

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1464

S.P. 472

In Senate, May 6, 1993

**An Act to Establish Minimum Regulatory Standards for Insurers to
Permit the Bureau of Insurance to Seek National Accreditation.**

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule
24.

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

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator KIEFFER of Aroostook.
Cosponsored by Senators: CAREY of Kennebec, McCORMICK of Kennebec, Representative:
PINEAU of Jay.

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

4 Sec. 1. 5 MRSA §139-A, as amended by PL 1991, c. 780, Pt. Y,
6 §12, is further amended by adding at the end a new paragraph to
8 read:

10 The Treasurer of State shall obtain the written approval of
12 the Superintendent of Insurance prior to releasing any securities
14 received by the Treasurer of State and deposited in custodial
16 accounts pursuant to the deposit requirements of the Maine
18 Insurance Code.

20 Sec. 2. 24-A MRSA §222, sub-§2, ¶D-1, as enacted by PL 1991, c.
22 828, §3, is repealed.

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

26 D-2. "Net gains from operations" means:

28 (1) For life insurers, the net income or loss after
30 dividends to policyholders and federal income taxes but
32 before the inclusion of net realized capital gains or
34 losses; and

36 (2) For non-life insurers, the net income or loss
38 after dividends to policyholders and federal income
40 taxes and net realized capital gains or losses.

42 Sec. 4. 24-A MRSA §222, sub-§10, as enacted by PL 1975, c.
44 356, §1, is amended to read:

46 10. **Insurer's surplus; adequacy factors.** For the purposes
48 of this chapter, in determining whether an insurer's surplus to
50 policyholders is reasonable in relation to the insurer's
outstanding liabilities and adequate to its financial needs, the
following factors, among others, shall may be considered:

A. The size of the insurer as measured by its assets,
capital and surplus, reserves, premium writings, insurance
in force and other appropriate criteria;

B. The extent to which the insurer's business is
diversified among the several lines of insurance;

C. The number and size of the risks insured in each line of
business;

D. The extent of the geographical dispersion of the
insurer's insured risks;

- 2 E. The nature and extent of the insurer's reinsurance
program;
- 4 F. The quality, diversification and liquidity of the
insurer's investment portfolio;
- 6 G. The recent past and projected future trend in the size
8 of the insurer's surplus to policyholders;
- 10 H. The surplus to policyholders maintained by other
comparable insurers in respect to the factors in paragraphs
12 A to G;
- 14 I. The adequacy of the insurer's reserves; and
- 16 J. The quality and liquidity of investments in subsidiaries
or affiliates. The department may discount any such
18 investment or treat any investment as a nonadmitted asset
for purposes of determining the adequacy of surplus as
20 regards policyholders whenever the investment so warrants.

22 **Sec. 5. 24-A MRSA §222, sub-§11, as amended by PL 1991, c.**
24 **828, §6, is repealed.**

26 **Sec. 6. 24-A MRSA §222, sub-§§11-A and 11-B are enacted to**
read:

28 **11-A. Extraordinary dividends. For purposes of this**
30 **subsection, an extraordinary dividend or distribution is any**
dividend or distribution that exceeds the greater of:

32 **A. Ten percent of the insurer's surplus to policyholders as**
34 **of December 31st of the preceding year; or**

36 **B. The net gain from operations for the 12-month period**
ending December 31st of the preceding year.

38 **A pro rata distribution of any class of the insurer's own**
40 **securities is not considered an extraordinary dividend or**
42 **distribution for purposes of this section. An insurer subject to**
44 **registration under this section may pay an extraordinary dividend**
46 **or make any other extraordinary distribution to its stockholders**
48 **upon the expiration of 60 days from the time the superintendent**
is notified of the declaration if within that period the
superintendent has not disapproved the payment or upon the
superintendent's approval of that payment within the 60-day
period. Notwithstanding any other provision of law, an insurer
may declare an extraordinary dividend or distribution that is
conditional upon the superintendent's approval, and such a
50 **declaration does not confer any rights to stockholders until the**

2 superintendent has approved the payment of the dividend or
4 distribution or the superintendent has not disapproved that
6 payment within the 60-day period. The insurer's surplus
8 following any dividends or distributions to shareholders under
10 this subsection must be reasonable in relation to the insurer's
12 outstanding liabilities and adequate to meet the insurer's
financial needs. An extraordinary dividend or distribution that
is permissible under statutory terms and conditions in the
insurer's state of domicile is deemed to meet the requirements of
this section if the value of that dividend or distribution does
not materially exceed the value that would be permissible under
this section.

14 **11-B. All other dividends and distributions.** For purposes
16 of this subsection, unassigned funds exclude 50% of unrealized
18 capital gains and include unrealized capital losses. An insurer
20 subject to registration under this section may pay from its
22 unassigned funds dividends and distributions other than those
24 defined in subsection 11-A if the insurer has notified the
26 superintendent within 5 days following the declaration of any
28 dividend under this subsection and at least 7 days prior to the
30 payment of any dividend under this subsection. A dividend or
32 distribution otherwise limited under this subsection may be paid
34 by a foreign insurer to its stockholders if the insurer's
36 domiciliary insurance regulatory authority has given approval
38 prior to that payment. A domestic insurer may pay a dividend or
40 distribution to its stockholders from other than unassigned funds
42 upon the expiration of 60 days from the time the superintendent
44 is notified of the declaration if the superintendent has not
within that period disapproved the payment or upon the
superintendent's approval of that payment within the 60-day
period. An insurer's surplus following any dividends or
distributions paid to shareholders under this subsection must be
reasonable in relation to the insurer's outstanding liabilities
and adequate to meet the insurer's financial needs. The
superintendent shall review at least annually dividends and
distributions declared or paid by an insurer under this
subsection. The superintendent shall issue an order restricting
or disallowing the payment of dividends and distributions by an
insurer upon a determination by the superintendent that the
insurer's surplus is not of a maintained value reasonable in
relation to the company's outstanding liabilities and is
inadequate to the company's financial needs, or a determination
that the insurer's financial condition constitutes a condition
hazardous to policyholders, claimants or the public.

46 **Sec. 7. 24-A MRSA §731-B, sub-§1, ¶C, as amended by PL 1991,**
48 **c. 38, is further amended by amending subparagraph (7) to read:**

2 (7) The corpus of the trust is to be valued as any
other admitted asset or assets; e~~r~~

4 **Sec. 8. 24-A MRSA §731-B, sub-§1, ¶C-1** is enacted to read:

6 C-1. Is accredited as a reinsurer in this State. An
8 accredited reinsurer is one that:

10 (1) Files with the superintendent evidence of
12 submission to this State's jurisdiction;

14 (2) Submits to this State's authority to examine its
16 books and records;

18 (3) Is licensed to transact insurance or reinsurance
20 in at least one state or, in the case of a United
22 States branch of an alien assuming insurer, is entered
24 through and licensed to transact insurance or
26 reinsurance in at least one state; and

28 (4) Files annually with the superintendent a copy of
30 its annual statement filed with the insurance
32 supervisory official of its state of domicile and a
34 copy of its most recent audited financial statement,
36 maintains a surplus as regards policyholders in an
38 amount less than \$20,000,000 and has been accredited by
40 the superintendent.

42 Credit may not be allowed to a domestic ceding insurer if
44 the assuming insurer's accreditation has been revoked by the
46 superintendent after notice and hearing; or

48 **Sec. 9. 24- A MRSA §731-B, sub-§1, ¶D,** as enacted by PL 1989,
50 c. 846, Pt. E, §2 and affected by §4, is amended to read:

36 D. Does not meet the requirements of paragraph A, B e~~r~~, C
38 or C-1, but only with respect to risks located in a
40 jurisdiction other than the United States, when that
reinsurance is required by any applicable law or regulation
of that jurisdiction.

42 **Sec. 10. 24-A MRSA §731-B, sub-§3, ¶C,** as enacted by PL 1989,
44 c. 846, Pt. E, §2 and affected by §4, is amended to read:

46 C. Clean, irrevocable, unconditional letters of credit,
48 issued or confirmed by a qualified United States financial
50 institution, ~~provided the Securities Valuation Office of the~~
~~National Association of Insurance Commissioners has~~
~~determined that the institution meets the standards that it~~
~~determines necessary and appropriate to the quality of a~~

2 ~~financial institution issuing letters of credit for this~~
purpose no later than December 31st of the year for which
4 filing is being made and in the possession of the ceding
company on or before the filing date of its annual statement.

6 (1) A letter of credit from an issuer determined to be
8 acceptable as of the date of issuance or the date of
confirmation of the letter, notwithstanding the issuing
10 or confirming institution's subsequent failure to meet
applicable standards of issuer acceptability, continues
12 to be acceptable as security until its expiration,
extension, renewal, modification or amendment,
14 whichever first occurs. The ceding insurer shall
replace a nonqualifying letter of credit at its
earliest opportunity.

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

24 **Sec. 11. 24-A MRSA §4204, sub-§2-A, ¶D,** as amended by PL 1989,
c. 842, §9, is further amended to read:

26 D. The health maintenance organization is financially
28 responsible, complies with the minimum surplus requirements
of section 4204-A, and, among other factors, can reasonably
30 be expected to meet its obligations to enrollees and
prospective enrollees.

32 (1) In a determination of minimum surplus
34 requirements, the following terms have the following
meanings.

36 (a) "Admitted assets" means assets as defined in
38 section 901. For purposes of this chapter, such
asset value is that contained in the annual
40 statement of the corporation as of December 31st
42 of the year preceding the making of the investment
or contained in any audited financial report, as
44 defined in section 221-A, of more current origin.

46 (b) "Reserves" means those reserves held by
corporations subject to this chapter for the
48 protection of subscribers. For purposes of this
chapter, such reserve value is that contained in
50 the annual statement of the corporation as of
December 31st of the preceding year or any audited

2 financial report, as defined in section 221-A, of
3 more current origin.

4 (3) In making the determination whether the health
5 maintenance organization is financially responsible,
6 the superintendent may also consider:

7 (a) The financial soundness of the health
8 maintenance organization's arrangements for health
9 care services and the schedule of charges used;

10 (b) The adequacy of working capital;

11 (c) Any agreement with an insurer, a nonprofit
12 hospital or medical service corporation, a
13 government or any other organization for insuring
14 or providing the payment of the cost of health
15 care services or the provision for automatic
16 applicability of an alternative coverage in the
17 event of discontinuance of the plan;

18 (d) Any agreement with providers for the
19 provision of health care services that contains a
20 covenant consistent with subsection 6; and

21 (e) Any arrangements for insurance coverage or an
22 adequate plan for self-insurance to respond to
23 claims for injuries arising out of the furnishing
24 of health care services.

25 **Sec. 12. 24-A MRS §4208, sub-§1, as amended by PL 1991, c.**
26 **709, §6, is further amended to read:**

27 **1. Every health maintenance organization shall annually, on**
28 **or before ~~the first day of April~~ March 1st or within any**
29 **reasonable extension of time that the superintendent for good**
30 **cause shown may have granted on or before March 1st, file a**
31 **report verified by at least 2 principal officers with the**
32 **superintendent with a full and true statement of its financial**
33 **condition, transactions and affairs as of December 31st of the**
34 **preceding year verified by at least 3 principal officers, and**
35 **shall provide a copy of that statement to the Commissioner of**
36 **Human Services, ~~covering the preceding calendar year.~~ The**
37 **superintendent may by rule or order require the filing of**
38 **quarterly or more frequent reports, which may be required to**
39 **include liability for uncovered expenditures as well as an audit**
40 **opinion.**

41 **Sec. 13. 24-A MRS §4208, sub-§2, as enacted by PL 1975, c.**
42 **503, is repealed.**

2 Sec. 14. 24-A MRSA §4208, sub-§§3 and 4 are enacted to read:

4 3. The annual statement must be prepared in accordance with
6 the National Association of Insurance Commissioners Annual
8 Statement Instructions and must follow practices and procedures
10 prescribed by the National Association of Insurance Commissioners
12 Accounting Practices and Procedures Manual for Health Maintenance
14 Organizations. Additionally, the annual statement must include:

16 A. A summary of information compiled pursuant to section
18 4204 in the form required by the Commissioner of Human
20 Services; and

22 B. Other information related to the performance of the
24 health maintenance organization that is necessary to enable
26 the superintendent to carry out the superintendent's duties
28 under this chapter.

30 4. The superintendent may refuse to continue or may suspend
32 or revoke the certificate of authority of a health maintenance
34 organization failing to file an annual statement when due.

36 Sec. 15. 24-A MRSA §4233, as enacted by PL 1989, c. 842, §18,
38 is repealed and the following enacted in its place:

40 **§4233. Registration, regulation and supervision of holding**
42 **company systems**

44 1. Every domestic health maintenance organization is
46 subject to the requirements of section 222, subsections 2 to 9
48 and 13 to 18, and is deemed to be an insurer for purposes of
50 chapter 57, subchapters I and II.

2. Every domestic health maintenance organization is
 subject to the requirements of section 221-A. At the
 superintendent's request, a domestic health maintenance
 organization must make available to the superintendent the audit
 work papers of any accountant who has audited that health
 maintenance organization.

Upon timely notice to a health maintenance organization, the
 superintendent may review, photocopy or otherwise record the
 audit work papers generated by any accountant who has audited
 that health maintenance organization.

Health maintenance organization work papers under the
 superintendent's custody or control are confidential and not
 subject to public inspection.

2 The work papers of a health maintenance organization's parent,
4 subsidiaries or other corporate affiliates are deemed to be the
6 work papers of that health maintenance organization to the extent
8 the work papers affect the health maintenance organization's
10 final equity determination and reference any transaction between
12 the health maintenance organization and its parent, subsidiaries
14 or corporate affiliates.

16 As a condition of engaging an auditing accountant, the health
18 maintenance organization shall require the accountant to:

20 A. Retain for a period of at least 6 years any work papers
22 prepared in connection with the accountant's audit of that
24 health maintenance organization; and

26 B. Provide, at the request of the health maintenance
28 organization, the original or copies of any work papers
30 created by the accountant in connection with an audit of
32 that health maintenance organization.

34 For purposes of this subsection, the term "work papers" includes,
36 but is not limited to, originals or copies of any schedules,
38 analyses, reconciliations, abstracts, memoranda, narratives, flow
40 charts, company records or other documents prepared or obtained
42 by the accountant and the accountant's employees in the course of
44 conducting an audit of the health maintenance organization.

46 **Sec. 16. Allocation.** The following funds are allocated from
48 Other Special Revenue funds to carry out the purposes of this Act.

1993-94 1994-95

32 **PROFESSIONAL AND FINANCIAL**
34 **REGULATION, DEPARTMENT OF**

36 **Insurance - Bureau of**

38	Positions	(2.0)	(2.0)
40	Personal Services	\$124,000	\$130,000
	All Other	4,000	4,000

42 Provides funding for
44 continuation of one Managing
46 Insurance Examiner and one
48 Senior Rate Analyst; and
provides funding for
reclassification of one Staff
Attorney to Senior Staff
Attorney, one Clerk IV to

2 Assistant Company Examiner
and one part-time Market
4 Conduct Examiner position to
a full-time Market Conduct
Examiner position.

6

8 **DEPARTMENT OF PROFESSIONAL AND
FINANCIAL REGULATION**
TOTAL

\$128,000

\$134,000

10

12

STATEMENT OF FACT

14

16 This bill enables the Bureau of Insurance to seek national
accreditation by establishing regulatory standards for insurers.
18 The accreditation process is coordinated through the National
Association of Insurance Commissioners, a voluntary association
of the 50 state insurance regulators. The purpose of
20 accreditation, consistent insurer solvency regulation across the
country, is achieved by requiring state insurance departments to
22 reach and maintain certain standards of insurance regulation,
which are subject to continuous monitoring and improvement.

24

26 The bill also allocates funds for the continuation of 2
positions created in the workers' compensation reform package
enacted by the Third Special Session of the 115th Legislature,
28 Public Law 1991, chapter 885. The bill also provides funds to
permit personnel upgrades in the legal and examination areas to
30 reflect performance of accreditation responsibilities. A change
in an examiner position from part-time to full-time is proposed
32 to better ensure insurer compliance with performance regulatory
standards.

34