

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

One Hundred and Fourth Legislature

OF THE

STATE OF MAINE

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THE KNOWLTON AND MCLEARY COMPANY

FARMINGTON, MAINE

1969

PUBLIC LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE
ONE HUNDRED AND FOURTH LEGISLATURE
1969

Chapter 132

AN ACT Providing the Maine Insurance Code.

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

Sec. 1. R. S., T. 24-A, additional. The Revised Statutes are amended by adding a new Title, to be numbered 24-A, to read as follows:

TITLE 24-A.

MAINE INSURANCE CODE

CHAPTER 1

GENERAL DEFINITIONS AND PROVISIONS

§ 1. Short title

This Title shall be known and be cited as the Maine Insurance Code.

§ 2. "Person" defined

"Person" includes an individual, firm, partnership, corporation, association, syndicate, organization, society, business trust, attorney-in-fact and every natural or artificial legal entity.

§ 3. "Insurance" defined

"Insurance" is a contract whereby one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies, or to act as surety.

§ 4. "Insurer" defined

"Insurer" includes every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance.

§ 5. "Commissioner;" "department" defined

1. Commissioner. "Commissioner" means the Insurance Commissioner of this State.

2. Department. "Department" means the Insurance Department of this State.

§ 6. "Domestic," "foreign," "alien" insurer defined

1. Domestic insurer. A "domestic" insurer is one formed under the laws of this State;

2. Foreign insurer. A "foreign" insurer is one formed under the laws of any jurisdiction other than this State;

3. Alien insurer. An "alien" insurer is a foreign insurer formed under the laws of any country other than the United States of America, its states, districts, commonwealths and possessions.

§ 7. "State" defined

When in context signifying other than this State, "state" means any state, district, territory, commonwealth or possession of the United States of America, and the Panama Canal Zone.

§ 8. "Authorized," "unauthorized" insurer defined

1. Authorized insurer. An "authorized" insurer is one duly authorized to transact insurance in this State by a subsisting certificate of authority issued by the commissioner.

2. Unauthorized insurer. An "unauthorized" insurer is one not so authorized.

§ 9. "Transacting insurance" defined

In addition to other aspects of insurance operations to which provisions of this Title by their terms apply, "transact" with respect to a business of insurance includes any of the following, whether by mail or any other means:

1. Solicitation or inducement.
2. Negotiations.
3. Effectuation of a contract of insurance.
4. Transaction of matters subsequent to effectuation and arising out of such a contract.

§ 10. Application of code as to particular types of insurers

No provision of this Title shall apply with respect to:

1. Domestic mutual insurers, as identified in chapter 51, except as stated in such chapter.
2. Fraternal benefit societies, except as stated in chapter 55.
3. Road or tourist service companies, except as stated in chapter 63.
4. A domestic insurer heretofore formed under a special Act of the Legislature, where inconsistent with such special Act as heretofore amended.

§ 11. Particular provisions prevail

Provisions of this Title as to a particular kind of insurance, type of insurer, or matter shall prevail over provisions relating to insurance, insurers or matters in general.

§ 12. General penalty

1. Each violation of this Title for which a different penalty consisting of fine or imprisonment, or both, is not provided by a provision of this Title or other applicable laws of this State, shall subject the violator to a fine of not more than \$1,000 or imprisonment for less than one year, or both such fine and imprisonment.

2. Except, that if the violator is a corporation or entity other than an individual, the fine shall be not more than \$3,000 for each violation. Any director, officer, manager, employee or representative of a violator corporation or other violator entity shall be subject to fine and imprisonment as provided in subsection 1 for authorizing or knowingly participating in any such violation.

CHAPTER 3
THE INSURANCE COMMISSIONER

§ 200. Department continued

There is continued a department of state government known as the Insurance Department.

§ 201. Insurance Commissioner; appointment, term

1. The Insurance Commissioner is the head of the Insurance Department.
2. The commissioner shall be appointed by the Governor with the advice and consent of the Council.
3. The commissioner shall hold office for 4 years and until his successor has been appointed and has qualified.

§ 202. Seal

The commissioner shall have a seal of office of a suitable design, bearing the words "Insurance Commissioner of the State of Maine." The commissioner shall file an impression of the seal, duly certified by him under oath, with the Secretary of State.

§ 203. Compensation

The State shall pay the commissioner an annual salary in amount as provided by law as full compensation for all duties required of him as commissioner.

§ 204. Principal office

The commissioner's principal office shall be at the State Capitol.

§ 205. Departmental organization

Within the department there shall be such divisions, not expressly provided for or prohibited by law, as the commissioner deems advisable for the discharge of his duties.

§ 206. Deputy commissioners

1. Subject to the Personnel Law, the commissioner may appoint a first deputy commissioner, and may appoint one or more additional deputies.

2. The deputies shall perform such duties and exercise such powers of the commissioner as the commissioner may from time to time authorize. The first deputy shall be acting commissioner during a vacancy in the office of Insurance Commissioner or during the incapacity of the commissioner.

§ 207. Staff

Subject to the Personnel Law, the commissioner may appoint and dismiss for cause such personnel as conduct of his office may require.

§ 208. Independent technical, professional services

The commissioner may from time to time contract for such additional actuarial, examination, rating and other technical and professional services as he may require for discharge of his duties.

§ 209. Prohibited interests, rewards

1. The commissioner, or his deputy, or any examiner or employee of the department shall not be connected with the management or be holder of a material number of shares of any insurer, insurance holding company, insurance agency or broker, or be pecuniarily interested in any insurance transaction except as a policyholder or claimant under a policy; except, that as to matters wherein a conflict of interests does not exist on the part of any such individual, the commissioner may employ and retain from time to time insurance actuaries, examiners, accountants, and other technicians who are independently practicing their professions even though from time to time similarly employed or retained by insurers or others.

2. Subsection 1 above shall not be deemed to prohibit:

A. Receipt by any such individual of fully vested commissions or fully vested retirement benefits to which he is entitled by reason of services performed prior to becoming commissioner or prior to employment in the department;

B. Investment in shares of regulated diversified investment companies; or

C. Mortgage loans made under customary terms and in ordinary course of business.

3. The commissioner, or his deputy, or any employee or technician employed or retained by the department, shall not be given or receive, directly or indirectly, any fee, compensation, loan, gift or other thing of value in addition to the compensation and expense allowance provided by or pursuant to the law of this State, or by contract with the commissioner, for any service rendered or to be rendered as such commissioner, deputy, assistant, employee or technician, or in connection therewith.

§ 210. Delegation of powers

1. The commissioner may delegate to his deputy, examiner or an employee of the department the exercise or discharge in the commissioner's name of any power, duty or function, whether ministerial, discretionary or of whatever character, vested in or imposed upon the commissioner.

2. The official act of any such person acting in the commissioner's name and by his authority shall be deemed an official act of the commissioner.

§ 211. General powers, duties

1. The commissioner shall enforce the provisions of, and execute the duties imposed upon him by, this Title.

2. The commissioner shall have the powers and authority expressly vested in him by or reasonably implied from the provisions of this Title.

3. The commissioner shall have such additional rights, powers and duties as may be provided by other laws.

§ 212. Rules and regulations

Subject to the applicable requirements and procedures of Title 5, sections 2301 to 2354, the commissioner may make, promulgate, amend and rescind reasonable rules and regulations to aid the administration or effectuation of any provisions of this Title. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof.

§ 213. Orders, notices in general

1. Orders and notices of the commissioner shall be effective only when in writing signed by him or by his authority.

2. Every order of the commissioner shall state its effective date, and shall concisely state:

A. Its intent or purpose;

B. The grounds on which based; and

C. The provisions of this Title pursuant to which action is taken or proposed to be taken; but failure to so designate a particular provision shall not deprive the commissioner of the right to rely thereon.

3. An order or notice may be given by delivery to the person to be ordered or notified, or by mailing it, postage prepaid, addressed to such person at his principal place of business or residence as last of record in the department. The order or notice shall be deemed to have been given when deposited in a mail depository of the United States post office, and of which the affidavit of the individual who so mailed the order or notice shall be prima facie evidence.

§ 214. Enforcement

1. The commissioner may, through the Attorney General of this State, invoke the aid of the Superior Court through proceedings instituted in any county of this State to enforce any lawful order made or action taken by him. In such proceedings the Superior Court may make such orders, either preliminary or final, as it deems proper under the facts established before it.

2. If the commissioner has reason to believe that any person has violated any provision of this Title, or of other law as applicable to insurance operations, for which criminal prosecution is provided and would be in order, he shall give the information relative thereto to the Attorney General. The Attorney General shall promptly institute such action or proceedings against such person as in his opinion the information may require or justify.

3. The Attorney General upon request of the commissioner is authorized to proceed in the courts of any other state or in any federal court or agency to enforce an order or decision of any court proceeding or in any administrative proceeding before the commissioner.

§ 215. Violation of rules, regulations, orders; penalty

Any person who knowingly violates any rule, regulation or order of the commissioner shall be subject to such suspension or revocation of certificate of authority or license as may be applicable under this Title for violation of the provision to which such rule, regulation or order relates.

§ 216. Records; inspection; destruction

1. The commissioner shall carefully preserve in the department and in permanent form, a correct account of all his transactions and of all fees and moneys received by him by virtue of his office, together with all financial statements, examination reports, correspondence, filings and documents duly received by the department. The commissioner shall hand the same over to his successor in office.

2. All records of the department shall be subject to public inspection except as otherwise expressly provided by law as to particular matters; and except that records, correspondence and reports of investigation in connection with actual or claimed violations of this Title or prosecution or disciplinary action therefor shall be confidential. The confidential nature of any such record, correspondence or report shall not, however, limit or affect use of the same by the commissioner in any such prosecution or action.

3. All records and documents of the department are subject to subpoena

by a court of competent jurisdiction.

4. The commissioner may destroy unneeded or obsolete records and filings in the department in accordance with provisions and procedures applicable to administrative agencies of the State in general.

§ 217. Annual report

1. As soon as practical after the annual financial statements have been received from the authorized insurers, the commissioner may make a written report to the Governor and Council showing with respect to the preceding calendar year:

- A. The receipts and expenses of the department for the year;
- B. A summary of the insurance business transacted in this State;
- C. A summary of the financial condition of each authorized insurer, as shown by its most recent financial statement on file with the commissioner;
- D. Such recommendations as he deems advisable relative to amendment or supplementation of the insurance laws; and
- E. Such other information and matters as he deems to be in the public interest relative to the insurance business in this State.

2. If the report is printed the commissioner shall furnish a copy upon request thereby to the insurance supervisory official of other states and to authorized insurers; and, if copies are available for the purpose, to other persons who so request and upon payment by such persons of such reasonable charge therefor as may be fixed by the commissioner.

§ 218. Publications; price

The commissioner may have the directory of authorized insurers, of licensed insurance representatives, license examination material, insurance laws and related laws and regulations under his administration published in pamphlet form from time to time, and may fix a price for each copy to cover cost of printing and mailing.

§ 219. Interstate cooperation

The commissioner may communicate on request of the insurance supervisory official of any state, province or country, any information which it is his duty by law to ascertain respecting authorized insurers.

§ 220. Investigations authorized

In addition to examinations and investigations expressly authorized, the commissioner may conduct such investigations of insurance matters as he may deem proper upon reasonable cause to determine whether any person has violated any provision of this Title or to secure information useful in the lawful administration of any such provision. The cost of such investigations shall be borne by the State.

§ 221. Examination of insurers

1. For the purpose of determining its financial condition, fulfillment of its contractual obligations and compliance with the law, the commissioner shall examine the affairs, transactions, accounts, record and assets of each authorized insurer, and of any person as to any matter relevant to the financial affairs of the insurer or to the examination, as often as he deems advisable. Except as otherwise expressly provided, he shall so examine each domestic insurer not less frequently than every 5 years. Examination of an alien insurer shall be limited to its insurance transactions, assets, trust deposits and affairs in the United States except as otherwise required by the commissioner.

2. The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this State.

3. In lieu of making his own examination, the commissioner may, in his discretion, accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state.

4. As far as practical the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officials of other states in which the insurer transacts business.

§ 222. Examination of holding companies, subsidiaries, agents, promoters and others

For the purpose of ascertaining compliance with law, or relationships and transactions between any such person and any insurer or proposed insurer, the commissioner may as often as he deems advisable examine the accounts, records, documents and transactions pertaining to or affecting the insurance affairs or proposed insurance affairs and transactions of:

1. Any insurance holding company; or person holding the shares of voting stock or policyholder proxies of an insurer as voting trustee or otherwise, for the purpose of controlling the management thereof.

2. Any insurance agent, broker, general agent, surplus lines broker, adjuster, consultant, insurer representative or any person holding himself out as any of the foregoing.

3. Any person having a contract under which he enjoys by terms or in fact the exclusive or dominant right to manage or control the insurer.

4. Any person in this State engaged in, or proposing to be engaged in this State in, or holding himself out in this State as so engaging or proposing, or in this State assisting in, the promotion, formation, or financing of an insurer or insurance holding corporation, or corporation or other group to finance an insurer or the production of its business.

§ 223. Conduct of examination; access to records; correction

1. Whenever the commissioner determines to examine the affairs of any person, he shall designate one or more examiners and instruct them as to the scope of the examination. The examiner shall, upon demand, exhibit his official credentials to the person under examination.

2. The commissioner shall conduct each examination in an expeditious, fair and impartial manner.

3. Upon any such examination the commissioner, or the examiner if specifically so authorized in writing by the commissioner, shall have power to administer oaths, and to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.

4. Every person being examined, its officers, attorneys, employees, agents and representatives shall make freely available to the commissioner or his examiners the accounts, records, documents, files, information, assets and matters of such person in his possession or control relating to the subject of the examination and shall facilitate the examination.

5. If the commissioner or examiner finds any accounts or records to be inadequate, or inadequately kept or posted, the commissioner may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined if such person has failed to maintain, complete or correct such records or accounting after the commissioner or examiner has given him written notice and a reasonable opportunity to do so.

6. Neither the commissioner nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices or place of such person except with the written consent of such person in advance of such removal or pursuant to an order of court duly obtained. This provision shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document, or file.

7. Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section shall, upon conviction thereof, be subject to a fine of not more than \$2,500, or imprisonment for less than a year, or by both such fine and imprisonment.

§ 224. Appraisal of asset

1. If the commissioner deems it necessary to value any asset involved in such an examination, he may make written request of the person being examined to appoint one or more appraisers who by reason of education, experience or special training, and disinterest, are competent to appraise the asset. Selection of any such appraiser shall be subject to the written approval of the commissioner. If no such appointment is made within 20 days after the request therefor was delivered to such person, the commissioner may appoint the appraiser or appraisers.

2. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the commissioner and to the person being examined.

3. The reasonable expense of the appraisal shall be borne by the person

being examined.

§ 225. Examination report; contents; prima facie evidence in certain proceedings

1. Upon completion of an examination, the examiner in charge shall make a true report thereof which shall comprise only facts appearing upon the books, records or other documents of the person examined, or from an appraisal of assets, or as ascertained from the sworn testimony of its officers or agents or other individuals examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts. The report of examination shall be verified by the oath of the examiner in charge thereof.

2. Such a report of examination of an insurer so verified shall be prima facie evidence in any delinquency proceeding against the insurer, its officers, employees, or agents upon the facts stated therein, and whether or not the report has then been filed in the department as provided in section 226.

§ 226. Examination reports; distribution, hearing; as evidence

1. The commissioner shall deliver a copy of the examination report to the person examined, together with a notice affording such person 20 days or such additional reasonable period as the commissioner for good cause may allow, within which to review the report and recommend changes therein.

2. If so requested by the person examined, within the period allowed under subsection 1, or if deemed advisable by the commissioner without such request, the commissioner shall hold a hearing relative to the report and shall not file the report in the department until after such hearing and his order thereon; except, that the commissioner may furnish a copy of the report to the Governor, Attorney General or Treasurer of State pending final decision thereon, subject to section 227 as to the confidential nature of the report.

3. If no such hearing has been requested or held, the examination report, with such modifications, if any, thereof as the commissioner deems proper, shall be accepted by the commissioner and filed in the department upon expiration of the review period provided for in subsection 1 above. The report shall in any event be so accepted and filed within 6 months after final hearing thereon.

4. The commissioner shall forward to the person examined a copy of the examination report as filed, together with any recommendations or statements relating thereto which he deems proper.

5. If the report is as to examination of a domestic insurer, a copy of the report, or a summary thereof approved by the commissioner, when filed in the department, together with the recommendations or statements of the commissioner or his examiner, shall be presented by the insurer's chief executive officer to the insurer's board of directors or similar governing body at a meeting thereof which shall be held within 30 days next following receipt of the report in final form by the insurer. A copy of the report shall also be furnished by the secretary of the insurer, if incorporated, or by the attorney-in-fact if a reciprocal insurer, to each member of the insurer's board of directors

or board of governors, if a reciprocal insurer, and the certificate of the secretary or attorney-in-fact that a copy of the examination report has been so furnished shall be deemed to constitute knowledge of the contents of the report by each such member.

6. The report when so filed in the department shall be admissible in evidence in any action or proceeding brought by the commissioner against the person examined, or against its officers, employees or agents. In any such action or proceeding, the commissioner or his examiners may, however, at any time testify and offer proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished or filed in the department.

§ 227. Examination report; confidential nature

The report of examination of a domestic insurer, although filed in the department as provided in section 226, shall nevertheless not be for public inspection except as to those portions of the report showing the insurer's current financial condition and except as provided in section 219. The comments and recommendations of the examiner shall be deemed confidential information and shall not be available for public inspection.

§ 228. Examination expense

1. The expense of examination of an insurer, or of any person referred to in subsection 1 (holding companies and persons holding stock or policyholder proxies), or 3 (management or control of the insurer under contract), or 4 (promoters, etc.) of section 222, shall be borne by the person examined. Such expense shall include only the reasonable and proper hotel and travel expenses of the commissioner and his examiners and assistants, including expert assistance, and examiners furnished for the purpose by other states in which the insurer is authorized to transact insurance, reasonable compensation as to such examiners and assistants and incidental expenses as necessarily incurred in the examination. As to expense and compensation involved in any such examination the commissioner may give due consideration to scales and limitations recommended by the National Association of Insurance Commissioners and outlined in the examination manual sponsored by that association.

2. Such person examined shall promptly pay to the commissioner the expenses of the examination upon presentation by him of a reasonably detailed written statement thereof.

3. Except, that in lieu of payment of examination expense as above required, a domestic insurer shall have the right, at its option, of making an annual payment to the commissioner of an examination expense allotment in an amount equal to .00033% of its total admitted assets as of the end of the preceding calendar year, and which payment shall be made on March 1st with the filing of the insurer's annual statement with the commissioner; or, if the insurer's admitted assets exceed \$10,000,000, the insurer shall have the right, at its further option, to pay to the commissioner with respect to any examination the lesser of:

A. The expense of the examination as determined pursuant to subsections

1 and 2 above; or

B. An amount equal to .001% of the first \$10,000,000 of the insurer's admitted assets plus .0001% of the remainder of such assets, as such assets are shown by the insurer's financial statement filed with the commissioner for the year-end next preceding the commencement of the examination.

§ 229. Administrative procedures; hearings in general

1. The commissioner may hold a hearing without request of others for any purpose within the scope of this Title.

2. The commissioner shall hold a hearing:

A. If required by any provision of this Title, or

B. Upon written application for a hearing by a person aggrieved by any act or impending act, or by any report, rule, regulation or order of the commissioner, other than an order for the holding of a hearing, or order on a hearing, or pursuant to such order, of which hearing such person had notice.

3. Any such application must be filed with the commissioner within 90 days after such person knew or reasonably should have known of such act, impending act, failure, report, rule, regulation or order, unless a different period is provided for by other applicable law, and in which case such other law shall govern. The application shall briefly state the respects in which the applicant is so aggrieved, together with the ground to be relied upon for the relief to be demanded at the hearing. The commissioner may require that the application be signed and sworn to.

4. If the commissioner finds that the application is timely and made in good faith, that the applicant would be so aggrieved if his grounds are established and that such grounds otherwise justify the hearing, he shall hold the hearing within 30 days after filing of the application, or within 30 days after the application has been sworn to, whichever is the later date, unless in either case the hearing is postponed by mutual consent.

5. Failure to hold the hearing upon application therefor of a person entitled thereto as hereinabove provided shall constitute a denial of the relief sought, and shall be the equivalent of a final order of the commissioner on hearing for the purpose of an appeal under section 236.

6. Pending the hearing and decision thereon, the commissioner may suspend or postpone the effective date of his previous action.

§ 230. Notice of hearing

1. Except where a different period is expressly provided in this Title, the commissioner shall give written notice of the hearing not less than 14 days in advance. The notice shall state the date, time and place of the hearing and specify the matters to be considered thereat. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the commissioner shall give such notice to all persons whose pecuniary

interest, to the commissioner's knowledge or belief, are to be directly and immediately affected by the hearing. Notice of hearing may be waived, and the hearing held at a time mutually fixed by the commissioner and the parties.

2. If any person is entitled to a hearing by any provision of this Title before any proposed action is taken, the notice of the hearing may be in the form of a notice to show cause, stating that the proposed action may be taken unless such person shows cause at a hearing to be held as specified in the notice why the proposed action should not be taken, and stating the basis of the proposed action.

3. If any such hearing is to be held for consideration of rules and regulations of the commissioner, or of other matters which, under subsection 1, would otherwise require separate notices to more than 30 persons, in lieu of other notice the commissioner may give notice of the hearing by publication thereof in a newspaper of general circulation in this State, at least once each week during the 4 weeks immediately preceding the week in which the hearing is to be held; except, that the commissioner shall mail such notice to all persons who have requested the same in writing in advance and have paid to the commissioner the reasonable amount fixed by him to cover the cost thereof.

4. All such notices, other than published notices, shall be given as provided in section 213.

§ 231. Conduct of hearing

1. The commissioner may hold a hearing in Augusta or any other place of convenience to parties and witnesses, as the commissioner determines. The commissioner or his designee shall preside at the hearing, and shall expedite the hearing and all procedures involved therein.

2. Any party to the hearing shall have the right to appear in person and by counsel, to be present during the giving of all evidence, to have a reasonable opportunity to inspect all documentary and other evidence and to exam-

ine and cross-examine witnesses, to present evidence in support of his interest and to have subpoenas issued by the commissioner to compel attendance of witnesses and production of evidence in his behalf. Testimony may be taken orally or by deposition, and any party shall have such right of introducing evidence by interrogatories or deposition as may obtain in a Superior Court.

3. Upon good cause shown the commissioner shall permit to become a party to the hearing by intervention, if timely, only such persons, not original parties thereto, whose pecuniary interests are to be directly and immediately affected by the commissioner's order made upon the hearing.

4. Formal rules of pleading or of evidence need not be observed at any hearing, except that formal rules of evidence shall be followed at the election of any party who communicates notice of such election to all other parties not less than 5 days prior to the date of the hearing.

5. The hearing shall be public, unless the commissioner or hearing officer determines that a private hearing would be in the public interest, in which

case and only with the consent of all parties to the hearing, the hearing shall be private.

6. The commissioner or his hearing officer shall cause a complete record to be made of the hearing proceedings by a competent reporter, and if transcribed such record shall be made a part of the commissioner's record of the hearing. The record shall be transcribed at the request and expense of any party desiring the same, and a copy of such transcription shall be furnished to any other party upon the written request and at the expense of such other party. If the record is not transcribed, the commissioner or his hearing officer shall prepare a summary record of the proceedings and evidence.

7. The validity of any hearing held in accordance with the notice thereof, or waiver of notice, shall not be affected by the failure of any person to attend or remain in attendance.

§ 232. Witnesses and documentary evidence

1. As to the subject of any examination, investigation or hearing being conducted by him, the commissioner may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, or take depositions; and by subpoena duces tecum may require the production of documentary and other evidence. Any delegation by the commissioner of power of subpoena shall be in writing.

2. Every person subpoenaed to appear at any such hearing, examination or investigation shall obey the subpoena, testify truthfully, conduct himself with decorum and in no way obstruct the proceeding or purpose thereof.

3. Witnesses shall be entitled to the same fees and allowances as witnesses in Superior Court; except that no insurer, agent, broker or other person subject to this Title who is a subject of such proceeding, and no officer, director or employee of any of the foregoing, shall be entitled to witness or mileage fees. No person shall be excused from attending and testifying in obedience to a subpoena on the ground that the proper witness fee was not tendered or paid, unless the witness shall have demanded such payment as a condition precedent to attending the hearing, examination or investigation and unless such demand shall not have been complied with.

4. Any individual knowingly testifying falsely under oath or making a false affirmation, as to any matter material to any such examination, investigation or hearing, shall upon conviction thereof be guilty of perjury.

§ 233. Witnesses; disciplinary proceedings

1. If any individual without reasonable cause fails to appear when summoned as a witness, or refuses to answer a lawful and pertinent question, or refuses to produce documentary evidence when directed to do so by the commissioner or deports himself in a disrespectful or disorderly manner at the inquiry, or obstructs the proceedings by any means, whether or not in the presence of the commissioner or his designee, he is guilty of contempt and may be dealt with as provided in subsection 2.

2. The commissioner or his designee, as the case may be, may file a complaint in the Superior Court, setting forth under oath the facts constituting the contempt and requesting an order returnable in not less than 2 nor more than 5 days, directing the alleged contemner to show cause before the court, why he should not be punished for contempt. Upon the return of such order, the court shall examine the alleged contemner under oath, and the alleged contemner shall have an opportunity to be heard. If the court determines that the respondent has committed any alleged contempt, the court shall punish the offender as if the contempt had occurred in an action arising in or pending in such court.

§ 234. Witnesses; immunity from prosecution

1. If any individual asks to be excused from attending or testifying or from producing any books, papers, records, contracts, correspondence or other documents in connection with any examination, hearing or investigating being conducted by the commissioner on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall, by the Attorney General, be directed to give such testimony or produce such evidence, he must nonetheless comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding; except, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him in such testimony, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury; nor shall such individual be exempt from the refusal, suspension or revocation of any license, permission or authority conferred, or to be conferred, pursuant to this Title.

2. Any such individual may execute, acknowledge and file in the office of the commissioner and of the Attorney General a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privileges on account of any testimony he may so give or evidence so produced.

§ 235. Order on hearing

1. In the conduct of hearings under this Title and making his order thereon, the commissioner shall act in a quasi-judicial capacity.

2. Within 30 days after termination of a hearing, or of any rehearing thereof or reargument thereon, or within such other period as may be specified in this Title as to particular proceedings, or within such further reasonable period as the commissioner for good cause may require, the commissioner shall make his order on hearing covering matters involved in such hearing, and give a copy of the order to each party to the hearing in the same manner as notice of the hearing was given to such party; except, that as to hearings held with respect to merger, consolidation, bulk reinsurance, conversion, affili-

ation or change of control of a domestic insurer as provided in chapter 47 (organization and corporate procedures of domestic stock and mutual insurers), where notice of the hearing was given to all stockholders and/or policyholders of an insurer involved, the commissioner is required to give a copy of the order on hearing to the corporation and insurer parties, to intervening parties, to a reasonable number of such stockholders or policyholders as representative of the class, and to other parties only upon written request of such parties.

3. The order shall contain:

A. A concise statement of facts found by the commissioner upon the evidence adduced at the hearing;

B. A concise statement of the commissioner's conclusions from the facts so found;

C. His order, and the effective date thereof; and

D. Citation of the provisions of this Title upon which the order is based; but failure to so designate a particular provision shall not deprive the commissioner of the right thereafter to rely thereon.

4. The order may affirm, modify or rescind action theretofore taken or may constitute taking of new action within the scope of the notice of the hearing.

§ 236. Appeal from the commissioner

1. An appeal from the commissioner shall be taken only from an order on hearing, or as to a matter on which the commissioner has refused or failed to hold a hearing after application therefor under section 229, or as to a matter as to which the commissioner has failed to make his order on hearing as required by section 235.

2. Any person who was a party to such a hearing or whose pecuniary interests are directly and immediately affected by any such refusal or failure, and who is aggrieved by such order, refusal, or failure, may appeal from such order or as to any such matter within 30 days after:

A. The order on hearing has been mailed or delivered to the persons entitled to receive the same, or given by last publication thereof where delivery by publication is permitted; or

B. The commissioner has refused or failed to grant or hold a hearing as required under section 229; or

C. The commissioner has refused or failed to make his order on hearing as required under section 235.

3. The appeal shall be granted as a matter of right, and shall be taken to the Superior Court of Kennebec County or in any county of this State in

which the appellant resides or has his principal place of business.

4. The appeal shall be taken by filing in the court a complaint setting forth the grounds for appeal, and by serving a copy of the complaint on the commissioner. If the appeal is from the commissioner's order on hearing, the petitioner shall also deliver to the commissioner a sufficient number of copies of the complaint and the commissioner shall mail or otherwise furnish a copy thereof to the other parties to the hearing to the same extent as a copy of the commissioner's order is required to be furnished to the hearing parties under section 235.

5. Upon receiving the complaint on appeal, the commissioner shall forthwith prepare an official record certified by him which shall contain a copy of all proceedings and orders of the commissioner appealed from and the transcript of testimony and evidence or summary record thereof made as provided in section 231. Within 30 days after the complaint was served upon him the commissioner shall file such official record with the court.

6. Upon filing of the complaint on appeal the court shall have full jurisdiction of the proceeding. Such filing shall not stay the enforcement of the commissioner's order or action appealed from unless so stayed by order of the court.

7. If the appeal is from the commissioner's order on hearing the review of the court shall be limited to matters shown by the commissioner's official record; otherwise, the review shall be de novo. The court shall have power, by preliminary order, to settle questions concerning the completeness and accuracy of the commissioner's official record.

8. In its discretion the court may remand the case to the commissioner for further proceedings in accordance with the court's directions; or, in advance of judgment and upon a sufficient showing, the court may remand the case to the commissioner for the purpose of taking additional testimony or other proceedings.

9. From the judgment of the Superior Court the commissioner or other party to the appeal may appeal to the Supreme Judicial Court of the State of Maine in the same manner as provided in civil cases.

CHAPTER 5

AUTHORIZATION OF INSURERS

AND GENERAL REQUIREMENTS

SUBCHAPTER I

AUTHORIZATION OF INSURERS AND GENERAL

REQUIREMENTS

§ 400. "Stock" insurer defined

A "stock" insurer is an incorporated insurer with its capital divided into shares and owned by its stockholders.

§ 401. "Mutual" insurer defined

A "mutual" insurer is an incorporated insurer without permanent capital stock, and the governing body of which is elected by its policyholders or those policyholders specified in its charter, or by any reasonable combination of its policyholders, guaranty fund stockholders, or guaranty fund certificate holders, or by other reasonable method.

§ 402. "Reciprocal" insurer defined

A "reciprocal" insurer is an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact common to all such persons to provide reciprocal insurance among themselves.

§ 403. "Charter" defined

Except where context requires otherwise, "charter" means certificate of organization, certificate of incorporation, articles of incorporation, articles of agreement, articles of association, corporate charter granted by legislative act, or other basic constituent document of a corporation, or the power of attorney of the attorney-in-fact of a reciprocal insurer.

§ 404. Certificate of authority required; enforcement; penalty

1. No person shall act as an insurer and no insurer shall transact insurance in this State by mail or otherwise, unless as authorized by a certificate of authority issued by the commissioner pursuant to this Title and then in full force and effect, except as to such transactions as are expressly otherwise provided in this Title.

2. No insurer formed under the laws of this State, and no foreign insurer from offices or by personnel or facilities located in this State, shall solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting certificate of authority granted to it by the commissioner authorizing it to transact the same kind or kinds of insurance in this State.

3. The commissioner shall enforce this section through any and all available and lawful means, including, but not limited to, the enjoining of any violation or threatened violation.

4. Any insurer and any officer, director, agent, representative or employee of any insurer, who willfully authorizes, negotiates, makes or issues any insurance contract in violation of this section shall upon conviction thereof be subject to a fine of not to exceed \$5,000, or imprisonment for not over 2 years, or to both such fine and imprisonment.

§405. Exceptions to certificate of authority requirement

A certificate of authority shall not be required of an insurer with respect to any of the following:

1. Investigation, settlement or litigation of claims under its policies lawfully written in this State, or liquidation of assets and liabilities of the insurer, other than collection of new premiums, all as resulting from its former authorized operations in this State.

2. Except as provided in section 404, subsection 2, transactions thereunder subsequent to issuance of a policy covering only subjects of insurance not resident, located or expressly to be performed in this State at time of issuance, and lawfully solicited, written and delivered outside this State.

3. Transactions pursuant to surplus lines coverages lawfully written under chapter 19.

4. Reinsurance, except as to domestic reinsurers.

5. Transactions relative to its investments in this State.

6. Any suit or action by the duly constituted receiver, rehabilitator or liquidator of the insurer, or of the insurer's assignee or successor, under laws similar to those contained in chapter 57 (delinquency proceedings; rehabilitation and liquidation).

§ 406. General eligibility for certificate of authority

To qualify for and hold authority to transact insurance in this State, an insurer must be otherwise in compliance with this Title and with its charter powers, and must be an incorporated stock or mutual insurer, or a reciprocal or Lloyd's insurer; of the same general type as may be formed as a domestic insurer under this Title; except that:

1. No foreign insurer shall be authorized to transact insurance in this State unless as to insurance written in this State it maintains reserve as required by chapter 11 (assets and liabilities); or which, if other than a property or casualty insurer, transacts business anywhere in the United States on the assessment plan, or stipulated premium plan, or any similar plan.

2. No insurer shall be authorized to transact a kind of insurance in this State unless duly authorized or qualified to transact such insurance in the state or country of its domicile.

3. No insurer shall be authorized to transact in this State any kind of insurance which is not within the definitions as set forth in chapter 9 (kinds of insurance).

4. No such authority shall be granted or continued as to any insurer while in arrears to the State for fees, licenses, taxes, assessments, fines or penalties accrued on business previously transacted in this State.

5. A Lloyd's insurer shall be treated as a stock insurer for the purposes of this Title, with net assets over all liabilities to be not less than the capital funds required of a foreign stock insurer transacting the same kinds of insurance.

§ 407. Same; ownership, management

1. No foreign insurer which is directly or indirectly owned or controlled in whole or substantial part by any government or governmental agency, other than of the government of the United States of America, shall be authorized to transact insurance in Maine. Membership in a mutual insurer, or subscribership in a reciprocal insurer, or ownership of stock of an insurer by the alien property custodian or similar official of the United States, or ownership of stock or other security which does not have voting rights with respect to the management of the insurer, or supervision of an insurer by public authority, shall not be deemed to be an ownership or control of the insurer for the purposes of this provision.

2. The commissioner shall not grant or continue authority to transact insurance in this State as to any insurer or proposed insurer, any director, officer or other individual materially part of the management of which is found by him after investigation or upon reliable information to be incompetent, or dishonest, or untrustworthy, or of unfavorable business repute, or the managers of which are so lacking in insurance company managerial experience in operations of the kind proposed in this State as to make such operation, currently or prospectively, hazardous to, or contrary to the best interests of, the insurance-buying or investing public of this State; or which he has good reason to believe is affiliated directly or indirectly through ownership, control, management, reinsurance transactions or other business relations, with any person or persons of unfavorable business repute, or whose business operations in this State or elsewhere are or have been marked, to the injury of insurers, stockholders, policyholders, creditors or the public, by illegality, or by manipulation of assets, or of accounts, or of reinsurance or by bad faith.

§ 408. Name of insurer

1. No insurer shall be formed or authorized to transact insurance in this State which has or uses a name which is the same as or deceptively similar to that of another insurer already so authorized.

2. No life insurer shall be so authorized which has or uses a name deceptively similar to that of another insurer, other than a predecessor in interest, authorized to transact insurance in this State within the preceding 10 years if life insurance policies originally issued by such other insurer are still outstanding in this State.

3. No insurer shall be formed or authorized to transact insurance which has or uses a name the same as or deceptively similar to that of any foreign insurer not so authorized if such foreign insurer has within the next preceding 12 months signified its intention to secure an incorporation in this State under such name, or to do business as a foreign insurer in this State under such name, by filing notice of such intention with the commissioner, unless the written consent to the use of such name or deceptively similar name has been given by such foreign insurer.

4. No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.

5. In case of conflict of names between 2 insurers, or a conflict otherwise prohibited under this section, the commissioner may permit, or shall require as a condition to the issuance of an original certificate of authority to an

applicant insurer, the insurer to use in this State such supplementation or modification of its name or such business name as may reasonably be necessary to avoid the conflict.

6. Except as provided in subsection 5, an insurer shall conduct its business in this State in its own corporate, if incorporated, or proper, if a reciprocal, name.

§ 409. Combinations of insuring powers

An insurer may be authorized to transact such kinds of insurance as it is qualified for under this Title, except that a reciprocal insurer shall not transact life insurance.

§ 410. Capital funds required

1. To qualify for authority to transact any one kind of insurance, as defined in chapter 9, or combination of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock, if a stock insurer, or unimpaired basic surplus, if a foreign mutual or foreign reciprocal insurer, and when first so authorized shall possess initial free surplus, all in amounts not less than as determined from the following table:

Kind or Kinds of Insurance	Stock Insurers		Foreign mutual, Reciprocal Insurers	
	Minimum Required Capital Stock	Initial Free Surplus	Minimum Required Basic Surplus	Initial Free Surplus
Life	\$1,000,000	\$1,000,000	\$1,000,000*	\$1,000,000*
Health	250,000	250,000	250,000	250,000
Life and Health	1,000,000	1,000,000	1,000,000*	1,000,000*
Casualty	500,000	500,000	500,000	500,000
Marine and Transportation	500,000	500,000	500,000	500,000
Property	500,000	500,000	500,000	500,000
Surety	500,000	500,000	500,000	500,000
Title	150,000	150,000	150,000	150,000
Multiple line (as defined in section 710)	1,000,000	1,000,000	1,000,000	1,000,000
Life, and any one or more of Prop- erty, Casualty, Surety, Marine and Transportation	2,000,000	2,000,000	2,000,000*	2,000,000*

* Does not apply as to a reciprocal insurer.

Except:

A. An insurer holding a valid certificate of authority to transact insurance in this State on the effective date of this Act may, if otherwise qualified therefor, continue to be so authorized while possessing paid-in capital stock, if a stock insurer, or surplus, if a mutual or reciprocal insurer, as required for such authority immediately prior to such effective date. The commissioner shall not authorize such an insurer to transact any other kinds of

insurance unless it then complies with the requirements as to capital stock, if a stock insurer, or surplus, if a mutual or reciprocal insurer, as applied to all kinds of insurance it then proposes to transact, as provided by this Title as to foreign insurers applying for original certificates of authority under this Title. Except, that a domestic mutual insurer formed prior to January 1, 1968, and while possessing surplus of not less than \$200,000, may be authorized to transact additional kinds of insurance authorized by its charter; subject, however, to the same minimum required basic surplus amount as is applicable as to foreign mutual insurers under the table in subsection 1, above, if the insurer is to transact life insurance together with any one or more of property, casualty, surety, or marine and transportation insurances.

B. An insurer which otherwise possesses funds as required under this subsection, shall at all times maintain policyholders' surplus, combined paid-in capital stock, if any, and surplus, reasonable in amount, as determined by the commissioner, in relation to the kinds and amount of insurance it has in force, or being written and retained by it, net of applicable reinsurance. In making any such determination the commissioner shall give due consideration to any applicable standards approved or adopted by the National Association of Insurance Commissioners and to the desirability of substantial uniformity as to such requirements among the respective states.

2. Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in any and all areas in which it operates or proposes to operate, whether or not only a portion of such kinds are to be transacted in this State.

3. As to surplus required for authority to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual legal reserve insurers hereafter formed shall be governed by chapter 47.

§ 411. Insuring combinations without additional capital funds

Without additional paid-in capital stock or additional surplus, an authorized insurer may also be authorized:

1. If a life insurer, to grant annuities.
2. If a health insurer, to insure against congenital defects, as defined in section 707.
3. If a casualty insurer or multiple line insurer, to transact health insurance. Except, that this provision shall not apply to a domestic insurer authorized to transact casualty insurance only, pursuant to section 410, subsection 1, paragraph A.

§ 412. Deposit requirement, alien insurers

1. The commissioner shall not authorize an alien insurer to transact insurance in this State unless it makes in this State through the commissioner

and thereafter continuously maintains a deposit, representing funds in excess of all the insurer's liabilities under insurance contracts in force in the United States of America, of a fair market value in amount not less than the minimum paid-in capital stock required under this Title of a foreign stock insurer authorized to transact like kinds of insurance in this State. The deposit shall be held in trust for the exclusive benefit of the insurer's policyholders and creditors in the United States of America.

2. In lieu of such a deposit made or maintained in this State, the commissioner shall accept the certificate in proper form of the public official having general supervision of insurers in any other state to the effect that a deposit of like quality and amount, or part thereof, by such insurer is being maintained for like purposes in public custody or control pursuant to the laws of such state.

3. All such deposits in this State are subject to the applicable provisions of chapter 15 (administration of deposits).

§ 413. Application for certificate of authority

To apply for an original certificate of authority an insurer shall file with the commissioner its written application therefor on forms as prescribed and furnished by the commissioner, accompanied by the applicable fees specified in section 601 (fee schedule), stating under the oath of the president or vice-president or other chief officer and the secretary of the insurer, or of the attorney-in-fact, if a reciprocal insurer, the insurer's name, location of its home office or principal office in the United States, if an alien insurer, the kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional information as the commissioner may reasonably require, together with the following documents, as applicable:

1. If a corporation, a copy of its charter, together with all amendments thereto, or as restated and amended under the laws of its state or country of domicile, currently certified by the public official with whom the originals are on file in such state or country.

2. If a domestic incorporated insurer or a mutual insurer, a copy of its bylaws, certified by the insurer's corporate secretary.

3. If a reciprocal insurer, a copy of the power of attorney of its attorney-in-fact, certified by the attorney-in-fact; and if a domestic reciprocal insurer, the declaration provided for in section 3856.

4. A complete copy of its financial statement as of not earlier than the December 31st next preceding in form as customarily used in the United States by like insurers, sworn to by at least 2 executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state of domicile, or of entry into the United States, if an alien insurer.

5. A copy of the report of last examination of the insurer completed within the 12 months immediately prior to the filing of the application, certified by

the public insurance supervisory official of the insurer's state of domicile, or of entry into the United States, if an alien insurer.

6. Appointment of the commissioner pursuant to section 421 as its attorney to receive service of legal process.

7. If a foreign or alien insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized or qualified for authority to transact in such state or country the kinds of insurance proposed to be transacted in this State.

8. If an alien insurer, certificate as to deposit if to be tendered pursuant to section 412, and a copy of the trust deed pertaining to such deposit, certified by the trustee.

9. If a life or health insurer, a copy of the insurer's rate book and of each form of policy currently proposed to be issued in this State, and of the form of application therefor.

10. If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.

11. Designation by the insurer of its officer or representative authorized to appoint and remove its agents in this State.

12. If to transact surety insurance, the names and addresses of all its attorneys-in-fact within this State together with the scope of authority of each such attorney-in-fact.

§ 414. Issuance, refusal of authority, ownership of certificate

1. If upon completion of its application the commissioner finds that the insurer has met the requirements therefor under this Title, and that the insurer has furnished evidence satisfactory to him that its methods of operation are not such as would render its proposed operation hazardous to the public or its policyholders in this State, the commissioner shall issue to the insurer a proper certificate of authority; otherwise, the commissioner shall issue his order refusing such certificate.

2. The certificate of authority, if issued, shall state the insurer's name, home office address, state or country of organization, and the kinds of insurance the insurer is authorized to transact throughout this State. At the insurer's request, the commissioner may issue a certificate of authority limited to particular types of insurance or coverages within a kind of insurance as defined in chapter 9.

3. Although issued and delivered to the insurer, the certificate of authority at all times shall be the property of the State of Maine. Upon any expiration, suspension or termination thereof the insurer shall promptly deliver the certificate to the commissioner.

§ 415. Continuance, expiration, reinstatement of certificate of authority

1. A certificate of authority shall continue in force as long as the insurer is entitled thereto under this Title, and until suspended or revoked by the commissioner or terminated at the insurer's request; subject, however, to continuance of the certificate by the insurer each year by:

A. Payment on or before March 1st of the continuation fee provided in section 601 (fee schedule);

B. Due filing by the insurer of its annual statement for the next preceding calendar year as required by section 423; and

C. Payment by the insurer of premium taxes with respect to the preceding calendar year.

2. If not so continued by the insurer, its certificate of authority shall expire as at midnight on the June 30th next following such failure of the insurer to continue it in force, unless earlier revoked for failure to pay taxes as provided in section 416. The commissioner shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.

3. The commissioner may, in his discretion, upon the insurer's request made within 3 months after expiration, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration, and upon payment by the insurer of the fee for reinstatement specified in section 601 (fee schedule). Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this State.

§ 416. Suspension or revocation of certificate of authority; mandatory grounds

1. The commissioner shall refuse to continue or shall suspend or revoke an insurer's certificate of authority:

A. If such action is required by any provision of this Title; or

B. If a foreign insurer and it no longer meets the requirements for a certificate of authority, on account of deficiency of capital or surplus or otherwise; or

C. If a domestic insurer and it has failed to cure an impairment of capital or surplus within the time allowed therefor by the commissioner under this Title or is otherwise no longer qualified for the certificate of authority; or

D. If the insurer's certificate of authority to transact insurance therein is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer; or

E. For failure of the insurer to pay taxes on its premiums as required by law.

2. Except in case of insolvency or impairment of required capital or sur-

plus, or suspension or revocation by another state as referred to in paragraph D, the commissioner shall give the insurer at least 20 days' notice in advance of any such refusal, suspension or revocation under this section, and of the particulars of the reasons therefor. If the insurer requests a hearing thereon within such 20 days, such request shall automatically stay the commissioner's proposed action until his order is made on such hearing.

§ 417. Suspension or revocation of certificate of authority; discretionary and special grounds

1. The commissioner may, in his discretion, refuse to continue or may suspend or revoke an insurer's certificate of authority if he finds after a hearing thereon, or upon waiver of hearing by the insurer, that the insurer has violated or failed to comply with any lawful order of the commissioner, or has willfully violated or willfully failed to comply with any lawful regulation of the commissioner, or has violated any provision of this Title other than those for violation of which suspension or revocation is mandatory.

2. The commissioner shall suspend or revoke an insurer's certificate of authority on any of the following grounds, if he finds after a hearing thereon that the insurer:

A. Is in unsound condition, or is being fraudulently conducted, or is in such condition or using such methods and practices in the conduct of its business as to render its further transaction of insurance in this State currently or prospectively hazardous or injurious to policyholders or to the public; or

B. With such frequency as to indicate its general business practice in this State, has without just cause failed to pay, or delayed payment of, claims arising under its policies, whether the claim is in favor of an insured or is in favor of a third person; or, with like frequency, without just cause compels insureds or claimants to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or an insured to secure full payment or settlement of such claims; or

C. Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records and files for examination by the commissioner when required, or refuse to perform any legal obligation relative to the examination; or

D. Has failed to pay any final judgment rendered against it in this State upon any policy, bond, recognizance or undertaking as issued or guaranteed by it, within 30 days after the judgment became final or within 30 days after dismissal of an appeal before final determination, whichever date is the later.

3. The commissioner may, in his discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation or other delinquency proceedings, have been commenced in any state by the public insurance supervisory official of such state.

§ 418. Order, notice of suspension or revocation; publication; effect upon

agents' authority

1. All suspensions or revocations of, or refusal to continue, an insurer's certificate of authority shall be by the commissioner's order given to the insurer.

2. Upon issuance of the order, the commissioner shall forthwith give notice thereof to the insurer's agents in this State of record in the department, and shall likewise suspend or revoke the authority of such agents to represent the insurer.

§ 419. Duration of suspension; insurer's obligation during suspension period; reinstatement

1. Suspension of an insurer's certificate of authority shall be for such period as the commissioner specifies in the order of suspension, but not to exceed one year. During the suspension period the commissioner may rescind or shorten the suspension by his further order.

2. During the suspension period the insurer shall not solicit or write any new business in this State, but shall file its annual statement, pay fees, licenses and taxes as required under this Title, and may service its business already in force in this State, as if the certificate of authority had continued in full force.

3. Upon expiration of the suspension period, if within such period the certificate of authority has not terminated, the insurer's certificate of authority shall automatically reinstate unless the commissioner finds that the causes of the suspension, being other than a past event, are continuing, or that the insurer is otherwise not in compliance with the requirements of this Title, and of which the commissioner shall give the insurer notice not less than 30 days in advance of expiration of the suspension period.

4. Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this State to represent the insurer shall likewise reinstate. The commissioner shall promptly notify the insurer and its agents in this State, of record in the department, of such reinstatement.

§ 420. General corporation laws inapplicable to foreign insurers

The general corporation laws of this State shall not apply as to foreign insurers holding certificates of authority to transact insurance in this State.

§ 421. Commissioner process agent for insurers

1. Before the commissioner shall authorize it to transact insurance in this State, each insurer shall appoint the commissioner, and his successors in office, as its agent to receive service of legal process issued against the insurer in this State. The appointment shall be made on a form as designated and furnished by the commissioner, and shall be accompanied by a copy of a resolution of the board of directors or like governing body of the insurer, if an incorporated insurer, showing that those officers who executed the appointment were duly authorized to do so on behalf of the insurer.

2. The appointment shall be irrevocable, shall bind the insurer and any

successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force any contract of the insurer in this State or any obligation of the insurer arising out of its transactions in this State.

3. Service of such process against a foreign or alien insurer shall be made only by service thereof upon the commissioner.

4. Service of such process against a domestic insurer may be made as provided hereunder, or in any other manner provided by law.

5. At the time of application for a certificate of authority the insurer shall file the appointment with the commissioner, together with designation of the person to whom process against it served upon the commissioner is to be forwarded. The insurer may change such designation by a new filing.

6. A copy of such appointment, certified by the commissioner, shall be received in evidence in all courts of this State.

§ 422. Serving process

1. Service of process against an insurer for whom the commissioner is agent to receive service shall be made by delivering to and leaving with the commissioner, his deputy or a person in apparent charge of his office during the commissioner's absence, 2 copies of the process, together with fee therefor as specified in section 601 (fee schedule), taxable as costs in the action.

2. Upon such service the commissioner shall forthwith mail by certified mail one of the copies of such process with the date and time of service of same on the commissioner noted thereon, to the person currently designated by the insurer to receive the same as provided in section 421.

3. Process served in the manner provided by this section shall for all purposes constitute valid and binding personal service upon the insurer within this State.

4. The commissioner shall keep a record of the day of service upon him of all legal process.

§ 423. Annual statement

1. Each authorized insurer shall annually on or before March 1st, or within any reasonable extension of time therefor which the commissioner for good cause may have granted on or before such March 1st, file with the commissioner a full and true statement of its financial condition, transactions and affairs as of December 31st preceding. The statement shall be in the general form and context of, and require information as called for by, the form of annual statement as currently in general and customary use in the United States for the type of insurer and kinds of insurance to be reported upon, with any useful or necessary modification or adaptation thereof and as supplemented by additional information required by the commissioner. The statement shall be verified by the oath of the insurer's president or vice-president, and secretary or actuary as applicable, or in the absence of the foregoing, by 2 other principal officers; or if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation.

2. The statement of an alien insurer shall be verified by its United States manager or other officer duly authorized, and shall relate only to the insurer's transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to such an insurer's affairs throughout the world, the insurer shall file such statement with the commissioner as soon as reasonably possible.

3. The commissioner may refuse to continue, or may suspend or revoke, the certificate of authority of any insurer failing to file its annual statement when due.

4. At time of filing, the insurer shall pay the fee for filing its annual statement as prescribed by section 601 (fee schedule).

§ 424. Same—Penalty for late or false statement

1. An insurer failing, without just cause beyond the reasonable control of the insurer, to file its annual statement as required in section 423 shall forfeit to the State \$25 for each day of delinquency, to be collected if necessary, by civil action against the insurer in the District Court, Southern Kennebec division.

2. Any director, officer, agent or employee of any insurer who subscribes to, makes or concurs in making or publishing, any annual or other statement required by law, knowing the same to contain any material statement which is false, shall be punished by a fine of not more than \$5,000, or by imprisonment for not less than one year, or both such fine and imprisonment.

§ 425. Transactions with parent corporation, subsidiaries, and affiliates

1. No insurer shall engage directly or indirectly in any transaction or agreement with its parent corporation, or with any subsidiary or affiliated person which shall result or tend to result in:

A. Substitution through any method of any asset of the insurer with an asset or assets of inferior quality or lower fair market value; or

B. Deception as to the true operating results of the insurer; or

C. Deception as to the true financial condition of the insurer; or

D. Allocation to the insurer of a proportion of the expense of combined facilities or operations which is unfair and unfavorable to the insurer; or

E. Unfair, unnecessary or excessive charges against the insurer for services, or facilities, or supplies or reinsurance; or

F. Unfair and inadequate charges by the insurer for reinsurance, services, facilities or supplies furnished by the insurer to others; or

G. Payment by the insurer for services, facilities, supplies or reinsurance not reasonably needed by the insurer.

2. In all transactions between the insurer and its parent corporation, or involving the insurer and any subsidiary or affiliated person, full recognition shall be given to the paramount duty and obligation of the insurer to protect the interests of policyholders, both existing and future.

3. For the purposes of this section a "subsidiary" is a person of which either the insurer or the parent corporation, or both, holds practical control, and an "affiliated person" is a person controlled by any combination of the insurer, the parent corporation, a subsidiary, or the principal stockholders or officers or directors of any of the foregoing.

§ 426. Resident agent; countersignature law

1. Except as provided in section 427, a foreign authorized insurer shall not effect an insurance contract covering a resident of this State, property situated in this State, a risk incident to the performance or nonperformance of any obligation to be performed in this State, or a risk incident to any obligation which is governed by the laws of this State though actually to be performed elsewhere, unless it is issued or countersigned by a duly licensed agent of the insurer resident in this State.

2. The countersignature shall be in the manner provided by section 1611 (signature, countersignature of policies).

3. A nonresident agent or nonresident broker shall pay the countersigning agent countersignature fee as provided by section 1612 (countersignature fee).

§ 427. Same—Exceptions

Section 426 shall not apply as to any of the following:

1. Life insurance or annuity contracts, or supplemental contracts against accidental death or permanent and total disability made in connection therewith;

2. Insurance covering the rolling stock of a railroad or any vessel, aircraft or motor carrier used in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance or operation of them;

3. Insurance covering any property in interstate or foreign commerce, or any liability or risk incidental to it;

4. Reinsurance;

5. Bid bonds issued in connection with any public or private contract;

6. Group insurance of a type permitted by this Title issued to a non-resident policyholder, and any insurance certificate applicable to it.

§ 428. Retaliatory provision

1. When by or pursuant to the laws of any other state or foreign country

or province any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material requirements, obligations, prohibitions or restrictions are or would be imposed upon Maine insurers doing business or that might seek to do business in such state, country or province, or upon the agents or representatives of such insurers or upon brokers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or obligations, prohibitions or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, or upon brokers, of such other state, country or province under the statutes of this State, so long as such laws of such other state, country or province continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties or deposit requirements or other material requirements, obligations, prohibitions or restrictions of whatever kind shall be imposed by the commissioner upon the insurer, or upon the agents or representatives of such insurers, or upon brokers, of such other state, country or province doing business or seeking to do business in Maine. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state, country or province on Maine insurers or their agents or representatives or upon Maine brokers shall be deemed to be imposed by such state, country or province within the meaning of this section.

2. This section shall not apply as to personal income taxes, or as to ad valorem taxes on real or personal property, or as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the commissioner in determining the propriety and extent of retaliatory action under this section.

3. For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada or a province thereof, shall be that state designated by the insurer in writing filed with the commissioner at time of admission to this State or within 6 months after the effective date of this Act, whichever date is the later, and may be any one of the following states:

- A. That in which the insurer was first authorized to transact insurance;
- B. That in which is located the insurer's principal place of business in the United States; or
- C. That in which is held the largest deposit of trustee assets of the insurer for the protection of its policyholders in the United States.

If the insurer makes no such designation, its domicile shall be deemed to be that state in which is located its principal place of business in the United States.

4. The domicile of an insurer formed under the laws of Canada or a province thereof shall be that province of Canada in which its head office is located.

SUBCHAPTER II

INSURANCE EMERGENCIES

§ 471. Proclamation by Governor

Whenever it appears to the Governor that the welfare of the State or any section thereof, or the welfare and security of insurers under the supervision of the commissioner or their insureds or beneficiaries require, the Governor may proclaim that an insurance emergency exists and this subchapter shall thereupon become effective.

§ 472. Rules and regulations

During the period of any insurance emergency described in section 471, the commissioner shall have power to make, amend or rescind such rules and regulations governing the business of any insurers as he deems expedient in order to adopt and maintain sound methods of protecting the interests of insurer, insureds, beneficiaries or the public.

§ 473. Insurers regulated; suspended

During any insurance emergency period as described in sections 471 and 472, the commissioner is empowered to suspend for such time or times as he may determine the transaction of insurance functions of any authorized insurer, whether domestic or foreign, solvent or otherwise, and to limit its insurance business in volume or character to such particular amounts or classifications and for such time or times as he may deem advisable.

§ 474. Payments deferred

During any insurance emergency period as described in sections 471 and 472, the commissioner shall have authority to postpone or defer, by rules or orders made and issued by him, for such time or times as he may determine, the payment of any amount payable under the terms of any policy of insurance, annuity or pure endowment contract, and the payment of judgments, notes, drafts, checks, bills of exchange or other forms of payment of claims due from insurers to any person, firm or corporation, whether such claim is liquidated or unliquidated, due or to become due at a day certain, and defer the payment of premiums on policies affected by such postponements or suspensions and may direct payment in full or in part whenever in his discretion such payment may be safely consummated.

§ 475. "Insurer" defined

The words "insurer" or "insurers" as used in this subchapter shall include corporations, interinsurers, associations, societies and orders as well as partnerships and individual agents representing such organizations.

§ 476. Personal responsibility of the commissioner limited

The commissioner shall not be held legally responsible for any act or failure to act in the premises when such act or failure to act shall have been shown to be the result of good faith.

§ 477. Duration at will of Governor

The authority and power given the commissioner under this subchapter shall terminate and be of no effect when the Governor proclaims that any insurance emergency has ceased to exist.

§ 478. Jurisdiction of courts

During any emergency insurance period as described in sections 471 and 472, the commissioner is authorized to issue such directions, rules or orders as in his discretion the circumstances may warrant, and any Justice of the Supreme Judicial or Superior Courts shall have full jurisdiction to enforce this chapter by appropriate decrees.

§ 479. Penalties

Any violation of any order issued by virtue of this subchapter or any rule or regulatory provision made by the commissioner pursuant thereto shall be punishable by a fine of not more than \$1,000 or by imprisonment for less than one year, or by both.

CHAPTER 7
FEES AND TAXES

§ 601. Fee schedule

The commissioner shall collect in advance, and persons so served shall pay to the commissioner, fees, licenses and miscellaneous charges as follows:

1. Insurer's certificate of authority

A. For filing application for initial certificate of authority, including all documents submitted as part of such application \$300.00

B. Issuance, and each annual continuation 100.00

C. Reinstatement (section 415), annual continuation fee plus 50% thereof

2. Charter documents, other than those filed with application for certificate of authority. Filing amendments to certificate of organization, articles or certificate of incorporation, charter, bylaws, power of attorney, as to reciprocal insurers, and other constituent documents of the insurer, each document 5.00

3. Annual statement of insurer, filing 50.00

4. Service of process
Acceptance of service of process 5.00

5. Agents' licenses and appointments

A. Application for original resident agent license and issuance, if issued 5.00

B. Appointment of resident agent, each insurer 5.00

Annual continuation of appointment, per year	
Each domestic mutual nonlife insurer	3.00
Each other insurer	5.00
C. Temporary license	5.00
D. Limited license (section 1531)	5.00
E. Nonresident agent license, application and issuance, if issued	15.00
Appointment of such agent, each insurer	10.00
Annual continuation of appointment, each insurer, per year	10.00
6. Broker licenses	
A. Resident broker, application for original license and issuance, if issued	25.00
Annual continuation	25.00
B. Nonresident broker, application for original license and issuance, if issued	50.00
Annual continuation	50.00
C. Surplus lines broker, application for original license and issuance, if issued	25.00
Annual continuation	25.00
7. Consultant license	
Application for original license and issuance, if issued	25.00
Annual continuation	25.00
8. Adjuster license	
Application for original license and issuance, if issued	5.00
Annual continuation	5.00
9. Examination for license	
Filing application for each examination, other than consultants	15.00
Consultants, filing application, each examination	25.00
10. Insurance vending machines	
Filing application for license and issuance, if issued, each machine	50.00
Annual continuation of license, each machine	50.00
11. Rating organizations	
License fee	50.00
Annual renewal of license	50.00
12. Road or tourist service license, annually	20.00
Agent license, annually	2.00
13. Certified copy of insurer certificate of authority or other license issued under this Title	2.00

14. Copies of other documents on file in the department:
Reasonable charge as fixed by the commissioner; and for certifying and fixing official seal 1.00

§ 602. Tax on premiums and annuity considerations

As to returns and taxes on premiums and annuity considerations refer to Title 36, section 2511 et seq.

§ 603. Record, remittance of fees

The commissioner shall keep a correct account of all fees and moneys received by him by virtue of his office, and shall pay the same over to the Treasurer of State forthwith.

§ 604. Insurance Regulatory Fund

1. There is created in the State Treasury a dedicated account to be designated the "Insurance Regulatory Fund," the funds of which are hereby appropriated for the partial support and maintenance of the Insurance Department.

2. The Treasurer of State shall credit the following funds to the Insurance Regulatory Fund:

A. The balance, if any, remaining on the effective date of this Act of funds allocated to the department pursuant to Title 24, section 372;

B. Fees, licenses and other charges collected and remitted by the commissioner under section 601 (fee schedule), or as increased pursuant to section 428 (retaliatory provision); and

C. Amounts collected for investigation reports under section 1519.

3. Expenditures by the department from the insurance regulatory fund shall be subject to budget control in the same manner as applies to departments of State in general.

§ 605. In lieu, pre-emption provision

1. Payment by the insurer of the taxes as required by Title 36 section 2511 et seq. shall be in lieu of all taxes imposed by the State upon premiums or upon income, and of any franchise, privilege or other taxes measured by income of the insurer.

2. The State hereby preempts the field of regulating, or of imposing excise, privilege, franchise, income, license, permit, registration and similar taxes, licenses and fees upon, insurers and their general agents, agents and other representatives as such; and on the intangible property of insurers or such representatives; and all political subdivisions or agencies thereof in this State are prohibited from regulating insurers or their general agents, agents and other representatives as such, and from imposing upon them any

such tax, license, or fee. Except, that this provision shall not prohibit the imposition by political subdivisions of taxes upon real and tangible personal property.

3. This section shall not be modified or repealed by any law of general application hereafter enacted unless expressly referred to or expressly repealed therein.

CHAPTER 9

KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE

SUBCHAPTER I

KINDS OF INSURANCE

§ 701. Definitions not mutually exclusive

It is intended that certain insurance coverages may come within the definitions of 2 or more kinds of insurance as defined in this chapter, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage is likewise reasonably includable.

§ 702. "Life insurance" defined

Life insurance is insurance on human lives. The transaction of life insurance includes also the granting endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance.

§ 703. "Annuity" defined

For the purposes of this Title an "annuity" is a contract under which obligations are assumed with respect to periodic payments for a specific term or terms or where the making or continuance of all or of some of such payments, or the amount of any such payment, is dependent upon the continuance of human life, except payments made pursuant to optional modes of settlement under the authority of section 702 ("life insurance" defined). Such a contract which includes extra benefits of the kinds set forth in sections 702 (life insurance defined) and 704 (health insurance defined) shall nevertheless be deemed to be an annuity if such extra benefits constitute a subsidiary or incidental part of the entire contract.

§ 704. "Health insurance" defined

Health insurance is insurance of human beings against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto.

§ 705. "Property insurance" defined

Property insurance is insurance on real or personal property of every kind and of every interest therein against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage. Property insurance does not include title insurance, as defined in section 709.

§ 706. "Surety insurance" defined

Surety insurance includes:

1. Fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust.

2. Insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship.

3. Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, gems, precious and semi-precious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

§ 707. "Casualty insurance" defined

1. Casualty insurance includes:

A. Vehicle insurance. Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incidental to ownership, maintenance or use of any such vehicle, aircraft or animal; together with insurance against accidental injury to individuals, irrespective of legal liability of the insured, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking or caused by being struck by a vehicle, aircraft or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft or draft or riding animal.

B. Liability insurance. Insurance against legal liability for the death, injury or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.

C. Workmen's compensation and employer's liability. Insurance of the obligations accepted by, imposed upon or assumed by employers under law for death, disablement or injury of employees.

D. Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers and documents, resulting from any cause.

E. Personal property floater. Insurance upon personal effects against loss or damage from any cause.

F. Glass. Insurance against loss or damage to glass, including its lettering, ornamentation and fittings.

G. Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured.

H. Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus.

I. Credit. Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured.

J. Malpractice. Insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, and including medical hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary or professional service.

K. Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection upon, elevators.

L. Congenital defects. Insurance against congenital defects in human beings.

M. Livestock. Insurance against loss or damage to livestock, and services of a veterinary for such animals.

N. Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury or sickness of performers, participants, directors or other principals.

O. Miscellaneous. Insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this subchapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

2. Provision of medical, hospital, surgical and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under subsection 1, paragraphs A (vehicle), B (liability), D (burglary), G (boiler and machinery), J (malpractice) and K (elevator) shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this Title applicable to life and health insurances.

§ 708. Marine and transportation, "wet marine" insurance defined

1. "Marine and transportation insurance" includes:

A. Insurance against any kinds of loss or damage to:

(1) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to, or in connection with any and all risks, or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and

(2) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance, but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles, and

(3) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise, and

(4) Bridges, tunnels and other instrumentalities of transportation and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion are the only

hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks.

B. "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

2. For the purposes of this Title, "wet marine and transportation" insurance is that part of "marine and transportation" insurance which includes only:

A. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto:

B. Insurance of marine builders' risks, marine war risks and contracts of marine protection and indemnity insurance;

C. Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition; and

D. Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto.

§ 709. "Title insurance" defined

Title insurance is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title.

§ 710. "Multiple line" insurers

A multiple line insurer may transact any 2 or more kinds of insurance, as defined in sections 704 to 709 (health, property, surety, casualty, marine and transportation and title insurance). This provision shall not be deemed to prohibit such an insurer from transacting also life insurance and annuity business if otherwise qualified therefor under this Title.

SUBCHAPTER II

LIMITS OF RISK

§ 721. Limits of risk

1. No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in this State or elsewhere, in an amount exceeding 10% of its surplus to policyholders.

2. A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake and other catastrophic hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of any other hazard insured against.

3. Reinsurance ceded as authorized by section 731 shall be deducted in determining risk retained. As to surety risks, deduction shall be made of the amount assumed by any authorized co-surety and the value of any security deposited, pledged or held subject to the surety's consent and for the surety's protection.

4. As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

5. "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the commissioner, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

6. This section shall not apply to life or health insurance, annuities, title insurance, insurance of wet marine and transportation risks, workmen's compensation insurance, employers' liability coverages, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

7. Limits of risk as to newly formed domestic mutual insurers shall be as provided in section 3352.

SUBCHAPTER III REINSURANCE

§ 731. Reinsurance

1. An insurer may accept reinsurance only of such kinds of risks, and retain risk thereon within such limits, as it is otherwise authorized to insure.

2. An insurer may reinsure all or part of any particular risk with any solvent insurer authorized to transact insurance in one or more states and having surplus to policyholders in amount not less than the paid-in capital stock required of an authorized foreign stock insurer transacting like kinds of insurance. Cession of bulk reinsurance by a domestic insurer is subject to section 3483 (bulk reinsurance).

3. No credit shall be allowed to an insurer, as an asset or as a deduction from liability, for reinsurance ceded to an alien insurer unless such alien insurer has surplus to policyholders in amount not less than the paid-in capital

stock required of an authorized foreign stock insurer transacting like kinds of insurance and is authorized to transact insurance in at least one state of the United States; or, in the case of a group of individual, unincorporated alien insurers, has assets held in trust for the benefit of its United States policyholders in a sum not less than \$50,000,000, and is authorized to transact insurance in at least one state.

4. Credit shall be allowed as an asset or as a deduction from liability, to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under subsection 3, except that no such credit shall be allowed unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

5. Upon request of the commissioner an insurer shall promptly inform the commissioner in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.

6. This section shall not apply to wet marine and transportation insurance.

CHAPTER 11

ASSETS AND LIABILITIES

SUBCHAPTER I

ASSETS

§ 901. "Assets" defined

In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:

1. Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.

2. Investments, securities, properties and loans acquired or held in accordance with this Title, and in connection therewith the following items:

A. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.

B. Declared and unpaid dividends on stock and shares, unless such amount has otherwise been allowed as an asset.

C. Interest due or accrued upon a collateral loan in an amount not to exceed one year's interest thereon.

D. Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the commissioner a collectible asset.

E. Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the prop-

erty less delinquent taxes thereon over the unpaid principal; but in no event shall interest accrued for a period in excess of 18 months be allowed as an asset.

F. Rent due or accrued on real property if such rent is not in arrears for more than 3 months, and rent more than 3 months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

G. The unaccrued portion of taxes paid prior to the due date on real property.

3. Premium notes, policy loans and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy.

4. The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer.

5. Premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable thereon. The foregoing limitation shall not apply to premiums payable directly or indirectly by the United States Government or by any of its instrumentalities.

6. Installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply.

7. Notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the unearned premium reserves carried thereon.

8. The full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under section 731.

9. Amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty.

10. Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the commissioner available for the payment of losses and claims and at values to be determined by him.

11. All assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon therein.

12. As to a title insurer, its title plant and equipment reasonably necessary for conduct of its abstract or title insurance business, at not to exceed the cost thereof.

13. Electronic and mechanical machines and related equipment constituting a data processing, recordkeeping or accounting system or systems if the cost

of each such system is at least \$25,000, which cost shall be amortized in full over a period not to exceed 10 years. The aggregate amount invested in all such systems shall not exceed 5% of the insurer's assets.

14. Other assets, not inconsistent with the provisions of this section, deemed by the commissioner to be available for the payment of losses and claims, at values to be determined by him.

§ 902. Assets not allowed

In addition to assets impliedly excluded by the provisions of section 901, the following expressly shall not be allowed as assets in any determination of the financial condition of an insurer:

1. Good will, trade names and other like intangible assets.
2. Advances to officers, other than policy loans, whether secured or not, and advances to employees, agents and other persons on personal security only.
3. Stock of such insurer, owned by it, or any equity therein or loans secured thereby, or any proportionate interest in such stock acquired or held through the ownership by such insurer of an interest in another firm, corporation or business unit.
4. Furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature and supplies, other than data processing, recordkeeping and accounting systems authorized under section 901, subsection 13, except in the case of title insurers such materials and plants as the insurer is expressly authorized to invest in under section 1129 and except, in the case of any insurer, such personal property as the insurer is permitted to hold pursuant to chapter 13, or which is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office and similar purposes.
5. The amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value thereof as determined under this Title.

SUBCHAPTER II

LIABILITIES

§ 921. Liabilities, in general

In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

1. The amount of its capital stock outstanding, if any.
2. The amount, estimated consistent with the provisions of this Title, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.

3. With reference to life insurance policies and annuity contracts, and disability and accidental death benefits in or supplemental thereto:

A. The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest and methods adopted pursuant to this Title which are applicable thereto.

B. Reserves for disability benefits, for both active and disabled lives.

C. Reserves for accidental death benefits.

D. Any additional reserves which may be required by the commissioner consistent with applicable customary and general practice in insurance accounting.

4. As to health insurance policies, the reserve required under section 925.

5. With reference to insurance other than specified in subsections 3 and 4, and other than title insurance, the amount of the unearned premium reserves computed in accordance with this subchapter.

§ 922. Disallowance of "wash" transactions

1. The commissioner shall disallow as an asset or as a credit against liabilities any reinsurance found by him after a hearing thereon to have been arranged for the purpose principally of deception as to the ceding insurer's financial condition as at the date of any financial statement of the insurer. Without limiting the general purport of the foregoing provision, reinsurance of any substantial part of the insurer's outstanding risks contracted for in fact within 4 months prior to the date of any such financial statement and cancelled in fact within 4 months after the date of such statement, or reinsurance under which the reinsurer bears no substantial insurance risk or chance of net loss to itself, shall prima facie be deemed to have been arranged principally for the purpose of deception.

2. The commissioner shall disallow as an asset any deposit, funds or other assets of the insurer found by him after a hearing thereon:

A. Not to be in good faith the property of the insurer, and

B. Not freely subject to withdrawal or liquidation by the insurer at any time for the payment or discharge of claims or other obligations arising under its policies, except as to statutory deposits of the insurer, and

C. To be resulting from arrangements made principally for the purpose of deception as to the insurer's financial condition as at the date of any financial statement of the insurer.

3. The commissioner may suspend or revoke the certificate of authority of any insurer which has knowingly been a party to any such deception or attempt thereat.

§ 923. Unearned premium reserve

1. As to property, casualty and surety insurance the insurer shall maintain an unearned premium reserve on all policies in force.

2. Except as provided in section 924 as to marine and transportation risks, the unearned premium reserve shall be computed, after deduction of applicable reinsurance in solvent insurers, at the insurer's election either

A. As equal to not less than 50% of premiums in force, or

B. On a monthly or more frequent pro rata basis as to all such reserves. After adopting a method for computing such reserve, an insurer shall not change methods without approval of the insurance supervisory official of the insurer's domicile.

§ 924. Unearned premium reserve for marine and transportation insurance

As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned; and the commissioner may require the insurer to carry a reserve equal to 100% of premiums on trip risks written during the month ended as of the date of statement.

§ 925. Health insurance policy reserves

For all health insurance policies the insurer shall maintain an active life reserve which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the commissioner and, in no event, less in the aggregate than the pro rata gross unearned premiums for such policies.

§ 926. Title insurance reserves

In addition to an adequate reserve as to outstanding losses as required under section 921, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

1. Ten percent of the total amount of the risk portion of premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

2. During each of the 20 years next following the year in which the title insurance contract was issued, the reserve applicable to the contract may be reduced by 5% of the original amount of such reserve.

§ 927. Mortgage guaranty contingency reserve

1. Casualty or surety insurers insuring real property mortgage lenders against loss by reason of nonpayment of the mortgage indebtedness by the borrower, shall maintain a contingency reserve for the protection of policyholders against the effects of adverse economic cycles.

2. The insurer shall contribute to such contingency reserve 50% of the net premiums, gross premiums less premiums returned to policyholders, written on such insurance remaining after establishment of the unearned premium reserve.

3. Subject to the commissioner's approval, the contingency reserve shall be available for payment of losses only when the insurer's incurred losses in any one calendar year exceed the rate formula expected losses by 10% of the related earned premiums.

SUBCHAPTER III

LIFE INSURANCE RESERVES

§ 951. Short title

Sections 951 to 957 shall be known as the "Standard Valuation Law."

§ 952. Calculation of reserve liabilities

1. The commissioner shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting business in this State, except that in the case of an alien insurer, such valuation shall be limited to its United States business; and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods, net level premium method or other, used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of any foreign or alien insurer, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by law of that state or jurisdiction.

2. Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

§ 953. Minimum standards

1. This subsection applies only to policies and contracts issued prior to January 1, 1948, or such earlier date after July 21, 1945, as shall have been elected by an insurer as the date on and after which it would comply with the standard nonforfeiture law.

The legal minimum standard of value for such life insurance policies issued on or after the first day of September, 1931, by any life insurer chartered by this State, shall be the American Experience Table of Mortality with interest

at $3\frac{1}{2}\%$ per year. Any such life insurer may, at its option, value its insurance policies issued on and after such day, in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with interest not higher than $3\frac{1}{2}\%$ per year by the net level premium method. Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

2. This subsection applies only to policies and contracts issued on and after January 1, 1948, or such earlier date after July 21, 1945, as shall have been elected by an insurer as the date on and after which it would comply with the standard nonforfeiture law.

The minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation method defined in section 954, $3\frac{1}{2}\%$ interest, and the following tables:

A. Standard Ordinary Mortality Table. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, — the Commissioners 1941 Standard Ordinary Mortality Table; provided, however, that the Commissioners 1958 Standard Ordinary Mortality Table shall be the table for such minimum standard for such policies issued on and after January 1, 1966, or such earlier date after September 12, 1959, as shall have been elected by an insurer as the date on and after which it would use such table as the basis for minimum cash surrender values and nonforfeiture benefits under the standard nonforfeiture law; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in sections 951 to 957 may be calculated according to an age not more than 3 years younger than the actual age of the insured.

B. Standard Industrial Mortality Table. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, — the 1941 Standard Industrial Mortality Table; provided, however, that the Commissioners 1961 Standard Industrial Mortality Table shall be the table for such minimum standard for such policies issued on and after January 1, 1968, or such earlier date after September 1, 1963, as shall have been elected by the insurer as the date on and after which it would use such table as the basis for minimum cash surrender values and nonforfeiture benefits under the standard nonforfeiture law.

C. Standard Annuity Mortality Table or Annuity Mortality Table. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the commissioner.

D. Group Annuity Mortality Table. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies — the Group Annuity Mortality Table for 1951, any modification of such table approved by the commissioner, or, at the option of the insurer, any of the tables or modifications of tables specified for individual

annuity and pure endowment contracts.

E. Class (3) Disability Table. For total and permanent disability benefits in or supplementary to ordinary policies or contracts — for policies or contracts issued on or after January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit; for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966, either such tables or, at the option of the insurer, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

F. Inter-Company Double Indemnity Mortality Table. For accidental death benefits in or supplementary to policies — for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table; for policies issued on or after January 1, 1961 and prior to January 1, 1966, either such table or, at the option of the insurer, the Inter-Company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

G. Group Life Insurance Tables. For group life insurance, life insurance issued on the substandard basis and other special benefits — such table as may be approved by the commissioner.

§ 954. Commissioners reserve valuation method defined

Reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of 1 over 2, as follows:

1. Net level annual premium. A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due. Such net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

2. Net one-year term premium. A net one-year term premium for such benefits provided for in the first policy year.

Reserves according to the commissioners reserve valuation method for:

- A. Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums,
- B. Annuity and pure endowment contracts,
- C. Disability and accidental death benefits in all policies and contracts, and
- D. All other benefits, except life insurance and endowment benefits in life insurance policies,

shall be calculated by a method consistent with the principles of the preceding provisions, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums.

§ 955. Amount of aggregate reserves

In no event shall an insurer's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, which are subject to section 953, subsection 2, be less than the aggregate reserves calculated in accordance with the method set forth in section 954 and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

§ 956. Calculation of reserves

Reserves for any category of policies, contracts or benefits as established by the commissioner, which are subject to section 953, subsection 2, may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein. Reserves for participating life insurance policies, which are subject to section 953, subsection 2, may, with the consent of the commissioner, be calculated according to a rate of interest lower than the rate of interest used in calculating the nonforfeiture benefits in such policies, with the further proviso that if such lower rate differs from the rate used in the calculation of the nonforfeiture benefits by more than $\frac{1}{2}\%$ the insurer issuing such policies shall file with the commissioner a plan providing for such equitable increases, if any, in the cash surrender values and nonforfeiture benefits in such policies as the commissioner shall approve.

§ 957. Deficiency reserve

If the gross premium charged by any life insurer on any policy or contract which is subject to section 953, subsection 2, is less than the net premium for the policy or contract according to the mortality table, rate of interest and method used in calculating the reserve thereon, there shall be maintained on such policy or contract a deficiency reserve in addition to all other reserves required by law. For each such policy or contract the deficiency reserve shall be the present value, according to such standard, of an annuity of the difference between such net premium and the premium charged for such policy or contract, running for the remainder of the premium-paying period.

SUBCHAPTER IV
VALUATION OF ASSETS

§ 981. Valuation of bonds

1. All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

A. If purchased at par, at the par value.

B. If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

C. Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such securities.

D. Unless otherwise provided by valuation established or approved by the commissioner, no such security shall be carried at above the call price for the entire issue during any period within which the security may be so called.

2. The commissioner shall have full discretion in determining the method of calculating values according to the rules set forth in this section.

§ 982. Valuation of other securities

1. Securities, other than those referred to in section 981, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by him as representing their fair market value.

2. Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of computation as he may approve.

3. The stock of a subsidiary of an insurer shall not be valued on a basis in excess of the value of such of the assets only of such subsidiary as would constitute lawful investments of the insurer if acquired or held directly by the insurer.

§ 983. Valuation of property

1. Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the commissioner to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and

the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

2. Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal. If valuation is based on an appraisal more than 3 years old, the commissioner may at his discretion call for and require a new appraisal in order to determine fair value.

§ 984. Valuation of purchase money mortgages

Purchase money mortgages on real property referred to in section 983, subsection 1, shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or 90% of the fair value of such real property, whichever is less.

CHAPTER 13 INVESTMENTS

§ 1101. Scope of chapter

Except as provided in section 1137, this chapter applies to domestic insurers only.

§ 1102. Eligible investments

1. Insurers shall hereafter invest in or lend their funds on the security of, and shall hold as invested assets, eligible investments only those as prescribed in this chapter.

2. Any particular investment held by an insurer on the effective date of this Act, which was a legal investment at the time it was made, and which the insurer was legally entitled to possess immediately prior to such effective date, shall be deemed to be an eligible investment.

3. Eligibility of an investment shall be determined as of the date of its making or acquisition, except as stated in subsection 2.

4. Any investment limitation or diversification requirement based upon the amount of the insurer's assets or particular funds shall relate to such assets or funds as shown by the insurer's annual statement as of the December 31st next preceding date of acquisition of the investment by the insurer, or as shown by a current applicable financial statement resulting from merger of another insurer, bulk reinsurance, or change in capitalization.

5. Nothing in this chapter shall be deemed to prohibit an insurer from advancing funds to another insurer upon the type of agreement provided for in section 3415 (borrowed capital funds), and subject to the terms of such section 3415.

§ 1103. General qualifications

1. No security or investment, other than real and personal property ac-

quired under section 1125 (real estate), shall be eligible for acquisition unless it is interest bearing or interest accruing or entitled to dividends, if declared, or is otherwise income-entitled, is not then in default in any respect, and the insurer is entitled to receive for its exclusive account and benefit the interest or income accruing thereon.

2. No provision of this chapter shall prohibit the acquisition by an insurer of other or additional securities or property if received as a dividend or as a lawful distribution of assets, or upon a debt or judgment, or under a lawful and bona fide agreement of bulk reinsurance, merger or consolidation. Any security or property so acquired which is not otherwise an eligible investment under this chapter shall be disposed of pursuant to section 1133 if real estate, or pursuant to section 1134 if personal property or securities.

§ 1104. Authorization, record of investments

1. An insurer shall not make any investment or loan, other than policy loans or annuity contract loans of a life insurer, unless the same is authorized or approved by the insurer's board of directors or by a committee thereof charged with supervision of investments and loans.

2. The insurer shall maintain a full record of each investment, showing, among other pertinent information, the name of any officer, director or principal stockholder of the insurer having any direct, indirect or contingent interest in the securities, loan or property constituting the investment, or in the person in whose behalf the investment is made, and the nature of such interest.

§ 1105. Diversification — Life, life/health insurers

Investments of an insurer transacting life or health insurances or both shall as to such insurances be subject to the following diversification requirements and limitations:

1. Not less than 60% of the insurer's assets in aggregate amount shall consist of cash funds and investments eligible under the following sections:

- A. 1107 (public obligations);
- B. 1108 (obligations, stock of certain federal and international agencies);
- C. 1109 (corporate obligations);
- D. 1112 (preferred or guaranteed stocks);
- E. 1116 (trustees' or receivers' obligations);
- F. 1117 (equipment trust certificates);
- G. 1118 (acceptances, bills of exchange);
- H. 1119 (savings institutions);
- I. 1120, subsection 1 (bank's common trust fund);

J. 1121 (hydrocarbon production payments);

K. 1122 (policy loans);

L. 1124 (mortgage loans);

M. 1126 (housing developments); and

N. 1130 (investments in foreign countries).

2. The insurer shall not invest in aggregate amount over 20% of its assets in all investments eligible under the following sections of this chapter:

A. 1113 (common stocks);

B. 1114 (insurance stocks);

C. 1115 (stocks of subsidiaries) as to subsidiary insurance corporations;
and

D. 1120, subsection 2 (mutual funds).

3. The insurer shall not invest in aggregate amount over 15% of its assets in all investments in real estate eligible under sections 1125 (real estate) and 1127 (leased property).

4. The insurer shall not invest over 10% of its assets in investments eligible under section 1127 (leased property).

5. Notwithstanding any other provision an insurer may invest in the aggregate an amount not in excess of 35% of its surplus as to policyholders in all investments eligible under the section 1115 (stocks of subsidiaries).

6. Except as otherwise expressly provided an insurer shall not invest more than 10% of its assets in the securities of any one person, other than investments eligible under the following sections:

A. 1107 (public obligations);

B. 1108 (obligations, stock of certain federal and international agencies);
and

C. 1122 (policy loans).

7. Other investment limitations shall be as provided in particular sections of this chapter.

§ 1106. Diversification; property, casualty and other nonlife insurers

Investments of an insurer transacting property, casualty, surety and other such insurances other than life insurance and annuity business, and including health insurance when transacted by an insurer also transacting casualty insurance, shall as to such insurances be subject to the following diversification

requirements and limitations:

1. Not less than 30% of the insurer's assets in aggregate amount shall consist of cash funds, agents' balances less than 90 days past due, and investments eligible under the following sections:

- A. 1107 (public obligations);
- B. 1108 (obligations, stock of certain federal and international agencies);
- C. 1109 (corporate obligations);
- D. 1112 (preferred or guaranteed stocks);
- E. 1116 (trustees' or receivers' obligations);
- F. 1117 (equipment trust certificates);
- G. 1118 (acceptances, bills of exchange);
- H. 1119 (savings institutions);
- I. 1120 (common trust funds, mutual funds);
- J. 1124 (mortgage loans); and
- K. 1126 (housing developments).

2. The insurer shall not invest in aggregate amount in excess of its surplus as to policyholders in all investments eligible under the following sections of this chapter:

- A. 1113 (common stocks);
- B. 1114 (insurance stocks);
- C. 1115 (stocks of subsidiaries); and
- D. 1120, subsection 2 (mutual funds).

3. The insurer shall not invest in aggregate amount over 20% of its assets in all investments in real estate eligible under sections 1125 (real estate) and 1127 (leased property).

4. Except as otherwise expressly provided an insurer shall not invest more than 10% of its assets in the securities of any one person, other than investments eligible under the following sections of this chapter:

- A. 1107 (public obligations); and
- B. 1108 (obligations, stock of certain federal and international agencies).

§ 1107. Public obligations

An insurer may invest in bonds or other evidences of indebtedness, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States or by any state thereof, or by Canada or any of the provinces thereof, or by any county, city, town, village, municipality or district therein or by any political subdivision thereof or by a public instrumentality of one or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, from:

1. Taxes levied or by law required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit, or from
2. Adequate special revenues pledged or otherwise appropriated or by law required to be provided for the purpose of such payment; but not including any obligation payable solely out of special assessments on properties benefited by local improvements unless adequate security is evidenced by the ratio of assessment to the value of the property or the obligation is additionally secured by an adequate guaranty fund required by law.

§ 1108. Obligations, stock of certain federal and international agencies

An insurer may invest in the obligations, or stock where stated, issued, assumed or guaranteed by the following agencies of the government of the United States of America, or in which such government is a participant, whether or not such obligations are guaranteed by such government:

1. Farm Loan Bank.
2. Commodity Credit Corporation.
3. Federal Intermediate Credit Banks.
4. Federal Land Banks.
5. Central Bank for Cooperatives.
6. Federal Home Loan Banks, and stock thereof.
7. Federal National Mortgage Association, and stock thereof when acquired in connection with sale of mortgage loans to such association.
8. International Bank for Reconstruction and Development.
9. Inter-American Development Bank.
10. Asian Development Bank.
11. Any other similar agency of, or participated in by, the government of the United States of America and of similar financial quality.

§ 1109. Corporate obligations

An insurer may invest in obligations, other than those eligible for investment under section 1124 (mortgage loans), issued, assumed or guaranteed by any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, which are not in default as to principal or interest and which are qualified under any of the following:

1. Obligations secured by adequate collateral security and bearing fixed interest and if during each of any 3, including either of the last 2, fiscal years of a period of not less than 3 nor more than 5 fiscal years next preceding the date of acquisition by the insurer, the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges, as defined in section 1110, shall have been not less than $1\frac{1}{4}$ times the total of its fixed charges for such year, or obligations which, at the date of acquisition by the insurer, are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant. In determining the adequacy of collateral security, not more than $\frac{1}{3}$ of the total value of such required collateral shall consist of stock other than stock meeting the requirements of section 1112 (preferred or guaranteed stock).

2. Obligations secured by one or more leases, whether or not additionally secured by one or more mortgages, provided the following conditions are met:

A. The leases are assigned directly to the insurer and are noncancellable by either party except under provisions specified in the leases and designed to give adequate protection to the insurer's investment.

B. The aggregate rentals due under all such leases are sufficient to provide

(1) For all expenses (including taxes other than the borrower's income tax) of operation of the leased property during the initial term of such leases and

(2) For amortization during the initial term of such leases of not less than 90% of the investment (or 100% thereof if the investment is not also secured by a mortgage) with interest thereon.

C. The leases make suitable provisions for continuation of adequate payments throughout the life of the investment.

D. The lessees under such leases, or any corporation or instrumentality of government which has assumed or guaranteed the lessees' performance thereunder is such that its obligations would be eligible for investment by an insurer in accordance with the provisions of section 1107 or the aggregate net earnings of such lessees available for fixed charges, as defined in section 1110, is at least equal to that required by subsection 1.

3. Fixed interest bearing obligations, other than those described in subsection 1, if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than $1\frac{1}{2}$ times its annual fixed charges applicable to such period and if during either of the last 2 years of such period such net earnings have been

not less than $1\frac{1}{2}$ times its fixed charges for such year.

4. Adjustment, income or other contingent interest obligations if the net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than $1\frac{1}{2}$ times the sum of its average annual fixed charges and its average annual maximum contingent interest applicable to such period and if during either of the last 2 years of such period such net earnings have been not less than $1\frac{1}{2}$ times the sum of its fixed charges and maximum contingent interest for such year.

5. Fixed interest bearing obligations, other than those described in subsections 1 and 3, if:

A. Net earnings of the issuing, assuming or guaranteeing institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer have averaged per year not less than $1\frac{1}{4}$ times its average annual fixed charges applicable to such period and if during each of any 4 fiscal years of such period such net earnings have been not less than $1\frac{1}{4}$ times its fixed charges for such year;

B. The net earnings of such institution available for its fixed charges during a period of not less than 7 nor more than 10 fiscal years next preceding the date of acquisition by the insurer have been such that for each of any 7 fiscal years of such period such net earnings have been not less than $1\frac{1}{4}$ times its fixed charges for such year; and

C. The liquid assets of such institution have been not less than 105% of its liabilities, other than capital stock and surplus. For the purposes of this subsection, "liquid assets" and "liabilities" shall be determined in reliance upon the latest regular financial statement of the issuing, assuming or guaranteeing institution prepared as of a date not more than 15 months prior to the date of acquisition by the insurer; if net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, "liquid assets" and "liabilities" shall be determined in reliance upon a consolidated financial statement of parent and subsidiary institutions after treating any minority stock interest in such subsidiary institutions as a liability; and the term "liquid assets" shall mean the sum of cash, receivables or portions thereof, as the case may be, payable on demand or not more than 10 years after the date as of which the determination thereof is made for the purposes of this subsection, and readily marketable securities, in each case less applicable reserves and unearned income.

§ 1110. Same—Certain terms defined; net earnings

1. Certain terms used are defined for the purposes of this chapter as follows:

A. "Obligations" includes bonds, debentures, notes or other evidences of indebtedness.

B. "Institution" includes a corporation, a joint-stock association and a business trust.

C. "Net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal, state and other income taxes, depreciation and depletion, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the issuing, assuming or guaranteeing institutions.

D. "Fixed charges" includes interest on funded and unfunded debt, and amortization of debt discount.

2. If net earnings are determined in reliance upon consolidated earnings statements of parent and subsidiary institutions, such net earnings shall be determined after provisions for income taxes of only those subsidiaries in which the parent institution owns directly or indirectly less than 90% of all classes of voting stock, and after proper allowance for minority stock interest, if any; and the required coverage of fixed charges shall be computed on a basis including fixed charges and preferred dividends of subsidiaries other than those payable by such subsidiaries to the parent corporation or to any other of such subsidiaries, except that if the minority common stock interest in the subsidiary corporation is substantial, the fixed charges and preferred dividends may be apportioned in accordance with regulations prescribed by the commissioner.

§ IIII. Same—Application of earnings test

In applying the earnings tests under this chapter to any institution for any period, whether or not in legal existence at the beginning of such period:

1. Earnings from the beginning of such period may include, as determined in accordance with adjusted or pro forma consolidated earnings statements, earnings of any other institution the assets of which have been acquired substantially as an entirety by purchase, merger, consolidation or otherwise after the beginning of such period. If less than substantially all the assets of another institution have been so acquired, and such assets constitute either substantially all the assets of the acquiring institution immediately after such acquisition or substantially all the assets theretofore employed by such other institution in a divisional, branch or other unit operation, the earnings determined to be properly attributable to the assets so acquired may be so included, if certified by an independent accountant approved by the insurer to be earnings so attributable. If any such acquisition of assets has been made from a business enterprise other than an institution, the earnings determined to be attributable to the assets so acquired may likewise be so included if so certified. In the case of any such inclusion of earnings of assets so acquired, fixed charges, contingent interest or dividends for the period of such inclusion shall be either

A. The fixed charges, contingent interest or dividends for such period determined in accordance with adjusted or pro forma consolidated statements for such period giving effect to any additional fixed charges or contingent interest existing or dividends on stock or shares outstanding, immediately after such acquisition, properly attributable to such acquisition, as certified by an independent accountant approved by the insurer to be such fixed charges, contingent interest or dividends so determined, or

B. The fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such acquisition.

2. If any institution has been reorganized pursuant to the bankruptcy law after the beginning of such period, earnings prior to such reorganization of the institution so reorganized may be so included. In the case of the inclusion of earnings prior to such a reorganization, fixed charges, contingent interest or dividends for the period of such inclusion shall be fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such reorganization.

3. If earnings are determined in reliance on consolidated earnings statement of parent and subsidiary institutions,

A. The provisions of this section may also be applied in determining earnings of any subsidiary institution and

B. Any institution which has become a subsidiary institution after the beginning of such period may be included as a subsidiary institution from the beginning of such period.

In the case of any such inclusion of a subsidiary institution, fixed charges, contingent interest or dividends for the period of such inclusion shall be either

A. The fixed charges, contingent interest or dividends for such period determined in accordance with adjusted or pro forma consolidated statements for such period which give effect to any additional fixed charges or contingent interest existing or dividends on stock or shares outstanding, immediately after such subsidiary institution shall have become a subsidiary, properly attributable to the acquisition of stock or shares of such subsidiary institution, during such period and before it became a subsidiary, as certified by an independent accountant approved by the insurer to be such fixed charges, contingent interest or dividends so determined, or

B. The fixed charges or contingent interest existing or dividends on stock or shares outstanding immediately after such subsidiary institution became a subsidiary.

§ 1112. Preferred or guaranteed stocks

An insurer may invest in the preferred or guaranteed stocks or shares of any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, if all of the prior obligations and prior preferred stocks, if any, of such institution at the date of acquisition by the insurer are eligible as investments under this chapter; and if qualified under subsection 1 or subsection 2 following:

1. Preferred stocks or shares shall be deemed qualified if both of the following requirements are met:

A. The earnings of such institution available for its fixed charges for a period of 5 fiscal years next preceding the date of acquisition by the insurer shall have averaged per year not less than $1\frac{1}{2}$ times the sum of its

average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to such period; and

B. During either of the last 2 years of such period such net earnings shall have been not less than $1\frac{1}{2}$ times the sum of its fixed charges, contingent interest and preferred dividend requirements for such year. The term "preferred dividend requirements" shall be deemed to mean cumulative or non-cumulative dividends whether paid or not.

2. Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing institution meets the requirements of section 1109, subsection 3, (corporate obligations), construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends.

§ 1113. Common stocks

An insurer may invest in nonassessable, except as to bank or trust company stocks, and except for taxes, common stocks, other than insurance stocks, of any solvent corporation organized and existing under the laws of the United States or Canada, or of any state or province thereof, if such corporation has had net earnings available for dividends on such stock in at least 5 of the 7 fiscal years next preceding acquisition by the insurer. If the issuing corporation has not been in legal existence for the whole of such 7 fiscal years but was formed as a consolidation or merger of 2 or more businesses of which at least one was in operation on a date 7 years prior to the investment, eligibility of its common stock under this section shall be based upon consolidated pro-forma statements of the predecessor or constituent institutions.

§ 1114. Insurance stocks

1. An insurer may invest in the stocks of other solvent insurers formed under the laws of this or another state, which stocks meet the applicable requirements of section 1112 (preferred or guaranteed stocks) or 1113 (common stocks).

2. With the commissioner's advance written consent an insurer may acquire and hold the controlling interest in the outstanding voting stock of a stock insurer formed under the laws of this or another state. The commissioner shall not give his consent if he finds that such acquisition would not be in the best interests of the insurers involved, or of their respective policyholders or stockholders, or that it would materially tend to lessen competition or to result in any monopoly in the insurance business.

§ 1115. Stocks of subsidiaries

1. An insurer may invest in the stock of its subsidiary insurance corporation formed or acquired by it; or in the stock of its subsidiary business corporation or corporations formed and engaged solely in any one or more of the following businesses:

A. In any business necessary and incidental to the convenient operation of the insurer's insurance business, or to the administration of any of its

lawful affairs, or to the service or benefit of its policyholders;

B. Providing any of actuarial, computer, data processing, accounting, claims, appraisal, collection, loss prevention or safety engineering and similar services;

C. Real estate management and development;

D. Premium financing;

E. Financing of agents of the insurer;

F. Acting as investment adviser or principal underwriter of an investment company or companies, registered as such under the Investment Companies Act of 1940;

G. Financial and investment counseling services;

H. Administration of self-insurance plans;

I. Administration of self-insured pension and similar plans, or the self-insured portions of such plans;

J. Acting as administrative agent for a government instrumentality which is performing an insurance function;

K. Securities broker-dealer;

L. Escrow services;

M. Trust services with respect to funds payable or paid by it under its insurance contracts.

2. For the purposes of this section a "subsidiary" is a corporation of which the insurer owns sufficient stock to give it effective control.

§ 1116. Trustees' or receivers' obligations

An insurer may invest in certificates, notes or other obligations issued by trustees or receivers of any institution created or existing under the laws of the United States or of any state, district or territory thereof, which, or the assets of which, are being administered under the direction of any court having jurisdiction, if such obligation is adequately secured as to principal and interest.

§ 1117. Equipment trust certificates

An insurer may invest in equipment trust obligations or certificates which are adequately secured, or in other adequately secured instruments evidencing an interest in transportation equipment wholly or in part within the United States of America and a right to receive determined portions of rental, purchase or other fixed obligatory payments for the use or purchase of such transportation equipment.

§ 1118. Acceptances, bills of exchange

An insurer may invest in bank and bankers' acceptances and other bills of exchange of the kind and maturities made eligible, pursuant to law, for purchase in the open market by federal reserve banks.

§ 1119. Savings institutions

An insurer may invest in the shares of savings and loan or buildings and loan associations or in the savings accounts of federal savings and loan associations, to the extent that the investment or account is insured by the Federal Savings and Loan Insurance Corporation pursuant to the National Housing Act of 1934, as amended.

§ 1120. Common trust funds, mutual funds

An insurer may invest in:

1. A bank's common trust fund as defined in section 584 of the United States Internal Revenue Code of 1954; and

2. The securities of any open-end management type investment company or investment trust registered with the federal Securities and Exchange Commission under the Investment Company Act of 1940 as from time to time amended, if such investment company or trust, other than one of which a subsidiary of the insurer is investment adviser or principal underwriter, has a net asset value of not less than \$25,000,000 as at the date of investment by the insurer.

§ 1121. Hydrocarbon production payments

An insurer may invest in production payments, or interests therein evidenced by trust certificates or other instruments, payable from oil, gas or other hydrocarbons in producing properties located in the United States or the adjacent continental shelf if an obligation secured by and payable from such production payment or interest therein would qualify for investment under section 1109, subsection 1, (corporate obligations) as an obligation which is adequately secured and has investment qualities and characteristics wherein the speculative elements are not predominant. "Production payments" means rights to oil, gas or other hydrocarbons in place or as produced which entitle the owner thereof to a specified fraction or percentage of production until a specified sum of money has been received.

§ 1122. Policy loans

A life insurer may lend to its policyholder upon pledge of the policy as collateral security, any sum not exceeding the cash surrender value of the policy; or may lend against pledge or assignment of any of its supplementary contracts or other contracts or obligations, so long as the loan is adequately secured by such pledge or assignment. Loans so made are eligible investments of the insurer.

§ 1123. Collateral loans

An insurer may lend and thereby invest its funds upon the pledge of securities eligible for investment under this chapter. As at date made, no such loan shall exceed in amount 90% of the market value of such collateral pledged. The amount so loaned shall be included pro rata in determining the maximum percentage of funds permitted under this chapter to be invested in the respective categories of securities so pledged.

§ 1124. Mortgage loans

1. An insurer may invest in bonds, notes or evidences of indebtedness other than those described in section 1109 (corporate obligations), which are secured by first mortgages, or deeds of trust upon improved real property located in the United States or Canada, including leasehold estates having an unexpired term of not less than 21 years, inclusive of the term or terms which may be provided by enforceable options of renewal, if the underlying real property is not subject to any prior lien, and subject to the following requirements:

A. The security for the loan must be a first lien upon such real property; and

B. In the case of leaseholds, there must not be any condition or right of reentry or forfeiture not insured against under which the insurer is unable to continue the lease in force for the duration of the loan.

2. Nothing herein shall prohibit any investment by reason of the existence of any prior lien for ground rents, taxes, assessments or other similar charges not yet delinquent.

3. A mortgage shall nevertheless be deemed to be a first lien for the purposes of this section if, although junior in lien to a prior existing mortgage covering the same real property, the net amount actually advanced by the insurer under its mortgage plus the balance of principal and accrued interest then remaining unpaid under such prior mortgage does not exceed the amount which the insurer otherwise could have invested in such mortgage loan, and if the investing insurer administers the payments and other performance required under such prior mortgage.

4. Such a mortgage loan or loans made or acquired by an insurer on any one property shall not at time of investment by the insurer, be in amount in excess of 80% of the fair market value of the property or permit amortization over a period in excess of 40 years, or, in the case of leasehold interest, be in excess of 75% of the fair market value of such interest or permit amortization over a period exceeding 4/5 of the lease term remaining at the time of the loan. Prior to the investment the value of the property or of the leasehold interest shall be determined, for the purposes of the investment, by a competent appraiser.

5. In applying the limitations under subsection 4, there may be excluded from the amount invested that portion guaranteed by the Administrator of Veterans' Affairs pursuant to the Servicemen's Readjustment Act of 1944, as amended, or insured by the Federal Housing Administration under the National Housing Act, as amended, or by other United States or Canadian government agency.

6. An insurer may invest in purchase money mortgages or like securities received by it upon the sale or exchange of real property acquired pursuant to section 1125. Subsection 4 shall not apply as to such investments.

§ 1125. Real estate

1. Except as provided in section 1127 (leased property), a domestic insurer may invest in real estate only if used for the purposes or acquired in the manners, and within the limits, as follows:

A. The building in which it has its principal office, the land upon which the building stands, and such other real estate as may be requisite for the insurer's convenient accommodation in the transaction of its business. The amount so invested shall not aggregate more than 10% of the insurer's assets, if a life insurer, or more than 15% of the insurer's assets if a property or casualty or surety or other such nonlife insurer.

B. Real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees or debts previously owing to the insurer in the due course of its business.

C. Real estate acquired in part payment of the consideration on the sale of other real estate owned by it, if such transaction shall have effected a net reduction in the insurer's investments in real estate.

D. Real estate acquired by gift or devise, or through merger, consolidation or bulk reinsurance of another insurer under this Title.

E. The seller's interest in real estate subject to an agreement of purchase or sale, but the sum invested in any such interest shall not exceed 2/3 of the fair value of such parcel.

F. Additional real estate and equipment incident thereto, if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held under this section. Such real estate and equipment, together with the real estate for the enhancement of which it was acquired, shall be included, for the purpose of applicable investment limits, and shall be subject to disposal under section 1133 at the same time and under the same conditions as apply to such enhanced real estate.

G. Improved real estate, or any interest therein, acquired or held by purchase, lease or otherwise, acquired as an investment for production of income, or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. The insurer may hold, mortgage, improve, develop, maintain, manage, lease, sell, convey and otherwise dispose of real estate acquired by it under this provision.

2. For the purposes of section 1124 (mortgage loans) and this section, "improved" real property means:

A. Farmland used for tillage, crop or pasture;

B. Real estate on which permanent improvements, or improvements

under construction or in process of construction, suitable for residence, residential, recreational, institutional, commercial or industrial use, are situated; and

C. Real estate to be developed for the use or uses set forth in paragraph B, on which improvements, or improvements under construction or in process of construction, such as streets, sidewalks, sewers and utilities which will become an integral part of such development, are situated or abut.

§ 1126. Housing developments

To the extent and upon such conditions as may be authorized by the commissioner, an insurer may invest in stock and evidences of indebtedness of any housing company or redevelopment company organized under the private housing finance law of this or any other state, or of any corporation organized for the purpose of owning and operating any housing project under laws expressly designed to promote the provision of housing for persons of low and moderate income, or in the securities of any corporation organized under the laws of this or any other state for the purpose of owning, acquiring or holding real property or any interest therein as an investment for the production of income or to be developed or improved for such investment purpose, if all of the stock other than directors' qualifying shares of such housing company, redevelopment company or corporation has been or is to be originally issued to one or more insurers, whether domestic or foreign.

§ 1127. Leased property

An insurer may invest in personal or real property owned either by the insurer or by a trustee, while under lease to a lessee able to meet any one of the earnings tests provided by section 1109 (corporate obligations).

§ 1128. Special investments; separate accounts

The amounts allocated to each separate account established by the insurer pursuant to section 2537 (separate accounts), together with accumulations thereon may be invested and reinvested in any class of investments which may be authorized in the written contract or agreement without regard to any requirements or limitations prescribed by this chapter; except, that to the extent that the insurer's reserve liability with regard to benefits guaranteed as to principal amount and duration, and funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the applicable provisions of this chapter. The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the insurer.

§ 1129. Special investments of title insurers

1. A title insurer may also have invested funds in an amount not exceeding 50% of its paid-in capital stock and its surplus, in its abstract plant and equipment and in stocks of abstract companies.

2. Investments authorized under subsection 1 shall not be credited against required reserves.

§ 1130. Investments in foreign countries

1. An insurer authorized to transact insurance in a foreign country, or which has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in a foreign country may invest in or otherwise acquire or loan upon securities and investments in such foreign country which are substantially of the same kinds, classes and investment grades as those eligible for investment under other sections of this chapter; but the aggregate amount of such investments in a foreign country and of cash in the currency of such country shall not, except as to Canadian investments otherwise authorized under this chapter, exceed $1\frac{1}{2}$ times the amount of its reserves and other obligations under such contracts or the amount which the insurer is required by law to invest in such country, whichever is the greater.

2. In addition to the foreign investments otherwise permitted under this chapter, an insurer may invest in or otherwise acquire or loan upon securities and investments in foreign countries which are substantially of the same kinds, classes and investment grades as those otherwise eligible for investment under this chapter; but the aggregate amount of such investments under this subsection shall not exceed 1% of the insurer's assets.

§ 1131. Miscellaneous investments

1. An insurer may make loans or investments not otherwise expressly permitted under this chapter, in aggregate amount not over 5% of the insurer's assets if a life insurer, and in aggregate amount not over 10% of the insurer's assets if a property or casualty or surety or other such nonlife insurer, and not over 1% of such assets as to any one such loan or investment, if such loan or investment fulfills the requirements of section 1103 (general qualifications) and otherwise qualifies as a sound investment. No such loan or investment shall be represented by:

A. Any item described in section 902 (assets not allowed), or any loan or investment otherwise expressly prohibited.

B. Agent's balances, or amounts advanced to or owing by agents; except as to policy loans, mortgage loans and collateral loans otherwise authorized under this chapter.

C. Any category of loans or investments expressly eligible under any other provision of this chapter.

D. Any asset theretofore acquired or held by the insurer under any other category of loans or investments eligible under this chapter.

2. The insurer shall keep a separate record of all loans and investments made under this section.

§ 1132. Conversion and incidental rights

Nothing in this chapter shall be deemed to prohibit an insurer from making an investment otherwise authorized under this chapter, because the investment is convertible into other securities in which the insurer is not permitted to invest under this chapter, or because the insurer receives in connection with such investment stock warrants, whether or not detachable, stock options, stock, property interests or other assets of any kind. Anything so received by the insurer and in which the insurer is otherwise not authorized to invest shall be carried on its books at no value.

§ 1133. Time limit for disposal of real estate

1. Except as stated in subsection 2, or unless the insurer elects to hold the real estate as an investment under section 1125, subsection 1, paragraph G:

A. An insurer shall dispose of real estate acquired under section 1125, subsection 1, paragraph A, within 5 years after it has ceased to be necessary for the convenient accommodation of the insurer in the transaction of its business.

B. An insurer shall dispose of real estate acquired under section 1125, subsection 1, paragraphs B, C or E, within 5 years after the date of acquisition, unless used or to be used for the insurer's accommodation under section 1125, subsection 1, paragraph A.

2. Upon proof satisfactory to him that the interests of the insurer will suffer materially by the forced sale thereof, the commissioner may by order grant a reasonable extension of the period, as specified in such order, within which the insurer shall dispose of any particular parcel of such real estate.

§ 1134. Time limit for disposal of other ineligible property and securities

Any personal property or securities lawfully acquired by an insurer which it could not otherwise have invested in or loaned its funds upon at the time of such acquisition, shall be disposed of within 3 years from date of acquisition unless within such period the security has attained to the standard of eligibility; except, that any security or personal property acquired under any agreement of bulk reinsurance, merger or consolidation, may be retained for a longer period if so provided in the plan for such reinsurance, merger, or consolidation as approved by the commissioner under chapter 47. Upon application by the insurer and proof that forced sale of any such property or security would materially injure the interests of the insurer, the commissioner may extend the disposal period for an additional reasonable time.

§ 1135. Failure to dispose of real estate or securities; effect, penalty

1. Any real estate, personal property or securities lawfully acquired, and held by an insurer after expiration of the period for disposal thereof or any extension of such period granted by the commissioner as provided in sections 1133 and 1134 shall not be allowed as an asset of the insurer.

2. The insurer shall forthwith dispose of any ineligible investment unlawfully acquired by it, and the commissioner shall suspend or revoke the insurer's certificate of authority if the insurer fails to dispose of the invest-

ment within such reasonable time as the commissioner may, by his order, specify.

§ 1136. Prohibited investments and investment underwriting

1. In addition to investments excluded pursuant to other provisions of this Title, an insurer shall not invest in or lend its funds upon the security of:

A. Issued shares of its own capital stock, except:

(1) For the purpose of mutualization under chapter 47, or

(2) For retirement, or

(3) Pursuant to a plan for such investment or loan submitted in writing by the insurer to the commissioner in advance, and which the commissioner has not, within 20 days after such submission or within such additional reasonable period as the commissioner may request, disapproved as being unfair or inequitable to the insurer's policyholders or stockholders.

B. Securities issued by any corporation or enterprise the controlling interest of which is, or will after such acquisition by the insurer be, held directly or indirectly by the insurer or any combination of the insurer and the insurer's directors, officers, subsidiaries, or controlling stockholders, and the spouses and children of any of the foregoing individuals. Investments in controlled insurance corporations or subsidiaries under sections 1114 and 1115 are not subject to this provision.

C. Any note or other evidence of indebtedness of any director, officer or controlling stockholder of the insurer or of the spouse or child of any of the foregoing except as to policy loans authorized under section 1122.

2. No insurer shall underwrite or participate in the underwriting of an offering of securities or property of any other person. This provision shall not be deemed to prohibit:

A. The acquisition and ownership by the insurer of its subsidiary corporation acting as investment adviser or principal underwriter of a management company or investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended.

B. The registration by the insurer, under the Securities Act of 1933 or other applicable law, of restricted or other securities acquired and owned by it in regular course of business.

3. No insurer shall enter into any agreement to withhold from sale any of its securities or property, and the disposition of its assets shall at all times be within the control of the insurer. This provision shall not be deemed to affect any right or obligation of the insurer under a contract or agreement referred to in section 2537 (separate accounts).

§ 1137. Investments of foreign insurers

The investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile if of a quality substantially equal to that required under this chapter for similar funds of like domestic insurers.

CHAPTER 15

ADMINISTRATION OF DEPOSITS

§ 1251. Authorized deposits of insurers

The following deposits of insurers when made through the commissioner shall be accepted and held in trust, subject to the provisions of this chapter:

1. Deposits required under this Title for authority to transact insurance in this State.

2. Deposits of domestic insurers when made pursuant to its charter; or pursuant to the laws of other states, provinces, and countries as requirement for authority to transact insurance in such state, province or country.

3. Deposits in such additional amounts as are permitted to be made under section 1259.

§ 1252. Purpose of deposit

1. Deposits made in this State under section 412 (deposit requirement) shall be held in trust for the respective purposes stated in that section.

2. A deposit made in this State by a domestic insurer transacting insurance in another state, province or country, and as required by the laws of such other state, province or country, shall be held for the protection of all the insurer's policyholders or all its policyholders and creditors or for such other purpose or purposes as may be specified pursuant to such laws.

3. Deposits required under the retaliatory law, section 428, shall be held for such purposes as is required by such law, and as specified by the commissioner's order requiring such deposit to be made.

§ 1253. Securities eligible for deposit

1. All such deposits required under section 412 for authority to transact insurance in this State and hereafter made shall consist of securities in negotiable form of kinds eligible for investment of funds of domestic insurers under chapter 13, other than real estate mortgages, and approved by the commissioner for deposit. Deposits heretofore made shall consist of such assets as were then eligible for deposit.

2. All other deposits of a domestic insurer held in this State pursuant to the laws of another state, province or country shall be comprised of securities of the kinds described in subsection 1, and of such additional kind or kinds of securities required or permitted by the laws of such state, province or country.

3. Deposits of foreign insurers made in this State under the retaliatory law, section 428, shall consist of such assets as are required by the commissioner pursuant to such law.

§ 1254. Depositary; records

1. Deposits made in this State under this Title shall be made through the commissioner with the Treasurer of State.

2. The Treasurer of State shall furnish the commissioner, for delivery to the depositing insurer, his official certificate identifying the securities deposited, the amount and par value of each, and his opinion of their value.

3. The commissioner shall keep a record of the securities comprising the deposit of each insurer, showing as far as practical the amount and market value of each item, and all his transactions relative thereto.

§ 1255. Responsibility for safekeeping

The State shall be responsible for the safekeeping of all securities and receipts delivered to the commissioner under authority of this chapter.

§ 1256. Custodial arrangements

1. In lieu of deposit with the Treasurer of State as provided in section 1254, upon the insurer's written request and for its greater convenience, the commissioner may in his discretion permit the insurer to make and maintain the deposit under custodial arrangements with the trust department of an established bank located in Maine.

2. Where of convenience to the insurer in the buying, selling and exchange of securities comprising its deposit, and in the collection of accruals thereon, the insurer may, with the commissioner's advance written approval, deposit certain of its securities under custodial arrangements with an established bank or trust company located outside this State.

3. The insurer shall deposit with the Treasurer of State through the commissioner the original receipts issued by the custodian institution for all securities held under such custodial arrangements.

4. The form and terms of all such custodial arrangements shall be as prescribed or approved by the commissioner consistent with the applicable provisions of this Title.

5. The insurer shall bear the costs of custodial arrangements, and the State of Maine shall not be responsible for the safekeeping of securities so held.

§ 1257. Assignment, transfer of securities or assets

All assets deposited by an insurer and not negotiable by delivery shall be duly assigned or transferred to the commissioner and his successors in office. Upon release of any such security to the insurer, the commissioner shall reassign or transfer the same to the insurer.

§ 1258. Appraisal

The commissioner may, in his discretion, prior to acceptance for deposit of any particular security, or at any time thereafter while so deposited, have the same appraised or valued by competent appraisers. The reasonable cost of any such appraisal or valuation shall be borne by the insurer.

§ 1259. Excess deposits

1. If securities deposited by an insurer under this chapter are subject to material fluctuations in market value, the commissioner may, in his discretion, require the insurer to deposit and maintain on deposit additional securities in amount reasonably necessary to assure that the deposit at all times has a market value of not less than the amount specified under the law by which the deposit is required.

2. An insurer may otherwise at its option deposit securities in amount exceeding its deposit required or otherwise permitted under this Title by not more than 20% of such required or permitted deposit, or \$20,000, whichever is the larger amount, for the purpose of absorbing fluctuations in the value of securities deposited and to facilitate exchange and substitution of such securities. During the solvency of the insurer any such excess shall be released to the insurer upon its request. During the insolvency of the insurer, such excess deposit shall be released only as provided in section 1263, subsection 5.

§ 1260. Rights of insurer during solvency

So long as the insurer remains solvent and is in compliance with this Title it may:

1. Demand, receive, sue for and recover the income from the securities deposited;
2. Exchange and substitute for the deposited securities, eligible securities of equivalent or greater fair market value; and
3. At any reasonable time inspect any such deposit.

§ 1261. Levy upon deposit

No judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets held in this State as a deposit for the protection of the insurer's policyholders or policyholders and creditors. As to deposits made pursuant to the retaliatory provision, section 428, levy thereupon shall be permitted if so provided in the commissioner's order under which the deposit is required.

§ 1262. Deficiency of deposit

If for any reason the market value of securities of an insurer held on deposit in this State as required under this Title falls below the required amount, the insurer shall promptly deposit other or additional assets eligible

for deposit sufficient to cure the deficiency. If the insurer has failed to cure the deficiency within 20 days after receipt of notice thereof by registered mail from the commissioner, the commissioner shall forthwith revoke the insurer's certificate of authority.

§ 1263. Duration and release of deposit, in general

1. Every deposit made in this State by an insurer pursuant to this Title shall be held as long as there is outstanding any liability of the insurer as to which the deposit was so required; or, if a deposit required under the retaliatory provision, section 428, the deposit shall be held for so long as the basis of such retaliation exists.

2. Upon the request of a domestic insurer, the commissioner shall return to the insurer the whole or any portion of the assets and securities of the insurer held on deposit when the commissioner is satisfied that the securities so to be returned are subject to no liability and are not required to be longer held by any provision of law or the purposes of the original deposit. If the insurer has reinsured all its outstanding risks in another insurer or insurers authorized to transact insurance in this State, and if so provided in the reinsurance agreement, the commissioner shall deliver such securities to such insurer or insurers so assuming such risks, upon proof to his satisfaction:

A. That the assuming insurer has assumed and agreed to discharge all liabilities of every kind due and to become due which the deposit was to secure,

B. That the assuming insurer has on deposit in this State or with a State official in the United States, securities in an amount and value not less than the deposit required of the reinsured insurer and which will subsist for the security of the obligations of the reinsured insurer so assumed, and

C. That such assets and securities have been duly assigned, transferred and set over to such assuming insurer or insurers.

3. The commissioner shall return to a foreign insurer any deposit made in this State by the insurer, when the insurer has ceased transacting insurance in this State, or in the United States, and the insurer is not subject to any liability in this State on account of which the deposit was held.

4. If the insurer is subject to delinquency proceedings as defined in section 4353 upon the order of a court of competent jurisdiction the commissioner shall yield the insurer's assets held on deposit to the receiver, conservator, rehabilitator or liquidator of the insurer, or to any other properly designated official or officials who succeed to the management and control of the insurer's assets.

5. No release of deposited assets shall be made except upon application to and the written order of the commissioner. The commissioner shall have no personal liability for any release of any such deposit or part thereof so made by him in good faith.

CHAPTER 17
AGENTS, BROKERS, CONSULTANTS AND ADJUSTERS
SUBCHAPTER I
LICENSING PROCEDURES & GENERAL REQUIREMENTS

§ 1501. Scope of chapter

This chapter governs the qualifications, licensing and general requirements as to insurance agents, brokers, consultants and adjusters, as to any and all kinds of insurance and types of insurers; except that:

1. This chapter does not apply as to reinsurance; and
2. The application of this chapter as to domestic mutual assessment insurers is as provided in section 3628.

§ 1502. "Agent" defined, in general

As used in this Title, insurance "agent" means a general lines agent, or life agent, or health agent, as defined in this subchapter, or all such agents, as indicated by context.

§ 1503. "General lines agent" defined

A general lines agent is any person authorized or appointed by an insurer to solicit applications for insurance contracts or to negotiate for such contracts in its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts for one or more kinds of insurance as follows:

1. Casualty insurance;
2. Property insurance;
3. Marine and transportation insurance;
4. Surety insurance;
5. Health insurance, when transacted by an insurer also represented by the same agent as to property or casualty or surety insurance; and
6. Title insurance.

§ 1504. "Life agent" defined

A life agent is a person authorized or appointed by an insurer to solicit applications for, or negotiate the procurement of, life insurance contracts or annuity contracts on behalf of the insurer, including also the solicitation and negotiation of health insurance contracts where so authorized and transacted by the same insurer.

§ 1505. "Health agent" defined

A "health agent" is any person authorized or appointed by an insurer to solicit applications for, or negotiate the procurement of health insurance contracts on behalf of the insurer, other than an agent licensed as to health insurance under sections 1503 ("general lines agent" defined) or 1504 ("life agent" defined).

§ 1506. "Broker" defined

1. A "broker" is any person who, not being an agent of the insurer, as an independent contractor solicits, negotiates, or procures insurance or annuity contracts or the renewal or continuation thereof on behalf of insureds or prospective insureds other than himself.

2. A "general lines broker" is a broker so transacting one or more kinds of insurance as follows:

- A. Casualty insurance;
- B. Property insurance;
- C. Marine and transportation insurance;
- D. Surety insurance; and
- E. Title insurance.

3. A "life broker" is a broker licensed as to life insurance and annuity contracts, and as to health insurance contracts if so requested by the broker.

§ 1507. "Service representative" defined

1. A "service representative" is an individual regularly employed on salary by an insurer, group of insurers, or managing general agent to work in the field with licensed agents in soliciting, negotiating and effectuating insurance in such insurer, group or insurers represented by the managing general agent.

2. Service representatives are not required to be licensed as such, but shall qualify for and be licensed as an agent, resident or nonresident, as the case may be, as to the kinds of insurance to be transacted as a service representative.

3. This section does not apply as to life and health insurances and annuity contracts.

§ 1508. "Consultant" defined

1. A "consultant" is any individual who as an independent contractor in relation to his client for fee or compensation other than from the insurer in any manner advises, or offers or purports to advise, any person actually or prospectively insured, or named or to be named as beneficiary, or having

or to have any interest in or insured under, any insurance contract or annuity contract, existing or proposed, relative to coverage, advisability, rights or interests under such contract, or relative to the retention, exchange, surrender, exercise of rights or other disposition of such a contract or of rights thereunder. This subsection shall not apply as to:

A. An attorney while licensed to practice and actively practicing law in this State; or

B. An insurance actuary, and as such a member or associate of the Society of Actuaries or Academy of Actuaries.

2. A "general lines consultant" is one licensed as a consultant as to any one or more of the following kinds of insurance:

A. Casualty insurance;

B. Property insurance;

C. Surety insurance;

D. Marine and transportation insurance;

E. Title insurance.

3. A "life consultant" is one licensed as a consultant as to life insurance contracts, annuity contracts and health insurance contracts.

§ 1509. "Adjuster" defined

An adjuster is any person who for compensation as an independent contractor or for fee on behalf of the insurer investigates and settles, and reports to his principal relative to, claims arising under insurance contracts or annuity contracts. The definition of adjuster shall not be deemed to include and license as adjuster shall not be required of:

1. Attorneys at law admitted to practice in this State;

2. The salaried employee of the insurer, or of the managing general agent representing the insurer, as to whom the employer has filed with the commissioner in advance written notice of the employee's name and address and authority to adjust.

§ 1510. "Organization" defined

For the purposes of this chapter an "organization" is a partnership or a corporation.

§ 1511. "Resident," "nonresident" defined

1. For the purposes of this chapter a "resident" is an individual whose

domicile or principal place of business is located in this State, or an organization with an established place of business in this State.

2. A "nonresident" is other than a resident.

§ 1512. License required; liability; validity of contract; penalty

1. No person shall in this State be, act as or hold himself out to be, with respect to subjects of insurance resident, located, or to be performed in this State or elsewhere, an agent or broker or consultant unless then licensed as such under this Title. No person shall in this State be, act as, or hold himself out to be an adjuster unless then licensed as an adjuster under this Title, except as provided in section 1856 (nonresident adjusters of special, catastrophe losses).

2. No agent or broker shall take application for, procure or place for others, any kind of insurance as to which he is not then licensed under this Title. No consultant shall act as such with respect to any kind of insurance as to which he is not then licensed as consultant under this Title.

3. Except as provided in section 1677 (excess or rejected risks), no agent shall place any insurance with any insurer as to which he does not then hold a license and appointment as agent under this Title.

4. An agent is personally liable under any insurance contract made by or through him outside the scope of his licensed authority. An insurance contract issued on an application solicited, received or forwarded by an unlicensed person and otherwise valid, is not thereby rendered invalid.

5. In addition to or in lieu of any applicable denial, suspension or revocation of license, any person violating this section shall, upon conviction, be punished by a fine of not less than \$100 or more than \$1,000, or by imprisonment for less than one year, or by both such fine and imprisonment.

§ 1513. Exceptions to license requirement

In addition to persons otherwise excluded therefrom, the definitions of agent, broker, consultant or adjuster shall not be deemed to include, and no license shall be required as to:

1. Individuals performing only clerical or administrative services in the office of the employer; and including, if a salaried employee of a general lines agent or general lines broker, incidental taking of insurance applications in the office of the employer if the employee does not receive commission on such applications and his compensation is not varied thereby.

2. Salaried employees of insurers or of life agents or life brokers who do not solicit or accept from the public applications for life insurance.

3. Any regular salaried officer or employee of an authorized insurer rendering assistance to or on behalf of a licensed agent or broker, if such officer or employee devotes substantially all of his time to activities other than the solicitation of applications for insurance or annuity contracts, and receives no commission or other compensation directly dependent upon the

amount of business obtained; except that a service representative shall be licensed as an agent as required by section 1507.

§ 1514. Purpose of license; "controlled business"

1. The purpose of a license issued under this chapter to an agent or broker is to authorize and enable the licensee actively and in good faith to engage in the insurance business with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation upon insurance solicited or procured by or through him upon his own interests or upon those of other persons with whom he is closely associated in capacities other than as an insurance agent or broker.

2. The commissioner shall not grant, renew, continue or permit to exist any license as agent or broker as to any applicant therefor or licensee thereunder if he finds that the license is being or will probably be used by the applicant or licensee materially for the purpose of writing "controlled business," that is:

A. Insurance of his own interests or those of his family or of his employer; or

B. Insurance or annuity contracts covering himself or members of his family, or a corporation, association or partnership, or the officers, directors, stockholders, partners, employees or debtors of such a corporation, association or partnership, of which he or a member of his family is an officer, director, stockholder, partner, associate or employee.

3. Such a license shall be deemed to have been, or intended to be, used materially for the purpose of writing controlled business if the commissioner finds that during any 12 months' period the aggregate commissions earned from such controlled business have exceeded or probably will exceed 40% of the aggregate commissions earned or to be earned on all business written or probably to be written by such applicant or licensee during the same period.

4. This section shall not apply as to:

A. Insurance of the interest of a sales or financing agency in a motor vehicle sold or financed by it.

B. Insurance of the interest of a real property mortgagee in the mortgaged property.

C. Credit life and credit health insurance.

D. Any 12-month period during which the licensee was totally disabled for 6 months or more.

§ 1515. Licensing forms

The commissioner shall prescribe, consistent with the applicable require-

ments of this chapter, and furnish all printed forms required under this chapter in connection with application for and issuance of licenses, examinations for licenses, and for appointment and termination of appointments of agents.

§ 1516. License to be issued only on compliance

1. For the protection of the people of this State the commissioner shall not issue or continue or renew or permit to exist any license as agent, broker, consultant or adjuster except in compliance with the applicable provisions of this chapter.

2. The commissioner shall not issue, or continue, or renew, or permit to exist any such license as to any individual who has not established to the commissioner's satisfaction that he is qualified therefor in accordance with the applicable provisions of this chapter.

§ 1517. Licensing of organizations

1. A firm or corporation shall be licensed only as an agent or broker or adjuster. Each general partner of a firm, and each other individual to act for the firm or corporation under the license, shall be named in or registered with the commissioner as to the license, and shall qualify as though an individual licensee. Such an individual shall exercise the license powers only for and in the name of the organization, but this shall not prevent such individual from at the same time being separately licensed and acting in his own behalf and name. A full additional license fee shall be paid as to each respective individual in excess of one named in or registered as to the organization license.

2. The commissioner shall not license a firm or corporation unless the license is within purposes stated in the partnership agreement or certificate of organization.

3. The organization must establish and maintain a place of business in this State if to be licensed as a resident agent or broker.

4. All such licensees shall be subject to the applicable standards of section 407, subsection 2 (ownership, management).

5. The licensee shall promptly notify the commissioner of every change among its members, directors and officers, and of other individuals designated in or registered as to the license.

§ 1518. Application for license

1. Written application for an agent, broker, consultant or adjuster license shall be made to the commissioner by the applicant, accompanied by the applicable license application and examination application fees shown in section 601 (fee schedule), and the investigation cost, if applicable, referred to in section 1519. The application shall be signed and duly sworn to by the applicant.

2. The application form shall require full answers to questions reason-

ably necessary to determine the applicant's identity, age, residence, present occupation and occupations and business record over not less than the 5 years next preceding the date of the application, financial responsibility, insurance experience, special education or instruction in insurance and insurance laws of this State he has had or expects to receive, purpose for which the license is to be used, whether he will devote all or part of his efforts to transactions under the license and, if part only, how much time he will devote to such transactions and in what other business or businesses he is or will be engaged or employed, and such other facts as the commissioner may require relative to the applicant's qualifications for the license as such qualifications are stated in this chapter. The application shall be accompanied by an imprint of the applicant's fingerprints and applicant's recent photograph.

3. If for an agent, broker or consultant license the application shall state the kinds of insurance proposed to be transacted.

4. If for an agent license, the application shall be accompanied by written appointment by an authorized insurer of the applicant as agent for such kinds of insurance, subject to issuance of the license.

5. If the applicant is a firm or corporation, as provided in section 1517, the application shall show, in addition, the names and residence addresses of all members, officers and directors, and shall designate the name and residence address of each individual who is to exercise the license powers; and each such individual shall furnish information with respect to himself as though for an individual license.

6. The application shall show whether the applicant was ever previously licensed anywhere as to insurance; whether any such license was ever refused, suspended, revoked or renewal or continuance refused; whether any insurer, general agent, agent or broker claims applicant to be indebted to it, and if so, the details thereof and applicant's defense thereto; whether applicant has ever had an agency contract cancelled, and the facts thereof; and, if applicant is a married woman, like information with respect to her husband.

7. If the application is for license as an agent, it shall be accompanied by the insurer's certificate, on form furnished by the commissioner and signed by the insurer's duly authorized representative, that the insurer has investigated the applicant's character and background and is satisfied that he is trustworthy and qualified to act as its agent and will hold himself out in good faith to the general public as an agent.

8. No applicant for license under this chapter shall wilfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.

9. The commissioner shall withhold from public inspection information of a personal nature concerning applicants for license.

§ 1519. Investigation

1. Upon completion of any application for license under this chapter the

commissioner shall make such investigation as he deems advisable of the applicant's character, financial responsibility, experience, background and fitness for the license applied for.

2. As to applicants not theretofore licensed under this Title or licensed as insurance agent, broker or adjuster in this State under laws heretofore in force, the commissioner shall secure, as soon as is reasonably possible after filing of the application, a credit and investigation report relative to the applicant from a recognized and established independent investigation and reporting agency; except, that in lieu of obtaining a special such report, the commissioner may, in his discretion, accept a similar report furnished by or on behalf of an insurer which proposes to appoint the applicant as its agent. The cost, if any, of such report, in a reasonable uniform flat amount as from time to time fixed by the commissioner, shall be paid by or on behalf of the applicant, and shall be deposited with the commissioner at the time of filing the application. The commissioner shall promptly deposit the payment with the Treasurer of State to the credit of the insurance regulatory fund. The commissioner shall keep confidential the contents of any such report.

§ 1520. Examination for license; application for examination

1. After completion and filing of application with the commissioner as required by section 1518 the commissioner shall subject each applicant for license as agent, broker, consultant or adjuster, unless exempted therefrom under section 1521, to a written examination as to his competence to act as such agent, broker, consultant or adjuster.

2. If the applicant is an organization, the examination shall be so taken by each individual who is to be named in or registered as to the license, as provided in section 1517.

3. As to life insurers authorized to issue variable annuities, applicants appointed by such insurers to solicit such annuity contracts in this State, in addition to completing examinations required for a life agent's license, shall take and pass successfully a separate examination covering the subject of variable annuities, in accordance with such reasonable rules and regulations as may be adopted by the commissioner, and pay a separate examination application fee therefor.

4. An applicant for license as both a life agent or broker and a general lines agent or broker shall be separately examined as to life insurance and as to such general lines, and shall pay a separate examination application fee as to each of such 2 examinations.

5. Nothing in subsection 3 or 4 shall be deemed to prohibit the giving of all required examinations as to a particular applicant on the same day.

6. Written application for the examination shall be filed with the commissioner by or on behalf of the applicant not less than 10 days prior to the date fixed for the examination, as provided in section 1523, and shall be accompanied by the fee for such application as specified in section 601 (fee schedule). This application fee is earned when paid, and is not subject to refund.

§ 1521. Exemption from examination

Section 1520 shall not apply and no such examination shall be required of:

1. An applicant for license covering the same kind or kinds of insurance as to which the applicant was licensed under a similar license in this State, other than a temporary license or initial license as a life agent, within 2 years next preceding date of application for the license, unless such previous license was revoked or continuation thereof refused by the commissioner, and if the commissioner deems the applicant to be fully qualified for the license. For the purposes of this subsection an agent's license covering fire insurance and existing on the effective date of this Act shall be deemed to be the equivalent of a license covering "property" insurance as defined in this Title.

2. An applicant for an agent's license who is currently licensed as a broker or as a consultant as to the same kind or kinds of insurance, or has been so licensed within 12 months next preceding date of application for the license, unless such previous license was revoked or suspended or continuation thereof refused by the commissioner.

3. Applicants for limited license under section 1531, who represent public carriers and in the course of such representation solicit or sell insurance incidental to the transportation of persons or to the storage or transportation of property, and as to insurance so transacted.

4. Applicants for license as title insurance agent, who are attorneys at law duly licensed to practice law in this State.

§ 1522. Scope of examination; reference material

1. Each examination for license as agent, broker, consultant or adjuster shall reasonably test the applicant's competence and knowledge of the kinds of insurance, policies and transactions to be handled under the license applied for, of the duties and responsibilities of such a licensee, and of the pertinent laws of this State with which the applicant reasonably should be familiar.

2. The examination for a broker license shall be more difficult than that for an agent license; the examination for a consultant license shall be substantially more difficult than that for a broker license and shall be a thorough testing of the applicant's competence to provide expert advice within the field covered by the license applied for; and the examination for a life agent permanent license shall be substantially more difficult than the examination for initial license as a life agent as provided for in section 1674.

3. The commissioner shall prepare and make available to applicants printed information as to the general scope of, and particular subjects to be covered by, the examination for a particular license, together with information as to published books and other reference sources which may be studied by the applicant in preparation for the examination.

§ 1523. Conduct of examination

1. All examinations of license applicants shall be conducted by the commissioner, or his designee using examinations prepared by him.

2. The commissioner shall make examinations available to applicants at least biweekly at the commissioner's principal office; and at such other times and places in this State as the commissioner may deem advisable.

3. All the kinds of insurance and annuity business the applicant proposes to transact under the license applied for shall be included in the same examination, except as provided in section 1520, subsections 3 and 4, as to applicants for license as to both life insurance and general lines, and as to variable annuities.

4. The commissioner shall give, conduct and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.

5. The applicant must pass the examination with a grade indicating his ability to perform his duties in a satisfactory manner under the license for which he applies.

6. Within 30 days after the examination the commissioner shall inform the applicant and the appointing insurer as to whether or not he has passed.

7. The commissioner shall keep each examination paper on file for at least 6 months.

§ 1524. Failure to take examination; reexamination

1. An applicant who fails to take an examination within 90 days after filing application therefor shall forfeit both his application and the fee paid in connection therewith.

2. An applicant who has failed to pass the first examination for the license applied for may take a second examination after a one-week waiting period, and without paying a new examination application fee if the second examination is taken within 6 months after the first examination.

3. An applicant who has failed to pass the first 2 examinations for the license applied for shall not be permitted by the commissioner to take a 3rd or subsequent examination until expiration of 6 months after the last previous examination. Except as provided in subsection 2, the applicant shall pay a new examination application fee with respect to each examination after the first examination for the license applied for.

4. A different set of examination questions than any theretofore used as to the same applicant shall be used on each reexamination.

§ 1525. Examination advisory boards; designation, appointment

1. The commissioner shall continue to appoint 2 advisory boards to

make recommendations to him with respect to the scope, type and conduct of written examinations for license, the times and places within the State where examinations shall be held, and with respect to the other matters referred to in this section. He shall appoint one such board with respect to general lines agent licensing, to be referred to as the "general lines agent examination advisory board;" he shall appoint the other such board with respect to life agent licensing, to be referred to as the "life agent examination advisory board."

2. Each such board shall consist of 5 members, to be appointed by the commissioner for terms of 3 years each, on a staggered term system so as to prevent the terms of more than 2 members from expiring in any one year. No person shall be eligible for appointment to such a board unless he or she is active on a full-time basis in the general lines insurance business, as to the general lines advisory board, or in the life insurance business, as to the life advisory board, and is a resident of this State. No person may be reappointed to a board for more than one 3-year term.

3. In appointing members to the general lines advisory board, the commissioner so far as practicable shall appoint persons with prior experience in the education and training of fire, casualty or surety insurance agents or prospective agents; and so far as practicable the commissioner shall so constitute such board that it shall at all times include members who are experienced in the fire, casualty or surety insurance business, 2 of whom shall be representatives of general lines agents, one of whom shall be a representative of the domestic mutual insurers, other than life insurers, one of whom shall be the representative of other insurers authorized to do a property, casualty or surety insurance business in this State, and one of whom shall represent the public.

4. In appointing members to the life advisory board the commissioner so far as practicable shall appoint persons with prior experience in the education and training of life insurance agents or prospective agents; and so far as practicable the commissioner shall so constitute the board that it shall at all times include one general agent or manager of a life insurance agency within this State, and one salaried home office officer or employee of a domestic life insurer.

§ 1526. Same — Functions, reports, expenses

1. Each respective such advisory board shall meet with the commissioner twice during each calendar year at times and places to be designated by the commissioner, and on such other occasions as its members deem appropriate. The commissioner shall furnish to the board such information, not otherwise designated by law as confidential, as its members may reasonably require with respect to the conduct, scope and results of examinations of general lines agents, as to the general lines advisory board, or of life agents, as to the life advisory board.

2. Each such board shall make at least one written annual report to the commissioner with respect to the matters within its province. In the report, or in addition thereto, the board shall provide the commissioner with its specific recommendations from time to time as to changes in the scope, format and nature of examinations with which it is concerned, as appear to

its members desirable and in the best interest of the people of this State, and of the property, casualty or surety insurance business, as to the general lines advisory board, or the life insurance business, as to the life advisory board, as conducted in this State.

3. The commissioner shall avail himself and his department of all such recommendations and material so furnished by the respective such boards, and shall adopt or implement such portions thereof as appear to him appropriate and advisable.

4. Each board may, in addition, consult with the commissioner with respect to possible legislation or regulatory measures designed or intended to improve the quality and nature of the solicitation and servicing of property, casualty or surety insurance by licensed general lines agents, as to the general lines advisory board, or of life insurance by licensed life agents, as to the life advisory board, within this State; but nothing in this section shall be deemed to vest any authority in such a board other than on an advisory basis as stated.

5. The written reports of a board shall be matters of public record, and available from the commissioner upon request.

6. The members of such a board shall serve without compensation, but with the commissioner's approval may be reimbursed for their reasonable travel expenses in attending any meeting called or approved by the commissioner.

§ 1527. Issuance, refusal of license; refundability of fees

1. If the commissioner finds that the application is complete, that the applicant has passed any required examination and is otherwise qualified for the license applied for, he shall promptly issue the license; otherwise, the commissioner shall refuse to issue the license and promptly notify the applicant and the appointing insurer, if application is for an agent's license, of such refusal, stating the grounds thereof.

2. If the license is refused, the commissioner shall promptly refund to the appointing insurer, in the case of applications for agent's license, the appointment fee tendered with the license application. All other fees for application for agent, broker, consultant or adjuster license shall be deemed earned when paid and shall not be refundable.

§ 1528. License categories

The commissioner shall issue under this chapter the following categories of license only:

1. Agent license:

- A. Resident agent, individual or organization.
- B. Nonresident agent, individual or organization.
- C. Life agent initial license.
- D. Life agent permanent license.

E. Except as provided in section 1531, an agent license must cover one or more complete kinds of insurance as defined in chapter 9.

2. Broker license:

A. Resident broker, individual or organization.

B. Nonresident broker, individual or organization.

C. A broker license must cover one or more complete kinds of insurance as defined in chapter 9.

3. Consultant license:

A. Consultant, individual only.

B. A consultant license must cover either or both of the following categories, as selected by the licensee:

(1) General lines, that is, property, casualty and surety insurances.

(2) Life insurance, annuities, and health insurance.

4. Adjuster license:

A. Individual or organization.

§ 1529. License contents; number of licenses required

1. The license shall state the name and address of the licensee, date of issue, general conditions relative to expiration or termination, the kind or kinds of insurance covered by the license, if applicable, and such other conditions as the commissioner deems proper for inclusion in the license certificate. No license shall be issued in a trade name unless the name has been duly registered or filed as required by law.

2. The license of an agent shall not specify the name of any particular insurer by which the licensee is appointed as agent, except as provided in subsection 4, as to limited licenses; and the licensee may, subject to section 1530 as to life or health agents, represent as such agent under the one license as many insurers as may appoint him therefor, with respect to the kind or kinds of insurance covered by the license, in accordance with this chapter.

3. A license issued to an organization shall list the location of each place of business of the organization.

4. Each limited license issued pursuant to section 1531 shall show also the name of the insurer so represented, and a separate license shall be required as to each such insurer.

§ 1530. Multiple licensing, life or health insurance agents

1. A life or health insurance agent may concurrently be licensed as to as many life or health insurers as duly file appointments of the licensee with the commissioner and pay the appointment fee, except as provided hereinbelow.

2. Upon the filing of each appointment of the licensee or proposed licensee by a life or health insurer the commissioner shall promptly give written notice of the pending appointment to all other life or health insurers, as the case may be, as to whom the licensee has been licensed in this State within the 24 months next preceding, and shall allow such other insurers a reasonable period as specified in the notice within which to respond. If the commissioner finds that the applicant or licensee has a debit balance with any such other insurer or with a general agent which is not adequately secured or otherwise provided for to the obligee insurer's satisfaction, and that such indebtedness is either acknowledged by the applicant or licensee or the insurer or general agent has secured a judgment therefor, the commissioner shall not effectuate the new appointment until after such debit balance has been adequately secured, or otherwise so provided for.

§ 1531. Limited licenses

1. The commissioner may issue to an applicant qualified therefor under this chapter a limited agent's license as follows:

- A. Covering motor vehicle insurance only; or
- B. To persons representing public carriers, as provided in subsection 3 of section 1521; or
- C. Covering only credit life and credit health insurance.

2. No person so licensed shall concurrently hold license as an agent or broker as to any other or additional kind of insurance.

3. The fee for limited licenses is as specified in section 601 (fee schedule).

§ 1532. Continuation, expiration of licenses

1. Each broker (resident or nonresident), consultant, and adjuster license issued under this Title shall continue in force until expired, suspended, revoked or otherwise terminated, but subject to payment to the commissioner at his office in Augusta annually on or before December 31 of the applicable continuation fee as stated in section 601 (fee schedule), accompanied by written request of the licensee for such continuation. Any such license not so continued on or before December 31 shall be deemed to have expired as at midnight on such December 31; except that the commissioner may effectuate a request for continuation received by him within 30 days after such December 31 if accompanied by an annual continuation fee of 150% of the continuation fee otherwise required.

2. An initial license as life agent shall be for a term of one year and shall not be subject to renewal, continuance or reissuance.

3. An agent license, other than initial license as life agent, shall continue in force while there is in effect as to the licensee, as shown by the commissioner's records, an appointment or appointments as agent of authorized insurers covering collectively all the kinds of insurance included in the agent's license. Upon termination of all the licensee's agency appointments as to a particular kind of insurance and failure to replace such appointment within 60 days thereafter, the license shall thereupon expire and terminate as to such

kind of insurance, and the licensee shall promptly deliver his license to the commissioner for reissuance, without fee or charge, as to such kinds of insurance, if any, covered by the licensee's remaining agency appointments. Upon termination of all the licensee's agency appointments the license shall forthwith terminate.

4. As a condition to or in connection with the continuation of any agent or broker license the commissioner may require the licensee to file with him information as for application for the license, or as to the use made of the license during the current or next preceding calendar year.

5. This section does not apply to temporary licenses issued under section 1536.

§ 1533. Appointment of agents

1. Each insurer appointing an agent in this State shall file with the commissioner the appointment in writing, specifying the kinds of insurance or annuity business to be transacted by the agent for the insurer, and pay the appointment fee, or license fee in the case of limited licenses, at the rate specified in section 601 (fee schedule). An agent required to take a variable annuity examination pursuant to section 1520 shall be separately appointed as to variable annuities and the insurer shall pay a separate appointment fee therefor.

2. Where an initial limited license is issued or an initial agent appointment is filed as to an insurer after the insurer's anniversary, as defined in section 1534, the commissioner shall reduce, to the nearest 50c, the license or appointment fee in proportion to the then expired portion of the insurer's appointment year, except that in no case shall the fee as reduced be less than \$1.

3. Subject to annual continuation by the insurer as provided in section 1534, each appointment shall remain in effect until the agent's license is revoked or otherwise terminated, unless the insurer earlier terminates the appointment as provided in section 1535.

§ 1534. Annual continuation of appointment

1. In order to spread the renewal of limited licenses and continuation of agent appointments with reasonable uniformity throughout the calendar year, the commissioner shall fix a date, "insurer's anniversary", upon which all such licenses and appointments shall be subject to renewal or continuation as to a particular insurer, and shall give the insurer at least 90 days advance written notice of such date.

2. Annually on or before the insurer's anniversary the insurer shall file with the commissioner an alphabetical list of the names and addresses of all its agents in this State whose appointments, or licenses in the case of limited licenses, are to remain in effect as to the kinds of insurance or annuity business for which the respective agents are so appointed or licensed, accompanied by payment of the annual continuation of appointment fee, or license fee in the case of limited licenses, as specified in section 601 (fee schedule). At the same time, the insurer shall also file with the commissioner an alphabetical list of the names and addresses of all its agents whose appointments or limited licenses in this State are not to remain in effect, or whose appointment as to certain kinds of insurance or annuity business are not to remain in

effect and as designated in such list. Any appointment or limited license not so continued and not otherwise expressly terminated shall be deemed to have expired at midnight on the insurer's anniversary.

§ 1535. Termination of agent appointment

1. Subject to the agent's contract obligations and rights, if any, an insurer or agent may terminate an agency appointment at any time. If termination is by the insurer, the insurer shall promptly give written notice of termination and the effective date thereof to the commissioner, and to the agent where reasonably possible. The list of appointments not being continued referred to in section 1534 shall constitute such notice to the commissioner as to the terminations so listed. The commissioner may require of the insurer reasonable proof that the insurer has given such notice to the agent where reasonably possible.

2. Accompanying the notice of termination given the commissioner the insurer shall file with him a statement of the cause, if any, for termination. Any information, document, record or statement so disclosed or furnished to the commissioner shall be deemed an absolutely privileged communication and shall not be admissible as evidence in any action or proceeding.

§ 1536. Temporary license as agent or broker

1. The commissioner, in his discretion, may issue a temporary license as agent or broker, as the case may be, to or with respect to an individual otherwise qualified therefor but without requiring such individual to take an examination, in the following cases:

A. To the surviving spouse or next of kin, or to the administrator or executor or employee thereof, of a licensed agent or broker becoming deceased, or to the spouse, next of kin, employee or legal guardian or employee thereof, of a licensed agent or broker disabled because of sickness, insanity or injury, if in either case the commissioner deems that such temporary license is necessary for the winding up or continuation of the agent's or broker's business.

B. To a member or employee of a firm, or officer or employee of a corporation, licensed as agent or broker, upon the death or disablement of an individual designated in or registered as to the license to exercise the powers thereof.

C. To the designee of a licensed agent or broker entering upon active service in the armed forces of the United States of America.

2. A temporary license issued under this section shall be for a term of not over 6 months, and shall not be renewed.

3. The fee paid for a temporary license may be applied upon the fee required for any permanent similar license issued to the licensee, prior to expiration of the temporary license and covering the same kinds of insurance.

§ 1537. Same—Rights, limitations

1. The temporary license may cover the same kinds of insurance for which

the agent or broker thereby being replaced was licensed.

2. The temporary licensee may represent under the license all insurers last represented by the replaced agent, and without the necessity of new appointments of the licensee; but the licensee shall not be appointed as to any additional insurer or additional kind of insurance under such a temporary license. This provision shall not be deemed to prohibit termination of its appointment by any insurer.

3. A temporary licensee shall have the same license powers and duties as under a permanent license.

§ 1538. Insurance vending machines

1. A licensed resident agent may solicit and issue personal travel accident insurance policies by means of mechanical vending machines supervised by the agent and placed at airports and similar places of convenience to the traveling public, if the commissioner finds:

A. That the policy to be so sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines, and that use of such a machine in a proposed location would be of material convenience to the public;

B. That the type of vending machine proposed to be used is reasonably suitable for the purpose;

C. That reasonable means are provided for informing prospective purchasers of policy coverages and restrictions; and

D. That reasonable means are provided for refund of money inserted in defective machines, and for which no insurance, or a less amount than that paid for, is actually received.

2. As to each such machine to be used, the commissioner shall issue to the agent a special vending machine license. The license shall specify the name and address of the insurer and agent, the name of the policy to be sold, the serial number of the machine, and the place where the machine is to be in operation. The license shall be subject to annual continuation, to expiration, suspension or revocation coincidentally with that of the agent. The commissioner shall also revoke the license as to any machine as to which he finds that the license qualifications no longer exist. The license fee shall be as stated in section 601 (fee schedule) for each license year or part thereof for each respective vending machine. Proof of the existence of a subsisting license shall be displayed on or about each such machine in use in such manner as the commissioner reasonably requires.

§ 1539. Suspension, revocation, refusal of license

1. The commissioner may suspend for not more than 12 months, or may revoke or refuse to continue any license issued under this chapter or any surplus lines broker license if, after notice to the licensee and to the insurer represented as to an agent and hearing, he finds that as to the licensee any one or more of the following causes exist:

A. For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.

B. For violation of or noncompliance with any applicable provision of this Title, or for willful violation of any lawful rule, regulation, or order of the commissioner.

C. For obtaining or attempting to obtain any such license through misrepresentation, or for failure to disclose a material fact required to be disclosed in the application, or for fraud.

D. For misappropriation or conversion to his own use, or illegal withholding, or illegal failure to remit, moneys belonging to policyholders, or insurers, or beneficiaries, or others and received in conduct of business under the license.

E. For material misrepresentation of the terms of any existing or proposed insurance contract.

F. For willful overinsurance of property located in this State.

G. For holding at the same time licenses as a resident agent or broker in this and any other State.

H. If in conduct of his affairs under the license the licensee has used fraudulent, or coercive, or dishonest practices, or has shown himself to be incompetent, or untrustworthy, or financially irresponsible, or a source of injury and loss to the public.

2. The license of a firm or corporation may be suspended, revoked or refused also for any of such causes as relate to any individual designated in or registered as to the license to exercise its powers.

§ 1540. Notice, effective date of suspension, revocation or refusal to continue

1. Upon suspension or revocation of or refusal to continue any such license the commissioner shall forthwith notify the licensee thereof in writing either delivered to the licensee in person or sent by registered or certified mail addressed to the licensee at his address last of record with the commissioner. Notice by mail shall be deemed effective when so mailed. The commissioner shall give like notice to the insurers represented by an agent.

2. The suspension or revocation or refusal to continue shall become effective upon the date specified in the notice, but not less than 20 days after the notice was given or mailed as provided in subsection 1.

§ 1541. Return of license to commissioner

1. All licenses issued under this Title, although issued and delivered to the licensee, shall at all times be the property of the State of Maine. Upon any expiration, termination, suspension or revocation of the license, the licensee or other person having possession or custody of the license shall forthwith deliver it to the commissioner by personal delivery or by mail.

2. As to any license lost, stolen or destroyed while in the possession of any such licensee or person, the commissioner may accept in lieu of return of the license, the affidavit of the licensee or other person responsible for or involved in the safekeeping of such license, concerning the facts of such loss, theft or destruction.

§ 1542. Relicensing after revocation; refusal of license

1. The commissioner shall not again issue license under this Title as to any person whose license has been revoked or continuance refused, until after expiration of one year from the effective date of such revocation or refusal, or, if judicial review of such revocation or refusal is sought, until after one year from the date of final court order or decree affirming such revocation or refusal, and until such person again qualifies for the license in accordance with the applicable provisions of this Title. The commissioner may refuse any such new license applied for unless the applicant shows good cause why the prior revocation or refusal shall not be deemed a bar to the issuance of a new license.

2. A person whose license has been revoked or continuance refused twice shall not again be eligible for any license under this Title.

3. If the license of a firm or corporation is so suspended or revoked or continuance refused, no member of such firm, or officer or director of such corporation, shall be licensed or be designated in or as to any license to exercise the powers thereof during the period of such suspension, revocation or refusal, unless the commissioner determines upon substantial evidence that such member, officer or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended, revoked, or continuance refused.

SUBCHAPTER II

GENERAL LINES AGENTS AND BROKERS — QUALIFICATIONS AND REQUIREMENTS

§ 1601. Short title

This subchapter may be referred to as the “general lines agent and broker law.”

§ 1602. Scope of subchapter

1. This subchapter II applies only as to:

A. General lines agents, as defined in section 1503.

B. General lines brokers, as defined in section 1506.

2. As used in this subchapter “agent” means general lines agent, and “broker” means general lines broker.

§ 1603. Qualifications for agent, broker licenses

For the protection of the people of this State, the commissioner shall not issue, continue or permit to exist any agent or broker license except in compliance with this chapter, or as to any individual unless qualified therefor as follows:

1. Age. Must be at least 21 years of age.

2. Residence. Must be a resident of this State if to be licensed as a resident agent or resident broker, and, if to be licensed as a resident agent or

broker, must not be licensed as a resident agent or resident broker of another state.

3. Competence, etc. Must be competent, trustworthy, financially responsible, and of good personal and business reputation.

4. Education. Must have fulfilled applicable education requirements as provided for in section 1604.

5. Examination. Must have passed any written examination required for the license under this chapter.

6. Purpose. Must not seek or use the license for the purpose of writing controlled business, as referred to in section 1514.

7. Appointment. If for agent's license, must have been appointed agent by an authorized insurer or insurers as to the kinds of insurance to be covered by the license, subject to issuance of the license.

8. Experience. If for broker's license, must have had experience either as an agent, consultant, service representative, adjuster, managing general agent or broker, or other special experience, education or training, all of sufficient content and duration as deemed by the commissioner to be reasonably necessary for competence in fulfilling the responsibilities of a broker.

§ 1604. Educational requirement

1. An applicant for license as agent or broker who is required, under sections 1520 and 1521, to take a written examination must have completed the educational requirement prescribed by either paragraph A or B below within the 2 years next prior to the date his application for license is filed with the commissioner:

A. He must have completed successfully such courses of instruction in insurance as the commissioner may reasonably require and approve. Such courses may be either in attendance at or under the supervision and direction of or by correspondence with an educational institution or insurer, as approved by the commissioner; or

B. He must have had not less than 6 months of responsible duties and experience as a substantially fulltime employee of an insurance agent or broker, or of an insurer, its manager, general agent or representative, in the property, casualty and surety insurance business. As to applicants for license as broker, this provision shall not be deemed to restrict the requirements of section 1603, subsection 8.

2. If qualification is based upon fulfillment of the requirements of paragraph B, the applicant shall file with the commissioner an affidavit by his employer stating the period of employment, that it was substantially fulltime, and the nature of the duties performed by the applicant.

3. An applicant for relicensing as agent or broker and who has once fulfilled the above educational requirement, need not again fulfill them.

§ 1605. Authority of agent; limitation as to surety bonds

1. A licensed agent resident in this State of an authorized insurer may:

A. Sale of insurance. Solicit, sell and make binding insurance contracts throughout this State within the authority granted him by the insurer and the scope of his license.

B. Adjustment of losses. Adjust the losses of the insurer within the authority granted him by the insurer.

2. An agent who is also a judge of probate, register of probate or an employee in the office of either, shall not write surety bonds or share in the commissions thereon.

§ 1606. Broker's bond

1. Every applicant for a broker's license shall file with the commissioner with the application and shall thereafter maintain in force while so licensed, a bond in favor of the State of Maine executed by an authorized surety insurer. The bond shall be conditioned upon full accounting and due payment to the person entitled thereto, of funds coming into the broker's possession through insurance transactions under the license. The bond may be continuous in form and aggregate liability on the bond shall be limited to payment of not less than \$2,500.

2. The bond shall remain in force until released by the commissioner, or until cancelled by the surety. Without prejudice to liability previously incurred thereunder, the surety may cancel the bond upon 30 days' advance written notice to both the broker and the commissioner.

§ 1607. Broker's authority, commissions

1. A person licensed as a resident or nonresident broker may negotiate with any authorized insurer insurance contracts within the scope of his license and covering risks in this State, subject, as to a nonresident broker, to section 1618 (must place business through resident agent).

2. A broker as such is not an agent or other representative of an insurer and does not have power by his own acts to obligate the insurer upon any risk or with reference to any insurance transaction.

3. An insurer or agent shall have the right to pay to a broker licensed under this chapter the customary commissions upon insurance placed through the broker.

§ 1608. Broker, agent license combinations

A licensed agent may be licensed also as a broker and be a broker as to insurers for which he is not then licensed as agent. The sole relationship between a broker and an insurer as to which he is then licensed as an agent, as to transactions arising during the existence of such agency appointment, shall be that of insurer and agent, and not that of insurer and broker.

§ 1609. Place of business

Every resident agent and broker shall have and maintain in this State a place of business accessible to the public, and wherein the licensee principally

conducts transactions under his license. The licensee shall promptly notify the commissioner in writing of any change of address. Nothing in this section shall prohibit maintenance of such a place in the licensee's residence in this State.

§ 1610. Records

1. The agent or broker shall keep at his place of business complete records of transactions under his license. Such records shall show, as to each insurance policy or contract placed through or countersigned by the licensee, not less than:

- A. The names of the insurer and insured;
- B. The number and expiration date of the policy or contract;
- C. The premium payable as to the policy or contract;
- D. The date, time, insurer, insured and coverage of every binder made by the agent; and
- E. Such other information as the commissioner may reasonably require.

2. The record shall be kept available for inspection by the commissioner for a period of at least 3 years after completion of the respective transactions.

§ 1611. Signature, countersignature of policies

1. When by law the signature or countersignature of an agent is required on an insurance contract, or rider or endorsement thereto, the agent shall affix his signature thereon, either by original written signature or by a true facsimile signature.

2. The agent may grant a power of attorney to an individual who is 21 years or more of age to sign and countersign policies and endorsements in his name and behalf after first obtaining the commissioner's written consent and that of the proper official of the insurer involved.

3. A facsimile signature may be used as to personal accident insurance policies covering air travel on a common carrier and issued through a vending machine licensed as provided in section 1538.

§ 1612. Countersignature fee

1. A nonresident agent or nonresident broker shall pay as a countersigning fee to a resident agent who countersigns an insurance contract pursuant to section 426, subject to exceptions stated in section 427, 50% of the commission on the first \$50 of commissions, and a negotiated amount of commission on the balance of the commission based on the services rendered or to be rendered by the countersigning resident agent.

2. If the laws of a state or a province of Canada, in which the nonresident agent or nonresident broker is licensed as a resident thereof, imposes upon a Maine agent or broker a requirement to pay a greater countersignature fee of a specific amount of percentage of the commission, the countersigning fee

payable to the Maine agent shall be the same as would be imposed on the Maine agent or broker by or under the laws of such state or province.

§ 1613. Reporting and accounting for premiums

All premiums and return premiums received by an agent or broker are trust funds so received by the licensee in a fiduciary capacity; and the licensee shall in the applicable regular course of business account for and pay the same to the insured, insurer, or person entitled thereto.

§ 1614. Commissions; payment, acceptance

1. No insurer shall pay or allow to any person otherwise required to be licensed as an agent or broker under this chapter, either directly or indirectly, any commission or compensation for soliciting, negotiating or effecting a contract of insurance within this State unless at the time of such solicitation, negotiation or effectuation such person was duly licensed by this State as an agent or broker as to the kind or kinds of insurance involved, and, if an agent, was duly appointed as an agent of the insurer as provided in section 1533. This provision shall not apply as to business placed pursuant to section 1615 or pursuant to any assigned risk plan.

2. No person other than one entitled to the same as provided in subsection 1, shall receive or accept any such commission or compensation.

§ 1615. Sharing commissions

An agent may place with an insurer as to which he is not then appointed as agent, through a duly licensed and appointed agent of such insurer, an insurance coverage necessary for the adequate protection of a subject of insurance and share in the commission thereon, if each such agent is licensed as to the kinds of insurance involved.

§ 1616. Nonresident agents, brokers

1. The commissioner may license as agent or broker a resident of another state or province of Canada otherwise qualified therefor, if a similar privilege is extended by such other state or province to residents of Maine.

2. The commissioner may waive the taking of a written examination by the nonresident applicant for such a license, if a similar privilege is extended by the other state or province to Maine residents and if he finds that the applicant has already met qualification requirements and standards in the applicant's domiciliary state or province substantially as high as those applicable under this chapter to Maine residents applying for a similar license.

3. Such a nonresident licensee shall have the same general duties and obligations as apply under this chapter to a Maine resident holding similar license.

§ 1617. Same—Service of process

1. Every nonresident licensed in this State as an agent or broker under section 1616 shall appoint the commissioner in writing as his attorney upon whom may be served all legal process issued in connection with any action or proceeding brought or pending in this State against or involving the

licensee and relating to transactions under his Maine license. The appointment shall be irrevocable and shall continue in force for so long as any such action or proceeding could arise or exist. The commissioner shall prescribe and furnish the form for such appointment.

2. Duplicate copies of process shall be served upon the commissioner or other person in apparent charge of his office during his absence, accompanied by payment of the process fee specified in section 601 (fee schedule). Upon receiving such service the commissioner shall promptly mail a copy thereof by registered or certified mail with return receipt requested addressed to the nonresident licensee at his business address last of record with the commissioner.

3. Process served as in this section provided shall for all purposes constitute personal service thereof upon the licensee.

§ 1618. Same—Nonresident must place business through resident agent

A nonresident agent or broker must place through an agent resident in this State of the insurer, all insurance covering a resident of this State, property situated in this State, a risk incidental to the performance or nonperformance of any obligation to be performed in this State, or a risk incidental to any obligation which is governed by the laws of this State though actually to be performed elsewhere, except as provided in section 427 (exceptions to counter-signature law).

SUBCHAPTER III

LIFE AGENTS AND BROKERS

QUALIFICATIONS AND REQUIREMENTS

§ 1671. Short title

This subchapter may be referred to as the "life agent and broker law."

§ 1672. Scope of subchapter III

1. This subchapter applies only as to:

A. Life agents as defined in section 1504.

B. Life brokers as defined in section 1506.

2. As used in this subchapter "agent" means life agent, and "broker" means life broker.

§ 1673. Qualifications for life agent, broker licenses

For the protection of the people of this State, the commissioner shall not issue, continue or permit to exist any agent or broker license except in compliance with this chapter, or as to any individual unless qualified therefor as

follows:

1. Age. Must be 21 years or more of age.
2. Residence. If to be licensed as a resident agent or resident broker, must be a resident of this State or have his principal place of business located in this State and not be licensed as a resident agent or resident broker of another state.
3. Competence, etc. Must be competent, trustworthy, financially responsible, and of good personal and business reputation.
4. Examination. Must have passed any written examination required for the license under this chapter.
5. Purpose. Must not seek or use the license for the purpose of writing controlled business, as referred to in section 1514.
6. Appointment. If for agent's license, must have been appointed agent by an authorized insurer as to the kinds of insurance to be covered by the license, subject to issuance of the license.
7. Experience. If for broker's license, must have had experience as a life agent or broker, or managing general agent, or other special experience, education or training in the life insurance business, all of sufficient content and duration as deemed by the commissioner reasonably necessary for competence in fulfilling the responsibilities of a broker.

§ 1674. Initial license—Life agents, brokers

1. An individual who has not theretofore been licensed other than under a temporary license as a life agent or life broker in this State or elsewhere, may in this State first qualify for and be licensed as a life agent under an initial license. The initial license shall be valid for a period of one year from date of issue, and shall not be subject to continuance, renewal or reissuance. Not more than one initial license shall ever be issued as to the same individual.

2. Prior to expiration of his initial license, the licensee shall qualify for and obtain issuance to or as to him of a permanent license as a life agent or as a life broker. If the licensee does not so qualify for and secure his permanent license within such year, upon expiration of the initial license the licensee shall discontinue his activities as a life insurance agent and shall not thereafter be or act as a life agent or life broker in this State unless he applies and qualifies, and takes and passes the required examination, for a permanent license as life agent or life broker.

§ 1675. Brokers; bond, authority, commissions, combinations

The following sections shall also apply as to life brokers:

1. Section 1606 (broker's bond);
2. Section 1607 (broker's authority, commissions), except that the require-

ment that a nonresident broker must place insurance covering a subject of insurance in this State through a resident agent shall not apply as to life brokers; and

3. Section 1608 (broker, agent license combinations).

§ 1676. Commissions; payment, acceptance

1. No insurer, life agent or broker shall pay directly or indirectly any commission, brokerage or other valuable consideration to any person for services as a life agent or life broker within this State, unless such person held at the time such services were performed a valid license to act as a life agent or life broker as required by the laws of this State; nor shall any person, other than a person duly licensed as a life agent or life broker by this State at the time such services were performed, accept any such commission, brokerage or other valuable consideration.

2. This section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under subsection 1, even though at the time of such payment or receipt such person had ceased to hold a license as life agent or life broker.

§ 1677. Excess or rejected risks

A life or health agent may place with another insurer as to which he is not licensed as agent, and receive commission from the insurer as to, a particular risk or portion thereof which has been rejected by the insurers as to which the agent is licensed or is known to the agent to be unacceptable to such insurers, and without then being licensed as to such other insurer.

§ 1678. Reporting and accounting for premiums

Section 1613 shall likewise apply as to life agents and life brokers.

§ 1679. Countersignature of health policies

Sections 1611 (signature, countersignature of policies) and 1612 (countersignature fee) shall also apply as to countersignature of health policies by a life agent licensed as to health insurance.

§ 1680. Nonresident agents, brokers

1. An individual not resident in this State may be licensed as a life agent or life broker if the state or Canadian province of his domicile will accord the same privilege to a resident of this State.

2. The commissioner is authorized to enter into reciprocal agreements with the appropriate official of any other state or Canadian province waiving the written examination of an applicant resident in such other state or province, if:

A. A written examination is required of applicants for a life agent's or life broker's license in such other state or province;

B. The appropriate official of such other state or province certifies that the applicant holds a currently valid license as a life agent or life broker, as the case may be, in such other state or province and either passed such written examination or was the holder of such a license prior to the time such written examination was required;

C. The applicant has no place of business within this State, and is not an officer, director, stockholder or partner in any corporation or firm doing business in this State as a life insurance agency or broker; and

D. In such other state or province, a resident of this State is privileged to procure a life agent's or life broker's license, as the case may be, upon the foregoing conditions and without discrimination as to fees or otherwise in favor of the residents of such other state or province.

3. Section 1617 (service of process) shall also apply as to nonresidents licensed under this section.

§ 1681. Change of address, notice to commissioner

Every agent and broker shall promptly notify the commissioner in writing of every change of his principal business or residence address.

SUBCHAPTER IV

INSURANCE CONSULTANTS

QUALIFICATIONS AND REQUIREMENTS

§ 1801. Short title

This subchapter may be referred to as the "insurance consultant law."

§ 1802. Scope of subchapter IV

1. This subchapter applies only as to general lines consultants and life consultants, as defined in section 1508.

2. Unless context otherwise requires, "consultant" as used in this subchapter means both general lines consultants and life consultants.

§ 1803. Qualifications for license as consultant

For the protection of the people of this State the commissioner shall not issue, continue, or permit to exist any license as consultant except in compliance with this chapter, or as to any person not qualified therefor as follows:

1. Must be an individual of 25 or more years of age;

2. Must have had not less than 5 years of actual experience as a licensed agent or broker with respect to the kinds of insurance and contracts to be covered by the license, and other special experience, education or training, all

of sufficient content and duration reasonably necessary for competence in fulfilling the responsibilities of a consultant;

3. Must have a thorough knowledge of insurance and annuity contracts of the kinds proposed to be covered under the license;
4. Must pass all written examinations required for the license under this chapter;
5. Must be competent, trustworthy under highest fiduciary standards, financially responsible, and of good personal and business reputation; and
6. Must have filed the bond required by section 1804.

§ 1804. Consultant's bond

1. Every applicant for license as a consultant shall file with the commissioner with his application for license, and shall maintain in effect while so licensed, a bond issued by an authorized surety insurer in favor of the State of Maine, continuous in form and providing for aggregate liability of \$5,000.

2. The bond shall indemnify any person damaged by any fraudulent act or conduct of the licensee in transactions under the license, and shall likewise be conditioned upon faithful accounting and application of all moneys coming into the licensee's possession in connection with his activities as such a licensee.

3. The bond shall remain in force until released by the commissioner, or until cancelled by the surety. Without prejudice to any liability previously incurred thereunder, the surety may cancel the bond upon 30 days advance written notice to the licensee and the commissioner.

§ 1805. Place of business, records

1. Every consultant shall have and maintain in this State a place of business accessible to the public. The address of such place shall appear upon the license, and the licensee shall promptly notify the commissioner in writing of any change thereof. Nothing in this section shall prohibit maintenance of such a place in the licensee's residence in this State.

2. The license of the licensee shall be conspicuously displayed in such place of business in a part thereof customarily open to the public.

3. The licensee shall keep at his place of business a complete record of transactions under his license. The record shall be kept available for inspection by the commissioner for a period of at least 3 years after completion of the respective transactions.

§ 1806. Combined licensing prohibited

A licensed consultant shall not at the same time be licensed as an agent or broker and shall not have a pecuniary interest in any insurance agency or broker.

**[DUE TO ITS SIZE, THIS LAW HAS BEEN DIVIDED INTO
THREE ELECTRONIC FILES. FOR THE REMAINDER OF THE
CHAPTER, SEE THE SECOND AND THIRD FILES.]**