

44
46 8. The bill provides a penalty applicable to any insurer
that refuses to submit its records for examination by the State.
48 An insurer may be subject to revocation of its license for such
refusal.

2 9. The bill permits the superintendent to appoint
disinterested consultants when it is necessary to seek an
appraisal to determine the value of realty held by an insurer.

4
6 10. The bill permits the superintendent to review working
papers of an insurer's outside auditors and to treat such matters
confidentially. The superintendent may release information from
8 those records to the NAIC if the matter is accorded confidential
treatment by that organization. This will facilitate
10 computer-assisted financial analyses by that organization.
Analyses then will be made available to regulators in the states
12 in which the insurer operates.

14 11. The bill expands upon the treatment to be given to
sensitive information stemming from an examination conducted by
16 the bureau. It allows the superintendent, subject to a
protection order deeming the information to be confidential, to
18 share information with commissioners in other states so that
effective coordination of examinations will occur. This will
20 inform regulators in the several States of nonconforming conduct
or activities of insurers from other domiciles operating within
22 their borders.

24 12. The bill permits the reports of examination generated
by employees and consultants of the bureau to be made public
26 provided that no court has taken an action to stay publication of
the information.

28
30 13. The bill requires insurers doing business in Maine to
file their annual statements with the NAIC to facilitate
computer-assisted financial analyses by that organization. These
32 reports are to be sworn statements of the insurer.

34 14. The bill provides immunity for officers and employees
of the NAIC regarding compilation of information and its
36 distribution to insurance commissioners where an insurance
company operates, provided that the NAIC conducts itself in good
38 faith and limits the distribution of its financial analyses to
commissioners whose interest relates to the virtue of the
40 insurer's operations in those underwriting territories.

42 15. The bill authorizes the superintendent to adopt rules
that prescribe accounting precepts governing the form and content
44 of financial statements required to be filed with the bureau by
insurers operating in Maine. The superintendent may rely upon
46 standards of accounting practice adopted by the NAIC to guide in
the format and extent of disclosure of information.

48

2 16. The bill sets a license fee for reinsurance
intermediaries. The charge for the new class of licensees will
be \$50 for a 2-year period of licensure.

4
6 17. The bill conforms the required level of surplus to be
maintained by an insurer accepting reinsurance from domestic
8 insurers to uniform standards prescribed by the NAIC. The change
permits the superintendent to require an adequate surplus overlay
based upon the kinds and amounts of reinsurance assumed.

10
12 18. The bill defines performance standards applicable to
banks that act as fiduciaries in the holding of deposit funds for
14 the benefit of insurance companies that transfer risks to
reinsurers located outside the United States.

16 19. The bill sets reporting standards under which insurance
companies transferring risks to reinsurers must inform the
18 superintendent as to the deposits held in trust for the benefit
of the insurer's policyholders or claimants. It also authorizes
20 the superintendent to examine reinsurance agreements or deposit
arrangements regarding insurers and reinsurers as necessary.
22 This section additionally requires a domestic property or
casualty insurer to maintain not less than \$10,000,000 in surplus
24 to assume reinsurance from other insurers or reinsurers. No
reinsurance contract in force upon the effective date of this
26 change would be voided; the law would apply to reinsurance
arrangements executed after the effective date of the bill.

28
30 20. The bill enacts a new subchapter to regulate
reinsurance intermediaries. Reinsurance intermediaries are
32 brokers that facilitate reinsurance transactions between insurers
and reinsurance companies. This provision requires that
34 reinsurance brokers and managers perform with fiduciary
responsibilities, mandates deposit funds must be held by bank
trustees when appropriate and establishes relationships with
36 insurers and reinsurers pursuant to contractual terms that limit
the underwriting authority of the intermediary. Reinsurance
38 intermediaries must be licensed and are subject to civil
penalties of up to \$100,000 if their conduct results in
40 significant damage to insurers, reinsurers or the public. When
the superintendent is required under the Insurance Rehabilitation
42 and Liquidation Law to assume the role of the receiver of an
insolvent insurance company, a reinsurance intermediary may be
44 subject to a civil action brought by the superintendent to seek
restitution for losses suffered by insurers, reinsurers and
46 claimants. Civil action may be initiated by the superintendent
to seek restitution for the losses suffered by insurers and
48 reinsurers.

21. The bill permits the superintendent to prescribe appropriate standards in valuing certain assets of an insurance company. The superintendent may require insurers to value such assets pursuant to standards promulgated by the NAIC.

22. The bill authorizes the superintendent to require the use of standards of valuation published by the NAIC in determining the value of securities of insurers and other regulated parties in which insurers invest.

23. The bill establishes limitations upon the activities of managing general agents, or MGA's, sets the terms for mandated contract provisions between insurers and managing general agents, and requires managing general agents to ensure that loss reserves are appropriately valued so that insurers represented by the MGA are fully aware of the risk being undertaken by the MGA in the name of the insurer. A managing general agent conducting the activities of a portion or all of an insurer's business must demonstrate that the MGA is qualified to undertake those duties. All managing general agents are required to register with the bureau and be qualified as insurance agents by background and experience.

24. Sections 24 to 31 of the bill amend the Insurance Rehabilitation and Liquidation Law regarding transfers between insurers and closely affiliated parties prior to a petition being filed with the court for an order of supervision of a financially distressed insurer. The bill sharpens and expands upon the focus of voidable transfers now in the law. These changes strengthen the rights and legal recourse of policyholders and creditors when an insurer has become financially distressed, but that, prior to its assets passing to a receiver, has transferred funds to a closely affiliated person to avoid legitimate creditors obtaining satisfaction from the bankrupt insurer's estate upon liquidation. Technical changes in the bill flesh out regulatory adjustments necessary to modify the Uniform Liquidation Act to identify voidable transfers and to strengthen rights of policyholders and creditors in claiming against a bankrupt insurer's estate to recover the value of losses covered by insurance policies issued by the insolvent carrier.

25. The bill proposes standards that apply to property and casualty insurers controlled by a broker. When an insurance broker, through an ownership interest or otherwise, strongly influences operations of an insurance company licensed to do business in Maine, the broker must meet standards set by contract that limit the insurer's transfer of responsibilities for conduct of operation to the broker. If the insurer is financially defrauded and is ordered liquidated, the superintendent acting as the receiver may maintain a civil action for restitution of the

value of damages for the benefit of the insurer, its
2 policyholders and claimants. A controlling broker is charged
with fiduciary responsibilities and must maintain bank trust
4 accounts in account with each insurer it controls.