

MAINE STATE LEGISLATURE

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H.P. 982

House of Representatives, March 13, 2007

An Act Related to Special Purpose Reinsurance Vehicles

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BRAUTIGAM of Falmouth.
Cosponsored by Senator SULLIVAN of York.

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

2 **Sec. 1. 24-A MRSA §781, sub-§9**, as enacted by PL 2003, c. 249, §2, is amended
3 to read:

4 **9. Insolvency.** "Insolvency" or "insolvent" means that the special purpose
5 reinsurance vehicle or one or more of its protected cells is unable to pay its obligations
6 when they are due unless the obligations are the subject of a bona fide dispute.

7 **Sec. 2. 24-A MRSA §781, sub-§11-A** is enacted to read:

8 **11-A. Protected cell.** "Protected cell" means a separate account established and
9 maintained by a special purpose reinsurance vehicle for one special purpose reinsurance
10 vehicle contract and the accompanying insurance securitization with a ceding insurer as
11 further provided for in section 787-A.

12 **Sec. 3. 24-A MRSA §781, sub-§13-A** is enacted to read:

13 **13-A. Securities.** "Securities" means those different types of debt obligations,
14 equity, surplus certificates, surplus notes, funding agreements, derivatives and other legal
15 forms of financial instruments.

16 **Sec. 4. 24-A MRSA §781, sub-§16**, as enacted by PL 2003, c. 249, §2, is
17 amended to read:

18 **16. Special purpose reinsurance vehicle insurance securitization; insurance**
19 **securitization.** "Special purpose reinsurance vehicle insurance securitization" or
20 "insurance securitization" means a package of related risk transfer instruments, capital
21 market offerings and facilitating administrative agreements by which proceeds are
22 obtained by a special purpose reinsurance vehicle directly or indirectly through the
23 issuance of securities and are held in trust pursuant to the requirements of this subchapter
24 to secure the obligations of the special purpose reinsurance vehicle under a one or more
25 special purpose reinsurance vehicle ~~contract~~ contracts with one or more ceding insurers,
26 where investment risk to the holders of these securities is contingent upon the obligations
27 of the special purpose reinsurance vehicle to the ceding insurer under the special purpose
28 reinsurance vehicle contract in accordance with the transaction terms, and in which the
29 special purpose reinsurance vehicle's obligation to return the full initial investment to the
30 holders of such securities pursuant to the transaction terms is contingent upon the funds
31 not being used to pay the obligations of the special purpose reinsurance vehicle to the
32 ceding insurers under the special purpose reinsurance vehicle contract.

33 **Sec. 5. 24-A MRSA §781, sub-§18-A** is enacted to read:

34 **18-A. Surplus note.** "Surplus note" means an unsecured debt obligation that
35 possesses characteristics consistent with paragraph 3 of the Statement of Statutory
36 Accounting Principles No. 41, as amended, issued by the National Association of
37 Insurance Commissioners.

1 **Sec. 6. 24-A MRSA §782, sub-§2, ¶H**, as enacted by PL 2003, c. 249, §2, is
2 amended to read:

3 H. A plan of operation, consisting of a description of the contemplated insurance
4 securitization, the special purpose reinsurance vehicle contract and related
5 transactions, which must include:

6 (1) Draft documentation or at the discretion of the superintendent a written
7 summary of all material agreements that are planned in order to effectuate the
8 insurance securitization and the related contract, including the names of the
9 ceding insurers, the nature of the risks being assumed, the proposed use of
10 protected cells, if any, and the maximum amounts, purpose and nature and the
11 interrelationships of the various transactions required to effectuate the insurance
12 securitization;

13 (2) The investment strategy of the special purpose reinsurance vehicle and a
14 representation that the investment strategy complies with the investment
15 requirements set forth in this subchapter and that the strategy includes investment
16 practices or other provisions to preserve asset values that facilitate attainment of
17 full funding during the term of the insurance securitization with assets that can be
18 monetized in response to a triggering event without a substantial loss in value;

19 (3) A description of the method by which losses covered by the contract that
20 may develop after the termination of the contract period are to be addressed
21 under the provisions of the contract; and

22 (4) ~~A~~ If applicable, a representation that the trust agreement under section 784,
23 subsection 2, paragraph E and the trusts holding assets that secure the obligations
24 of the special purpose reinsurance vehicle under the contract and the contract
25 with the ceding insurers in connection with the contemplated insurance
26 securitization are structured in accordance with the requirements under this
27 subchapter; and

28 **Sec. 7. 24-A MRSA §782, sub-§2, ¶I** is enacted to read:

29 I. In addition to the information required by paragraph H, if a protected cell is used,
30 the special purpose reinsurance vehicle shall file with the superintendent:

31 (1) A business plan demonstrating how the applicant accounts for the loss and
32 expense experience of each protected cell and how that experience is to be
33 reported to the superintendent in a manner determined by the superintendent;

34 (2) A statement acknowledging that all financial records of the special purpose
35 reinsurance vehicle, including records pertaining to any protected cells, must be
36 made available for inspection or examination by the superintendent;

37 (3) All contracts or sample contracts between the special purpose reinsurance
38 vehicle and any ceding insurer, related to each protected cell; and

39 (4) A description of the expenses allocated to each protected cell.

40 **Sec. 8. 24-A MRSA §782, sub-§3, ¶A**, as enacted by PL 2003, c. 249, §2, is
41 amended to read:

1 A. The superintendent shall approve the application and issue a limited certificate
2 of authority under this section if the superintendent finds that:

3 (1) The proposed plan of operation provides a reasonable expectation of a
4 successful operation;

5 (2) The terms of the contract and related transactions comply with this
6 subchapter and any applicable rules adopted by the superintendent;

7 (3) The proposed plan of operation is not hazardous to any ceding insurer or to
8 policyholders; and

9 (4) The insurance regulator of the state of domicile of each ceding insurer has
10 notified the superintendent in writing or otherwise provided satisfactory
11 assurance to the superintendent that it has approved or not disapproved the
12 transaction. The superintendent may waive this requirement for a ceding insurer
13 whose domiciliary state does not have a substantially similar law if the
14 superintendent finds that the domiciliary regulator has had notice and adequate
15 opportunity to review the proposal and has not objected.

16 **Sec. 9. 24-A MRSA §782, sub-§6**, as enacted by PL 2003, c. 249, §2, is amended
17 to read:

18 **6. Documentation of insurance securitization.** The special purpose reinsurance
19 vehicle organizer shall provide a complete set of the documentation of the insurance
20 securitization to the superintendent upon closing of any transactions, including an opinion
21 of legal counsel with respect to compliance with this subchapter and any other applicable
22 laws as of the effective date of any transaction. ~~Any material change to the special~~
23 ~~purpose reinsurance vehicle's plan of operation filed pursuant to subsection 2, including,~~
24 ~~but not limited to, the issuance of new securities to continue the insurance securitization~~
25 ~~activities of the special purpose reinsurance vehicle pursuant to this subchapter after~~
26 ~~expiration and full satisfaction of the initial securitization transactions, requires prior~~
27 ~~approval of the superintendent. A change in the counterparty to swap transactions for an~~
28 ~~existing insurance securitization as allowed under this subchapter is not considered a~~
29 ~~material change unless the special purpose reinsurance vehicle's managers know or~~
30 ~~should know that the new counterparty presents a substantial risk of default.~~

31 **Sec. 10. 24-A MRSA §782, sub-§7** is enacted to read:

32 **7. Changes in plan of operation.** Any material change to the special purpose
33 reinsurance vehicle's plan of operation filed pursuant to subsection 2, whether or not
34 through a protected cell, requires prior approval of the superintendent, except that:

35 A. If initially approved in the plan of operation, securities subsequently issued to
36 continue the securitization activities of the special purpose reinsurance vehicle either
37 during or after expiration, redemption or satisfaction of those securities, in whole or
38 in part, issued pursuant to initial insurance securitization transactions may not be
39 considered a material change; and

40 B. A change in the counterparty to swap transactions for an existing insurance
41 securitization as allowed under this subchapter is not considered a material change

1 unless the special purpose reinsurance vehicle's managers know or should know that
2 the new counterparty presents a substantial risk of default.

3 **Sec. 11. 24-A MRSA §782, sub-§8** is enacted to read:

4 **8. Confidentiality.** Information submitted pursuant to this section is confidential
5 and may not be disclosed except as provided in section 799.

6 **Sec. 12. 24-A MRSA §783**, as enacted by PL 2003, c. 249, §2, is amended to
7 read:

8 **§783. Limited purpose of special purpose reinsurance vehicle**

9 Special purpose reinsurance vehicles authorized under this subchapter are created for
10 the limited purpose of entering into insurance securitization transactions with investors
11 and related agreements to pay one or more ceding insurers agreed-upon amounts under a
12 special purpose reinsurance vehicle contract upon the occurrence of triggering events
13 related to the insurance business of the ceding insurer. A special purpose reinsurance
14 vehicle may not issue a contract for assumption of risk or indemnification of loss other
15 than a special purpose reinsurance vehicle contract. A special purpose reinsurance
16 vehicle may purchase reinsurance to cede the risks assumed under the special purpose
17 reinsurance vehicle contract as approved by the superintendent.

18 **Sec. 13. 24-A MRSA §784, sub-§1**, as enacted by PL 2003, c. 249, §2, is
19 amended to read:

20 **1. Contracts.** Special purpose reinsurance vehicles authorized under this subchapter
21 may enter into and effectuate special purpose reinsurance vehicle contracts with one or
22 more ceding insurers as long as the contracts: obligate the reinsurance vehicle to
23 indemnify the ceding insurer for losses.

24 ~~A.— Obligate the reinsurance vehicle to indemnify the ceding insurer for losses;~~

25 ~~B.— Are securitized in full through a single special purpose reinsurance vehicle~~
26 ~~insurance securitization; and~~

27 ~~C.— Are fully funded and secured with assets held in trust in accordance with the~~
28 ~~requirements of this section pursuant to agreements proposed under this subchapter,~~
29 ~~and invested in a manner that meets the criteria set forth in section 795.~~

30 **Sec. 14. 24-A MRSA §784, sub-§4**, as enacted by PL 2003, c. 249, §2, is
31 amended to read:

32 **4. Terms of operation.** A special purpose reinsurance vehicle may enter into
33 agreements with 3rd parties and conduct business necessary to fulfill its obligations and
34 administrative duties incident to the insurance securitization and the special purpose
35 reinsurance vehicle contract. The agreements may include entering into swap agreements
36 or other transactions that have the objective of leveling timing differences in funding
37 upfront or ongoing transaction expenses or managing credit or interest rate risk of the
38 investments in trust to ensure that the assets held in trust are sufficient to satisfy payment
39 or repayment of the securities issued pursuant to an insurance securitization transaction or

1 the obligations of the special purpose reinsurance vehicle under the contract or for any
2 other purpose approved by the superintendent. In fulfilling its function, the special
3 purpose reinsurance vehicle shall adhere to the following requirements and shall, to the
4 extent of its powers, ensure that contracts obligating other parties to perform certain
5 functions incident to its operations are substantively and materially consistent with the
6 following requirements and guidelines.

7 A. A special purpose reinsurance vehicle must have a distinct name, which ~~must~~
8 ~~include the designation "SPRV" or "Special Purpose Reinsurance Vehicle."~~ The
9 ~~name of the reinsurance vehicle~~ may not be deceptively similar to, or likely to be
10 confused with or mistaken for, any other existing business name registered in this
11 State.

12 B. Unless otherwise provided in the plan of operation, the principal place of
13 business and office of any reinsurance vehicle organized under this subchapter must
14 be located in this State.

15 C. The assets of a reinsurance vehicle must be preserved and administered by or on
16 behalf of the reinsurance vehicle to satisfy the liabilities and obligations of the
17 reinsurance vehicle incident to the insurance securitization and other related
18 agreements including the contract.

19 D. Assets of the reinsurance vehicle that are pledged to secure obligations of the
20 reinsurance vehicle to a ceding insurer under a contract ~~must~~ may be held in trust and
21 administered by a qualified United States financial institution serving as trustee. The
22 qualified United States financial institution may not control, be controlled by or be
23 under common control with the reinsurance vehicle or any ceding insurer.

24 E. The agreement governing the trust described in paragraph D if any must create
25 one or more trust accounts into which all pledged assets must be deposited and held
26 until distributed in accordance with the trust agreement. The pledged assets must be
27 held by the trustee at the trustee's office in the United States and may be held in
28 certificated or electronic form.

29 F. The provisions for withdrawal by ceding insurers of funds from the trust must ~~be~~
30 ~~clean and unconditional, subject only to the following requirements:~~ comply with the
31 ceding insurer's applicable domiciliary credit for reinsurance laws.

32 ~~(1) The ceding insurer has the right to withdraw assets from the trust account at~~
33 ~~any time without notice to the reinsurance vehicle subject only to written notice~~
34 ~~to the trustee from the ceding insurer that funds in the amount requested are due~~
35 ~~and payable by the reinsurance vehicle;~~

36 ~~(2) No other statement or document need be presented in order to withdraw~~
37 ~~assets, except that the ceding insurer may be required to acknowledge receipt of~~
38 ~~withdrawn assets;~~

39 ~~(3) The trust agreement described in paragraph E must indicate that it is not~~
40 ~~subject to any conditions or qualifications outside of the trust agreement;~~

41 ~~(4) The trust agreement described in paragraph E may not contain references to~~
42 ~~any other agreements or documents; and~~

1 ~~(5) Reference may not be made to the fact that these funds may represent~~
2 ~~reinsurance premiums or that the funds have been deposited for any specific~~
3 ~~purpose.~~

4 G. The trust agreement described in paragraph E if any must be established for the
5 sole use and benefit of the ceding insurer at least to the full extent of the reinsurance
6 vehicle's obligations to the ceding insurer under the contract or as may otherwise be
7 specified under the contract. In the case of more than one ceding insurer or more
8 than one reinsurance contract with the same ceding insurer, a separate trust agreement
9 must be entered into with each ceding insurer and a separate trust account must be
10 maintained for each ceding insurer unless otherwise approved by the superintendent.

11 **H.** ~~The trust agreement described in paragraph E must provide for the trustee to:~~

12 ~~(1) Receive assets and hold all assets in a safe place;~~

13 ~~(2) Determine that all assets are in a form that the ceding insurer or the trustee,~~
14 ~~upon direction by the ceding insurer, may whenever necessary negotiate the~~
15 ~~assets, without consent or signature from the reinsurance vehicle or any other~~
16 ~~person or entity;~~

17 ~~(3) Furnish to the reinsurance vehicle, the superintendent and the ceding insurer~~
18 ~~a statement of all assets in the trust account referred to in paragraph E reported at~~
19 ~~fair value upon its inception and at intervals no less frequent than the end of each~~
20 ~~calendar quarter;~~

21 ~~(4) Notify the reinsurance vehicle and the ceding insurer within 10 days of any~~
22 ~~deposits to or withdrawals from the trust account referred to in paragraph E;~~

23 ~~(5) Upon written demand of the ceding insurer, immediately take steps~~
24 ~~necessary to transfer absolutely all right, title and interest in the assets held in the~~
25 ~~trust account referred to in paragraph E to the ceding insurer and deliver physical~~
26 ~~custody of the assets to the ceding insurer; and~~

27 ~~(6) Allow no substitutions or withdrawals of assets from the trust account~~
28 ~~referred to in paragraph E except on written instructions from the ceding insurer.~~

29 **I.** ~~The trust agreement described in paragraph E must provide that at least 30 days~~
30 ~~but not more than 45 days before termination of the trust account written notification~~
31 ~~of termination must be delivered by the 3rd party to the ceding insurer.~~

32 **J.** ~~The trust agreement described in paragraph E may be made subject to and~~
33 ~~governed by the laws of any state in addition to the requirements for the trust as~~
34 ~~provided in this subchapter as long as the state is disclosed in the plan of operation~~
35 ~~filed with and approved by the superintendent.~~

36 **K.** ~~The trust agreement described in paragraph E must prohibit invasion of the trust~~
37 ~~account referred to in paragraph E for the purpose of paying compensation to or~~
38 ~~reimbursing the expenses of the trustee.~~

39 **L.** ~~The trust agreement described in paragraph E must provide that the trustee be~~
40 ~~liable for the trustee's own negligence, willful misconduct or lack of good faith.~~

1 (1) Notwithstanding the provisions of paragraph F, subparagraphs (3) to (5) and
2 paragraph M, subparagraph (5), when a trust agreement described in paragraph E
3 is established in conjunction with a contract, then the trust agreement may
4 provide that the ceding insurer shall undertake to use and apply any amounts
5 drawn upon the trust account without diminution because of the insolvency of the
6 ceding insurer or the reinsurance vehicle for the following purposes:

7 (a) To pay or reimburse the ceding insurer amounts due to the ceding
8 insurer under the contract, including, but not limited to, unearned premiums
9 due to the ceding insurer if not otherwise paid by the reinsurance vehicle in
10 accordance with the terms of that trust agreement; or

11 (b) When the ceding insurer has received notification of termination of the
12 trust account referred to in paragraph E and when some or all of the
13 reinsurance vehicle's obligations under the specific contract remain
14 unliquidated and undischarged 10 days before the termination date, to
15 withdraw amounts equal to the undischarged obligations and deposit the
16 amounts in a separate account in the name of the ceding insurer in any
17 qualified United States financial institution apart from its general assets in
18 trust for the sole purpose of discharging any contractual obligations of the
19 reinsurance vehicle that may remain executory after the withdrawal and for
20 any period after the termination date. Assets so held must revert to the
21 reinsurance vehicle when they are no longer necessary to secure the
22 obligations of the reinsurance vehicle and may not exceed the sum of the
23 following amounts as determined in good faith by the ceding insurer:

24 (i) Losses and loss expenses paid by the ceding insurer but not
25 recovered from the reinsurance vehicle;

26 (ii) Reserves for losses reported and outstanding;

27 (iii) Reserves for losses incurred but not reported;

28 (iv) Reserves for loss expenses;

29 (v) Reserves for unearned premiums; and

30 (vi) Any additional amount necessary to maintain full funding of the
31 aggregate limit remaining under the contract if the period of coverage or
32 the agreed-upon period of loss development has yet to expire.

33 (2) The provisions to be included in the trust agreement described in paragraph
34 E pursuant to this paragraph may instead be included in the underlying contract.

35 **M.** A special purpose reinsurance vehicle contract must contain provisions that:

36 (1) Require the reinsurance vehicle to enter into a trust agreement described in
37 paragraph E and to establish a trust account referred to in paragraph E for the
38 benefit of the ceding insurer and specifying what recoverables or reserves or both
39 the trust agreement is to cover;

40 (2) Stipulate that assets deposited in the trust account be valued according to
41 their current fair value and may consist only of permitted investments;

1 ~~(3) Require the reinsurance vehicle, before depositing assets with the trustee, to~~
2 ~~execute assignments or endorsements in blank or to transfer legal title to the~~
3 ~~trustee of all shares, obligations or any other assets requiring assignments in~~
4 ~~order that the ceding insurer or the trustee upon the direction of the ceding insurer~~
5 ~~may whenever necessary negotiate any such assets without consent or signature~~
6 ~~from the reinsurance vehicle or any other entity;~~

7 ~~(4) Require that all settlements of account between the ceding insurer and the~~
8 ~~reinsurance vehicle be made in cash or its equivalent; and~~

9 ~~(5) Stipulate that the reinsurance vehicle and the ceding insurer agree that the~~
10 ~~assets in the trust account referred to in paragraph E and established pursuant to~~
11 ~~the provisions of the contract may be withdrawn by the ceding insurer at any time~~
12 ~~notwithstanding any other provisions in the contract and must be used and~~
13 ~~applied by the ceding insurer or any successor by operation of law of the ceding~~
14 ~~insurer, including, but not limited to, and subject to the provisions of section 793,~~
15 ~~any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without~~
16 ~~diminution because of insolvency on the part of the ceding insurer or the~~
17 ~~reinsurance vehicle, only for the following purposes:~~

18 ~~(a) To transfer all such assets into one or more trust accounts pursuant to~~
19 ~~Paragraph L for the benefit of the ceding insurer pursuant to the terms of the~~
20 ~~contract and in compliance with this subchapter; and~~

21 ~~(b) To pay any other amounts that the ceding insurer claims are due under~~
22 ~~the contract.~~

23 ~~N. The contract entered into by the reinsurance vehicle may contain provisions that~~
24 ~~give the reinsurance vehicle the right to seek approval from the ceding insurer to~~
25 ~~withdraw from the trust account referred to in paragraph E all or part of the assets~~
26 ~~contained in the trust account and to transfer the assets to the reinsurance vehicle as~~
27 ~~long as:~~

28 ~~(1) The reinsurance vehicle shall at the time of the withdrawal replace the~~
29 ~~withdrawn assets with other qualified assets having a fair value equal to the fair~~
30 ~~value of the assets withdrawn and that meet the requirements of section 795; and~~

31 ~~(2) After the withdrawals and transfer, the fair value of the assets in the trust~~
32 ~~account referred to in paragraph E securing the obligations of the reinsurance~~
33 ~~vehicle under the contract is no less than an amount needed to satisfy the full~~
34 ~~funding requirement of the contract. The ceding insurer has the sole discretion to~~
35 ~~determine whether these provisions have been satisfied but may not unreasonably~~
36 ~~nor arbitrarily withhold its approval.~~

37 ~~O. The contract must provide that investors in the reinsurance vehicle agree that~~
38 ~~any obligation to repay principal, interest or dividends on the securities issued by the~~
39 ~~reinsurance vehicle must be reduced upon the occurrence of a triggering event, to the~~
40 ~~extent that the assets of the reinsurance vehicle held in trust for the benefit of the~~
41 ~~ceding insurer are remitted to the ceding insurer in fulfillment of the obligations of~~
42 ~~the reinsurance vehicle under the contract.~~

43 ~~P. Assets held by a reinsurance vehicle in trust must be valued at their fair value.~~

1 ~~Q. The proceeds from the sale of securities by the reinsurance vehicle to investors~~
2 ~~must be deposited with the trustee as described in this subchapter and must be held or~~
3 ~~invested by the trustee in accordance with the requirements of section 795.~~

4 R. A reinsurance vehicle organized under this subchapter may engage only in fully
5 funded contracts to support in full the ceding insurer's exposures assumed by the
6 reinsurance vehicle. A contract must be indemnity-triggered unless the
7 superintendent adopts rules pursuant to section 797 authorizing nonindemnity-
8 triggered contracts and addressing the treatment of the portion of the risk that is
9 nonindemnity-based, including accounting, disclosure, risk-based capital treatment
10 and the manner in which risks associated with a nonindemnity-based contract may be
11 evaluated and managed. Assets of the reinsurance vehicle and income on trust assets
12 received by the reinsurance vehicle may be used to pay interest or other consideration
13 on any securities or outstanding debt or other obligation of the reinsurance vehicle
14 and nothing in this paragraph may be construed or interpreted to prevent a
15 reinsurance vehicle from entering into a swap agreement or other transaction that has
16 the effect of guaranteeing interest or other consideration.

17 S. In the special purpose reinsurance vehicle insurance securitization, the contracts
18 or other relating documentation must contain provisions identifying the reinsurance
19 vehicle that enters into the reinsurance securitization and the contracts or other
20 documentation must clearly disclose that the assets of the reinsurance vehicle and
21 only those assets are available to pay the obligations of that reinsurance vehicle.
22 Notwithstanding this paragraph, and subject to the provisions of this subchapter and
23 any other applicable law, the failure to include such language in the contracts or other
24 documentation may not be used as the sole basis by creditors, reinsurers or other
25 claimants to circumvent the provisions of this subchapter.

26 T. A reinsurance vehicle is not authorized to:

27 (1) Issue or otherwise administer primary insurance policies;

28 (2) Have any obligation to the policyholders or reinsureds of the ceding insurer;

29 (3) Enter into a contract with a person that is not licensed or otherwise
30 authorized to conduct the business of insurance or reinsurance in at least its state
31 or country of domicile; or

32 (4) Assume or retain exposure to insurance or reinsurance losses for its own
33 account that is not initially fully funded by proceeds from an insurance
34 securitization that meets the requirements of this subchapter, except that the
35 reinsurance vehicle may wholly or partially reinsure or retrocede the risks
36 assumed to a 3rd-party reinsurer on terms approved by the superintendent.

37 U. At the cessation of business of a reinsurance vehicle, the limited certificate of
38 authority granted by the superintendent under section 782 expires or, in the case of
39 retiring and surviving protected cells, is modified, and the reinsurance vehicle may no
40 longer be authorized to conduct activities pursuant to this subchapter until a new
41 certificate of authority is issued pursuant to a new filing in accordance with section
42 782.

1 V. It is unlawful for a reinsurance vehicle to lend or otherwise invest or place in
2 custody, in trust or under management any of its assets with or to borrow money or
3 receive a loan or advance from, other than by issuance of the securities pursuant to an
4 insurance securitization, from anyone convicted of a felony, anyone who is
5 untrustworthy or of known bad character or anyone convicted of a criminal offense
6 involving the conversion or misappropriation of fiduciary funds or insurance
7 accounts, theft, deceit, fraud, misrepresentation or corruption.

8 **Sec. 15. 24-A MRSA §785, sub-§1**, as enacted by PL 2003, c. 249, §2, is
9 amended to read:

10 **1. Powers.** A special purpose reinsurance vehicle authorized under this subchapter
11 has the powers to enter into contracts and to conduct other commercial activities
12 necessary to fulfill the purposes of this subchapter. These activities may include, but are
13 not limited to, entering into contracts, issuing securities of the special purpose reinsurance
14 vehicle and complying with the terms of the contracts, entering into trust agreements,
15 swap agreements and any other agreements necessary to effectuate an insurance
16 securitization in compliance with the limitations and pursuant to the authorities granted to
17 the reinsurance vehicle under this subchapter or the plan of operation approved by the
18 superintendent. Other than a special purpose reinsurance vehicle contract, a special
19 purpose reinsurance vehicle may not assume risk or indemnify loss, except that the
20 special purpose reinsurance vehicle may cede risks assumed through a contract to 3rd-
21 party reinsurers through the purchase of reinsurance or retrocession protection on terms
22 approved by the superintendent. A special purpose reinsurance vehicle may discount its
23 reserves at discount rates as approved by the superintendent.

24 **Sec. 16. 24-A MRSA §786**, as enacted by PL 2003, c. 249, §2, is amended to
25 read:

26 **§786. Affiliation**

27 Notwithstanding the provisions of section 222, the special purpose reinsurance
28 vehicle, the special purpose reinsurance vehicle organizer or subsequent debt or equity
29 investors in special purpose reinsurance vehicle securities are not deemed affiliates of the
30 ceding insurer by virtue of the special purpose reinsurance vehicle contract between the
31 ceding insurer and the reinsurance vehicle, the securities of the reinsurance vehicle or
32 related agreements necessary to implement the special purpose reinsurance vehicle
33 insurance securitization. ~~The reinsurance vehicle may not be controlled by, may not~~
34 ~~control and may not be under common control with any ceding insurer that is a party to a~~
35 ~~contract.~~

36 **Sec. 17. 24-A MRSA §787-A** is enacted to read:

37 **§787-A. Establishment of protected cell accounts**

38 **1. Use of protected cells.** This section and section 787-B provide a basis for the
39 creation and use of protected cells by a special purpose reinsurance vehicle as a means of
40 accessing alternative sources of capital, lowering formation and administrative expenses
41 and generally making insurance securitizations more efficient. If a conflict occurs

1 between a provision of this chapter and either this section or section 787-B, the
2 provisions of this section and section 787-B control.

3 **2. Conditions for establishing protected cells.** A special purpose reinsurance
4 vehicle may establish and maintain one or more protected cells with prior written
5 approval of the superintendent and subject to compliance with the applicable provisions
6 of this subchapter and the following conditions.

7 A. A protected cell must be established only for the purpose of insuring or reinsuring
8 risks of one or more special purpose reinsurance vehicle contracts with a counterparty
9 with the intent of facilitating an insurance securitization.

10 B. Each protected cell must be accounted for separately on the books and records of
11 the special purpose reinsurance vehicle to reflect the financial condition and results of
12 operations of the protected cell, net income or loss, dividends or other distributions to
13 the counterparty for the special purpose reinsurance vehicle contract with each cell,
14 and other factors as may be provided in the special purpose reinsurance vehicle
15 contract, insurance securitization transaction documents, plan of operation or
16 business plan or as required by the superintendent.

17 C. Amounts attributed to a protected cell under this subchapter, including assets
18 transferred to a protected cell account, are owned by the special purpose reinsurance
19 vehicle, and the special purpose reinsurance vehicle may not be, or hold itself out to
20 be, a trustee with respect to those protected cell assets of that protected cell account.

21 D. All attributions of assets and liabilities between a protected cell and the general
22 account must be in accordance with the plan of operation approved by the
23 superintendent. No other attribution of assets or liabilities may be made by a special
24 purpose reinsurance vehicle between the special purpose reinsurance vehicle's general
25 account and its protected cell or cells. The special purpose reinsurance vehicle must
26 attribute all insurance obligations, assets and liabilities relating to a special purpose
27 reinsurance vehicle contract and the related insurance securitization transaction,
28 including any securities issued by the special purpose reinsurance vehicle as part of
29 the insurance securitization, to a particular protected cell. The rights, benefits,
30 obligations and liabilities of any securities attributable to that protected cell and the
31 performance under a special purpose reinsurance vehicle contract and the related
32 securitization transaction and any tax benefits, losses, refunds or credits allocated, or
33 any of them, at any point in time pursuant to a tax allocation agreement between the
34 special purpose reinsurance vehicle and the special purpose reinsurance vehicle's
35 counterparty, parent or company or group company, or any of them, in common
36 control with them, including any payments made by or due to be made to the special
37 purpose reinsurance vehicle pursuant to the terms of the agreement, must reflect the
38 insurance obligations, assets and liabilities relating to the special purpose reinsurance
39 vehicle contract and the insurance securitization transaction that are attributed to a
40 particular protected cell.

41 E. The assets of a protected cell may not be chargeable with liabilities arising out of
42 a special purpose reinsurance vehicle contract related to or associated with another
43 protected cell, except that one or more special purpose reinsurance vehicle contracts
44 may be attributed to a protected cell so long as those special purpose reinsurance

1 vehicle contracts are intended to be, and ultimately are, part of a single securitization
2 transaction.

3 F. A sale, an exchange or another transfer of assets may not be made by the special
4 purpose reinsurance vehicle between or among any of its protected cells without the
5 consent of the superintendent, the counterparty and each protected cell.

6 G. Except as otherwise contemplated in the special purpose reinsurance vehicle
7 contract or related insurance securitization transaction documents, or both, a sale,
8 exchange, transfer of assets, dividend or distribution may not be made from a
9 protected cell to a counterparty or parent without the superintendent's approval and
10 may not be approved if the sale, exchange, transfer, dividend or distribution would
11 result in insolvency or impairment with respect to a protected cell.

12 H. A special purpose reinsurance vehicle may pay interest or repay principal, or
13 both, and make distributions or repayments in respect of any securities attributed to a
14 particular protected cell from assets or cash flows relating to or emerging from the
15 special purpose reinsurance vehicle contract and the insurance securitization
16 transactions that are attributable to that particular protected cell in accordance with
17 the provisions of this subchapter or as otherwise approved by the superintendent.

18 **3. Written approval required.** A special purpose reinsurance vehicle contract with
19 or attributable to a protected cell does not take effect without the superintendent's prior
20 written approval, and the addition of each new protected cell constitutes a change in the
21 business plan requiring the superintendent's prior written approval. The superintendent
22 may use internal resources to examine and investigate the application for a protected cell
23 or retain legal, financial and examination services from outside the bureau to examine and
24 investigate the application. The reasonable cost of any examination or investigation
25 pursuant to this subsection may be charged to the applicant for the special purpose
26 reinsurance vehicle up to a maximum of \$12,000.

27 **4. Minimum capitalization.** A special purpose reinsurance vehicle utilizing
28 protected cells initially shall possess minimum capitalization separate and apart from the
29 capitalization of its protected cell or cells in an amount determined by the superintendent
30 after giving due consideration of the special purpose reinsurance vehicle's business plan,
31 feasibility study and proformas, including the nature of the risks to be insured or
32 reinsured. For purposes of determining the capitalization of each protected cell, a special
33 purpose reinsurance vehicle initially shall capitalize and after that time maintain
34 capitalization in each protected cell in the amount and manner required for a special
35 purpose reinsurance vehicle in section 787.

36 **5. Not fraudulent.** The establishment of one or more protected cells alone does not
37 constitute, and may not be construed to be, a fraudulent conveyance, an intent by the
38 special purpose reinsurance vehicle to defraud creditors or the carrying out of business by
39 the special purpose reinsurance vehicle for any other fraudulent purpose.

40 **Sec. 18. 24-A MRS §787-B** is enacted to read:

1 **§787-B. Protected cell does not separate from a special purpose reinsurance vehicle**

2 **1. Not separate from special purpose reinsurance vehicle.** The creation of a
3 protected cell does not create, with respect to that protected cell, a legal person separate
4 from the special purpose reinsurance vehicle. Notwithstanding this subsection, a
5 protected cell must have its own distinct name or designation that includes the words
6 "protected cell." The special purpose reinsurance vehicle shall transfer all assets
7 attributable to the protected cell to one or more separately established and identified
8 protected cell accounts bearing the name or designation of that protected cell. Although
9 it is not a separate legal person, the property of a special purpose reinsurance vehicle in a
10 protected cell is subject to orders of a court by name as it would have been if the
11 protected cell were a separate legal person. The property of a special purpose reinsurance
12 vehicle in a protected cell must be served in its own name with process in all civil actions
13 or proceedings involving or relating to the activities of that protected cell or a breach by
14 the special purpose reinsurance vehicle of a duty to the protected cell or to a counterparty
15 to a transaction linked or attributed to it. A protected cell exists only at the pleasure of
16 the special purpose reinsurance vehicle. At the cessation of business of a protected cell in
17 accordance with the plan approved by the superintendent, the special purpose reinsurance
18 vehicle voluntarily shall close out the protected cell account.

19 **2. Management of protected cell assets.** This section may not be construed to
20 prohibit a special purpose reinsurance vehicle from contracting with, or arranging for, an
21 investment advisor, commodity trading advisor or other 3rd party to manage the assets of
22 a protected cell, if all remuneration, expenses and other compensation of the 3rd-party
23 advisor or manager are payable from the assets of that protected cell and not from the
24 assets of other protected cells or the assets of the special purpose reinsurance vehicle's
25 general account, unless approved by the superintendent.

26 **3. No recourse for creditors.** Creditors with respect to a protected cell are not
27 entitled to have recourse against the protected cell assets of other protected cells or the
28 assets of the special purpose reinsurance vehicle's general account. If an obligation of a
29 special purpose reinsurance vehicle relates only to the general account, the obligation of
30 the special purpose reinsurance vehicle extends only to that creditor, with respect to that
31 obligation, and is entitled to have recourse only to the assets of the special purpose
32 reinsurance vehicle's general account.

33 **4. Use of assets.** The assets of the protected cell may not be used to pay expenses or
34 claims other than those attributable to the protected cell. Protected cell assets are
35 available only to the special purpose reinsurance vehicle contract counterparty and other
36 creditors of the special purpose reinsurance vehicle that are creditors only with respect to
37 that protected cell and, accordingly, are entitled, in conformity with this subchapter, to
38 have recourse to the protected cell assets attributable to that protected cell and absolutely
39 are protected from the creditors of the special purpose reinsurance vehicle that are not
40 creditors with respect to that protected cell and who, accordingly, are not entitled to have
41 recourse to the protected cell assets attributable to that protected cell. If an obligation of
42 a special purpose reinsurance vehicle to a person or counterparty arises from a special
43 purpose reinsurance vehicle contract or related insurance securitization transaction, or is
44 otherwise incurred, with respect to a protected cell;

1 A. That obligation of the special purpose reinsurance vehicle extends only to the
2 protected cell assets attributable to that protected cell, and the person or counterparty,
3 with respect to that obligation, is entitled to have recourse only to the protected cell
4 assets attributable to that protected cell; and

5 B. That obligation of the special purpose reinsurance vehicle does not extend to the
6 protected cell assets of another protected cell or the assets of the special purpose
7 reinsurance vehicle's general account, and that person, with respect to that obligation,
8 is not entitled to have recourse to the protected cell assets of another protected cell or
9 the assets of the special purpose reinsurance vehicle's general account. The special
10 purpose reinsurance vehicle's capitalization held separate and apart from the
11 capitalization of its protected cell or cells as required by subsection 6 must be
12 available at all times to pay expenses of or claims against the special purpose
13 reinsurance vehicle and may not be used to pay expenses or claims attributable to any
14 protected cell.

15 **5. Security interest permitted.** Notwithstanding any other provision of law, a
16 special purpose reinsurance vehicle may allow for a security interest in accordance with
17 applicable law to attach to protected cell assets or a protected cell account when in favor
18 of a creditor of the protected cell or to facilitate the insurance securitization, including,
19 without limitation, the issuance of the special purpose reinsurance vehicle contract, to the
20 extent those protected cell assets are not required at all times to support the risk, but
21 without otherwise affecting the discharge of liabilities under the special purpose
22 reinsurance vehicle contract, or as otherwise approved by the superintendent.

23 **6. Administrative and accounting procedures.** A special purpose reinsurance
24 vehicle shall establish administrative and accounting procedures necessary to properly
25 identify the one or more protected cells of the special purpose reinsurance vehicle and the
26 protected cell assets and protected cell liabilities to each protected cell. The
27 superintendents of a special purpose reinsurance vehicle shall keep protected cell assets
28 and protected cell liabilities:

29 A. Separate and separately identifiable from the assets and liabilities of the special
30 purpose reinsurance vehicle's general account; and

31 B. Attributable to one protected cell separate and separately identifiable from
32 protected cell assets and protected cell liabilities attributable to other protected cells.

33 **7. Protected cell liabilities.** All contracts or other documentation reflecting
34 protected cell liabilities clearly must indicate that only the protected cell assets are
35 available for the satisfaction of those protected cell liabilities. In all special purpose
36 reinsurance vehicle insurance securitizations involving a protected cell, the contracts or
37 other documentation effecting the transaction must contain provisions identifying the
38 protected cell to which the transaction is attributed. In addition, the contracts or other
39 documentation clearly must disclose that the assets of that protected cell, and only those
40 assets, are available to pay the obligations of that protected cell. Notwithstanding the
41 provisions of this subsection and subject to the provisions of this subchapter and
42 applicable law or rule, the failure to include this language in the contracts or other
43 documentation may not be used as the sole basis by creditors, insureds or reinsureds,
44 insurers or reinsurers or other claimants to circumvent the provisions of this subsection.

1 **8. Annual filing.** A special purpose reinsurance vehicle with protected cells
2 annually shall file with the bureau accounting statements and financial reports detailing
3 the financial experience of each protected cell and the special purpose reinsurance vehicle
4 separately and providing the combined financial experience of the special purpose
5 reinsurance vehicle and all protected cells.

6 **9. Notice of insolvency.** A special purpose reinsurance vehicle with protected cells
7 shall notify the superintendent in writing within 10 business days of a protected cell's
8 becoming insolvent.

9 **Sec. 19. 24-A MRSA §787-C** is enacted to read:

10 **§787-C. Issuance of securities and surplus notes**

11 The following provisions apply to the issuance of securities and surplus notes by a
12 special purpose reinsurance vehicle.

13 **1. Securities and surplus notes.** A special purpose reinsurance vehicle may issue
14 securities, including surplus notes and other forms of financial instruments, subject to and
15 in accordance with applicable law, its approved plan of operation and its organizational
16 documents.

17 **2. Contracts.** A special purpose reinsurance vehicle, in connection with the
18 issuance of securities, may enter into and perform all of its obligations under any required
19 contracts to facilitate the issuance of these securities.

20 **3. Accounting as surplus not debt.** Subject to the approval of the superintendent, a
21 special purpose reinsurance vehicle may lawfully account for the proceeds of surplus
22 notes as surplus and not as debt for purposes of statutory accounting and submit for prior
23 approval of the superintendent periodic written requests for payments of interest on and
24 repayments of principal of surplus notes.

25 **4. Surplus or contribution notes.** Surplus notes issued by a special purpose
26 reinsurance vehicle constitute surplus or contribution notes of the type defined in section
27 781, subsection 18-A.

28 **5. Authority to approve formulas for payments.** The superintendent, without
29 otherwise prejudicing the superintendent's authority, may approve formulas for an
30 ongoing plan of interest payments or principal repayments, or both, to provide guidance
31 in connection with the superintendent's ongoing reviews of requests to approve the
32 payments on and principal repayments of the surplus notes.

33 **6. Obligation to repay; reflection of risk.** The obligation to repay principal or
34 interest, or both, on the securities issued by the special purpose reinsurance vehicle must
35 reflect the risk associated with the obligations of the special purpose reinsurance vehicle
36 to the counterparty under the contract.

37 **Sec. 20. 24-A MRSA §788**, as enacted by PL 2003, c. 249, §2, is amended to
38 read:

1 **§788. Dividends**

2 The special purpose reinsurance vehicle may not declare or pay dividends in any
3 form to its owners unless the dividends do not decrease the capital of the reinsurance
4 vehicle below \$5,000 and, after giving effect to the dividends, the assets of the
5 reinsurance vehicle, including assets held in trust pursuant to the terms of the insurance
6 securitization, must be sufficient to meet its obligations. Except for dividends
7 specifically provided for in the approved plan of operation under section 782, subsection
8 2, paragraph H or dividends that are part of an ongoing plan for the payment of dividends
9 approved by the superintendent, the prior approval of the superintendent is required for
10 any dividend paid during the term of coverage or while the reinsurance vehicle has
11 undischarged obligations to the ceding insurer. The dividends may be declared by the
12 board of directors of the reinsurance vehicle if the dividends would not violate the
13 provisions of this subchapter or the approved plan of operation and would not jeopardize
14 the fulfillment of the obligations of the reinsurance vehicle or the trustee pursuant to the
15 special purpose reinsurance vehicle insurance securitization, the special purpose
16 reinsurance vehicle contract or any related transaction. The provisions of section 222,
17 subsections 11-A and 11-B do not apply to such dividends.

18 **Sec. 21. 24-A MRSA §793**, as enacted by PL 2003, c. 249, §2, is amended to
19 read:

20 **§793. Conservation, rehabilitation or liquidation**

21 **1. Authorized insurer.** A special purpose reinsurance vehicle is considered an
22 authorized insurer for purposes of section 4351, subsection 1, and the provisions of
23 chapter 57 apply to a reinsurance vehicle or to each of the reinsurance vehicle's protected
24 cells independently, or both, except to the extent modified by this section.

25 **2. Grounds for action.** Notwithstanding the provisions of sections 4356 and 4357,
26 and without causing or otherwise affecting the conservation or rehabilitation of an
27 otherwise solvent protected cell of a reinsurance vehicle, the Superior Court may issue an
28 order authorizing the superintendent to conserve, rehabilitate or liquidate a special
29 purpose reinsurance vehicle domiciled in this State only if the superintendent proves by
30 clear and convincing evidence or the reinsurance vehicle stipulates after notice and
31 opportunity for hearing that:

32 A. There has been embezzlement, wrongful sequestration, dissipation or diversion
33 of the assets of the reinsurance vehicle intended to be used to pay amounts owed to
34 the ceding insurer or the holders of special purpose reinsurance vehicle securities; or

35 B. The reinsurance vehicle is insolvent and the holders of a majority in outstanding
36 principal amount of each class of special purpose reinsurance vehicle securities
37 request or consent to conservation, rehabilitation or liquidation under this subchapter.

38 **3. Receiver.** Notwithstanding any contrary provision of this Title, rules adopted
39 under this Title or any other applicable law, upon any order of conservation,
40 rehabilitation or liquidation of the special purpose reinsurance vehicle or one or more of
41 its protected cells, a receiver is bound to deal with the reinsurance vehicle's assets and
42 liabilities in accordance with the requirements under this subchapter. The receiver shall

1 ensure that the assets linked to one protected cell are not applied to the liabilities linked to
2 another protected cell or to the reinsurance vehicle generally, unless an asset or liability is
3 linked to more than one protected cell, in which case the receiver shall deal with the asset
4 or liability in accordance with the terms of any relevant governing instrument or contract.

5 **4. Recoverable amounts.** With respect to amounts recoverable under a special
6 purpose reinsurance vehicle contract, the amount recoverable by the receiver may not be
7 reduced or diminished as a result of the entry of an order of conservation, rehabilitation or
8 liquidation with respect to the ceding insurer, notwithstanding any provisions to the
9 contrary in the contracts or other documentation governing the special purpose
10 reinsurance vehicle insurance securitization.

11 A. Notwithstanding the provisions of chapter 57, an application or petition in any
12 delinquency proceeding relating to a ceding insurer or any temporary restraining
13 order or injunction issued in any such proceeding may not prohibit the transaction of
14 any business by a reinsurance vehicle, including any payment by a reinsurance
15 vehicle made pursuant to a special purpose reinsurance vehicle security or any action
16 or proceeding against a reinsurance vehicle or its assets.

17 B. Notwithstanding the provisions of chapter 57, subchapter 2, the commencement
18 of a summary proceeding or other interim proceeding commenced prior to a formal
19 delinquency proceeding with respect to a reinsurance vehicle and any order issued by
20 the court in such proceeding may not prohibit a reinsurance vehicle from making a
21 payment pursuant to a special purpose reinsurance vehicle security or contract or
22 from taking any action required to make the payment.

23 **5. Nonfraudulent transfer.** Notwithstanding any other provision of chapter 57 or
24 other state law:

25 A. A receiver of a ceding insurer may not ~~avoid~~ void a nonfraudulent transfer by a
26 ceding insurer to a special purpose reinsurance vehicle of money or other property
27 made pursuant to a special purpose reinsurance vehicle contract; ~~and~~

28 B. A receiver of a special purpose reinsurance vehicle may not void a nonfraudulent
29 transfer by the reinsurance vehicle of money or other property made to a ceding
30 insurer pursuant to a special purpose reinsurance vehicle contract or made to or for
31 the benefit of any holder of a special purpose reinsurance vehicle security on account
32 of the special purpose reinsurance vehicle security; and

33 C. The superintendent may not seek to have a special purpose reinsurance vehicle
34 with protected cells declared insolvent as long as at least one of the protected cells
35 remains solvent, and, in the case of such insolvency, the receiver shall handle the
36 reinsurance vehicle's assets in compliance with subsection 7 and other laws of this
37 State.

38 **6. Fulfillment of obligations.** With the exception of the fulfillment of the
39 obligations under a special purpose reinsurance vehicle contract and notwithstanding any
40 other provisions of this subchapter or other law of this State to the contrary, the assets of
41 a special purpose reinsurance vehicle including assets held in trust may not be
42 consolidated with or included in the estate of a ceding insurer in any delinquency

1 proceeding against the ceding insurer under this subchapter for any purpose, including,
2 without limitation, distribution to creditors of the ceding insurer.

3 **7. Domiciliary receiver.** Notwithstanding any other provision of this subchapter:

4 A. The domiciliary receiver of a special purpose reinsurance vehicle domiciled in
5 another state is vested by operation of law with the title to all of the assets, property,
6 contracts and rights of action and all of the books, accounts and other records of the
7 reinsurance vehicle located in this State. The domiciliary receiver has the immediate
8 right to recover all such vested property, assets and causes of action of the
9 reinsurance vehicle located in this State; and

10 B. An ancillary proceeding may not be commenced or prosecuted in this State
11 against a special purpose reinsurance vehicle domiciled in another state.

12 **8. Court order; protected cells.** Notwithstanding the provisions of sections 4356
13 and 4357, the Superior Court may issue an order authorizing the superintendent to
14 conserve, rehabilitate or liquidate one or more of a special purpose reinsurance vehicle's
15 protected cells, independently, without causing or otherwise effecting a conservation,
16 rehabilitation, receivership or liquidation of the special purpose reinsurance vehicle
17 generally or another of its protected cells domiciled in this State only if the
18 superintendent proves by clear and convincing evidence or the reinsurance vehicle's
19 protected cell stipulates after notice and opportunity for hearing that:

20 A. There has been embezzlement, wrongful sequestration, dissipation or diversion of
21 the assets of the reinsurance vehicle attributable to the affected protected cell or cells
22 intended to be used to pay amounts owed to the ceding insurer or the holders of
23 special purpose reinsurance vehicle securities of the affected protected cell or cells;
24 or

25 B. The affected protected cell is insolvent and the holders of a majority in
26 outstanding principal amount of each class of special purpose reinsurance vehicle
27 securities attributable to that particular protected cell request or consent to
28 conservation, rehabilitation or liquidation under this subchapter.

29 The court's order may be made in respect of one or more protected cells by name, rather
30 than the special purpose reinsurance vehicle generally.

31 **9. Superintendent action; insolvency.** Subsection 8 does not prohibit the
32 superintendent from taking any action permitted under this section or another provision of
33 this Title with respect only to the conservation or rehabilitation of a special purpose
34 reinsurance vehicle with a protected cell or cells, if the superintendent would have had
35 sufficient grounds to seek to declare the special purpose reinsurance vehicle insolvent.
36 With respect to any solvent protected cell or cells, the superintendent may not prohibit
37 payments made by the special purpose reinsurance vehicle pursuant to the reinsurance
38 vehicle security or contract or otherwise made under the insurance securitization
39 transaction that are attributable to the protected cell or cells or prohibit the reinsurance
40 vehicle from taking any action required to make these payments.

41 **Sec. 22. 24-A MRSA §795, sub-§2,** as enacted by PL 2003, c. 249, §2, is
42 amended to read:

1 **2. Investment practices.** In addition, the special purpose reinsurance vehicle may
2 enter into swap agreements or other transactions, including guaranteed investment
3 contracts, that have the objective of leveling timing differences in funding of upfront or
4 ongoing transaction expenses or managing credit or interest rate risk of the investments in
5 the trust to ensure that the investments are sufficient to ensure payment or repayment of
6 the securities and related interest or principal payments issued pursuant to a special
7 purpose reinsurance vehicle insurance securitization transaction or the reinsurance
8 vehicle's obligations under the special purpose reinsurance vehicle contract, or for any
9 other purpose approved by the superintendent.

10 **Sec. 23. 24-A MRSA §796**, as enacted by PL 2003, c. 249, §2, is amended to
11 read:

12 **§796. No transaction of insurance business by investors in securities**

13 The securities issued by the special purpose reinsurance vehicle pursuant to a special
14 purpose reinsurance vehicle insurance securitization are not deemed to be insurance or
15 reinsurance contracts. An investor in such securities issued pursuant to insurance
16 securitization or any holder of such securities may not by sole means of this investment
17 or holding be deemed to be transacting an insurance business in this State. The
18 underwriters or selling agents and their partners, directors, officers, members, managers,
19 employees, agents, representatives and advisors involved in an insurance securitization
20 are not deemed to be acting as insurance producers or brokers or conducting an insurance
21 or reinsurance agency, brokerage, intermediary, advisory or consulting business by virtue
22 of their activities in connection with the special purpose reinsurance vehicle or with the
23 insurance securitization.

24 **Sec. 24. 24-A MRSA §798, sub-§3** is enacted to read:

25 **3. Exemptions.** The superintendent may by rule or written order exempt a special
26 purpose reinsurance vehicle or its protected cells, on a case-by-case basis, from
27 provisions of this subchapter that the superintendent determines to be inappropriate given
28 the nature of the risks to be insured.

29 **Sec. 25. 24-A MRSA §799** is enacted to read:

30 **§799. Confidentiality of information submitted**

31 Information submitted pursuant to the provisions of this subchapter is confidential
32 and may not be disclosed by the superintendent or an agent or employee of the
33 superintendent without the prior written consent of the special purpose reinsurance
34 vehicle, except that:

35 **1. Information subject to discovery.** Information submitted pursuant to the
36 provisions of this subchapter is discoverable by a party in a civil action or contested case
37 to which the submitting special purpose reinsurance vehicle is a party, upon a specific
38 finding by the court that:

1 A. The special purpose reinsurance vehicle is a necessary party to the action and not
2 joined only for the purposes of evading the confidentiality provisions of this
3 subchapter;

4 B. The party seeking the information demonstrates by a clear and convincing
5 standard that the information sought is relevant to, material to and necessary for the
6 prosecution or defense of the claim asserted in the action; and

7 C. The information sought is unavailable from other nonconfidential sources.

8 **2. Disclosure to other states.** The superintendent may disclose the information to
9 the public official having jurisdiction over the regulation of insurance in another state if:

10 A. The public official agrees in writing to maintain the confidentiality of the
11 information; and

12 B. The laws of the state in which the public official serves require the information to
13 be confidential.

14 **SUMMARY**

15 This bill allows the establishment of special purpose reinsurance vehicles to facilitate
16 the securitization of insurance risks.