

MAINE STATE LEGISLATURE

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BANKING AND INSURANCE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 341, L.D. 431, Bill, "An Act to Amend the Credit for Reinsurance Provisions of the Maine Insurance Code"

Amend the bill by striking out everything after the enacting clause and before section 2 and inserting in its place the following:

Sec. 1. 24-A MRSA §601, sub-§26 is enacted to read:

26. Accreditation as reinsurer. Application fee for accreditation as reinsurer \$500.

Sec. 2. 24-A MRSA §731-B, sub-§1, ¶B-1 is enacted to read:

B-1. Is accredited as a reinsurer in this State, in accordance with the following standards.

(1) To apply for accreditation, a reinsurer shall file with the superintendent a written application on a form prescribed by the superintendent, accompanied by the fee prescribed in section 601, subsection 26 and an agreement to submit to the jurisdiction of the courts of this State and to the authority of the superintendent to examine the reinsurer's books and records.

(2) An accredited reinsurer must be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an

2 alien reinsurer, that reinsurer must be entered through
3 and licensed to transact insurance or reinsurance in at
4 least one state.

6 (3) An accredited reinsurer shall file with the
7 superintendent, as part of its application and annually
8 thereafter, a copy of its annual statement filed with
9 the insurance department of its state of domicile or
10 United States port of entry and a copy of its most
11 recent audited financial statement.

12 (4) A reinsurer applying for accreditation that
13 maintains a surplus as regards to policyholders in an
14 amount not less than \$20,000,000 is deemed to be
15 accredited if the reinsurer's application is not denied
16 by the superintendent within 90 days after submission
17 of the application. The superintendent has the
18 discretion to grant accreditation to an applicant with
19 a surplus less than \$20,000,000 subject to such terms
20 and conditions as the superintendent determines to be
21 necessary and appropriate for the protection of
22 domestic ceding insurers and their policyholders.

24 The superintendent may deny, suspend, revoke or place
25 restrictions upon a reinsurer's accreditation, after notice
26 and opportunity for hearing, for failure to comply with the
27 requirements of this paragraph or for any grounds that would
28 warrant similar action against the certificate of authority
29 of an authorized insurer.'

30 Further amend the bill in section 2 in paragraph C by
31 inserting after subparagraph (3) the following:

34 '(3-A) A group including incorporated and individual
35 unincorporated underwriters may secure its obligations
36 with funds held in trust in compliance with the
37 following standards.

38 (a) For reinsurance ceded under reinsurance
39 agreements with an inception, amendment or renewal
40 date on or after August 1, 1995, the trust must
41 consist of a trusteed account in an amount at
42 least equal to the group's several liabilities
43 attributable to reinsurance ceded by United States
44 domiciled ceding insurers to any member of the
45 group.

46 (b) Notwithstanding the other provisions of this
47 section, for reinsurance ceded under reinsurance
48 agreements with an inception date on or before
49 the effective date of this act, the trust must
50 consist of a trusteed account in an amount at
51 least equal to the group's several liabilities
52 attributable to reinsurance ceded by United States
53 domiciled ceding insurers to any member of the
54 group.

R. D. S.
COMMITTEE AMENDMENT "A" to H.P. 341, L.D. 431

2 July 31, 1995 and not amended or renewed after
4 that date, the trust must consist of a trustee
6 account in an amount not less than the group's
8 several insurance and reinsurance liabilities
10 attributable to business written in the United
12 States.

8 (c) In addition, the group shall maintain a
10 trustee surplus of at least \$100,000,000 held
12 jointly for the benefit of the United States
14 domiciled ceding insurers of any member of the
16 group for all years of account.

14 An incorporated member of the group may not be engaged
16 in any business other than underwriting as a member of
18 the group and is subject to the same level of solvency
20 regulation and control by the group's domiciliary
22 regulator as are the unincorporated members. Within 90
24 days after its financial statements are due to be filed
26 with the group's domiciliary regulator, the group shall
28 provide to the superintendent an annual certification
30 by the group's domiciliary regulator of the solvency of
32 each underwriter member of the group or, if a
34 certification is unavailable, financial statements
36 prepared by independent public accountants.'

28 Further amend the bill in section 2 in paragraph C by
30 striking out all of subparagraphs (4) and (4-A) (page 2, lines 33
32 to 50 and page 3, lines 1 to 26 in L.D.) and inserting in their
34 place the following:

32 '~~(4)---A--group--including--incorporated--and--individual~~
34 ~~unincorporated--underwriters--may--secure--its--obligations~~
36 ~~with--a--peeled--trust--fund--if--the--trust--consists--of--a~~
38 ~~trustee--account--in--an--amount--at--least--equal--to--the~~
40 ~~group's--liabilities--attributable--to--reinsurance--ceded~~
42 ~~by--United--States--ceding--insurers--and,--in--addition,~~
44 ~~includes--a--trustee--surplus--of--at--least--\$100,000,000~~
46 ~~that--must--be--held--jointly--for--the--benefit--of--United~~
48 ~~States--ceding--insurers--of--any--member--of--the--group.--An~~
50 ~~incorporated--member--of--the--group--may--not--be--engaged--in~~
~~any--business--other--than--underwriting--as--a--member--of--the~~
~~group--and--must--be--subject--to--the--same--level--of--solvency~~
~~regulation--and--control--by--the--group's--domiciliary~~
~~regulator--as--are--the--unincorporated--members.--Within--90~~
~~days--after--its--financial--statements--are--due--to--be--filed~~
~~with--the--group's--domiciliary--regulator,--the--group--shall~~
~~provide--to--the--superintendent--an--annual--certification~~
~~by--the--group's--domiciliary--regulator--of--the--solvency--of~~
~~each--underwriter--member--of--the--group--or,--if--a~~

~~certification--is--unavailable,--financial--statements
prepared-by-independent-public-accountants.~~

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

Further amend the bill by striking out all of sections 3 and 4 and inserting in their place the following:

'Sec. 3. 24-A MRSA §731-B, sub-§1, ¶D, as amended by PL 1999, c. 113, §20, is further amended to read:

D. Does not meet the requirements of paragraph A, B, B-1 or C, but only with respect to risks located in a jurisdiction where that reinsurance is required by law. The superintendent for good cause after notice and opportunity for hearing may disallow or reduce the credit otherwise permitted under this paragraph.

Sec. 4. 24-A MRSA §731-B, sub-§2-A is enacted to read:

2-A. Credit for reinsurance may not be allowed on the basis of a trust maintained pursuant to subsection 1, paragraph C unless the assuming insurer agrees in the trust agreements to the following conditions.

A. Notwithstanding any other provisions in the trust instrument, if the trust fund contains an amount less than the amount required by this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

B. The assets must be distributed by and claims must be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

2 C. If the commissioner with regulatory oversight determines
4 that the assets of the trust fund or any part of the assets
6 of the trust fund are not necessary to satisfy the claims of
8 the United States ceding insurers of the grantor of the
 trust, the assets or part of the assets of the trust fund
 must be returned by the commissioner with regulatory
 oversight to the trustee for distribution in accordance with
 the trust agreement.

10 D. The grantor shall waive any right otherwise available to
12 it under United States law that is inconsistent with this
14 subsection.'

16 Further amend the bill by striking out all of section 6 and
 inserting in its place the following:

18 '**Sec. 6. 24-A MRSA §731-B, sub-§5**, as enacted by PL 1989, c.
20 846, Pt. E, §2 and affected by §4, is amended to read:

22 5. Credit is allowed as an asset or deduction from
24 liability to any ceding insurer only for reinsurance ceded to an
26 assuming insurer qualified under this section, except that no
28 credit is allowed, unless the reinsurance contract provides, in
30 substance, that in the event of the insolvency of the ceding
32 insurer, the reinsurance is payable under a contract or contracts
34 reinsured by the assuming insurer on the basis of the-liability
36 of--the--ceding--insurer--under--the--contracts--reinsured reported
38 claims allowed by the court, without diminution because of the
40 insolvency of the ceding insurer. The payments must be made
42 directly to the ceding insurer or to the ceding insurer's
44 domiciliary receiver unless the contract or other written
46 agreement specifically provides another payee in the event of the
48 insolvency of the ceding insurer or unless the assuming insurer,
50 with the consent of the direct insured or insureds, has assumed
 the policy obligations of the ceding insurer as direct
 obligations of the assuming insurer to the payees under the
 reinsured policies and in substitution for the obligations of the
 ceding insurer to those payees.

The reinsurance agreement may condition the payments upon written
 notice by the ceding insurer's domiciliary receiver to the
 assuming insurer of the pendency of a claim on the contract
 reinsured within a reasonable time after the claim is filed in
 the proceeding where the claim is to be adjudicated. During the
 pendency of such a claim, any assuming insurer may investigate
 the claim and interpose, at the assuming insurer's own expense,
 any defenses in the proceeding that the assuming insurer
 determines available to the ceding insurer or to the ceding
 insurer's receiver. The expenses may be filed as a claim against

R. 11 9.

COMMITTEE AMENDMENT "A" to H.P. 341, L.D. 431

2 the insolvent ceding insurer to the extent of its proportionate
3 share of the benefit that may accrue to the ceding insurer solely
4 as a result of the defense undertaken by the assuming insurer.
5 When 2 or more assuming insurers are involved in the same claim
6 and a majority in interest elect to interpose a defense to the
7 claim, the expense must be apportioned in accordance with the
8 terms of the reinsurance agreement as though the expense had been
9 incurred by the ceding insurer.'

10 Further amend the bill by relettering or renumbering any
11 nonconsecutive Part letter or section number to read
12 consecutively.

14 Further amend the bill by inserting at the end before the
15 summary the following:

18 **FISCAL NOTE**

20 The Bureau of Insurance within the Department of
21 Professional and Financial Regulation will incur some minor
22 additional costs to adopt provisions from the 1996 National
23 Association of Insurance Commissioners Credit for Reinsurance
24 Model Act. These costs can be absorbed within the bureau's
25 existing budgeted resources.'

28 **SUMMARY**

30 The amendment makes changes to the State's credit for
31 reinsurance statutes to adopt provisions from the 1996 National
32 Association of Insurance Commissioners Credit for Reinsurance
33 Model Act. The amendment also incorporates technical clean-up
34 provisions to the credit for reinsurance laws to eliminate
35 confusing and ambiguous language and clarify a reinsurer's
36 responsibility in the event of an insurance company insolvency.
The amendment also adds a fiscal note to the bill.