

MAINE STATE LEGISLATURE

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L.D. 933

DATE: 6/2/05

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INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 652, L.D. 933, Bill, "An Act To Amend the Maine Life and Health Insurance Guaranty Association Act"

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

Sec. 1. 24-A MRSA §§4601 and 4602, as enacted by PL 1983, c. 846, are amended to read:

§4601. Short title

This chapter shall may be known and cited as the Maine Life and Health Insurance Guaranty Association Act.

§4602. Purpose

The purpose of this chapter, subject to certain limitations, is to maintain public confidence in the promises of insurers by providing a mechanism for protecting policyholders, insureds, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts and supplemental contracts against failure in the performance of fair and equitable contractual obligations due to the impairment or insolvency of the member insurer issuing these policies or contracts. To provide this protection:

1. Creation of association. An association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages as limited by this chapter;

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2 **2. Assessment of members.** Members of the association are
subject to assessment to provide funds to carry out the purpose
of this chapter; and

4 **3. Assistance to superintendent.** The association is
6 authorized to assist the superintendent, in the prescribed
manner, in the detection and prevention of insurer impairments
8 and insolvencies.

10 **Sec. 2. 24-A MRSA §4603,** as amended by PL 1989, c. 751, §§8
to 10, is further amended to read:

12 **§4603. Scope**

14 **1. Application.** This chapter ~~shall apply~~ applies to direct
16 nongroup life insurance policies, health insurance policies,
annuity contracts and contracts supplemental to life and health
18 insurance policies and annuity contracts ~~issued--by--persons~~
~~authorized to transact insurance in this State at any time~~ and to
20 certificates under direct group life insurance policies, health
insurance policies and annuity contracts, except as limited by
22 this chapter. For the purposes of this chapter, annuity contracts
and certificates under group annuity contracts include allocated
24 funding agreements, structured settlement annuities and any
immediate or deferred annuity contracts.

26 **1-A. Persons covered.** This chapter ~~shall provide~~ provides
28 coverage for the policies and contracts specified in subsection 1:

30 A. To any person, regardless of where the person resides,
except for a nonresident certificate holder under a group
32 policy or contract, who is the beneficiary, assignee or
payee of a person covered under paragraph B; and

34 B. To any person who owns, or is a certificate holder
36 under, a policy or contract specified in subsection 1 ~~or, in~~
~~the case of an unallocated annuity contract, to a person who~~
38 ~~is the contract holder and,~~ other than a structured
settlement annuity, who:

40 (1) Is a resident; or

42 (2) Is not a resident, if all the following conditions
44 are met:

46 (i) (a) The insurer that issued the policy or
48 contract is domiciled in this State;

{ii} (b) The insurer never held a license or certificate of authority in the state in which the person resides;

{iii} (c) The state in which the person resides has an association similar to the Maine Life and Health Insurance Guaranty Association; and

{iv} (d) The person is not eligible for coverage by the association in that state; and

C. To any person who is a payee under a structured settlement annuity, or to a beneficiary or beneficiaries of a payee if the payee is deceased, if the payee:

(1) Is a resident, regardless of where the contract owner resides; or

(2) Is not a resident, if all of the conditions of either division (a) or (b) are met:

(a) The contract owner of the structured settlement annuity is a resident; or

(b) The contract owner of the structured settlement annuity is not a resident, but:

(i) The insurer that issued the structured settlement annuity is domiciled in this State;

(ii) The state in which the contract owner resides has an association similar to the association created by this chapter; and

(iii) The payee or beneficiary and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

This chapter does not provide coverage to a person who is a payee or beneficiary of a contract owner who is a resident of this State if the payee or beneficiary is afforded any coverage by a similar association of another state.

This chapter is intended to provide coverage to a person who is a resident, and, in special circumstances as provided by this section, to a person who is not a resident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, that person may not be provided coverage

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2 under this chapter. In determining the application of the
3 provisions of this subsection in a situation in which a person
4 could be covered by the association of more than one state,
5 whether as an owner, payee, beneficiary or assignee, this chapter
6 must be construed in conjunction with other state laws to result
7 in coverage by only one association.

8 2. **Exceptions.** This chapter shall ~~does~~ not apply to:

10 A. That portion of a ~~variable-life-insurance-or-variable~~
11 ~~annuity policy or~~ contract not guaranteed by an insurer;

12 B. Any such policies or contracts, or any part of these
13 policies or contracts, under which the risk is borne by the
14 policyholder;

15 C. Any ~~such-policy-or-contract-or-part-thereof-assumed-by~~
16 ~~the-impaired-insurer-under-a~~ contract of reinsurance, other
17 than reinsurance for which assumption certificates have been
18 issued;

19 D. Any such policy or contract issued by assessment mutuals
20 and nonprofit hospital and medical service plans; and

21 E. Any portion of a policy or contract to the extent that
22 the rate of interest on which it is based, or similar factor
23 determined by use of an index or other external reference
24 stated in the policy or contract employed in calculating
25 returns or changes in value:

26 (1) Averaged over a period of 4 years before the date
27 on which the ~~association-becomes-obligated-with-respect~~
28 ~~to-the-policy-or-contract~~ member insurer becomes an
29 impaired insurer or becomes an insolvent insurer under
30 this chapter, whichever is earlier, exceeds a rate of
31 interest determined by subtracting 2 percentage points
32 from Moody's Corporate Bond Yield Average averaged over
33 the same 4-year period or for a lesser period if the
34 policy or contract was issued less than 4 years before
35 the ~~association-became-obligated~~ member insurer becomes
36 an impaired insurer or becomes an insolvent insurer,
37 whichever is earlier; and

38 (2) ~~After~~ On or after the date on which the
39 ~~association--becomes--obligated--with--respect--to--the~~
40 ~~policy-or-contract~~ member insurer becomes an impaired
41 insurer or becomes an insolvent insurer under this
42 chapter, whichever is earlier, exceeds the rate of
43 interest determined by subtracting 3 percentage points

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from Moody's Corporate Bond Yield Average as most recently available;

F. Any portion of a policy or contract issued to a plan or program of an employer, association or other person to provide life, health or annuity benefits to its employees, members or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association or other person under:

(1) A multiple employer welfare arrangement as defined in 29 United States Code, Section 1144;

(2) A minimum premium group insurance plan;

(3) A stop loss group insurance plan; or

(4) An administrative-services-only contract;

G. Any portion of a policy or contract to the extent that it provides for:

(1) Dividends or experience rating credits;

(2) Voting rights; or

(3) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

H. Any policy or contract issued in this State by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this State;

I. Any portion of a policy or contract to the extent that the assessments required by section 4609 with respect to the policy or contract are preempted by federal or state law;

J. Any obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:

(1) Claims based on marketing materials;

(2) Claims based on side letters, riders or other documents that were issued by the insurer without

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meeting applicable policy form filing or approval requirements;

(3) Misrepresentations of or regarding policy benefits;

(4) Extra-contractual claims; or

(5) Claims for penalties or consequential or incidental damages;

K. Any contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, neither of which is an affiliate of the member insurer;

L. Any unallocated annuity contract; and

M. Any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired insurer or becomes an insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this paragraph, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

3. Benefits; limitations of coverage. The benefits that the association may become obligated to cover may not exceed the least of:

A. The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer;

B. With respect to one life, regardless of the number of policies or contracts:

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2 (1) Three hundred thousand dollars in life insurance
4 death benefits, but not more than \$100,000 in net cash
surrender and net cash withdrawal values for life
insurance;

6 (2) The following limits for health insurance benefits:

8 (a) Three hundred thousand dollars for coverages
10 not defined as disability insurance or basic
hospital, medical and surgical insurance or major
12 medical insurance, including any net cash
surrender and net cash withdrawal values;

14 (b) Three hundred thousand dollars for disability
and long-term care insurance; or

16 (c) Five hundred thousand dollars for basic
18 hospital, medical and surgical insurance or major
medical insurance; or

20 (3) One hundred thousand dollars in the present value
22 of annuity benefits, including net cash surrender and
net cash withdrawal values; or

24 C. With respect to each payee of a structured settlement
26 annuity, or beneficiary or beneficiaries of the payee if
deceased, \$100,000 in present value annuity benefits, in the
28 aggregate, including net cash surrender and net cash
withdrawal values.

30 4. Maximum obligation in benefits. Notwithstanding
32 subsection 3, the association is not in any event obligated to
cover more than:

34 A. An aggregate of \$300,000 in benefits with respect to any
36 one life under subsection 3, paragraph B except with
respect to benefits for basic hospital, medical and surgical
38 insurance and major medical insurance under subsection 3,
paragraph B, subparagraph (2), in which case the aggregate
40 liability of the association may not exceed \$500,000 with
respect to any one individual; or

42 B. Five million dollars in benefits, regardless of the
44 number of policies and contracts held by the owner, with
respect to one owner of multiple nongroup policies of life
46 insurance, whether the policy owner is an individual, firm,
corporation or other person, and whether the persons insured
48 are officers, managers, employees or other persons.

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2 5. Subrogation and assignment rights. The limitations set
4 forth in subsections 3 and 4 are limitations on the benefits for
6 which the association is obligated before taking into account
8 either its subrogation and assignment rights or the extent to
10 which those benefits could be provided out of the assets of the
impaired or insolvent insurer attributable to covered policies.
The costs of the association's obligations under this chapter may
be met by the use of assets attributable to covered policies or
reimbursed to the association pursuant to its subrogation and
assignment rights.

12 6. Material economic benefits; contractual obligations. In
14 performing its obligations to provide coverage under section
16 4608, the association is not required to guarantee, assume,
18 reinsure or perform, or cause to be guaranteed, assumed,
20 reinsured or performed, the contractual obligations of the
insolvent or impaired insurer under a covered policy or contract
that do not materially affect the economic values or economic
benefits of the covered policy or contract.

22 **Sec. 3. 24-A MRSA §4604,** as enacted by PL 1983, c. 846, is
amended to read:

24 **§4604. Construction**

26 This chapter shall ~~shall~~ must be liberally construed to effect the
28 purpose under section 4602 which--shall--constitute--an--aid--and
guide--to--interpretation.

30 **Sec. 4. 24-A MRSA §4605,** as amended by PL 2001, c. 44, §11
32 and affected by §14, is repealed.

34 **Sec. 5. 24-A MRSA §4605-A** is enacted to read:

36 **§4605-A. Definitions**

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

40 1. Account. "Account" means any one of the 3 accounts
42 created under section 4606.

44 2. Association. "Association" means the Maine Life and
Health Insurance Guaranty Association created under section 4606.

46 3. Authorized assessment. "Authorized assessment" or
48 "authorized" when used in the context of assessments means that a
resolution by the board of directors of the association has been
passed whereby an assessment will be called immediately or in the

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future from member insurers for a specified amount; an assessment is authorized when the resolution is passed.

4. Benefit plan. "Benefit plan" means a specific employee, union or association of natural persons benefit plan.

5. Board of directors. "Board of directors" means the board of directors of the association.

6. Called assessment. "Called assessment" or "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice; an authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.

7. Contractual obligation. "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof, for which coverage is provided under section 4603.

8. Covered policy. "Covered policy" means a policy or contract or portion of a policy or contract for which coverage is provided under section 4603.

9. Extra-contractual claims. "Extra-contractual claims" includes, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages or attorney's fees and costs.

10. Impaired insurer. "Impaired insurer" means a member insurer that, after the effective date of this section, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

11. Insolvent insurer. "Insolvent insurer" means a member insurer that, after the effective date of this section, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

12. Member insurer. "Member insurer" means an insurer that is licensed or that holds a certificate of authority to transact in this State any kind of insurance for which coverage is provided under section 4603 and includes an insurer whose license or certificate of authority in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

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- 2 A. A hospital or medical service organization, whether
 profit or nonprofit;
- 4 B. A health maintenance organization;
- 6 C. A fraternal benefit society;
- 8 D. A mandatory state pooling plan;
- 10 E. A mutual assessment company or other person that
 operates on an assessment basis;
- 12 F. An insurance exchange;
- 14 G. An organization that has a certificate or license
 limited to the issuance of charitable gift annuities under
 this Title; or
- 18 H. An entity similar to any of those listed in this
 subsection.

22 13. Moody's Corporate Bond Yield Average. "Moody's
 24 Corporate Bond Yield Average" means the monthly average
 26 corporates as published by Moody's Investors Service, Inc., or
 any successor to that index.

28 14. Owner. "Owner" with respect to a policy or contract
 30 and "policy owner" and "contract owner" mean the person who is
 32 identified as the legal owner under the terms of the policy or
 34 contract or who is otherwise vested with legal title to the
 policy or contract through a valid assignment completed in
 accordance with the terms of the policy or contract and properly
 recorded as the owner on the books of the insurer. "Owner,"
 "contract owner" and "policy owner" do not include persons with a
 mere beneficial interest in a policy or contract.

36 15. Person. "Person" means an individual, corporation,
 38 limited liability company, partnership, association, governmental
 body or entity or voluntary organization.

40 16. Premiums. "Premiums" means amounts or considerations
 42 by whatever name called received on covered policies or contracts
 44 less returned premiums, considerations and deposits and less
 46 dividends and experience credits. "Premiums" does not include
 amounts or considerations received for policies or contracts or
 for the portions of policies or contracts for which coverage is
 not provided under section 4603, except that assessable premiums
 48 may not be reduced on account of the provisions of section 4603
 relating to interest limitations and relating to limitations with

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2 respect to one individual, one participant and one contract
owner. "Premiums" does not include:

4 A. Premiums on an unallocated annuity contract; or

6 B. With respect to multiple nongroup policies of life
8 insurance owned by one owner, whether the policy owner is an
10 individual, firm, corporation or other person, and whether
12 the persons insured are officers, managers, employees or
other persons, premiums in excess of \$5,000,000 with respect
to these policies or contracts, regardless of the number of
policies or contracts held by the owner.

14 17. Principal place of business. "Principal place of
16 business" has the following meaning.

18 A. "Principal place of business" of a plan sponsor or a
20 person other than a natural person means the single state in
22 which the natural persons who establish policy for the
24 direction, control and coordination of the operations of the
entity as a whole primarily exercise that function,
determined by the association in its reasonable judgment by
considering the following factors:

26 (1) The state in which the primary executive and
administrative headquarters of the entity is located;

28 (2) The state in which the principal office of the
30 chief executive officer of the entity is located;

32 (3) The state in which the board of directors of the
34 entity or similar governing body of the entity conducts
the majority of its meetings;

36 (4) The state in which the executive or management
38 committee of the board of directors of the entity or
similar governing body of the entity conducts the
majority of its meetings;

40 (5) The state from which the management of the overall
42 operations of the entity is directed; and

44 (6) In the case of a benefit plan sponsored by
46 affiliated companies comprising a consolidated
48 corporation, the state in which the holding company or
50 controlling affiliate has its principal place of
business as determined using the factors listed in
subparagraphs (1) to (5). However, in the case of a
plan sponsor, if more than 50% of the participants in
the benefit plan are employed in a single state, that

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2 state is deemed to be the principal place of business
3 of the plan sponsor.

4 B. The principal place of business of a plan sponsor of a
5 benefit plan is deemed to be the principal place of business
6 of the association, committee, joint board of trustees or
7 other similar group of representatives of the parties who
8 establish or maintain the benefit plan, which, in lieu of a
9 specific or clear designation of a principal place of
10 business, is deemed to be the principal place of business of
11 the employer or employee organization that has the largest
12 investment in the benefit plan in question.

14 18. Receivership court. "Receivership court" means the
15 court in the impaired or insolvent insurer's state having
16 jurisdiction over the conservation, rehabilitation or liquidation
17 of the insurer.

18 19. Resident. "Resident" means a person to whom a
19 contractual obligation is owed and who resides in this State on
20 the date of entry of a court order that determines a member
21 insurer to be an impaired insurer or a court order that
22 determines a member insurer to be an insolvent insurer, whichever
23 occurs first. A person may be a resident of only one state,
24 which in the case of a person other than a natural person is its
25 principal place of business. Citizens of the United States that
26 are either residents of foreign countries or residents of United
27 States possessions, territories or protectorates that do not have
28 an association similar to the association created by this chapter
29 are deemed residents of the state of domicile of the insurer that
30 issued the policies or contracts.

32 20. Structured settlement annuity. "Structured settlement
33 annuity" means an annuity purchased in order to fund periodic
34 payments for a plaintiff or other claimant in payment for or with
35 respect to personal injury suffered by the plaintiff or other
36 claimant.

38 21. State. "State" means a state, the District of
39 Columbia, Puerto Rico or a United States possession, territory or
40 protectorate.

42 22. Supplemental contract. "Supplemental contract" means a
43 written agreement entered into for the distribution of proceeds
44 under a life, health or annuity policy or contract.

46 23. Unallocated annuity contract. "Unallocated annuity
47 contract" means an annuity contract or group annuity certificate
48 that is not issued to and owned by an individual, except to the

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2 extent of any annuity benefits guaranteed to an individual by an
insurer under the contract or certificate.

4 Sec. 6. 24-A MRSA §§4606, 4607 and 4608, as enacted by PL
1983, c. 846, are amended to read:

6 §4606. Creation of the association

8
1. **Creation.** There is created a nonprofit legal entity to
10 be known as the Maine Life and Health Insurance Guaranty
Association. All member insurers shall ~~must~~ be and remain members
12 of the association as a condition of their authority to transact
insurance in this State. The association shall perform its
14 functions under the plan of operation established and approved
under section 4610 and shall exercise its powers through a board
16 of directors established under section 4607. For purposes of
administration and assessment, the association shall maintain 3
18 accounts:

- 20 A. The health insurance account;
- 22 B. The life insurance account; and
- 24 C. The annuity account, which must include annuity
26 contracts owned by a governmental retirement plan or its
trustee established under Section 401, Section 403(b) or
28 Section 457 of the United States Internal Revenue Code.

30 **2. Supervision of association.** The association shall ~~come~~
is under the immediate supervision of the superintendent and
32 shall-be is subject to the applicable provisions of the insurance
laws of this State. Meetings or records of the association may
34 be open to the public upon majority vote of the board of
directors of the association.

36 §4607. Board of directors

38 **1. Membership.** The board of directors of the association
39 shall ~~must~~ consist of not less than 5 nor more than 9 members
40 representing member insurers serving terms as established in the
plan of operation pursuant to section 4610. The members of the
42 board shall ~~be~~ are selected by member insurers subject to the
approval of the superintendent. Vacancies on the board shall ~~must~~
44 be filled for the remaining period of the term in the manner
described in the plan of operation. To select the initial board
46 of directors and initially organize the association, the
superintendent shall give notice to all member insurers of the
48 time and place of the organizational meeting. In determining
voting rights at the organizational meeting each member insurer
50 shall ~~be is~~ entitled to one vote in person or by proxy. If the

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board of directors is not selected within 60 days after notice of the organizational meeting, the superintendent may appoint the initial members.

2. **Appointments; representation of member insurers.** In approving selections or in appointing members to the board, the superintendent shall consider, among other things, whether all member insurers are fairly represented.

3. **Reimbursement.** Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board shall may not otherwise be compensated by the association for their services.

§4608. Powers and duties of the association

In addition to the powers and duties enumerated in other sections of this chapter:

1. **Impaired insurer; association action.** If a ~~domestic~~ member insurer is an impaired insurer, the association may, ~~prior to a final order of liquidation or rehabilitation, and~~ subject to any fair and equitable conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by ~~the impaired insurer and the superintendent, employ any or all of the following actions:~~

A. Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured all the covered policies of the impaired insurer; or

B. Provide such ~~moneys~~ money, pledges, loans, notes, guarantees or other means as are proper to effectuate paragraph A and assure payment of the appropriate contractual obligations of the impaired insurer pending action under paragraph A ~~or~~.

~~C. Loan money to the impaired insurer.~~

~~2. Foreign or alien impaired insurer; association action prior to final order of liquidation, rehabilitation or conservation. If a foreign or alien insurer is an impaired insurer, the association may prior to a final order of liquidation, rehabilitation or conservation, with respect to the covered policies of residents and subject to any fair and equitable conditions imposed by the association and approved by the impaired insurer and the superintendent, employ any or all of the following actions:~~

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A.---Guarantee---or---reinsure,---or---cause---to---be---guaranteed,
assumed---or---reinsured,---the---impaired---insurer's---covered
policies-of-residents;--

B.---Provide-such-moneys,-pledges,-notes,-guarantees-or-other
means-as-are-proper-to-effectuate-paragraph-A-and-assure
payment-of-the-impaired-insurer's-appropriate-contractual
obligations-to-residents-pending-action-under-paragraph-A;or

C.---Loan-money-to-the-impaired-insurer.

~~3.---Domestic---impaired---insurer---under---final---order---of
liquidation-or-rehabilitation;-association-action.--If-a-domestic
insurer-is-an-impaired-insurer-under-a-final-order-of-liquidation
or-rehabilitation,-the-association-shall,-subject-to-the-approval
of-the-superintendent;~~

A.---Guarantee,-assume-or-reinsure-or-cause-to-be-guaranteed,
assumed-or-reinsured-the-covered-policies-of-the-impaired
insurer;

B.----Assure---payment---of---the---appropriate---contractual
obligations-of-the-impaired-insurer;-and

C.---Provide-such-moneys,-pledges,-notes,-guarantees-or-other
means-as-are-reasonably-necessary-to-discharge-these-duties.
If-the-association-fails-to-act-within-a-reasonable-period
of-time,-the-superintendent-shall-have-the-powers-and-duties
of-the-association-under-this-chapter-with-respect-to-the
domestic-impaired-insurer.

3-A. Impaired and insolvent insurer; association action.
If a member insurer is an insolvent insurer, the association may,
in its discretion, either:

A. Take the following actions:

(1) Guarantee, assume or reinsure or cause to be
guaranteed, assumed or reinsured the policies or
contracts of the insolvent insurer, or assure payment
of the contractual obligations of the insolvent
insurer; and

(2) Provide money, pledges, loans, notes, guarantees or
other means reasonably necessary to discharge the
association's duties; or

B. Provide benefits and coverages in accordance with this
paragraph.

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2 (1) With respect to life and health insurance policies
4 and annuities, the association shall assure payment of
6 benefits for premiums identical to the premiums and
8 benefits, except for terms of conversion and
10 renewability, that would have been payable under the
12 policies or contracts of the insolvent insurer, for
14 claims incurred:

16 (a) With respect to group policies and contracts,
18 not later than the earlier of the next renewal
20 date under those policies or contracts or 45 days,
22 but in no event less than 30 days, after the date
24 on which the association becomes obligated with
26 respect to the policies and contracts; and

28 (b) With respect to nongroup policies, contracts
30 and annuities, not later than the earlier of the
32 next renewal date if any under the policies or
34 contracts and one year, but in no event less than
36 30 days, after the date on which the association
38 becomes obligated with respect to the policies or
40 contracts.

42 (2) The association shall make diligent efforts to
44 provide all known insureds or annuitants for nongroup
46 policies and contracts, or group policy owners with
48 respect to group policies and contracts, 30 days'
50 notice of the termination of the benefits provided.

52 (3) With respect to nongroup life and health insurance
54 policies and annuities covered by the association, the
56 association shall make available to each known insured
58 or annuitant, or owner if other than the insured or
60 annuitant, and, with respect to an individual formerly
62 insured or formerly an annuitant under a group policy
64 who is not eligible for replacement group coverage,
66 make available substitute coverage on an individual
68 basis in accordance with the provisions of subparagraph
70 (4), if the insureds or annuitants had a right under
72 law or the terminated policy or annuity to convert
74 coverage to individual coverage or to continue an
76 individual policy or annuity in force until a specified
78 age or for a specified time, during which the insurer
80 had no right unilaterally to make changes in any
82 provision of the policy or annuity or had a right only
84 to make changes in premium by class.

86 (4) In providing substitute coverage, the association
88 may offer either to reissue the terminated coverage or

2 to issue an alternative policy in accordance with the
3 following:

4 (a) Alternative or reissued policies must be
5 offered without requiring evidence of insurability
6 and may not provide for any waiting period or
7 exclusion that would not have applied under the
8 terminated policy;

10 (b) The association may reinsure any alternative
11 or reissued policy;

12 (c) Alternative policies adopted by the
13 association are subject to the approval of the
14 superintendent and the receivership court. The
15 association may adopt alternative policies of
16 various types for future issuance without regard
17 to any particular impairment or insolvency;

20 (d) Alternative policies must contain at least
21 the minimum statutory provisions required in this
22 State and provide benefits that are not
23 unreasonable in relation to the premium charged.
24 The association shall set the premium in
25 accordance with a table of rates that it adopts.
26 The premium must reflect the amount of insurance
27 to be provided and the age and class of risk of
28 each insured, but may not reflect any changes in
29 the health of the insured after the original
30 policy was last underwritten; and

32 (e) Any alternative policy issued by the
33 association must provide coverage of a type
34 similar to that of the policy issued by the
35 impaired or insolvent insurer, as determined by
36 the association.

38 (5) If the association elects to reissue terminated
39 coverage at a premium rate different from that charged
40 under the terminated policy, the premium must be set by
41 the association in accordance with the amount of
42 insurance provided and the age and class of risk,
43 subject to approval of the superintendent and the
44 receivership court.

46 (6) The association's obligations with respect to
47 coverage under any policy of the impaired or insolvent
48 insurer or under any reissued or alternative policy
must cease on the date the coverage or policy is

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2 replaced by another similar policy by the policy owner,
the insured or the association.

4 (7) When proceeding under this paragraph with respect
to a policy or contract carrying guaranteed minimum
6 interest rates, the association shall assure the
payment or crediting of a rate of interest consistent
8 with section 4603.

10 (8) Nonpayment of premiums within 31 days after the
date required under the terms of any guaranteed,
12 assumed, alternative or reissued policy or contract or
substitute coverage terminates the association's
14 obligations under the policy or coverage under this
chapter with respect to the policy or coverage, except
16 with respect to any claims incurred or any net cash
surrender value that may be due in accordance with the
18 provisions of this chapter.

20 (9) Premiums due for coverage after entry of an order
of liquidation of an insolvent insurer belong to and
22 are payable at the direction of the association, and
the association is liable for unearned premiums due to
24 policy or contract owners arising after the entry of
the order.

26 (10) The protection provided by this chapter does not
28 apply when any guaranty protection is provided to
residents of this State by the laws of the domiciliary
30 state or jurisdiction of the impaired or insolvent
insurer other than this State.

32 ~~4. Foreign or alien impaired insurer under final order of~~
34 ~~liquidation, rehabilitation or conservation; association action.~~
~~If a foreign or alien insurer is an impaired insurer under a~~
36 ~~final order of liquidation, rehabilitation or conservation, the~~
~~association shall, subject to the approval of the superintendent,~~

38 ~~A. Guarantee, assume or reinsure or cause to be guaranteed,~~
40 ~~assumed or reinsured the covered policies of residents;~~

42 ~~B. Assure payment of the appropriate contractual~~
44 ~~obligations of the impaired insurer to residents; and~~

46 ~~C. Provide such moneys, pledges, notes, guarantees or other~~
~~means as are reasonably necessary to discharge these duties.~~
48 ~~If the association fails to act within a reasonable period~~
~~of time, the superintendent shall have the powers and duties~~
50 ~~of the association under this chapter with respect to such~~
~~foreign or alien impaired insurer.~~

2 ~~5.--- Policy liens; contract liens; moratoriums on payments.~~
3 ~~In carrying out its duties under subsections 3 and 4, the~~
4 ~~association may request that there be imposed policy liens,~~
5 ~~contract liens, moratoriums on payments or other similar means~~
6 ~~and these liens, moratoriums or similar means may be imposed if~~
7 ~~the superintendent:~~

8
9
10 ~~A.--- Finds that the amounts which can be assessed under this~~
11 ~~chapter are less than the amounts needed to assure full and~~
12 ~~prompt performance of the impaired insurer's contractual~~
13 ~~obligations, or that the economic or financial conditions as~~
14 ~~they affect member insurers are sufficiently adverse to~~
15 ~~render the imposition of policy or contract liens,~~
16 ~~moratoriums or similar means to be in the public interest;~~
17 ~~and~~

18 ~~B.--- Approves the specific policy liens, contract liens,~~
19 ~~moratoriums or similar means to be used.~~

20
21 ~~Before being obligated under subsections 3 and 4 the association~~
22 ~~may request that there be imposed temporary moratoriums or liens~~
23 ~~on payments of cash values and policy loans and such temporary~~
24 ~~moratoriums and liens may be imposed if they are approved by the~~
25 ~~superintendent.~~

26
27 5-A. Policy liens; contract liens; moratoriums on
28 payments. In carrying out its duties under subsection 3-A, the
29 association may:

30
31 A. Subject to approval by a court in this State, impose
32 permanent policy or contract liens in connection with a
33 guarantee, assumption or reinsurance agreement, if the
34 association finds that the amounts that can be assessed
35 under this chapter are less than the amounts needed to
36 assure full and prompt performance of the association's
37 duties under this chapter or that the economic or financial
38 conditions as they affect member insurers are sufficiently
39 adverse to render the imposition of such permanent policy or
40 contract liens to be in the public interest; and

41
42 B. Subject to approval by a court in this State, impose
43 temporary moratoriums or liens on payments of cash values
44 and policy loans or on any other right to withdraw funds
45 held in conjunction with policies or contracts, in addition
46 to any contractual provisions for deferral of cash or policy
47 loan value. In addition, in the event of a temporary
48 moratorium or moratorium charge imposed by the receivership
49 court on payment of cash values or policy loans or on any
50 other right to withdraw funds held in conjunction with

2 policies or contracts, out of the assets of the impaired or
4 insolvent insurer, the association may defer the payment of
6 cash values, policy loans or other rights by the association
8 for the period of the moratorium or moratorium charge
imposed by the receivership court, except for claims covered
by the association to be paid in accordance with a hardship
procedure established by the liquidator or rehabilitator and
approved by the receivership court.

10 **6. Association liability.** The association shall-~~have~~ has no
12 liability under this section for any covered policy of a foreign
14 or alien insurer whose domiciliary jurisdiction or state of entry
16 provides by statute for residents of this State protection
substantially similar to that provided by this chapter for
residents of other states.

18 **6-A. Failure to act.** If the association fails to act within
a reasonable period of time with respect to an insolvent insurer,
as provided in subsection 3-A, the superintendent has the powers
and duties of the association under this chapter with respect to
the insolvent insurer.

22 **6-B. Retention of deposit; final order of liquidation or**
rehabilitation plan. A deposit in this State, held pursuant to
24 law or required by the superintendent for the benefit of
26 creditors, including policy owners, not turned over to the
28 domiciliary liquidator upon the entry of a final order of
30 liquidation or order approving a rehabilitation plan of an
insurer domiciled in this State or in a reciprocal state,
pursuant to this Title must be promptly paid to the association.
The association is entitled to retain a portion of any amount so
paid to it equal to the percentage determined by dividing the
aggregate amount of policy owners' claims related to that
insolvency for which the association has provided statutory
benefits by the aggregate amount of all policy owners' claims in
this State related to that insolvency and shall remit to the
domiciliary receiver the amount so paid to the association and
not retained pursuant to this subsection. Any amount so paid to
the association less the amount not retained by it must be
treated as a distribution of estate assets pursuant to chapter 57
or similar provision of the state of domicile of the impaired or
insolvent insurer.

44 **7. Assistance and advice to superintendent.** The association
46 may render assistance and advice to the superintendent, upon his
48 the superintendent's request, concerning rehabilitation, payment
of claims, continuations of coverage or the performance of other
contractual obligations of any impaired or insolvent insurer.

8. **Standing to appear before court.** The association shall have has standing to appear or intervene before any court or agency in this State with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise. This standing shall--extend extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying or guaranteeing the covered policies or contracts and contractual obligations of the impaired or insolvent insurer and the determination of the covered policies or contracts and contractual obligations. The association also has the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

9. **Subrogation rights.** Any person receiving benefits under this chapter shall--be is deemed to have assigned his that person's rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter whether the benefits are payments of or on account of contractual obligations ex, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of these rights and cause of action by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon that person. The association shall--be is subrogated to these rights against the assets of any impaired or insolvent insurer.

The subrogation rights of the association under this subsection shall must have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

In addition, the association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary or payee of a policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary or payee of the annuity, to the extent of benefits received pursuant to this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor,

2 excepting any such person responsible solely by reason of serving
3 as an assignee in respect of a qualified assignment under Section
4 130 of the federal Internal Revenue Code.

5 If the provisions of this subsection are invalid or ineffective
6 with respect to any person or claim for any reason, the amount
7 payable by the association with respect to the related covered
8 obligations must be reduced by the amount realized by any other
9 person with respect to the person or claim that is attributable
10 to the policies or portion thereof covered by the association.

11 If the association has provided benefits with respect to a
12 covered obligation and a person recovers amounts as to which the
13 association has rights as described in this subsection, the
14 person shall pay to the association the portion of the recovery
15 attributable to the policies or portion thereof covered by the
16 association.

17 ~~10. Association's contractual obligation; impaired insurer.~~
18 ~~The contractual obligations of the impaired insurer for which the~~
19 ~~association becomes or may become liable shall be as great as but~~
20 ~~not greater than the contractual obligations of the impaired~~
21 ~~insurer would have been in the absence of the impairment. In no~~
22 ~~event may the aggregate liability of the association exceed~~
23 ~~\$100,000 in cash values, or \$300,000 for all benefits, including~~
24 ~~cash values, with respect to any one life.~~
25

26
27 **11. Other powers.** The association may:

28
29 A. Enter into such contracts as are necessary or proper to
30 carry out the provisions and purposes of this chapter;

31
32 B. Sue Subject to the provisions of section 4617, sue or be
33 sued, including taking any legal actions necessary or proper
34 for recovery of any unpaid assessments under section 4609 or
35 to settle claims or potential claims against it;

36
37 C. Borrow money to effect the purposes of this chapter.
38 Any notes or other evidence of indebtedness of the
39 association not in default are legal investments for
40 domestic insurers and may be carried as admitted assets;

41
42 D. Employ or retain such persons as are necessary or
43 appropriate to handle the financial transactions of the
44 association and to perform such other functions as become
45 necessary or proper under this chapter;

46
47 E. Negotiate and contract with any liquidator,
48 rehabilitator, conservator or ancillary receiver to carry
49 out the powers and duties of the association;
50

2 F. Take such legal action as may be necessary to avoid or
3 recover payment of improper claims; and

4
5 G. Exercise, for the purposes of this chapter and to the
6 extent approved by the superintendent, the powers of a
7 domestic life or health insurer, but in no case may the
8 association issue insurance policies or annuity contracts
9 other than those issued to perform the contractual
10 obligations of the impaired insurer;

12 H. Organize itself as a corporation or in other legal form
13 permitted by the laws of this State;

14
15 I. Request information from a person seeking coverage from
16 the association in order to aid the association in
17 determining its obligations under this chapter with respect
18 to the person, and the person shall promptly comply with the
19 request;

20
21 J. Join an organization of one or more other state
22 associations of similar purposes, to further the purposes
23 and administer the powers and duties of the association; and

24
25 K. Take necessary or appropriate action to discharge its
26 duties and obligations under this chapter or to exercise its
27 powers under this chapter.

28 **12. Reinsurance of obligations; election by association.**

30 At any time within one year after the date on which the
31 association becomes responsible for the obligations of a member
32 insurer, the association may elect to succeed to the rights and
33 obligations of the member insurer that accrue on or after the
34 coverage date and that relate to contracts covered in whole or in
35 part by the association under any one or more indemnity
36 reinsurance agreements entered into by the member insurer as a
37 ceding insurer and selected by the association. However, the
38 association may not exercise an election with respect to a
39 reinsurance agreement if the receiver, rehabilitator or
40 liquidator of the member insurer has previously and expressly
41 disaffirmed the reinsurance agreement. The election is effected
42 by a notice to the receiver, rehabilitator or liquidator and to
43 the affected reinsurers. If the association makes an election,
44 the following requirements apply with respect to the agreements
45 selected by the association.

46
47 A. For contracts covered in whole or in part by the
48 association, the association is responsible for all unpaid
49 premiums due under the agreements for periods both before
50 and after the coverage date and for the performance of all

2 other obligations to be performed after the coverage date.
3 The association may charge contracts covered in part by the
4 association, through reasonable allocation methods, the
5 costs for reinsurance in excess of the obligations of the
6 association.

7
8 B. The association is entitled to any amounts payable by
9 the reinsurer under the agreements with respect to losses or
10 events that occur in periods after the coverage date and
11 that relate to contracts covered by the association in whole
12 or in part, except that, upon receipt of any such amounts,
13 the association is obliged to pay to the beneficiary under
14 the policy or contract on account of which the amounts were
15 paid a portion of the amount equal to the excess of the
16 amount received by the association over the benefits paid by
17 the association on account of the policy or contract less
18 the retention of the impaired or insolvent insurer
19 applicable to the loss or event.

20 C. Within 30 days following the association's election, the
21 association and each indemnity reinsurer shall calculate the
22 net balance due to or from the association under each
23 reinsurance agreement as of the date of the association's
24 election, giving full credit to all items paid by either the
25 member insurer or its receiver, rehabilitator or liquidator
26 or the indemnity reinsurer during the period between the
27 coverage date and the date of the association's election.
28 Either the association or indemnity reinsurer shall pay the
29 net balance due the other within 5 days of the completion of
30 the calculation. If the receiver, rehabilitator or
31 liquidator has received any amounts due the association
32 pursuant to paragraph B, the receiver, rehabilitator or
33 liquidator shall remit them to the association as promptly
34 as practicable.

35
36 D. If the association, within 60 days of the election, pays
37 the premiums due for periods both before and after the
38 coverage date that relate to contracts covered by the
39 association in whole or in part, the reinsurer is not
40 entitled to terminate the reinsurance agreements insofar as
41 the agreements relate to contracts covered by the
42 association in whole or in part and is not entitled to set
43 off any unpaid premium due for periods prior to the coverage
44 date against amounts due the association.

45
46 E. In the event the association transfers its obligations
47 to another insurer and if the association and the other
48 insurer agree, the other insurer must succeed to the rights
49 and obligations of the association under this chapter
50 effective as of the date agreed upon by the association and

2 the other insurer and regardless of whether the association
3 has made the election referred to in this subsection, except
4 that:

5 (1) The indemnity reinsurance agreements automatically
6 terminate for new reinsurance unless the indemnity
7 reinsurer and the other insurer agree to the contrary;
8 and

9 (2) The obligations described in this chapter no
10 longer apply on and after the date the indemnity
11 reinsurance agreement is transferred to the 3rd-party
12 insurer.

13 This paragraph does not apply if the association has
14 previously expressly determined in writing that it will not
15 exercise the election.

16 F. This subsection supersedes the provisions of any law of
17 this State or of any affected reinsurance agreement that
18 provides for or requires any payment of reinsurance
19 proceeds, on account of losses or events that occur in
20 periods after the coverage date, to the receiver, liquidator
21 or rehabilitator of an insolvent insurer. The receiver,
22 rehabilitator or liquidator is entitled to any amounts
23 payable by the reinsurer under the reinsurance agreement
24 with respect to losses or events that occur in periods prior
25 to the coverage date subject to applicable set-off
26 provisions.

27 G. Except as otherwise expressly provided, this subsection
28 does not alter or modify the terms and conditions of the
29 indemnity reinsurance agreements of an insolvent insurer.
30 This subsection may not be construed to abrogate or limit
31 any rights of any reinsurer to claim that it is entitled to
32 rescind a reinsurance agreement. This subsection may not be
33 construed to give a policy owner or beneficiary an
34 independent cause of action against an indemnity reinsurer
35 that is not otherwise set forth in the indemnity reinsurance
36 agreement.

37 **13. Discretion.** The board of directors of the association
38 has discretion and may exercise reasonable business judgment to
39 determine the means by which the association is to provide the
40 benefits of this chapter in an economical and efficient manner.

41 **14. No additional benefits.** When the association has
42 arranged or offered to provide the benefits of this chapter to a
43 covered person under a plan or arrangement that fulfills the
44 association's obligations under this chapter, the person is not
45 entitled to any additional benefits.

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2 entitled to benefits from the association in addition to or other
than those provided under the plan or arrangement.

4 15. Venue. Venue in a suit against the association arising
6 under this chapter is Kennebec County. The association may not
be required to give an appeal bond in an appeal that relates to a
8 cause of action arising under this chapter.

10 16. Issuance of substitute coverage. In carrying out its
12 duties in connection with guaranteeing, assuming or reinsuring
14 policies or contracts under this section, the association may,
16 subject to approval of the receivership court, issue substitute
18 coverage for a policy or contract that provides an interest rate,
crediting rate or similar factor determined by use of an index or
other external reference stated in the policy or contract
employed in calculating returns or changes in value by issuing an
alternative policy or contract in accordance with this subsection.

20 A. In lieu of the index or other external reference provided
for in the original policy or contract, the alternative
22 policy or contract must provide for:

- 24 (1) A fixed interest rate;
- 26 (2) Payment or dividends with minimum guarantees; or
- 28 (3) A different method for calculating interest or
changes in value.

30 B. There may not be a requirement for evidence of
32 insurability, waiting period or other exclusion that would
not have applied under the replaced policy or contract.

34 C. The alternative policy or contract must be substantially
36 similar to the replaced policy or contract in all other
material terms.

38 **Sec. 7. 24-A MRS** **A §4609**, as amended by PL 1989, c. 751, §12,
40 is further amended to read:

42 **§4609. Assessments**

44 **1. Assessments; collection.** For the purpose of providing
46 the funds necessary to carry out the powers and duties of the
48 association, the board of directors shall assess the member
insurers, separately for each account, at such times and for such
amounts as the board finds necessary. ~~The board shall collect the~~
~~assessments after 30 days' written notice to the member insurers~~
~~before payment is due.~~ Assessments are due not less than 30 days

after prior written notice to the member insurers and accrue interest at 10% annually on and after the due date.

2. --- Classes of assessments. --- There shall be 5 classes of assessments, as follows.

A. --- Class A assessments shall be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

B. --- Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 4608 with regard to an impaired domestic insurer.

C. --- Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section 4608 with regard to an impaired foreign or alien insurer.

D. --- To the extent that the maximum 2% has not been assessed, an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph shall be assessed when immediately necessary for the payment of claims and expenses. --- Payment of this assessment shall be assured by one of the means set forth in this paragraph. Any amount drawn by the association under any line of credit shall be considered a payment toward the member insurer's obligation provided for in this paragraph. --- The maximum line of credit or preinsolvency assessment for each account shall be as follows:

Account	Maximum
Life	\$1,400,000
Health	\$1,500,000
Annuity	\$500,000

(1) --- The association shall obtain a line of credit for the benefit of each account, in an amount not to exceed the applicable maximum to ensure the immediate availability of funds for purposes of future claims and expenses attributable to an insurer insolvency in that account. --- That line of credit shall be obtained from a qualified financial institution. --- At no time may a qualified financial institution participate in a line of credit in excess of 20% of its equity capital. --- The line of credit shall provide for a 30-day notice of termination or nonrenewal to the superintendent and the association --- and --- shall --- provide --- funding --- to --- the

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association--within--one--business--day--of--receipt--of
notice--from--the--superintendent--of--an--impaired--insurer
in--that--account--as--defined--in--section--4605.---Each
member--insurer--upon--notice--from--the--association--shall
make--immediate--payment--for--its--proportionate--share--of
the--amount--borrowed--based--on--the--premium--for--the
preceding--calendar--year.---The--line--of--credit--provided
for--in--this--paragraph--shall--be--subject--to--prior--review
and--approval--by--the--superintendent--at--the--time--of
origination--and--at--any--subsequent--renewal.

(2)--If--the--association--cannot--obtain--a--line--of--credit,
a--member--insurer--may--obtain--a--line--of--credit--from--a
qualified--financial--institution--or--may--extend--a--line--of
credit--itself--directly--to--and--for--the--benefit--of--the
member--insurer's--account--by--submitting--to--the
association--a--duly--authorized--and--executed--line--of
credit--agreement--providing--that--the--member--insurer
shall--provide--funding--to--the--association--under--the--line
of--credit--within--one--business--day--of--receipt--of--a
written--notice--from--the--superintendent--of--an--impaired
insurer--as--defined--in--section--4605--and--receipt--of--a
written--request--from--the--association--for--a--drawdown
under--the--line--of--credit.---The--line--of--credit--agreement
shall--be--subject--to--prior--review--and--approval--by--the
superintendent--at--the--time--of--origination--and--at--any
subsequent--renewal.---It--shall--include--such--commercially
reasonable--provisions--as--the--association--or--the
superintendent--may--deem--advisable,---including--a
provision--that--the--line--of--credit--is--irrevocable--or--for
a--stated--period--of--time--and--provides--for--a--30--day
notice--to--the--association--and--the--superintendent--that
the--line--is--being--terminated--or--not--renewed.---Any--line
of--credit--issued--under--this--paragraph--may--be--replaced
with--another--line--of--credit--and--the--existing--line--of
credit--shall--be--released--by--the--association--once--a
substitute--line--of--credit--has--been--provided--or--the
assessment--provided--for--in--this--paragraph--has--been--paid.

(3)--If--a--line--of--credit--is--not--given--as--provided--for
in--subparagraph--(2),--the--member--insurer--shall--be
responsible--for--payment--of--an--assessment--of--up--to--that
member's--proportionate--share--of--the--applicable--maximum
as--set--forth--in--this--paragraph--which--shall--be--paid--into
a--preinsolvency--assessment--fund--in--each--account.---Funds
in--each--account--shall--only--be--used--for--the--payment--of
claims--and--expenses--of--an--insolvent--insurer--in--that
account.

(4) All materials and information submitted or considered under this paragraph shall be matters of public record.

Class E assessments shall be made to the extent necessary to carry out the powers and duties of the association under subsection 8.

2-A. Classes of assessments. There are 2 classes of assessments, as set out in this subsection.

A. Class A assessments are authorized and called for the purpose of meeting administrative costs and other general expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

B. Class B assessments are authorized and called to the extent necessary to carry out the powers and duties of the association under section 4608 with regard to an impaired or an insolvent insurer.

3. Determination of assessments. Assessments shall be determined as follows.

A. The amount of any Class A, Class D or Class E assessment for each account shall be determined by the board. The amount of any Class B or Class C assessment shall be divided among the accounts in the proportion that the present value of the liabilities for each account of the impaired insurer bears to the total liabilities of the impaired insurer. This paragraph shall not be a factor in the determination as to whether the protection provided by laws for residents of this State by the domiciliary jurisdiction of a foreign or alien insurer is or is not substantially similar to the protection provided by this chapter for residents of other states.

B. Class A and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this State by each assessed member insurer on policies covered by each account bear to such premiums received on business in this State by all assessed member insurers.

C. Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in

that-state-by-the-impaired-insurer-on-policies-covered-by
the-account-bear-to-the-premiums-received-in-all-such-states
by-the-impaired-insurer.--The-assessments-against-member
insurers--shall-be-in-the-proportion-that-the-premiums
received-on-business-in-each-such-state-by-each-assessed
member-insurer-on-policies-covered-by-each-account-bear-to
the-premiums-received-on-business-in-each-state-by-all
assessed-member-insurers.---

D.--Assessments-for-funds-to-meet-the-requirements-of-the
association-with-respect-to-an-impaired-insurer-shall-not-be
made-until-necessary-to-implement-the-purposes-of-this
chapter.--Classification-of-assessments-under-subsection-2
and-computation-of-assessments-under-this-paragraph-shall-be
made-with-a-reasonable-degree-of-accuracy,-recognizing-that
exact-determinations-may-not-always-be-possible.

3-A. Determination of assessments. Assessments must be
determined as follows:

A. The amount of any Class A assessment, as described in
subsection 2-A, for each account must be determined by the
board of directors and may be authorized and called on a pro
rata or non-pro rata basis. The amount of any Class B
assessment, as described in subsection 2-A, must be
allocated for assessment purposes among the accounts
pursuant to an allocation formula that may be based on the
premiums or reserves of the impaired or insolvent insurer or
any other standard determined by the board in its sole
discretion as being fair and reasonable under the
circumstances. This paragraph may not be a factor in the
determination as to whether the protection provided by laws
for residents of this State by the domiciliary jurisdiction
of a foreign or alien insurer is or is not substantially
similar to the protection provided by this chapter for
residents of other states.

B. Class A assessments, as described in subsection 2-A,
against member insurers for each account must be in the
proportion that the premiums received on business in this
State by each assessed member insurer on policies or
contracts covered by each account for the calendar year for
which information is available preceding the year in which
the insurer became insolvent or, in the case of an
assessment with respect to an impaired insurer, the calendar
year for which information is available preceding the year
in which the insurer became impaired bears to premiums
received on business in this State for the calendar year by
all assessed member insurers.

2 C. Class B assessments, as described in subsection 2-A,
3 against member insurers for each account must be in the
4 proportion that the premiums received on business in this
5 State by each assessed member insurer on policies or
6 contracts covered by each account for the calendar year for
7 which information is available preceding the year in which
8 the insurer became insolvent or, in the case of an
9 assessment with respect to an impaired insurer, the calendar
10 year for which information is available preceding the year
11 in which the insurer became impaired bears to premiums
12 received on business in this State for the calendar year by
13 all assessed member insurers.

14 D. Assessments for funds to meet the requirements of the
15 association with respect to an impaired or insolvent insurer
16 may not be authorized or called until necessary to implement
17 the purposes of this chapter. Classification of assessments
18 under subsection 2-A and computation of assessments under
19 this paragraph must be made with a reasonable degree of
20 accuracy, recognizing that exact determinations may not
21 always be possible.

22
23 **4. Abatement or deferral of assessments.** The association
24 may abate or defer, in whole or in part, the assessment of a
25 member insurer if, in the opinion of the board of directors,
26 payment of the assessment would endanger the ability of the
27 member insurer to fulfill its contractual obligations. Once the
28 conditions that caused a deferral have been removed or rectified,
29 the member insurer shall pay all assessments that were deferred
30 pursuant to a repayment plan approved by the association. The
31 total of all assessments upon a member insurer for each account
32 shall may not in any one calendar year exceed 2% of the insurer's
33 premiums in this State on the policies covered by the account.

34
35 **5. Additional assessment for abatements or deferrals.** In
36 the event an assessment against a member insurer is abated or
37 deferred, in whole or in part, because of the limitations set
38 forth in subsection 4, the amount by which the assessment is
39 abated or deferred shall must be assessed against the other
40 member insurers in a manner consistent with the basis for
41 assessments set forth in this section.

42
43 **6. Refunds.** The board of directors may, ~~subject to the~~
44 ~~preinsolvency funding requirement of section 4609, subsection 2,~~
45 ~~paragraph D,~~ by an equitable method as established in the plan of
46 operation, refund to member insurers, in proportion to the
47 contribution of each insurer to that account, the amount by which
48 the assets of the account exceed the amount the board finds is
49 necessary to carry out during the coming year the obligations of
50 the association with regard to that account, including assets

100

2 accruing from net realized gains and income from investments. A
4 reasonable amount may be retained in any account to provide funds
for the continuing expenses of the association and for future
losses if refunds are impractical.

6 **7. Consideration of assessments in determining premium**
8 **rates and dividends.** It shall-be is proper for any member insurer
10 in determining its premium rates and policyowner dividends as to
12 any kind of insurance within the scope of this chapter, to
consider the amount reasonably necessary to meet its assessment
obligations under this chapter.

14 **8. Assessment shortfalls.** If the maximum assessment,
16 together with the other assets of the association in any account,
18 does not provide in any one year in any one account an amount
sufficient to make all necessary payments from that account, the
20 shortfall shall must be assessed as an obligation of the other
22 accounts of the association. Each member insurer's assessment
24 shall must be in the proportion that its premium for the calendar
year preceding the assessment on the kinds of insurance in the
26 accounts to be assessed bears to the total premium of all member
insurers for the same calendar year on the kinds of insurance in
those accounts. The total of assessments against a member
insurer for shortfalls under this section and section 4440 in any
one calendar year shall may not exceed 2% of that member
insurer's premiums in this State or for policies covered by the
account. ~~Within 7 days after the board of directors votes to
levy an assessment under this subsection, the chair of the board
of directors shall notify the chairs of the joint standing
committee of the Legislature having jurisdiction over banking and
insurance matters that the association has voted to make that
assessment. The notification must be in writing and must include
the total amount to be assessed against each account and the name
of the account to which the assessed funds will be credited.~~

36 **9. Certificate of contribution.** The association shall issue
38 to each insurer paying an assessment under this chapter, other
than a Class A assessment, a certificate of contribution, in a
40 form prescribed by the superintendent, for the amount of the
assessment so paid. All outstanding certificates are of equal
42 dignity and priority without reference to amounts or dates of
issue.

44 **Sec. 8. 24-A MRSA §4611, sub-§1, ¶¶ A and C,** as enacted by PL
46 1983, c. 846, are amended to read:

48 A. Notify the board of directors of the existence of an
impaired insurer not later than 3 days after a determination
of impairment or insolvency is made or he the superintendent
50 has received the notice of impairment or insolvency;

2 C. When an impairment is declared, ~~pursuant to section 4605~~
3 ~~determined, as defined in section 4605-A,~~ subsection 6,
4 ~~paragraph--B 10,~~ and the amount of the impairment is
5 determined, serve a demand upon the impaired insurer to make
6 good the impairment within a reasonable time. Notice ~~of to~~
7 the impaired insurer ~~shall constitute~~ constitutes notice to
8 its shareholders, if any. The failure of the insurer to
9 promptly comply with the demand ~~shall~~ does not excuse the
10 association from the performance of its powers and duties
11 under this chapter; and

12 **Sec. 9. 24-A MRSA §4611, sub-§3,** as enacted by PL 1983, c.
13 846, is amended to read:

14 **3. Appeal of actions of board of directors or association.**
15 Any final action of the board of directors or the association may
16 be appealed to the superintendent by any member insurer if such
17 appeal is taken within 30 days of the action being appealed. Any
18 final action or order of the superintendent ~~shall-be~~ is subject
19 to judicial review pursuant to chapter 3.

20 **Sec. 10. 24-A MRSA §4612,** as enacted by PL 1983, c. 846, is
21 repealed.

22 **Sec. 11. 24-A MRSA §4612-A** is enacted to read:

23 **§4612-A. Prevention of impairments and insolvencies**

24 To aid in the detection and prevention of insurer
25 impairments and insolvencies, the following provisions apply.

26 **1. Action by superintendent. The superintendent shall:**

27 **A. Notify the insurance commissioners of all the other**
28 **states, territories of the United States and the District of**
29 **Columbia, within 30 days following the action taken or the**
30 **date the action occurs, when the superintendent takes any of**
31 **the following actions against a member insurer:**

32 **(1) Revokes a license;**

33 **(2) Suspends a license; or**

34 **(3) Makes a formal order that the member insurer**
35 **restrict its premium writing, obtain additional**
36 **contributions to surplus, withdraw from the State,**
37 **reinsure all or any part of its business or increase**
38 **capital, surplus or any other account for the security**
39 **of policy owners or creditors.**

MS

2 B. Report to the board of directors when the superintendent
4 has taken any of the actions set forth in paragraph A or has
6 received a report from any other insurance commissioner
8 indicating that any such action has been taken in another
state. The report to the board of directors must contain
all significant details of the action taken or the report
received from another commissioner.

10 C. Report to the board of directors when the superintendent
12 has reasonable cause to believe from an examination, whether
14 completed or in process, of any member insurer that the
insurer may be an impaired or insolvent insurer.

16 D. Furnish to the board of directors the National
18 Association of Insurance Commissioners Insurance Regulatory
20 Information System ratios and listings of companies not
22 included in the ratios. The board may use the information
24 contained therein in carrying out its duties and
responsibilities under this section. The report and the
information contained therein must be kept confidential by
the board until such time as made public by the
superintendent or other lawful authority.

26 2. Advice and recommendations. The superintendent may seek
28 the advice and recommendations of the board of directors
30 concerning any matter affecting the duties and responsibilities
of the superintendent regarding the financial condition of member
insurers and companies seeking admission to transact insurance
business in this State.

32 3. Action by board of directors. The board of directors,
34 upon majority ballot vote, shall:

36 A. Notify the superintendent of any information indicating
any member insurer may be an impaired or insolvent insurer;

38 B. Make reports and recommendations to the superintendent
40 upon any matter germane to the solvency, liquidation,
42 rehabilitation or conservation of any member insurer or
44 germane to the solvency of any company seeking to do an
insurance business in this State. These reports and
recommendations must be treated as confidential by the
superintendent; and

46 C. Make recommendations to the superintendent for the
48 detection and prevention of insurer insolvencies.

50 **Sec. 12. 24-A MRSA §§4614 and 4617, as enacted by PL 1983, c.**
846, are amended to read:

2 **§4614. Miscellaneous provisions**

4 **1. Liability for unpaid assessments of insureds of an**
6 **impaired insurer.** Nothing in this chapter may be construed to
8 reduce the liability for unpaid assessments of the insureds of an
impaired insurer operating under a plan with assessment
liability.

10 **2. Records.** Records shall ~~must~~ be kept of all negotiations
12 and meetings in which the association or its representatives are
involved to discuss the activities of the association in carrying
14 out its powers and duties under section 4608. Records of the
negotiations or meetings shall ~~may~~ be made public only upon the
16 termination of a liquidation, rehabilitation or conservation
proceeding involving the impaired ~~or insolvent~~ insurer, upon the
18 termination of the impairment of the insurer, or upon the order
of a court of competent jurisdiction. Nothing in this subsection
20 limits the duty of the association to render a report of its
activities under section 4615.

22 **3. Association deemed to be creditor of impaired or**
24 **insolvent insurer.** For the purpose of carrying out its
obligations under this chapter, the association shall--be is
26 deemed to be a creditor of the impaired insurer to the extent of
assets attributable to covered policies reduced by any amounts to
28 which the association is entitled as subrogee pursuant to section
4608, subsection 9. All assets of the impaired insurer
30 attributable to covered policies shall ~~must~~ be used to continue
all covered policies and pay all contractual obligations of the
32 impaired insurer as required by this chapter. Assets attributable
to covered policies, as used in this subsection, are to be
34 construed as that proportion of the assets ~~which~~ that the
reserves that should have been established for these policies
36 bear to the reserve that should have been established for all
policies of insurance written by the impaired insurer.

38 As creditors of the impaired or insolvent insurer, the
40 association and other similar associations are entitled to
receive a disbursement of assets out of the marshaled assets,
42 from time to time as the assets become available to reimburse it,
as a credit against contractual obligations under this chapter.
44 If the liquidator has not, within 120 days of a final
determination of insolvency of an insurer by the receivership
46 court, made an application to the court for the approval of a
proposal to disburse assets out of marshaled assets to guaranty
48 associations having obligations because of the insolvency, then
the association is entitled to make application to the
50 receivership court for approval of its own proposal to disburse
these assets.

2 **4. Factors considered in distributing assets.** In
3 distributing assets, the following factors shall must be
4 considered.

6 A. Prior to the termination of any liquidation,
7 rehabilitation or conservation proceeding, the court may
8 take into consideration the contributions of the respective
9 parties, including the association, the shareholders and
10 policy owners of the impaired or insolvent insurer and any
11 other party with a bona fide interest, in making an
12 equitable distribution of the ownership rights of the
13 impaired or insolvent insurer. In such a determination,
14 consideration shall must be given to the welfare of the
15 policyholders policy owners of the continuing or successor
16 insurer.

18 B. No distribution to stockholders, if any, of an impaired
19 or insolvent insurer shall may be made until and unless the
20 total amount of assessments levied by the association with
21 respect to the insurer have been fully recovered by the
22 association.

24 ~~5. -- Unfair trade practice. -- It shall be a prohibited unfair
25 trade practice for any person to make use in any manner of the
26 protection afforded by this chapter in the sale of insurance.~~

28 **6. Recovery procedure; provisions.** The recovery procedure
29 shall must provide that:

30 A. If an order for liquidation or rehabilitation of an
31 insurer domiciled in this State has been entered, the
32 receiver appointed under that order shall ~~have~~ has a right
33 to recover on behalf of the insurer, from any affiliate that
34 controlled it, the amount of distributions, other than stock
35 dividends paid by the insurer on its capital stock, made at
36 any time during the 5 years preceding the petition for
37 liquidation or rehabilitation subject to the limitations of
38 paragraphs B to D;

39 B. ~~No such dividends shall~~ distribution may be recoverable
40 if the insurer shows that when paid the distribution was
41 lawful and reasonable and that the insurer did not know and
42 could not reasonably have known that the distribution might
43 adversely affect the ability of the insurer to fulfill its
44 contractual obligations;

45 C. Any person who was an affiliate that controlled the
46 insurer at the time the distributions were paid shall ~~be~~ is
47 liable up to the amount of distributions ~~he~~ the person

2 received. Any person who was an affiliate that controlled
the insurer at the time the distributions were declared
4 ~~shall-be~~ is liable up to the amount of distributions ~~-he-~~
the person would have received if they had been paid
6 immediately. If 2 or more persons are liable with respect to
the same distributions they ~~shall--be~~ are jointly and
severally liable;

8
10 D. The maximum amount recoverable under this section shall
be is the amount needed in excess of all other available
12 assets of the impaired or insolvent insurer to pay the
contractual obligations of the impaired or insolvent insurer
on a fair and equitable basis; and

14
16 E. If any person liable under paragraph C is insolvent, all
its affiliates that controlled it at the time the dividend
18 distribution was paid ~~shall--be~~ are jointly and severally
liable for any resulting deficiency in the amount recovered
from the insolvent affiliate.

20
22 **§4617. Immunity**

24 There ~~shall-be~~ is no liability on the part of and no cause
of action of any nature ~~shall~~ may arise against any member
26 insurer or its agents or employees, the association or its agents
or employees, ~~members-of~~ the board of directors or any member of
28 the board or the superintendent or his the superintendent's
representatives, for any ~~action-taken~~ act or omission by them in
the performance of their powers and duties under this chapter.
30 Immunity extends to the participation in any organization of one
or more other state associations of similar purposes and to any
32 such organization and its agents or employees.

34 **Sec. 13. 24-A MRSA §4619**, as enacted by PL 1989, c. 751, §13,
is repealed.

36
38 **Sec. 14. 24-A MRSA §§4620 and 4621** are enacted to read:

40 **§4620. Prohibited advertisement of association in insurance sales**

42 A person, including an insurer or an agent or affiliate of
an insurer, may not make, publish, disseminate, circulate or
44 place before the public or cause directly or indirectly to be
made, published, disseminated, circulated or placed before the
46 public in any newspaper, magazine or publication or in the form
of a notice, circular, pamphlet, letter or poster or over any
48 radio station or television station or in any other way any
advertisement, announcement or statement, written or oral, that
50 uses the existence of the association for the purpose of sales,
solicitation or inducement to purchases of any form of insurance

covered by this chapter. This section does not apply to the Maine Life and Health Insurance Guaranty Association or any other entity that does not sell or solicit insurance.

§4621. Credits for assessments paid; tax offsets

1. Credit allowed. A member insurer may offset against its premium tax liability to this State an assessment described in section 4609, subsection 2-A, paragraph B and for which a certificate under section 4609, subsection 9 is issued, to the extent of 20% of the amount of the assessment for each of the 5 calendar years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

2. Refunds. Any sums that are acquired by refund, pursuant to section 4609, subsection 6, from the association by member insurers, and that have been offset against premium taxes as provided in subsection 1, must be recaptured in such manner as required by the State Tax Assessor under Title 36. The association shall notify the superintendent and the State Tax Assessor that refunds have been made. The association also shall provide the State Tax Assessor with a list of all members who were issued refunds and the dates and amounts of such refunds.

3. Application. This section applies to assessments paid to the association by a member insurer on or after January 1, 2005.

Sec. 15. 36 MRSA §2530 is enacted to read:

§2530. Maine Life and Health Insurance Guaranty Association credit

A taxpayer is allowed a credit against the tax otherwise due under this chapter as determined under Title 24-A, section 4621.

Sec. 16. Application. This Act does not apply to any insurer that is insolvent or unable to fulfill its contractual obligations on the effective date of this Act.'

SUMMARY

This amendment replaces the bill, which is a concept draft pursuant to Joint Rule 208. Under current law, the Maine Life and Health Insurance Guaranty Association Act, "the Act," provides a mechanism to provide payment of benefits and continuation of coverage under an individual life or health insurance policy or annuity contract and under certificates of group coverage when an insurance company doing business in this State becomes

financially impaired or insolvent. The amendment updates and revises the current law in conformance with the model act from the National Association of Insurance Commissioners.

The amendment does the following.

1. It clarifies that the Act provides protection to persons covered under both individual and group life and health policies and annuity contracts.

2. It establishes the conditions under which persons who are payees or beneficiaries under a structured settlement annuity are eligible for coverage.

3. It clarifies that nonresidents may be covered under the Act in certain circumstances.

4. It adds certain exceptions, including policies and contracts issued to a self-insured or uninsured plan, policies and contracts issued by a member insurer at a time when that insurer was not licensed in this State and unallocated annuity contracts.

5. It establishes that the limits for coverage provided by the association may not exceed the lesser of the contractual obligations of the impaired or insolvent insurer under the policy or \$300,000 for life insurance death benefits, \$300,000 for disability, long-term care insurance or other limited benefit health insurance, \$500,000 for health insurance and \$100,000 in the present value of annuity benefits.

6. It allows meetings and records of the association to be open to the public upon majority vote of the association's board of directors.

7. It establishes the powers of the association to take action following an insolvency of a member insurer to either provide payment of benefits or continue coverage for persons covered under a policy or contract of the insolvent insurer. The amendment also provides the conditions under which substitute coverage through an alternative policy or reissued policy may be extended to covered persons.

8. It permits the association to request policy liens or moratoriums on payments from a court.

9. It gives the Superintendent of Insurance the powers and duties of the association in the event the association fails to take action with respect to an impaired or insolvent insurer in a timely manner.

2 10. It clarifies the standing of the association to appear
4 before any court or agency in this State in an action relating to
an impaired or insolvent insurer or matters germane to the powers
and duties of the association.

6 11. It clarifies the subrogation rights of the association.

8 12. It permits the association to elect within one year of
10 the date the association becomes responsible for obligations of a
member insurer to succeed to the rights and obligations of that
12 impaired or insolvent insurer through reinsurance agreements.

14 13. It establishes the authority of the association to make
2 classes of assessment: Class A assessments to support the
16 administrative costs of the association and Class B assessments
to carry out the powers and duties of the association with regard
18 to a particular impairment or insolvency of a member insurer. The
amendment also provides the method for determining the amount of
20 any Class A or Class B assessment.

22 14. It requires the Superintendent of Insurance to notify
other insurance commissioners and the association when the
24 superintendent revokes or suspends the license or authority of a
member insurer or makes a formal order relating to that member
26 insurer. The amendment also requires the superintendent to report
to the association if an examination of a member insurer results
28 in reasonable cause to believe that a member insurer may be
impaired or insolvent.

30 15. It requires the association, upon a majority vote of
32 the board of directors, to notify the superintendent of any
information indicating a member insurer may be impaired or
34 insolvent and to make reports and recommendations to the
superintendent upon any matters germane to the solvency of a
36 member insurer.

38 16. It repeals the requirement that the association make
annual reports to the Legislature and removes the requirement
40 that the association notify the Legislature when the association
has voted to levy an assessment because of a shortfall in the
42 amount of money needed by the association to meet its payment
obligations.

44 17. It prohibits insurers, insurance agents and other
46 persons from using the existence of the guaranty association in
the advertising, sale or solicitation of insurance covered under
48 the chapter.

COMMITTEE AMENDMENT "A" to H.P. 652, L.D. 933

2 18. It permits a member insurer to offset against its
premium tax liability any Class B assessments paid by the member
insurer because of an insolvency. The provision allows a member
4 insurer to offset 20% of the assessment in each of the 5 years
following the assessment. The amendment requires that any
6 refunded assessments that have been offset must be recaptured as
required by the State Tax Assessor and also requires the
8 association to notify the Superintendent of Insurance and the
State Tax Assessor regarding the issuance of refunds. The premium
10 offset provision applies to assessments paid to the association
by a member insurer on or after January 1, 2005.

12
14 19. The amendment makes clear the changes to current law do
not apply to any insurer that is insolvent or unable to meet its
16 contractual obligations at the time the changes become
effective.

18

FISCAL NOTE REQUIRED
(See attached)

20



Approved: 05/20/05 *MAC*

122nd MAINE LEGISLATURE

LD 933

2060(02)

An Act To Amend the Maine Life and Health Insurance Guaranty Association Act

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Bureau of Insurance in the Department of Professional and Financial Regulation can be absorbed by the bureau utilizing existing budgetary resources.