

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 431

H.P. 341

House of Representatives, February 1, 2001

An Act to Amend the Credit for Reinsurance Provisions of the Maine Insurance Code.

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative O'NEIL of Saco.

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

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

4 B-1. Is accredited as a reinsurer in this State. An
5 accredited reinsurer is one that:

6
7 (1) Files with the commissioner evidence of its
8 submission to the State's jurisdiction;

9 (2) Submits to the State's authority to examine its
10 books and records;

11 (3) Is licensed to transact insurance or reinsurance
12 in at least one state or, in the case of a United
13 States branch of an alien assuming insurer, is entered
14 through and licensed to transact insurance or
15 reinsurance in at least one state;

16 (4) Files annually with the commissioner a copy of its
17 annual statement filed with the insurance department of
18 its state of domicile and a copy of its most recent
19 audited financial statement; and

20 (5) Maintains a surplus in regard to policyholders in
21 an amount not less than \$20,000,000 and whose
22 accreditation has not been denied by the commissioner
23 within 90 days of its submission or maintains a surplus
24 in regard to policyholders in an amount less than
25 \$20,000,000 and whose accreditation has been approved
26 by the commissioner;

27
28 **Sec. 1. 24-A MRSA §731-B, sub-§1-A** is enacted to read:

29 1-A. Credit is not allowed a domestic ceding insurer if the
30 assuming insurer's accreditation has been revoked by the
31 commissioner after notice and hearing.

32
33 **Sec. 2. 24-A MRSA §731-B, sub-§1, ¶C**, as amended by PL 1999,
34 c. 113, §19, is further amended to read:

35 C. Maintains a trust fund in a qualified United States
36 financial institution for the payment of the valid claims of
37 its United States ceding insurers, their assigns and
38 successors in interest.

39 (1) The assuming insurer shall report annually to the
40 superintendent information substantially the same as
41 that required to be reported on the National
42 Association of Insurance Commissioners Annual Statement

2 form by licensed insurers to enable the superintendent
to determine the sufficiency of the trust fund.

4 (2) In the case of a single assuming insurer, the
6 trust must consist of a trustee account representing
the assuming insurer's liabilities attributable to
8 reinsurance ceded by United States ceding insurers and,
in addition, include a trustee surplus of at least
\$20,000,000.

10 ~~(3) A group of incorporated insurers under common
12 administration may in the superintendent's discretion
secure its obligations with a pooled trust fund if the
14 group has an aggregate policyholders' surplus of
\$10,000,000,000 and has continuously transacted
16 insurance during the 3 years preceding the period for
which credit for reinsurance is to be taken. The trust
18 must be in an amount equal to the group's several
liabilities attributable to reinsurance ceded by United
20 States ceding insurers. In addition, the group shall
maintain a joint trustee surplus of at least
22 \$100,000,000 that must be held jointly for the benefit
of the United States ceding insurers of any member of
24 the group. Each member of the group shall make
available to the superintendent an annual certification
26 of the member's solvency by that member's domiciliary
regulator and the member's independent public
28 accountant. Each group member shall comply with the
filing requirements of subparagraph 1, submit to the
30 State's authority to examine the member's books and
records and bear the expense of the examination.~~

32 (4) A group including incorporated and individual
34 unincorporated underwriters may secure its obligations
with a pooled trust fund if and, ~~in the trust consists~~
36 ~~of a trustee account in an amount at least equal to~~
~~the group's liabilities attributable to reinsurance~~
38 ~~ceded by United States ceding insurers, for reinsurance~~
ceded under reinsurance agreements with an inception,
40 amendment or renewal date on or after August 1, 1995,
the trust consists of a trustee account in an amount
42 not less than the group's several liabilities
attributable to business ceded by United States
44 domiciled ceding insurers to any member of the group;
or for reinsurance ceded under reinsurance agreements
46 with an inception date on or before July 31, 1995 and
not amended or renewed after that date, notwithstanding
48 the other provisions of this Act, the trust consists of
a trustee account in an amount not less than the
50 group's several insurance and reinsurance liabilities

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

19 ~~(4-A)--The superintendent in rules adopted pursuant to~~
20 ~~subsection 7 may establish alternative criteria for~~
21 ~~approval of a reinsurance trust if the superintendent~~
22 ~~determines that the criteria provide adequate~~
23 ~~protection to policyholders of United States ceding~~
24 ~~insurers and are in substantial conformance with~~
25 ~~standards approved by the National Association of~~
26 ~~Insurance Commissioners.~~

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

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

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

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

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

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

26 2-A. If the assuming insurer does not meet the requirements
of subsection 1, paragraph A or B, the credit permitted by
28 subsection 1, paragraph C is not allowed unless the assuming
insurer agrees in the trust agreements to the following
conditions:

30 A. Notwithstanding any other provisions in the trust
32 instrument, if the trust fund is inadequate because it
34 contains an amount less than the amount required by
36 subsection 1, paragraph C or if the grantor of the trust has
38 been declared insolvent or placed into receivership,
40 rehabilitation, liquidation or similar proceedings under the
42 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;

44 B. The assets must be distributed by and claims must be
46 filed with and valued by the commissioner with regulatory
oversight in accordance with the laws of the state in which
48 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 trust
6 fund are not necessary to satisfy the claims of the United
8 States ceding insurers of the grantor of the trust, the
 assets or part of the assets must be returned by the
 commissioner with regulatory oversight to the trustee for
 distribution in accordance with the trust agreement; and

10 D. The grantor shall waive any right otherwise available to
12 it under federal law that is inconsistent with this
 provision.

14 **Sec. 5. 24-A MRSA §731-B, sub-§3,** as amended by PL 1993, c.
 313, §18, is further amended to read:

16 3. A An asset or a reduction from liability for the
18 reinsurance ceded to an assuming insurer not meeting the
20 requirements of subsection 1 is allowed in an amount not
22 exceeding the liabilities carried by the ceding insurer. The
24 reduction must equal the value of funds held by or on behalf of
26 the ceding insurer, including funds held in trust for the ceding
 insurer, under a reinsurance contract with such assuming insurer
 as security for the payment of obligations under the contract, if
 such security is held in the United States subject to withdrawal
 solely by, and under the exclusive control of, the ceding insurer
 or, in the case of a trust, held in a qualified United States
 financial institution. This security may be in the form of:

28 A. Cash;

30 B. Securities listed by the Securities Valuation Office of
32 the National Association of Insurance Commissioners and
 qualifying as admitted assets; or

34 C. Clean, irrevocable, unconditional letters of credit,
36 issued or confirmed by a qualified United States financial
38 institution no later than December 31st of the year for
40 which filing is being made and in the possession of the
 ceding company on or before the filing date of its annual
 statement.

42 (1) A letter of credit from an issuer determined to be
44 acceptable as of the date of issuance or the date of
46 confirmation of the letter, notwithstanding the issuing
 or confirming institution's subsequent failure to meet
48 applicable standards of issuer acceptability, continues
 to be acceptable as security until its expiration,
 extension, renewal, modification or amendment,
 whichever first occurs. The ceding insurer shall

2 replace a nonqualifying letter of credit at its
earliest opportunity.

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

10 **Sec. 6. 24-A MRSA §731-B, sub-§5**, as enacted by PL 1989, c.
12 846, Pt. E, §2 and affected by §4, is amended to read:

14 5. Credit is allowed as an asset or deduction from
16 liability to any ceding insurer only for reinsurance ceded to an
assuming insurer qualified under this section, except that no
18 credit is allowed, unless the reinsurance is contract provides,
in substance, that in the event of the insolvency of the ceding
insurer the reinsurance must be payable under a contract
reinsured by the assuming insurer on the basis of the-liability
of--the--ceding--insurer--under--the--contracts--reinsured reported
claims allowed by the court without diminution because of the
insolvency of the ceding insurer. The payments must be made
directly to the ceding insurer or to its domiciliary liquidator
except:

26 A. When the contract or other written agreement
specifically provides another payee of the reinsurance in
the event of the insolvency of the ceding insurer; or

30 B. When the assuming insurer, with the consent of the
direct insured, has assumed the policy obligations of the
ceding insurer as direct obligations of the assuming insurer
to the payees under the policies and in substitution for the
obligations of the ceding insurer to such payees.

36 The reinsurance agreement may provide that the domiciliary
liquidator of an insolvent ceding insurer shall give written
notice to the assuming insurer of the pendency of a claim
against the ceding insurer on the contract reinsured within
a reasonable time after the claim is filed in the
liquidation proceeding. During the pendency of the claim,
the assuming insurer may investigate the claim and
interpose, at its own expense, in the proceeding by which
the claim is to be adjudicated any defenses that it
considers available to the ceding insurer or its
liquidator. The expense may be filed as a claim against the
insolvent ceding insurer to the extent of a proportionate
share of the benefit that may accrue to the ceding insurer
solely as a result of the defense undertaken by the assuming

2 insurer. When 2 or more assuming insurers are involved in
3 the same claim and a majority in interest elects to
4 interpose a defense to the claim, the expense must be
5 apportioned in accordance with the terms of the reinsurance
6 agreement as though the expense had been incurred by the
7 ceding insurer.

8 **Sec. 7. 24-A MRSA §731-B, sub-§7,** as enacted by PL 1989, c.
9 846, Pt. E, §2 and affected by §4, is amended to read:

10 7. The superintendent may adopt rules, subject to Title 5,
11 chapter 375, to implement this section. Rules adopted under this
12 section are routine technical rules pursuant to Title 5, chapter
13 375, subchapter II-A.

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SUMMARY

19 This bill amends the State's credit for reinsurance statutes
20 to adopt provisions from the 1996 National Association of
21 Insurance Commissioners Credit for Reinsurance Model Act,
22 including provisions that protect the interest of policyholders,
23 claimants, ceding insurers, reinsurers and the public generally
24 by establishing appropriate oversight and regulation of ceding
25 insurers and reinsurers. The proposed legislation also
26 incorporates technical clean-up provisions to the credit for
27 reinsurance and rehabilitation and liquidation laws to eliminate
28 confusing and ambiguous language and clarify a reinsurer's
 responsibility in the event of an insurance company insolvency.