

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1192

S.P. 401

In Senate, February 11, 1999

An Act to Update Insurance Financial Standards.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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 LaFOUNTAIN of York.
Cosponsored by Representative MAYO of Bath and
Senator DOUGLASS of Androscoggin, Representatives: O'NEIL of Saco, SULLIVAN of
Biddeford.

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

2 **Sec. 1. 13-A MRSA §811** is enacted to read:

4 **§811. Redomestication by Maine insurer**

6 A Maine insurer that transfers its domicile to another state
8 shall file with the Secretary of State notification of
10 redomestication on a form prescribed by the Secretary of State
12 and approved by the Superintendent of Insurance.

12 **Sec. 2. 13-A MRSA §1207-A** is enacted to read:

14 **§1207-A. Redomestication by foreign insurer**

16 1. A foreign insurer that transfers its domicile to this
18 State shall file with the Secretary of State a long-form
20 certificate of good standing or its equivalent, duly certified by
22 the proper official of the previous state of domicile, and an
24 application for redomestication to become a Maine insurer on a
26 form prescribed by the Secretary of State and approved by the
28 Superintendent of Insurance.

24 2. A foreign insurer qualified to do business in this State
26 that transfers its domicile to a state other than Maine shall
28 file with the Secretary of State notification by a foreign
30 insurer of redomestication in a form prescribed by the Secretary
32 of State and approved by the Superintendent of Insurance.

30 **Sec. 3. 13-A MRSA §1401, sub-§16-A** is enacted to read:

32 16-A. Notification by a Maine insurer of redomestication,
34 as provided by section 811, §55;

36 **Sec. 4. 13-A MRSA §1401, sub-§§27-A and 27-B** are enacted to
read:

38 27-A. Application for redomestication to become a Maine
40 insurer, as provided in section 1207-A, §80;

42 27-B. Notification by a foreign insurer of redomestication,
44 as provided by section 1207-A, §35;

44 **Sec. 5. 24-A MRSA §221-A, sub-§3,** as amended by PL 1993, c.
313, §5, is further amended to read:

2 **3. Audits required.** All insurers, excepting insurers
4 transacting business in this State pursuant to the terms of
5 chapter 51, shall cause to be conducted an annual audit by an
6 independent certified public accountant ~~and.~~ Each domestic
7 insurer shall file an audited financial report with the
8 superintendent on or before June 1st for the year ending December
9 31st preceding. An extension of the filing deadline may be
10 granted by the superintendent upon a showing by the insurer or
11 its accountant that there exists valid justification for such an
12 extension. A foreign or alien insurer shall file an audited
13 financial report upon the superintendent's request. A firm of
14 independent certified public accountants engaged to perform an
15 audit of an insurer shall substitute the appointed audit partner
16 in charge with another audit partner in charge at least once
17 every 7 years. An accountant substituted for pursuant to this
18 subsection may not serve as a partner in charge of that audit
19 until 2 years ~~from~~ after the date of substitution.

20 **Sec. 6. 24-A MRSA §221-A, sub-§4, ¶D,** as amended by PL 1993,
21 c. 313, §6, is further amended to read:

22 D. The statement must include an independent certified
23 public accountant's letter, in conformance with standards
24 established by the National Association of Insurance
25 Commissioners, attesting to that certified public
26 accountant's qualifications, possession of license and
27 subscription to the code of professional ethics and
28 pronouncements issued by the American Institute of Certified
29 Public Accountants.

30 **Sec. 7. 24-A MRSA §221-A, sub-§§6 and 7,** as enacted by PL
31 1985, c. 330, §1, are amended to read:

32 **6. Application and effective date.** For those insurers
33 doing business in this State ~~which~~ that are subject to this
34 section, the filing of the initial annual audited financial
35 reports required under this section ~~shall--be~~ are due June 30,
36 1986, covering the calendar year December 31, 1985. Similar
37 recurring reports ~~shall--be~~ are due each June ~~30th~~ 1st thereafter.

38 **7. Exemptions.** Upon written application of any insurer
39 subject to this section, the superintendent may grant an
40 exemption of the filing requirements under this section if the
41 superintendent finds upon review of the application that
42 compliance would constitute a financial hardship upon the insurer.

43 If an insurer's annual statement reflects business ~~in this State~~
44 in an amount less than \$100,000 in written premium for the

preceding year, the insurer is exempt from the filing requirements of this section with respect to that year.

Sec. 8. 24-A MRSA §222, sub-§2, ¶B, as amended by PL 1989, c. 385, §2, is further amended to read:

B. Control

(1) 'Control,' including 'controlling,' 'controlled by' and 'under common control with,' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control ~~shall be~~ is presumed to exist if any person is the beneficial owner of 10% or more of the voting securities, or voting ~~insurance--policies~~ rights in the case of mutual or reciprocal insurers, or guaranty capital shares if a mutual insurer has established a guaranty fund, of any other person. A beneficial owner may rely in determining the amount of voting securities of any person outstanding upon information set forth in that person's most recent quarterly or annual report filed with the Securities and Exchange Commission pursuant to the Exchange Act unless the beneficial owner knows or has reason to believe that the information contained ~~therein~~ in the quarterly or annual report is inaccurate. Two or more domestic mutual insurance companies ~~who~~ that have restricted their licensed territories to the State ~~shall be deemed to be~~ considered subject to this section merely because ~~such~~ those insurance companies commonly share facilities, incurred expenses, personnel services, or otherwise utilize cost allocations based on generally accepted accounting principles including pro rata sharing of assumed risks.

(2) Notwithstanding the presumption of control contained in subparagraph (1), the superintendent, upon application of the insurance company, may determine that the insurer is not controlled by the person presumed to control it. In addition, the superintendent, after notice and an opportunity to be heard, may determine, notwithstanding the absence of the presumption in subparagraph (1), that a person does control an insurance company or companies.

2 **Sec. 9. 24-A MRSA §222, sub-§2, ¶F**, as repealed and replaced
by PL 1975, c. 356, §1, is amended to read:

4 **F. Subsidiary.** "Subsidiary" of a specified person shall
mean means an affiliate controlled by a that person,
6 directly or indirectly, through one or more intermediaries.

8 **Sec. 10. 24-A MRSA §222, sub-§2, ¶I** is enacted to read:

10 **I. "Voting security" means any security with voting rights**
or any security convertible into or evidencing a right to
12 **acquire a security with voting rights.**

14 **Sec. 11. 24-A MRSA §222, sub-§8, ¶A**, as enacted by PL 1975, c.
356, §1, is amended to read:

16 **A.** Every insurer which that is authorized to do business in
18 this State and which that is a member of an insurance
holding company system shall register with the
20 superintendent, except that such these requirements shall do
not apply to a foreign insurer domiciled in a jurisdiction
22 which that in the opinion of the superintendent has adopted
by statute or regulation disclosure statements and standards
24 substantially similar to those contained in this chapter.
Any An insurer domiciled in a jurisdiction that has not
26 adopted by statute or regulation disclosure requirements and
standards substantially similar to those contained in this
28 section may be treated as a domestic insurer for purposes of
this section. Each insurer which that is subject to
30 registration under this subsection shall register within ~~60~~
~~days-after-the-effective-date-of-this-section-or~~ 15 days
32 after it becomes subject to registration, ~~whichever-is-later~~
and annually thereafter by May 1st, unless the
34 superintendent, for good cause shown, extends the time for
registration and then an insurer must file within such that
36 extended time. Nothing in this section shall may be
construed to prohibit the superintendent from requesting any
38 authorized insurer which that is a member of a holding
company system and not subject to registration under this
40 section for a copy of the registration statement or other
information filed by such insurer with the insurance
42 regulatory authority of its state of domicile. Upon request
of the insurer or of the insurance regulatory authority of
44 another jurisdiction in which the insurer is authorized to
transact insurance, the superintendent at the insurer's
46 expense shall furnish a copy of the registration statement
or other information filed by a domestic insurer with the
48 superintendent pursuant to this chapter;

2 **Sec. 12. 24-A MRSA §222, sub-§11-A**, as enacted by PL 1993, c.
313, §12, is amended to read:

4 **11-A. Extraordinary dividends.** For purposes of this
5 subsection, an extraordinary dividend or distribution is any
6 dividend or distribution that exceeds the greater of:

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

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

14 In addition to the provisions of paragraphs A and B, any dividend
15 or distribution declared at any time within 5 years following any
16 acquisition of control of a domestic insurer or by any person
controlling that insurer, ~~as long as that is an extraordinary~~
18 ~~dividend that is an extraordinary dividend if it~~ has not been
approved by a number of continuing directors equal to a majority
20 of the continuing directors in office immediately preceding that
acquisition of control ~~is an extraordinary dividend.~~

22 A pro rata distribution of any class of the insurer's own
23 securities is not considered an extraordinary dividend or
24 distribution for purposes of this section. An insurer subject to
25 registration under this section may pay an extraordinary dividend
or make any other extraordinary distribution to its stockholders
27 upon the expiration of 60 days from the time the superintendent
is notified of the declaration if within that period the
29 superintendent has not disapproved the payment or upon the
superintendent's approval of that payment within the 60-day
31 period. Notwithstanding any other provision of law, an insurer
may declare an extraordinary dividend or distribution that is
33 conditional upon the superintendent's approval and such a
declaration does not confer any rights to stockholders until the
35 superintendent has approved the payment of the dividend or
distribution or the superintendent has not disapproved that
37 payment within the 60-day period. The insurer's surplus
following any dividends or distributions to shareholders under
39 this subsection must be reasonable in relation to the insurer's
outstanding liabilities and adequate to meet the insurer's
41 financial needs. An extraordinary dividend or distribution that
is permissible under statutory terms and conditions in the
43 insurer's state of domicile is deemed to meet the requirements of
this section if the value of that dividend or distribution does
45 not materially exceed the value that would be permissible under
this section.

48 **Sec. 13. 24-A MRSA §222, sub-§12, ¶C** is enacted to read:

2 C. A member of an insurer's holding company system shall
3 comply fully and accurately with a request by the insurer to
4 provide it with information necessary to respond to an
5 examination request by the superintendent pursuant to this
6 section.

7 **Sec. 14. 24-A MRSA §222, sub-§§17 and 18, as enacted by PL**
8 **1975, c. 356, §1, are amended to read:**

10 **17. Jurisdiction of courts; service of process.** Any person
11 obtaining or attempting to obtain control of a domestic insurer
12 ~~shall by such act~~ is subject ~~such person~~ to the jurisdiction of
13 the courts of this State and to service of process in the manner
14 provided in this Title. Unless a valid appointment of an agent
15 for service of process is on file with the superintendent
16 pursuant to another provision of this Title, the person is deemed
17 to have appointed the superintendent as agent for service of
18 process, and service may be made in the same manner as provided
19 in section 2105.

20 **18. Rules.** The superintendent may, upon notice and
21 opportunity for all interested ~~parties~~ persons to be heard, ~~issue~~
22 ~~such~~ adopt reasonable rules, ~~regulations and orders~~ as ~~shall be~~
23 necessary to carry out and effectuate provisions of this section.

24 **Sec. 15. 24-A MRSA §226, sub-§§1 and 2, as amended by PL 1973,**
25 **c. 585, §12, are further amended to read:**

26 **1. The** Within 60 days after completion of the examination,
27 the superintendent shall deliver a copy of the verified
28 examination report to the person examined, together with a notice
29 affording ~~such~~ that person 20 days or ~~such~~ an additional
30 reasonable period as the superintendent for good cause may allow,
31 within which to review the report and recommend changes ~~therein~~
32 to the report.

33 **2. If so** requested by the person examined, within the
34 period allowed under subsection 1, or if ~~deemed~~ determined
35 advisable by the superintendent without such request, the
36 superintendent shall hold a hearing relative to the report and
37 ~~shall~~ may not file the report in the bureau until after ~~such~~ the
38 hearing and ~~his~~ the superintendent's order ~~thereon~~ on the report;
39 except that the superintendent may furnish a copy of the report
40 to the Governor, Attorney General or Treasurer of State pending
41 final decision ~~thereon~~ and, if ~~such~~ the copies are so furnished,
42 they ~~shall be~~ are deemed confidential information until the other
43 requirements of this section with regard to examination reports
44 have been satisfied. In lieu of convening a hearing, the
45 superintendent may reopen the examination or, if supported by the

2 information obtained, may adopt some or all of the modifications
3 proposed by the person examined.

4 **Sec. 16. 24-A MRSA §412, sub-§1**, as repealed and replaced by
5 PL 1975, c. 77, is amended to read:

6
7 1. No insurance company other than a domestic real estate
8 title insurance company or a domestic mutual fire insurance
9 company ~~which that~~ is transacting only the business of fire,
10 marine or glass on the assessment plan ~~shall may~~ do so in this
11 State unless it makes and maintains a deposit with the
12 Superintendent of Insurance, as security for all its
13 ~~policyholders' policyholders,~~ of securities ~~which that~~ are deemed
14 determined eligible for deposit under section 1253. ~~Such~~ The
15 deposit ~~shall must~~ be maintained in a minimum actual market value
16 ~~which that,~~ exclusive of interest, ~~shall may~~ never be less than
17 \$100,000. ~~Such~~ The deposit ~~shall must~~ be retained by the
18 superintendent and disposed of as directed by section 1263.

19 **Sec. 17. 24-A MRSA §413-A, sub-§1**, as enacted by PL 1995, c.
20 375, Pt. D, §1, is amended to read:

21
22 1. **Port of entry.** An alien insurer that has been
23 authorized by the superintendent to use the State as its port of
24 entry for the transaction of business in the United States is
25 considered a domestic insurer to the extent provided in this
26 section. An alien insurer that has been approved by another
27 state to use that state as its port of entry is considered to be
28 domiciled in that state in the same manner, if there is a valid
29 reciprocity agreement between that state and this State or if the
30 superintendent has determined that the applicable laws of that
31 state are substantially similar to this section and its
32 implementing rules.

33 **Sec. 18. 24-A MRSA §421, sub-§7** is enacted to read:

34
35 7. Any person or entity required by Title 24 or this Title
36 to appoint an agent for service of process who does not have a
37 valid appointment on file with the superintendent is deemed to
38 have appointed the superintendent as agent for service of
39 process, and process may be served within this State in the same
40 manner as provided in section 2105. This subsection does not
41 relieve that person or entity from the requirement to appoint an
42 agent for service of process or from the applicable penalties for
43 failure to comply with that requirement.

44 **Sec. 19. 24-A MRSA §731-B, sub-§1, ¶C**, as amended by PL 1993,
45 c. 666, Pt. C, §1, is further amended to read:

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

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

12 (2) In the case of a single assuming insurer, the
13 trust must consist of a trusteed account representing
14 the assuming insurer's liabilities attributable to
15 ~~business--written--in--the~~ reinsurance ceded by United
16 States ceding insurers and, in addition, include a
17 trusteed surplus of at least \$20,000,000.

18 (3) ~~In--the--case--of--a~~ A group of incorporated insurers
19 under common administration ~~that--is--under--the~~
20 ~~supervision--of--the--Department--of--Trade--and--Industry--of~~
21 ~~the--United--Kingdom,~~ may in the superintendent's
22 discretion secure its obligations with a pooled trust
23 fund if the group must--have has an aggregate
24 policyholders' surplus of \$10,000,000,000 and the has
25 continuously transacted insurance during the 3 years
26 preceding the period for which credit for reinsurance
27 is to be taken. The trust must be in an amount equal
28 to the group's several liabilities attributable to
29 ~~business--written--in--the~~ reinsurance ceded by United
30 States ceding insurers. In addition, the group shall
31 maintain a joint trusteed surplus of which at least
32 \$100,000,000 is that must be held jointly for the
33 benefit of the United States ceding insurers of any
34 member of the group. Each member of the group shall
35 make available to the superintendent an annual
36 certification of the member's solvency by that member's
37 domiciliary regulator and the member's independent
38 public accountant. Each group member shall comply with
39 the filing requirements of subparagraph 1, submit to
40 the State's authority to examine the member's books and
41 records, and bear the expense of the examination.

42 (4) ~~In--the--case--of--a~~ A group including incorporated
43 and individual unincorporated underwriters, may secure
44 its obligations with a pooled trust fund if the trust
45 must--consist consists of a trusteed account
46 representing in an amount at least equal to the group's
47 liabilities attributable to ~~business--written--in--the~~

2 reinsurance ceded by United States ceding insurers and,
3 in addition, include includes a trusteed surplus of at
4 least \$100,000,000, which that must be held jointly for
5 the benefit of United States ceding insurers of any
6 member of the group. An incorporated member of the
7 group may not be engaged in any business other than
8 underwriting as a member of the group and is must be
9 subject to the same level of solvency regulation and
10 control by the group's domiciliary regulator as are the
11 unincorporated members. The group shall make available
12 to the superintendent an annual certification by the
13 group's domiciliary regulator and the independent
14 public accountants of the solvency of each underwriter.
15 Within 90 days after its financial statements are due
16 to be filed with the group's domiciliary regulator, the
17 group shall provide to the superintendent an annual
18 certification by the group's domiciliary regulator of
19 the solvency of each underwriter member of the group
20 or, if a certification is unavailable, financial
21 statements prepared by independent public accountants.

22 (4-A) The superintendent in rules adopted pursuant to
23 subsection 7 may establish alternative criteria for
24 approval of a reinsurance trust if the superintendent
25 determines that the criteria provide adequate
26 protection to policyholders of United States ceding
27 insurers and are in substantial conformance with
28 standards approved by the National Association of
29 Insurance Commissioners.

30
31
32 (5) The trust must be established in a form approved
33 by the superintendent and consistent with any rules
34 adopted by the superintendent pursuant to this
35 section. The form of the trust and any amendments to
36 the trust must also have been approved by the insurance
37 regulatory official of the state where the trust is
38 domiciled or of another state that, pursuant to the
39 terms of the trust instrument, has accepted principal
40 regulatory oversight of the trust. The trust
41 instrument must provide that contested claims are valid
42 and enforceable upon the final order of any court of
43 competent jurisdiction in the United States. The trust
44 must vest legal title to its assets in the trustees of
45 the trust for its the benefit of the assuming insurer's
46 United States policyholders and ceding insurers, their
47 assigns and successors in interest. The trust and the
48 assuming insurer are subject to examination, as
49 determined by the superintendent, at the assuming
50 insurer's expense. The trust must remain in effect for
as long as the assuming insurer has outstanding

2 obligations due under the reinsurance agreements
subject to the trust.

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

12 (7) The corpus of the trust is to be valued as any
14 other admitted asset or assets;

16 **Sec. 20. 24-A MRSA §731-B, sub-§1, ¶D**, as enacted by PL 1989,
c. 846, Pt. E, §2 and affected by §4, is amended to read:

18 D. Does not meet the requirements of paragraph A, B or C,
20 but only with respect to risks located in a jurisdiction
~~other than the United States, when~~ where that reinsurance is
22 required by any--applicable law or--regulation--of--that
jurisdiction. The superintendent for good cause after
24 notice and opportunity for hearing may disallow or reduce
the credit otherwise permitted under this paragraph.

26 **Sec. 21. 24-A MRSA §731-B, sub-§6**, as enacted by PL 1989, c.
28 846, Pt. E, §2 and affected by §4, is repealed.

30 **Sec. 22. 24-A MRSA §944**, as enacted by PL 1991, c. 128, is
repealed.

32 **Sec. 23. 24-A MRSA §3487** is enacted to read:

34 **§3487. Redomestication of insurers**

36 **1. Redomestication of foreign insurers to Maine.** Any stock
38 or mutual insurer that is organized under the laws of any other
state and has a valid certificate of authority to do business in
40 this State may become a domestic insurer with approval of the
superintendent by amending its certificate of organization or
42 equivalent corporate charter and by designating a location in
this State as its principal place of business. The
44 redomestication must be approved if the chief insurance
regulatory official of the other state certifies to the
46 superintendent that the redomestication is in compliance with all
requirements established by the laws of that state, and the
48 superintendent determines that the insurer's operations and
corporate organization will comply with the requirements of this
50 chapter and that the redomestication is not contrary to the

2 interests of policyholders or the public. The amendments to the
3 insurer's certificate of organization may provide that the
4 corporation is a continuation of the corporate identity of the
5 original foreign corporation and that the original date of
6 incorporation in its original domiciliary state is the date of
7 incorporation of the domestic insurer. The insurer's certificate
8 of authority must be amended as of the effective date of the
9 superintendent's approval to reflect the insurer's status as a
10 domestic insurer and its new home office, and the insurer is
11 thereafter subject to all provisions of this Title applicable to
12 domestic insurers.

13
14 2. Redomestication of domestic insurers. Any domestic
15 insurer may, upon the approval of the superintendent, transfer
16 its domicile to any other state in which it is authorized to
17 transact the business of insurance in accordance with the
18 procedures established by the laws of that state. The proposed
19 redomestication must be approved if the superintendent determines
20 that the certificate of organization has been amended in
21 conformance with section 3310 and that the redomestication is not
22 contrary to the interests of policyholders or the public. The
23 insurer ceases to be a domestic insurer as of the date the
24 redomestication is recognized by its new state of domicile.
25 Unless the superintendent determines that the insurer no longer
26 qualifies for a certificate of authority, the insurer's
27 certificate of authority must be amended as of the effective date
28 of the redomestication to reflect the insurer's status as a
29 domestic insurer and its new home office in its new state of
30 domicile, and the insurer is thereafter subject to all provisions
31 of this Title applicable to foreign insurers.

32 3. Effect of redomestication. The certificate of
33 authority, producers' appointments and licenses, rate approvals
34 and all other actions and permissions by the superintendent that
35 are in effect at the time any insurer authorized to transact the
36 business of insurance in this State transfers its corporate
37 domicile to this State or any other state pursuant to this
38 section or by merger, consolidation or any other lawful method
39 continue in full force and effect upon the redomestication if the
40 insurer remains duly qualified to transact the business of
41 insurance in this State. All outstanding policies and other
42 legal or contractual obligations of any remodesticating insurer
43 remain in full force and need not be endorsed as to the new name
44 of the company or its new location unless ordered by the
45 superintendent. The insurer shall file new policy forms with the
46 superintendent on or before the effective date of the
47 redomestication but may use existing policy forms with
48 appropriate endorsements if allowed by and under such conditions
49 as approved by the superintendent. Each redomesticating insurer
50 shall notify the superintendent of the details of the proposed

2 redomestication and shall file promptly any resulting amendments
3 to corporate documents filed or required to be filed with the
4 superintendent.

6 4. Filing with Secretary of State. Each insurer that
7 transfers its domicile to this State shall file with the
8 Secretary of State a long-form certificate of good standing or
9 its equivalent, duly certified by the proper official of the
10 previous state of domicile and an application for redomestication
11 to become a Maine insurer in a form prescribed by the Secretary
12 of State and approved by the superintendent. Each foreign
13 insurer qualified to do business in this State that transfers its
14 domicile to a state other than Maine shall file with the
15 Secretary of State a notification by a foreign insurer of
16 redomestication in a form prescribed by the Secretary of State
17 and approved by the superintendent. Each domestic insurer that
18 transfer its domicile to another state shall file with the
19 Secretary of State a notification of redomestication in a form
20 prescribed by the Secretary of State and approved by the
21 superintendent.

22 **Sec. 24. 24-A MRSA §6451-A is enacted to read:**

24 **§6451-A. Applicability to other health organizations**

26 This chapter applies to fraternal benefit societies
27 authorized to do business in this State pursuant to section 4124,
28 to health maintenance organizations authorized to do business in
29 this State pursuant to section 4204 and to nonprofit hospital or
30 medical service organizations authorized to do business in this
31 State pursuant to Title 24, section 2305. Such health
32 organizations are considered insurers for purposes of this
33 chapter and are subject to the provisions applicable to property
34 and casualty insurers where this chapter provides separate
35 standards for property and casualty insurers and for life or
36 health insurers.

38 **Sec. 25. 24-A MRSA §6452, sub-§1, as enacted by PL 1993, c.**
39 **634, Pt. A, §1, is amended to read:**

40
41 **1. Duty to file.** A domestic insurer shall, on or before
42 March ~~15th~~ 1st, submit to the superintendent a report of its
43 risk-based capital levels as of the end of the previous calendar
44 year, in a form and containing such information as is required by
45 the risk-based capital instructions. In addition, a domestic
46 insurer shall file its risk-based capital report:

48 A. With the NAIC in accordance with the risk-based capital
49 instructions; and
50

2 B. With the insurance superintendent regulator in any state
in which the insurer is authorized to do business, if ~~the~~
3 ~~insurance--superintendent~~ that regulator has notified the
insurer of its request for the filing in writing, in which
4 case the insurer shall file its risk-based capital report
not later than the later of:

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

10 (2) The filing date.

12 **Sec. 26. 24-A MRSA §6453, sub-§3, ¶A,** as enacted by PL 1993,
14 c. 634, Pt. A, §1, is amended to read:

16 A. Within 45 days ~~of~~ after the company action level event;
or

18 **Sec. 27. 24-A MRSA §6453, sub-§6,** as enacted by PL 1993, c.
20 634, Pt. A, §1, is amended to read:

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

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

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

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

42 (2) The date on which the risk-based capital plan or
44 revised risk-based capital plan is filed ~~under section~~
~~6454,--subsection-3~~ with the superintendent.

46 **Sec. 28. 24-A MRSA §5454, sub-§1, ¶¶F, H and I,** as enacted by PL
48 1993, c. 634, Pt. A, §1, are amended to read:

2 F. The Provided the insurer has not challenged the
3 determination under section 6457, the notification by the
4 superintendent to the insurer that:

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

10 (2) ~~Provided the insurer has not challenged the~~
11 ~~determination under section 6457, that notification~~ The
12 superintendent's finding unless vacated or stayed
13 constitutes a regulatory action level event with
14 respect to the insurer;

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

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

36 **Sec. 29. 24-A MRSA §6454, sub-§4,** as enacted by PL 1993, c.
37 634, Pt. A, §1, is amended to read:

38 **4. Consultants.** The superintendent may retain actuaries,
39 investment experts and other consultants as may be necessary in
40 the judgment of the superintendent to review the insurer's
41 risk-based capital plan or revised risk-based capital plan;
42 examine or analyze the assets, liabilities and operations of the
43 insurer; and formulate the corrective order with respect to the
44 insurer. For insurers offering managed care plans as defined in
45 section 4301, the analysis of the insurer's operations may
46 include an analysis of its contractual relationships with
47 providers and the ability of the providers to fulfill their
48 contractual obligations. The fees, costs and expenses relating

2 to consultants must be borne by the affected insurer or such
3 other party as directed by the superintendent.

4 **Sec. 30. 39-A MRSA §403, sub-§3, ¶A**, as repealed and replaced
5 by PL 1995, c. 398, §2, is amended to read:

6
7 A. An individual self-insurer providing an irrevocable
8 standby letter of credit as security shall file with the
9 Superintendent of Insurance a letter of credit, on a form
10 approved by the superintendent, copies of any agreements or
11 other documents establishing the terms and conditions of the
12 employer's reimbursement obligations to the financial
13 institution issuing the letter of credit, together with
14 copies of any required security agreements, mortgages or
15 other agreements or documents granting security for the
16 employer's reimbursement obligations and any other
17 agreements that contain conditions, restrictions or
18 limitations of any kind upon the employer, the
19 superintendent or the Treasurer of State. The form of
20 letter of credit approved by the superintendent must
21 include, but is not limited to, all terms specifically
22 required by this subsection and all terms reasonably
23 required to secure the payment of compensation and benefits
24 to claimants as required under this Act. The
25 superintendent, upon receipt of the original irrevocable
26 standby letter of credit, shall promptly forward it to the
27 Treasurer of State.

28
29 ~~The--Superintendent--of--Insurance--shall--adopt--rules--to
30 establish--the--qualifications--for--financial--institutions
31 issuing--irrevocable--standby--letters--of--credit--that--must
32 include--maintenance--of--a--long--term--unsecured--debt--rating--of
33 at--least--A--by--either--Moody's--Investors--Service--Inc.--or
34 Standard--and--Poor's--Corporation--or--with--commercial--paper
35 within--the--3--highest--short--term--rating--categories
36 established--by--Moody's--Investors--Service--Inc.--or--Standard
37 and--Poor's--Corporation--The--irrevocable--standby--letter--of
38 credit--must--be--the--individual--obligation--of--the--issuing
39 financial--institution--may--not--be--subject--to--any--agreement,
40 condition--qualification--or--defense--between--the--financial
41 institution--and--the--employer--and--may--not--in--any--way--be
42 contingent--on--reimbursement--by--the--employer--If--the--rating
43 of--an--issuing--financial--institution--that--has--issued--an
44 irrevocable--standby--letter--of--credit--pursuant--to--this
45 section--falls--below--the--required--standard--the--employer--must
46 obtain--a--new--irrevocable--standby--letter--of--credit--from--a
47 qualified--financial--institution--or--must--provide--other
48 eligible--security--of--equal--value--approved--by--the
49 superintendent--The--irrevocable--standby--letter--of--credit--is
50 automatically--extended--for--one--year--from--the--date--of~~

2 ~~expiration unless, 90 days prior to any expiration date, the~~
3 ~~issuing financial institution notifies the superintendent~~
4 ~~that the financial institution elects not to renew the~~
5 ~~irrevocable standby letter of credit.~~

6 In order to issue an irrevocable standby letter of credit as
7 security under this paragraph, a financial institution or
8 its parent company must either:

10 (1) Maintain a long-term unsecured debt rating of at
11 least A by either Moody's Investors Service, Inc. or
12 Standard and Poor's Corporation;

14 (2) Maintain a short-term commercial paper rating
15 within the 3 highest categories established by Moody's
16 Investors Service, Inc. or Standard and Poor's
17 Corporation; or

18 (3) Be certified in writing by the Superintendent of
19 Banking to be well capitalized and well managed in
20 accordance with the criteria set forth in Title 9-B,
21 section 446-A, subsections 1 and 2. The Superintendent
22 of Insurance shall keep the certification confidential,
23 except from the subject financial institution, in
24 accordance with Title 9-B, section 226.

26 The Superintendent of Insurance may adopt rules to establish
27 additional qualifications for financial institutions issuing
28 irrevocable standby letters of credit. Rules adopted
29 pursuant to this paragraph are routine technical rules
30 pursuant to Title 5, chapter 375, subchapter II-A.

32 The irrevocable standby letter of credit must be the
33 individual obligation of the issuing financial institution,
34 may not be subject to any agreement, condition,
35 qualification or defense between the financial institution
36 and the employer and may not in any way be contingent on
37 reimbursement by the employer. If the rating of an issuing
38 financial institution that has issued an irrevocable standby
39 letter of credit pursuant to this section falls below the
40 required standard, the employer shall obtain a new
41 irrevocable standby letter of credit from a qualified
42 financial institution or shall provide other eligible
43 security of equal value approved by the Superintendent of
44 Insurance. The irrevocable standby letter of credit is
45 automatically extended for one year from the date of
46 expiration unless, 90 days prior to any expiration date, the
47 issuing financial institution notifies the Superintendent of
48 Insurance that the financial institution elects not to renew
49 the irrevocable standby letter of credit.

2 An irrevocable standby letter of credit that has been issued
4 by a qualified financial institution and accepted by the
6 Superintendent of Insurance binds the issuing financial
8 institution to pay one or more drafts drawn by the Treasurer
10 of State, as directed by the superintendent, as long as the
12 draft does not exceed the total amount of the irrevocable
14 standby letter of credit. Any draft presented by the
Treasurer of State, as directed by the superintendent, must
be promptly honored if accompanied by the certification of
the superintendent that any obligation under this chapter
has not been paid when due or that a proceeding in
bankruptcy has been initiated by or with respect to the
employer in a court of competent jurisdiction.

16 If the Superintendent of Insurance certifies that the
18 superintendent has been notified by the issuing financial
20 institution that the irrevocable standby letter of credit
22 ~~will expire~~ expires by its terms in 30 days or less and that
24 the irrevocable standby letter of credit was not replaced
26 within 15 days after that notice to the superintendent by
other eligible security of equal value approved by the
superintendent, then the financial institution must remit
within 15 days the full amount of the irrevocable letter of
credit to the Treasurer of State without further
certification.

28 Any proceeds from a draw on such an irrevocable standby
30 letter of credit by the Treasurer of State, as directed by
32 the Superintendent of Insurance, must be held by the
34 Treasurer of State on behalf of workers' compensation
36 claimants to secure payment of claims until either the
38 superintendent authorizes the Treasurer of State to release
those proceeds to the employer upon provision by the
employer of replacement security adequate to meet the
requirements for security set by the superintendent or the
superintendent directs distribution of the proceeds in
accordance with this Title.

40 To the extent not inconsistent with state law, the letter of
42 credit is subject to and governed by the Uniform-Customs-and
Practice--for--Documentary--Credits,--1983, International
44 Standby Practices 1998 or successor practices governing
46 standby letters of credit duly adopted by the International
48 Chamber of Commerce Publication--No.--400. If any legal
proceedings are initiated with respect to payment of the
letter of credit, those proceedings are subject to the
State's courts and law.

50

SUMMARY

2

4 The bill amends Maine's audit report, holding company,
6 examination, actuarial certification, credit for reinsurance and
8 risk-based capital standards to bring them more into conformity
with the current versions of the National Association of
Insurance Commissioners, or NAIC, model laws.

10 The bill brings the audit report law into conformance with
12 NAIC standards; makes technical changes to the holding company
14 law and adds a service of process provision and a requirement for
information sharing between affiliates; establishes a procedural
16 timetable for the issuance of examination reports; adds a
reciprocity provision to the port of entry law; clarifies the
18 trust requirements of the credit for reinsurance laws and enacts
the "reinsurance-only" structure now in use by the NAIC;
implements the NAIC's new health organization risk-based capital
standards; and repeals certain obsolete exemptions in the audit
report, credit for reinsurance and actuarial standards.

20

22 In addition, the bill provides a mechanism for service of
process when a person required to appoint an agent fails to
24 comply with that requirement, authorizes the redomestication of
insurance corporations, consistent with the laws of most other
states and eases restrictions on financial institutions seeking
26 to issue letters of credit to workers' compensation self-insurers.