

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1899

S.P. 701

In Senate, February 18, 1994

**An Act to Require Risk-based Capital Standards and Standard Valuation
to Ensure Continued Accreditation for the Bureau of Insurance.**

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 that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator KIEFFER of Aroostook.

Cosponsored by Representatives: CARLETON of Wells, HALE of Sanford, PINEAU of Jay.

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

4 PART A

6 Sec. A-1. 24-A MRSA c. 79 is enacted to read:

8 CHAPTER 79

10 RISK-BASED CAPITAL STANDARDS

12 §6451. Definitions

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

16 1. Adjusted risk-based capital report. "Adjusted risk-based capital report" means a risk-based capital report that has been adjusted by the superintendent in accordance with section 6452, subsection 3.

20 2. Corrective order. "Corrective order" means an order issued by the superintendent specifying corrective actions that the superintendent has determined are required.

24 3. Domestic insurer. "Domestic insurer" means any life or health insurance company organized in this State.

28 4. Foreign insurer. "Foreign insurer" means any life or health insurance company that is authorized to do business in this State under section 404 but is not domiciled in this State.

32 5. NAIC. "NAIC" means the National Association of Insurance Commissioners.

36 6. Negative trend. "Negative trend" means a negative trend over a period of time, as determined in accordance with the trend test calculation included in the risk-based capital instructions.

40 7. Risk-based capital instructions. "Risk-based capital instructions" means the risk-based capital instructions adopted by the NAIC, as such risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

44 8. Risk-based capital level. "Risk-based capital level" means an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital or mandatory control level risk-based capital where:

2 A. "Company action level risk-based capital" means, with
3 respect to any insurer, the product of 2.0 and its
4 authorized control level risk-based capital;

5 B. "Regulatory action level risk-based capital" means the
6 product of 1.5 and its authorized control level risk-based
7 capital;

8 C. "Authorized control level risk-based capital" means the
9 number determined under the risk-based capital formula in
10 accordance with the risk-based capital instructions; and
11

12 D. "Mandatory control level risk-based capital" means the
13 product of .70 and the authorized control level risk-based
14 capital.

15 9. Risk-based capital plan. "Risk-based capital plan"
16 means a comprehensive financial plan containing the elements
17 specified in section 6453, subsection 2. If the superintendent
18 rejects the risk-based capital plan and it is revised by the
19 insurer, with or without the superintendent's recommendation, the
20 plan is called the revised risk-based capital plan.
21

22 10. Risk-based capital report. "Risk-based capital report"
23 means the report required in section 6452.

24 11. Total adjusted capital. "Total adjusted capital" means
25 the sum of:

26 A. An insurer's statutory capital and surplus; and

27 B. Such other items, if any, as the risk-based capital
28 instructions provide.

29 **§6452. Risk-based capital reports**

30 1. Duty to file. A domestic insurer shall, on or before
31 March 15th, submit to the superintendent a report of its
32 risk-based capital levels as of the end of the previous calendar
33 year, in a form and containing such information as is required by
34 the risk-based capital instructions. In addition, a domestic
35 insurer shall file its risk-based capital report:

36 A. With the NAIC in accordance with the risk-based capital
37 instructions; and

38 B. With the insurance superintendent in any state in which
39 the insurer is authorized to do business, if the insurance
40 superintendent has notified the insurer of its request for
41

2 the filing in writing, in which case the insurer shall file
3 its risk-based capital report not later than the later of:

4 (1) Fifteen days from the receipt of notice to file
5 its risk-based capital report with that state; or

6
7 (2) The filing date.

8
9 2. Determination of insurer's risk-based capital. An
10 insurer's risk-based capital must be determined in accordance
11 with the formula set forth in the risk-based capital
12 instructions. The formula must take into account, and may adjust
13 for the covariance between, the following:

14 A. The risk with respect to the insurer's assets;

15 B. The risk of adverse insurance experience with respect to
16 the insurer's liabilities and obligations;

17 C. The interest rate risk with respect to the insurer's
18 business; and

19 D. All other business risks and such other relevant risks
20 as are set forth in the risk-based capital instructions,
21 determined in each case by applying the factors in the
22 manner set forth in the risk-based capital instructions.

23
24 3. Filing of inaccurate report. If a domestic insurer
25 files a risk-based capital report that in the judgment of the
26 superintendent is inaccurate, then the superintendent shall
27 adjust the risk-based capital report to correct the inaccuracy
28 and notify the insurer of the adjustment. The notice must
29 contain a statement of the reason for the adjustment. A
30 risk-based capital report so adjusted is referred to as an
31 adjusted risk-based capital report.

32
33 **§6453. Company action level event**

34
35 1. Company action level event; defined. "Company action
36 level event" means any of the following events:

37 A. The filing of a risk-based capital report by an insurer
38 that indicates that:

39 (1) The insurer's total adjusted capital is greater
40 than or equal to its regulatory action level risk-based
41 capital but less than its company action level
42 risk-based capital; or

2 (2) The insurer has total adjusted capital that is
4 greater than or equal to its company action level
6 risk-based capital but less than the product of its
 authorized control level risk-based capital and 2.5 and
 has a negative trend;

8 B. Provided the insurer does not challenge the adjusted
10 risk-based capital report under section 6457, the
12 notification by the superintendent to the insurer of an
 adjusted risk-based capital report that indicates the event
 in paragraph A; or

14 C. If the insurer, under section 6457, challenges the
16 adjusted risk-based capital report that indicates the event
18 in paragraph A, the notification by the superintendent to
 the insurer that the superintendent has, after a hearing,
 rejected the insurer's challenge.

20 2. Contents of risk-based capital plan. When a company
22 action level event occurs, the insurer shall submit to the
 superintendent a risk-based capital plan that must:

24 A. Identify the conditions in the insurer's business that
 contribute to the company action level event;

26 B. Contain proposals of corrective actions that the insurer
28 intends to take and that are expected to result in the
 elimination of the company action level event;

30 C. Provide projections of the insurer's financial results
32 in the current year and at least the 4 succeeding years,
34 with consideration given to the effect of implementing and
36 not implementing the proposed corrective actions, including
38 projections of statutory operating income, net income,
 capital and surplus. The projections for new and renewal
 business may include separate projections for each major
 line of business and separately identify each significant
 income, expense and benefit component;

40 D. Identify the key assumptions impacting the insurer's
42 projections and the sensitivity of the projections to the
 assumptions; and

44 E. Identify the quality of, and the problems associated
46 with, the insurer's business, including but not limited to
48 its assets, anticipated business growth and associated
 surplus strain, extraordinary exposure to risk, mix of
 business and use of reinsurance in each case, if any.

2 3. Submission of risk-based capital plan. The risk-based capital plan must be submitted:

4 A. Within 45 days of the company action level event; or

6 B. If the insurer challenges an adjusted risk-based capital report under section 6457, within 45 days after notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

10 4. Review by superintendent. Within 60 days after the submission by an insurer of a risk-based capital plan to the superintendent pursuant to this section, the superintendent shall notify the insurer whether the risk-based capital plan may be implemented or is, in the judgment of the superintendent, unsatisfactory. If the superintendent determines the risk-based capital plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may set forth proposed revisions that will render the risk-based capital plan satisfactory, in the judgment of the superintendent. Upon notification from the superintendent, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the superintendent, and shall submit the revised risk-based capital plan to the superintendent:

16 A. Within 45 days after the notification from the superintendent; or

18 B. If the insurer challenges the notification from the superintendent under section 6457, within 45 days after a notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

22 5. Notification that plan is unsatisfactory. In the event of a notification by the superintendent to an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the superintendent may at the superintendent's discretion, subject to the insurer's right to a hearing under section 6457, specify in the notification that the notification constitutes a regulatory action level event.

26 6. Duty to file copies of plan with other states. A domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the superintendent pursuant to this section shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance superintendent in any state in which the insurer is authorized to do business if:

28 A. That state has a risk-based capital provision substantially similar to that required by this chapter; and

2 B. The insurance superintendent of that state has notified
4 the insurer of its request for the filing in writing, in
6 which case the insurer shall file a copy of the risk-based
 capital plan or revised risk-based capital plan in that
 state no later than the later of:

8 (1) Fifteen days after the receipt of notice to file a
10 copy of its risk-based capital plan or revised
 risk-based capital plan with the state; or

12 (2) The date on which the risk-based capital plan or
14 revised risk-based capital plan is filed under section
 6454, subsection 3.

16 §6454. Regulatory action level event

18 1. Regulatory action level event; defined. "Regulatory
20 action level event" means, with respect to any insurer, any of
 the following events:

22 A. The filing of a risk-based capital report by the insurer
24 that indicates that the insurer's total adjusted capital is
 greater than or equal to its authorized control level
26 risk-based capital but less than its regulatory action level
 risk-based capital;

28 B. Provided the insurer does not challenge the adjusted
30 risk-based capital report under section 6457, the
32 notification by the superintendent to an insurer of an
 adjusted risk-based capital report that indicates the event
 in paragraph A;

34 C. If the insurer, under section 6457, challenges an
36 adjusted risk-based capital report that indicates the event
38 in paragraph A, the notification by the superintendent to
 the insurer that the superintendent has, after a hearing,
 rejected the insurer's challenge;

40 D. The failure of the insurer to file a risk-based capital
42 report by the filing date, unless the insurer has provided
44 an explanation for the failure that is satisfactory to the
 superintendent and has cured the failure within 10 days
 after the filing date;

46 E. The failure of the insurer to submit a risk-based
48 capital plan to the superintendent within the time period
 set forth in section 6453, subsection 3;

2 F. The notification by the superintendent to the insurer
3 that:

4 (1) The risk-based capital plan or revised risk-based
5 capital plan submitted by the insurer is, in the
6 judgment of the superintendent, unsatisfactory; and

7 (2) Provided the insurer has not challenged the
8 determination under section 6457, that notification
9 constitutes a regulatory action level event with
10 respect to the insurer;

11 G. If the insurer, under section 6457, challenges a
12 determination by the superintendent under paragraph F, the
13 notification by the superintendent to the insurer that the
14 superintendent has, after a hearing, rejected that challenge;

15 H. Provided the insurer has not challenged the
16 determination under section 6457, the notification by the
17 superintendent to the insurer that the insurer has failed to
18 adhere to its risk-based capital plan or revised risk-based
19 capital plan, but only if that failure has a substantial
20 adverse effect on the ability of the insurer to eliminate
21 the regulatory action level event in accordance with its
22 risk-based capital plan or revised risk-based capital plan
23 and the superintendent has so stated in the notification; or

24 I. If the insurer, under section 6457, challenges a
25 determination by the superintendent under paragraph H, the
26 notification by the superintendent to the insurer that the
27 superintendent has, after a hearing, rejected the challenge
28 unless the failure of the insurer to adhere to its
29 risk-based capital plan or revised risk-based capital plan
30 has no substantial adverse effect on the ability of the
31 insurer to eliminate the regulatory action level event with
32 respect to the insurer.

33 2. Superintendent duties; regulatory action level event.
34 When a a regulatory action level event occurs, the superintendent
35 shall:

36 A. Require the insurer to submit a risk-based capital plan
37 or, if applicable, a revised risk-based capital plan;

38 B. Perform such examination or analysis as the
39 superintendent considers necessary of the assets,
40 liabilities and operations of the insurer, including a
41 review of its risk-based capital plan or revised risk-based
42 capital plan; and

2 C. Subsequent to the examination or analysis, issue a
3 corrective order specifying corrective actions that the
4 superintendent considers necessary.

5 3. Determination of corrective actions. In determining
6 corrective actions, the superintendent may take into account
7 those factors that the superintendent considers relevant with
8 respect to the insurer based upon the superintendent's
9 examination or analysis of the assets, liabilities and operations
10 of the insurer, including, but not limited to, the results of any
11 sensitivity tests undertaken pursuant to the risk-based capital
12 instructions. The risk-based capital plan or revised risk-based
13 capital plan must be submitted:

14 A. Within 45 days after the occurrence of the regulatory
15 action level event;

16 B. If the insurer challenges an adjusted risk-based capital
17 report under section 6457 and the challenge is not, in the
18 judgment of the superintendent, frivolous, within 45 days
19 after the notification to the insurer that the
20 superintendent has, after a hearing, rejected the insurer's
21 challenge; or

22 C. If the insurer challenges a revised risk-based capital
23 plan under section 6457, within 45 days after notification
24 to the insurer that the superintendent has, after a hearing,
25 rejected the insurer's challenge.

26 4. Consultants. The superintendent may retain actuaries,
27 investment experts and other consultants as may be necessary in
28 the judgment of the superintendent to review the insurer's
29 risk-based capital plan or revised risk-based capital plan;
30 examine or analyze the assets, liabilities and operations of the
31 insurer; and formulate the corrective order with respect to the
32 insurer. The fees, costs and expenses relating to consultants
33 must be borne by the affected insurer or such other party as
34 directed by the superintendent.

35 §6455. Authorized control level event

36 1. Authorized control level event; defined. "Authorized
37 control level event" means any of the following events:

38 A. The filing of a risk-based capital report by the insurer
39 that indicates that the insurer's total adjusted capital is
40 greater than or equal to its mandatory control level
41 risk-based capital but less than its authorized control
42 level risk-based capital;

43

2 B. Provided the insurer does not challenge the adjusted
4 risk-based capital report under section 6457, the
6 notification by the superintendent to the insurer of an
8 adjusted risk-based capital report that indicates the event
10 in paragraph A;

12 C. If the insurer, under section 6457, challenges an
14 adjusted risk-based capital report that indicates the event
16 in paragraph A, the notification by the superintendent to
18 the insurer that the superintendent has, after a hearing,
20 rejected the insurer's challenge;

22 D. Provided the insurer has not challenged the corrective
24 order under section 6457, the failure of the insurer to
26 respond, in a manner satisfactory to the superintendent, to
28 a corrective order; or

30 E. If the insurer has challenged a corrective order under
32 section 6457 and the superintendent has, after a hearing,
34 rejected the challenge or modified the corrective order, the
36 failure of the insurer to respond, in a manner satisfactory
38 to the superintendent, to the corrective order subsequent to
40 rejection or modification by the superintendent.

42 **2. Superintendent duties; authorized control level event.**

44 When an authorized control level event occurs, the superintendent
46 shall:

48 A. Take those actions that are required under section 6454
regarding an insurer with respect to which a regulatory
action level event has occurred; or

B. If the superintendent considers it to be in the best
interests of the policyholders and creditors of the insurer
and of the public, take those actions that are necessary to
cause the insurer to be placed under regulatory control
under chapter 57. If the commissioner takes those actions,
the authorized control level event is deemed sufficient
grounds for the superintendent to take action under chapter
57, and the superintendent has the rights, powers and duties
with respect to the insurer as are set forth in chapter 57.
If the superintendent takes actions under this paragraph
pursuant to an adjusted risk-based capital report, the
insurer is entitled to those protections that are afforded
to insurers under the provisions of chapter 57, subchapter
II pertaining to summary proceedings.

§6456. Mandatory control level event

2 1. Mandatory control level event; defined. "Mandatory
control level event" means any of the following events:

4 A. The filing of a risk-based capital report that indicates
6 that the insurer's total adjusted capital is less than its
mandatory control level risk-based capital;

8 B. Provided the insurer does not challenge the adjusted
10 risk-based capital report under section 6457, the
12 notification by the superintendent to the insurer of an
adjusted risk-based capital report that indicates the event
in paragraph A; or

14 C. If the insurer, under section 6457, challenges an
16 adjusted risk-based capital report that indicates the event
18 in paragraph A, the notification by the superintendent to
the insurer that the superintendent has, after a hearing,
rejected the insurer's challenge.

20 2. Superintendent duties; mandatory control level event.
22 When a mandatory control level event occurs, the superintendent
24 shall take those actions that are necessary to cause the insurer
26 to be placed under regulatory control under chapter 57. If the
28 superintendent takes those actions, the mandatory control level
30 event is deemed sufficient grounds for the superintendent to take
32 action under chapter 57, and the superintendent has the rights,
34 powers and duties with respect to the insurer as are set forth in
36 chapter 57. If the superintendent takes actions pursuant to an
adjusted risk-based capital report, the insurer is entitled to
those protections that are afforded to insurers under the
provisions of chapter 57, subchapter II pertaining to summary
proceedings. Notwithstanding any provision of this section to
the contrary, the superintendent may forego action for up to 90
days after the mandatory control level event if the
superintendent finds there is a reasonable expectation that the
mandatory control level event may be eliminated within the 90-day
period.

38 §6457. Hearings

40 1. Right to hearing. An insurer has the right to a
42 departmental hearing, on record, at which the insurer may
44 challenge any determination or action by the superintendent upon:

46 A. Notification to an insurer by the superintendent of an
adjusted risk-based capital report;

48 B. Notification to an insurer by the superintendent that:

2 (1) The insurer's risk-based capital plan or revised
risk-based capital plan is unsatisfactory; and

4 (2) That notification constitutes a regulatory action
level event with respect to the insurer;

6
8 C. Notification to any insurer by the superintendent that
the insurer has failed to adhere to its risk-based capital
10 plan or revised risk-based capital plan and that such
failure has a substantial adverse effect on the ability of
12 the insurer to eliminate the company action level event with
respect to the insurer in accordance with its risk-based
14 capital plan or revised risk-based capital plan; or

16 D. Notification to an insurer by the superintendent of a
corrective order with respect to the insurer.

18 The insurer must notify the superintendent of its request for a
hearing within 5 days after the notification by the
20 superintendent under paragraph A, B, C or D. Upon receipt of the
insurer's request for a hearing, the superintendent shall set a
22 date for the hearing, which may not be less than 10 or more than
30 days after the date of the insurer's request.

24 §6458. Confidentiality and prohibition on announcements

26 1. Confidentiality. The following constitute information
28 that might be damaging to the insurer if made available to its
competitors and must be kept confidential by the superintendent:

30 A. Risk-based capital reports, with respect to any domestic
32 insurer or foreign insurer, that are filed with the
superintendent, to the extent that the information in the
34 reports is not required to be set forth in a publicly
available annual statement schedule; and

36 B. Risk-based capital plans, with respect to any domestic
38 insurer or foreign insurer, that are filed with the
superintendent, including the results or report of any
40 examination or analysis of an insurer performed pursuant to
this chapter and any corrective order issued by the
42 superintendent pursuant to the examination or analysis.

44 The information listed in paragraph A or B may not be made public
or be subject to subpoena, other than by the superintendent and
46 then only for the purpose of enforcement actions taken by the
superintendent pursuant to this chapter or any other provision of
48 the insurance laws of this State.

2 2. Prohibition on dissemination of information regarding
3 risk-based capital levels. Except as otherwise required under
4 this chapter, making, publishing, disseminating, circulating or
5 placing before the public, or causing, directly or indirectly, to
6 be made, published, disseminated, circulated or placed before the
7 public, in a newspaper, magazine or other publication, or in the
8 form of a notice, circular, pamphlet, letter or poster, or over
9 any radio or television station, or in any other way, an
10 advertisement, announcement or statement containing an assertion
11 or representation with regard to the risk-based capital levels of
12 any insurer, or of any component derived in the calculation of
13 risk-based capital levels, by any insurer, agent, broker or other
14 person engaged in any manner in the insurance business would be
15 misleading and is prohibited; provided, however, that if any
16 materially false statement with respect to the comparison between
17 an insurer's total adjusted capital to its risk-based capital
18 levels or an inappropriate comparison of any other amount to the
19 insurer's risk-based capital levels is published in any written
20 publication and the insurer is able to demonstrate to the
21 superintendent with substantial proof the falsity of that
22 statement, or the inappropriateness, as the case may be, then the
23 insurer may publish an announcement in a written publication if
24 the sole purpose of the announcement is to rebut the materially
25 false statement.

26 **§6459. Supplemental provisions**

27 The provisions of this chapter are supplemental to any other
28 provisions of the laws of this State and do not preclude or limit
29 any other powers or duties of the superintendent under those
30 laws, including, but not limited to, sections 417, 3423 and 3424
31 and chapter 57.

32 **§6460. Foreign insurers**

33 1. Submission of risk-based capital report. Upon the
34 written request of the superintendent, a foreign insurer shall
35 submit to the superintendent a risk-based capital report as of
36 the end of the previous calendar year by the later of:

37 A. The date a risk-based capital report would be required
38 to be filed by a domestic insurer under this chapter; or

39 B. Fifteen days after the request is received by the
40 foreign insurer.

41 At the written request of the superintendent, a foreign insurer
42 shall promptly submit to the superintendent a copy of any
43 risk-based capital plan that is filed with the insurance
44 superintendent of any other state.

2 **2. Company action level event or regulatory action level**
3 **event.** When a company action level event or regulatory action
4 **level event with respect to a foreign insurer occurs, as**
5 **determined under laws governing risk-based capital applicable in**
6 **the state of domicile of the insurer, or, if no such risk-based**
7 **capital provision is in force in that state, under the provisions**
8 **of this chapter, if the insurance superintendent of the state of**
9 **domicile of the foreign insurer fails to require the foreign**
10 **insurer to file a risk-based capital plan in the manner specified**
11 **under the laws governing risk-based capital in that state, or, if**
12 **no such risk-based capital provision is in force in that state,**
13 **under this chapter, the superintendent may require the foreign**
14 **insurer to file a risk-based capital plan with the**
15 **superintendent. In this event, the failure of the foreign**
16 **insurer to file a risk-based capital plan with the superintendent**
17 **is grounds to order the insurer to desist from writing new**
18 **insurance business in this State.**

19 **3. Mandatory control level event.** When a mandatory control
20 **level event with respect to any foreign insurer occurs, if a**
21 **domiciliary receiver has not been appointed with respect to the**
22 **foreign insurer under the rehabilitation and liquidation statute**
23 **applicable in the state of domicile of the foreign insurer, the**
24 **superintendent may make application to the Superior Court under**
25 **chapter 57 with respect to the liquidation of property of foreign**
26 **insurers in this State, and the occurrence of the mandatory**
27 **control level event is considered adequate grounds for the**
28 **application.**

29 **§6461. Notices**

30
31 A notice by the superintendent to an insurer that may result
32 **in regulatory action under this chapter is effective upon**
33 **dispatch if transmitted by registered or certified mail or, in**
34 **the case of any other transmission, is effective upon the**
35 **insurer's receipt of the notice.**

36
37 **Sec. A-2. Transition provision.** Notwithstanding the Maine
38 Revised Statutes, Title 24-A, sections 6453, 6454, 6455 and 6456,
39 for risk-based capital reports required to be filed with respect
40 to calendar year 1993, the following requirements apply.

41 **1. Company action level event.** When a company action level
42 event occurs with respect to a domestic insurer, the
43 Superintendent of Insurance may not take regulatory action under
44 Title 24-A, chapter 79.

45 **2. Certain regulatory action level events.** When a
46 regulatory action level event occurs under Title 24-A, section
47
48
49
50

2 6454, subsection 1, paragraph A, B or C, the Superintendent of
Insurance shall take the actions required under Title 24-A,
4 section 6453.

6 **3. Authorized control level event; certain regulatory
action events.** When a regulatory action level event occurs under
8 Title 24-A, section 6454, subsection 1, paragraph D, E, F, G, H
or I or an authorized control level event occurs, the
10 Superintendent of Insurance shall take the actions required under
Title 24-A, section 6454 with respect to the insurer.

12 **4. Mandatory control level events.** When a mandatory
control level event occurs with respect to an insurer, the
14 Superintendent of Insurance shall take the actions required under
Title 24-A, section 6455 with respect to the insurer.

16 PART B

18 **Sec. B-1. 24-A MRSA §952-A** is enacted to read:

20 **§952-A. Actuarial opinion of reserves**

22 **1. General.** A life insurer doing business in this State
24 shall annually submit the opinion of a qualified actuary as to
26 whether the reserves and related actuarial items of that life
insurer held in support of the policies and contracts specified
28 by the superintendent by rule are computed appropriately, are
based on assumptions that satisfy contractual provisions, are
30 consistent with prior reported amounts and comply with applicable
laws of this State. The superintendent by rule shall define the
32 specifics of this opinion and add any other items considered
necessary to its scope.

34 **2. Actuarial analysis of reserves and assets supporting**
those reserves. A life insurer, except as exempted by or
36 pursuant to rule, shall include in the opinion required by
38 subsection 1 an opinion of the same qualified actuary as to
whether the reserves and related actuarial items held in support
40 of the policies and contracts specified by the superintendent by
rule, when considered in light of the assets held by the insurer
42 with respect to the reserves and related actuarial items,
including, but not limited to, the investment earnings on the
44 assets and the considerations anticipated to be received and
retained under the policies and contracts, adequately provide for
46 the insurer's obligations under the policies and contracts,
including, but not limited to, the benefits under and expenses
associated with the policies and contracts.

48 The superintendent may provide by rule for a transition period
50 for establishing any higher reserves that the qualified actuary

may consider necessary in the opinion required by this subsection.

2
3. Requirement for opinion under subsection 2. An opinion
4 required by subsection 2 is governed by the following provisions.

6 A. A memorandum, in form and substance acceptable to the
7 superintendent as specified by rule, must be prepared to
8 support the actuarial opinion.

10 B. If the insurer fails to provide a supporting memorandum
11 at the request of the superintendent within a period
12 specified by rule or the superintendent determines that the
13 supporting memorandum provided by the insurer fails to meet
14 the standards prescribed by the rules or is otherwise
15 unacceptable to the superintendent, the superintendent may
16 engage a qualified actuary at the expense of the insurer to
17 review the opinion and the basis for the opinion and prepare
18 a supporting memorandum as required by the superintendent.

20 4. Requirement for all opinions. An opinion required
21 pursuant to subsection 1 or 2 is governed by the following
22 provisions.

24 A. The opinion must be submitted with the annual statement
25 reflecting the valuation of reserve liabilities for each
26 year ending on or after December 31, 1995.

28 B. The opinion must apply to all business in force,
29 including individual and group health insurance plans, in a
30 form and substance acceptable to the superintendent as
31 specified by rule.

32 C. The opinion must be based on standards adopted by the
33 actuarial standards board and on those additional standards
34 as the superintendent by rule prescribes.

36 D. In the case of an opinion required to be submitted by a
37 foreign or alien insurer, the superintendent may accept the
38 opinion filed by that insurer with the insurance supervisory
39 official of another state if the superintendent determines
40 that the opinion reasonably meets the requirements
41 applicable to an insurer domiciled in this State.

42 E. For the purposes of this section, "qualified actuary"
43 means a member in good standing of the American Academy of
44 Actuaries who meets the requirements set forth in the rules
45 of the American Academy of Actuaries.
46
47
48

2 F. Except in cases of fraud or willful misconduct, a
4 qualified actuary is not liable for damages to any person,
6 other than the insurer and the superintendent, for any act,
8 error, omission, decision or conduct with respect to the
10 qualified actuary's opinion.

12 G. Disciplinary action by the superintendent against the
14 insurer or the qualified actuary must be defined in rules
16 established by the superintendent.

18 H. Any memorandum in support of the opinion and any other
20 material provided by the insurer to the superintendent in
22 connection with the memorandum must be kept confidential by
24 the superintendent, may not be made public and may not be
26 subject to subpoena other than for the purpose of defending
28 an action seeking damages from any person by reason of an
30 action required by this section or by rules adopted under
32 this section, provided, however, that the memorandum or
34 other material may otherwise be released by the
36 superintendent with the written consent of the insurer, or
38 to the American Academy of Actuaries upon request stating
40 that the memorandum or other material is required for the
42 purpose of professional disciplinary proceedings and setting
44 forth procedures satisfactory to the superintendent for
46 preserving the confidentiality of the memorandum or other
48 material. Once any portion of the confidential memorandum
is cited by the insurer in its marketing or is cited before
any governmental agency other than a state insurance
department or is released by the insurer to the news media,
all portions of the confidential memorandum are no longer
confidential.

Sec. B-2. 24-A M RSA §955, as amended by PL 1983, c. 346, §6,
is repealed and the following enacted in its place:

§955. Minimum reserves

1. Minimum aggregate reserves for life insurance policies.

An insurer's aggregate reserves for all life insurance policies,
excluding disability and accidental death benefits, that are
subject to section 953, subsection 2 may not be less than the
aggregate reserves calculated in accordance with the method set
forth in sections 954 and 957-A and the mortality table or tables
and rate or rates of interest used in calculating nonforfeiture
benefits for these policies.

2. Minimum aggregate reserves for all policies. The
aggregate reserves for all policies, contracts and benefits may
not be less than the aggregate reserves determined necessary by

2 the qualified actuary in the opinion required by section 952-A.

4 **Sec. B-3. 24-A MRSA §956**, as amended by PL 1979, c. 453, §6,
is repealed and the following enacted in its place:

6 **§956. Optional reserve calculation**

8 **1. Reserve calculation.** Reserves for any category of
10 policies, contracts or benefits as established by the
12 superintendent that are subject to section 953, subsection 2, may
14 be calculated at the option of the insurer according to any
16 standards that produce greater aggregate reserves for that
18 category than those calculated according to the minimum standard
provided in section 955, but the rate or rates of interest used
for policies and contracts, other than annuity and pure endowment
contracts, may not be higher than the corresponding rate or rates
of interest used in calculating any nonforfeiture benefits
provided.

20 **2. Lower standard of valuation.** Any insurer that adopts
22 any standard of valuation producing greater aggregate reserves
24 than those calculated according to the minimum standard provided
26 in section 955 may adopt, with the approval of the
28 superintendent, any lower standards of valuation, but not lower
than the minimum required, provided, however, that for the
purposes of this section the holding of additional reserves
previously determined necessary by a qualified actuary in the
opinion required by section 952-A may not be determined to be the
adoption of a higher standard of valuation.

30 **Sec. B-4. Effective date.** That section of this Part that enacts
32 the Maine Revised Statutes, Title 24-A, section 952-A takes
34 effect December 31, 1995.

36 **STATEMENT OF FACT**

38 The purpose of Part A of this bill is to create a regulatory
40 tool that allows the Bureau of Insurance to differentiate the
42 financial conditions of insurers. This regulatory tool is
intended to provide adequate surplus for unexpected increases in
44 liabilities, unexpected decreases in asset values, inadequate
rates, cash-flow timing problems and catastrophes.

46 An insurer's risk-based capital is calculated by applying
factors to various assets and premium and reserve items, where
48 the factor is higher for those items with greater underlying risk
and lower for less risky items. A weighted average is achieved
that works in conjunction with provisions in the bill that calls

for mandatory regulatory action when surplus drops below
mandatory levels.

The Standard Valuation Law was enacted in all 50 states to
specify the level of reserves life insurers are required to hold
to provide for future benefits. The National Association of
Insurance Commissioners recently amended the model law to require
an actuarial certification as to the appropriateness of the
assets backing up the reserves. Part B of this bill amends the
State's Standard Valuation Law to conform to the new model.

This document has not yet been reviewed to determine the
need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.