

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

**[DUE TO ITS SIZE, THIS LAW HAS BEEN DIVIDED INTO
THREE ELECTRONIC FILES. THIS IS THE THIRD FILE.]**

SUBCHAPTER IV
GENERAL PROVISIONS

§ 3040. Insurance on furniture, owned jointly by husband and wife

Insurance effected by a husband or wife on a dwelling house owned by the insured and on the furniture therein, is valid for all the furniture, although part is owned by the husband and part by the wife.

§ 3041. Time limit for adjusting, paying fire loss; penalty

1. In case of physical loss by fire to property insured by any insurer, the insurer or its representative shall begin adjustment of such loss within 20 days after the receipt of the notice of loss provided for by the policy.

2. In any statute relating to fire insurance or in any policy of fire insurance reference to the date of loss or the time when a loss occurs shall mean the day of the fire against which the policy insures.

CHAPTER 43
SURETY INSURANCE CONTRACTS

§ 3101. Contracts subject to general provisions

All contracts of surety insurance delivered or issued for delivery in this State and covering subjects resident, located, or to be performed in this State are also subject to the applicable provisions of chapter 27 (the insurance contract) and to other applicable provisions of this Title.

§ 3102. Acceptance as surety on bonds

Any insurer duly authorized to transact surety insurance in this State may be accepted as surety upon the bond of any person required by the laws of the State to execute a bond. If such insurer shall furnish satisfactory evidence of its ability to provide all the security required by law, no additional surety may be exacted, but other surety or sureties may, in the discretion of the official authorized to approve such bond, be required. Such insurer may be released from its liability on the same terms and conditions as are by law prescribed for the release of individuals. It is the true intent and meaning of this section to enable corporations created for that purpose to become surety on bonds required by law, subject to all the rights and liabilities of private individuals.

§ 3103. Premiums on bonds

Any court or officer whose duty it is to pass upon the account of any person required by law to give a bond may, whenever such person has given any such surety insurer as surety upon the bond, allow in the settlement of such account a reasonable sum for the expense of procuring such surety. The premiums on account of all official bonds required by law to be given by county officials shall be paid from the treasuries of their several counties.

§ 3104. Notice of authorization to registers of probate

Whenever any surety insurer is authorized to transact business in this State, the commissioner shall forthwith transmit to each register of probate the name of such insurer and the names of all agents of such insurer who have been licensed by him, their places of residence and the dates when their licenses will expire, and the names and addresses of all attorneys in fact registered with him whose addresses are in the county of such register. He shall from time to time communicate to the registers of probate the names of all surety insurers which become authorized or cease to be authorized to transact business in this State. The registers shall preserve such lists on the files of the courts.

§ 3105. Estoppel to deny corporate power

Any insurer which shall execute any bond as surety under section 3102 shall be estopped in any proceedings to enforce the liability which it shall have assumed to incur, to deny its corporate power or the authority of its attorney in fact within the scope of his power of attorney filed in accordance with section 413, to execute such instrument or assume such liability or the authority of any licensed agent to countersign such instrument.

CHAPTER 45

TITLE INSURANCE CONTRACTS

§ 3201. Contracts subject to general provisions

All contracts of title insurance delivered or issued for delivery in this State and covering subjects located in this State are subject to the applicable provisions of chapter 27 (the insurance contract) and to other applicable provisions of this Title.

CHAPTER 47

ORGANIZATION, CORPORATE POWERS, PROCEDURES OF
DOMESTIC LEGAL RESERVE STOCK AND MUTUAL INSURERS

SUBCHAPTER I

ORGANIZATION AND GENERAL POWERS

§ 3301. Scope of chapter

This chapter applies only as to domestic stock and mutual insurers transacting insurance on the cash premium or legal reserve plan, and applies as to such insurers in particular as follows:

1. To each such insurer hereafter organized.
2. To each such insurer heretofore organized under general laws.

§ 3302. Insurers to be organized under this Title

All domestic stock and mutual legal reserve insurers hereafter organized shall be organized under the provisions of this Title, and not otherwise.

§ 3303. Reservation of power

The Legislature shall have power to amend, repeal or modify this Title at pleasure.

§ 3304. Applicability of general corporation statutes

Domestic stock and mutual insurers shall be governed by the applicable provisions of the general statutes of this State relating to private corporations organized for profit, as such statutes are now or hereafter may be constituted, except where such general statutes are in conflict with the express provisions of this Title and the reasonable implications thereof, and in which case the provisions of this Title shall govern.

§ 3305. "Stock," "mutual" insurers defined

1. A "stock" insurer is as defined in section 400.
2. A "mutual" insurer is as defined in section 401.

§ 3306. Incorporation of domestic stock, mutual insurers

1. This section applies to stock and mutual insurers hereafter incorporated in this State. Such an insurer may be formed for the purpose of transacting any kind or kinds of insurance, as well as annuity business.

2. Incorporators. Three or more individuals, none of whom is less than 21 years of age, may incorporate a stock insurer; 10 or more such individuals may incorporate a mutual insurer. At least a majority of the incorporators must be citizens of the United States of America.

3. Certificate of organization. The incorporators shall execute a certificate of organization in quadruplicate, and at least a majority of the incorporators shall acknowledge their execution thereof under oath. The certificate of organization shall state and show:

A. The name of the corporation, which must be generally indicative of the business to be transacted and be subject to section 408 (name of insurer); if a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in foreign countries, or in jurisdictions wherein conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance therein.

B. The duration of its existence, which may be perpetual.

C. The kinds of insurance, as defined in this Title, which the corporation is formed to transact.

D. If a stock corporation, its authorized capital and the number of shares of stock into which divided. The capital stock shall consist entirely of common stock of one uniform class, par value not less than \$1.00 per share, each outstanding share of which shall have equal rights in every respect with every other such share, except that treasury stock shall not have dividend or voting rights. Shares without par value shall not be authorized.

E. If a stock corporation the extent, if any, to which shares of its stock shall be subject to assessment.

F. If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability shall be as stated in the certificate of organization, but shall not be less than 1 or more than 6 times the premium for the member's policy at the annual premium rate for a term of one year.

G. If a mutual corporation, the amount, if any, of its guaranty capital shares, the number and par value of shares into which divided, the voting and other rights of such shares, and the conditions under which such shares shall or may be retired by the corporation, all consistent with the provisions of section 3358 (guaranty capital shares).

H. The number of directors, not less than 3, who shall constitute the board of directors and conduct the affairs of the corporation; and the names, addresses and terms of the members of the initial board of directors, who shall conduct the corporation's affairs for the term specified in the certificate, but for not more than one year after date of incorporation.

I. The city or town, and county in this State in which the corporation's principal place of business is to be located.

J. The name, residence address and national citizenship of each incorporator.

K. Other provisions, not inconsistent with law, deemed appropriate by the incorporators, and including, in the case of life insurers, the power to act as trustee with respect to proceeds of maturity or death benefits payable under life insurance or annuity contracts issued or assumed by it.

§ 3307. Certificate of organization, approval and filing

1. The incorporators of a proposed insurer shall deliver the quadruplicate originals of the certificate of organization to the commissioner. The commissioner shall deliver one set of such originals to the Attorney General of this State, and the Attorney General shall examine the same. If the Attorney General finds that the certificate of organization complies with law, he shall so certify in writing and return the original of the certificate of organization, so certified, to the commissioner.

2. When the certificate of organization has been so approved and returned by the Attorney General, the commissioner shall also endorse his approval upon each set thereof and return the quadruplicate originals of the certificate of organization to the incorporators. The incorporators shall then file one of such sets with the Secretary of State of this State, one set with the commis-

sioner bearing the certification of the Secretary of State, one set for recording in the registry of deeds of the county in this State in which the corporation's principal place of business is to be located, and shall retain the remaining set in the corporate records.

3. For filing the certificate of organization of a mutual insurer the Secretary of State shall charge and collect a filing fee of \$25; except, that if it is a mutual insurance corporation with provision for guaranty capital shares, the Secretary of State shall charge and collect for the filing of the certificate of organization the same amount as would be payable by a stock insurance corporation having a like amount of authorized capital stock.

4. If the Attorney General finds that the proposed certificate of organization does not comply with law, he shall refuse to approve the same and shall return the set thereof to the commissioner, together with a written statement of the respects in which he finds that the certificate does not so comply. The commissioner shall thereupon return all sets of the proposed certificate of organization to the proposed incorporators together with the Attorney General's written statement.

5. The Secretary of State shall not permit the filing in that office of any such certificate unless the same bears the commissioner's approval endorsed thereon as hereinabove provided.

6. The approval of the Attorney General or commissioner, as hereinabove provided for, shall be deemed to relate only to the form and contents of the certificate, and shall not constitute approval or commitment as to any other aspect or operation of the proposed insurer or relative to its entitlement, if any, to a certificate of authority.

7. The commissioner and Attorney General shall perform all duties required of them under this section within a reasonable time after the certificate of organization has been submitted to the commissioner as provided in subsection 1.

§ 3308. Certificate of Secretary of State

1. Upon filing with him of the certificate of organization of a proposed insurer as provided in section 3307, subsection 2, and payment of the charges and fees therefor, the Secretary of State shall issue to the corporation his certificate of organization in the following form:

“STATE OF MAINE

“Be it known, that whereas” (names of the incorporators) “have associated themselves with the intention of forming a corporation, under the name of , for the purpose” (here the purpose declared in the certificate of organization shall be inserted,) “with a capital stock of \$..... , and have complied with the provisions of the statutes of the State in such case made and provided, as appear from the certificate of organization, duly approved by the Insurance Commissioner and recorded in this office: Now, therefore, I, , Secretary of State of Maine, hereby certify that” (incorporators' names) “their associates and successors, are legally organized and established as, and are

hereby made, an existing corporation under the name of the company, with all the powers, rights and privileges, and subject to the duties, liabilities and restrictions which by law appertain thereto. Witness my official signature, hereunto subscribed, and the seal of the State of Maine hereunto affixed, this day of....., A. D. 19....." (In case of purely mutual companies, so much as relates to capital stock shall be omitted.)

2. The Secretary of State shall sign the same, and cause the seal of the State to be thereto affixed, and such certificate shall have the force and effect of a special charter and be conclusive evidence of the organization and establishment of such corporation. The certificate shall be duly recorded in the office of the Secretary of State, and a duly authenticated copy of such record may be used in evidence, with like effect as the original certificate.

§ 3309. Completion of incorporation; general powers, duties

The incorporation of an insurer shall be effective as of the date of issuance by the Secretary of State of his certificate as provided for in section 3308; and thereupon the corporation shall be vested with all the powers, rights and privileges, and be subject to all the duties, liabilities and restrictions applicable to insurer corporations; subject, however, to qualification and application for, and issuance to the corporation of, a certificate of authority as an insurer by the commissioner under the provisions of this Title.

§ 3310. Amendment of certificate of organization;
change of principal place of business

1. A stock insurer may amend its certificate of organization for any lawful purpose by authorization or vote of stockholders as provided for business corporations in general under the laws of this State applicable to such business corporations.

2. A mutual insurer may amend its certificate of organization for any lawful purpose by affirmative vote of a majority of those of its members entitled to vote and present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend and the substance of such proposal, and by affirmative vote of the holders of at least 2/3 of the insurer's outstanding guaranty capital shares, if any.

3. Upon adoption of such an amendment the insurer shall make in quadruplicate under its corporate seal a certificate, sometimes referred to as a "certificate of amendment", setting forth such amendment and the date and manner of the adoption thereof. The certificate shall be executed by the insurer's president or vice-president and secretary or assistant secretary and duly sworn to by one of them. The insurer shall deliver to the commissioner the quadruplicate originals of the certificate for review, certification and approval or disapproval by the Attorney General and the commissioner, and filing and recording, all as provided for original certificates of organization under section 3307. The Secretary of State shall charge and collect for the use of the State a fee of \$20 for filing and recording the certificate of amendment of a mutual insurer. The amendment shall be effective when duly approved and filed with the Secretary of State.

4. An insurer may change its principal place of business without amendment of its certificate of organization, by resolution of its board of directors. A copy of such resolution, duly certified under oath by the corporate secretary, shall be executed in quadruplicate and filed with the commissioner, the Secretary of State, the registry of deeds of the county in which the insurer's principal place of business was theretofore located, and in the corporate records. If the principal place of business is thereby changed to another county of this State, the insurer shall also file in the registry of deeds of such county a copy, duly certified by the commissioner, of its certificate of organization and of each amendment thereto, and a certified copy of the resolution by which the principal place of business was so changed.

§ 3311. Insurance business exclusive; exceptions

1. No domestic insurer heretofore or hereafter formed shall engage in any business other than the insurance business and in business activities reasonably and necessarily incidental to such insurance business.

2. Except that:

A. A title insurer may also engage in business as an escrow agent;

B. Any insurer may also engage in business activities reasonably related to the management, supervision, servicing of, and protection of its interests as to its lawful investments;

C. An insurer may own subsidiaries, or subsidiaries owning other subsidiaries which may engage in such businesses all as provided for in section 1115 (stocks of subsidiaries); and

D. An insurer may utilize its facilities to perform administrative services for any governmental body, unit, or agency.

SUBCHAPTER II

PROVISIONS APPLYING ONLY TO MUTUAL INSURERS

§ 3352. Mutual insurers, initial qualifications

1. When hereafter newly organized, a mutual insurer may be authorized to transact any one of the kinds of insurance listed in the schedule contained in subsection 2 or any combination of such kinds as provided in subsection 3.

2. When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this Title, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at a rate not less than that usually charged by other insurers for comparable coverages, must have surplus funds on hand and deposited as of the date such insurance coverages are to become effective, or, in lieu of such applications, premiums, and surplus, may deposit and thereafter maintain surplus, all in accordance with that part of the following schedule which applies to each kind of insurance the insurer proposes to transact:

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
Kind of Ins.	Min. No. of Apps. Accepted	Min. No. Sub-jects Covered	Minimum Premium Collected	Min. Amt. Ins. Ea. Subject	Max. Amt. Ins. Ea. Subject (5)	Deposit Min. Surplus Fund (6)	Deposit Surplus in Lieu (7)
Life(1)	500	500	Annual	\$ 2,000	\$ 5,000	\$100,000	\$200,000
Health(2)	500	500	Quarterly	\$ 25 (wkly. indem.)	\$ 50 (wkly. indem.)	\$100,000	\$200,000
Property(3)	100	250	Annual	\$ 3,000	\$ 7,000	\$100,000	\$200,000
Casualty(4)	250	500	Annual	\$ 5,000	\$25,000	\$200,000	\$300,000

The following provisos are respectively applicable to the foregoing schedule and provisions as indicated by like numerals appearing in such schedule:

A. No group insurance or term policies for terms of less than 10 years shall be included.

B. No group, blanket or family plans of insurance shall be included. In lieu of weekly indemnity a life premium value in medical, surgical, and hospital benefits may be provided. Any accidental death or dismemberment benefit provided shall not exceed \$5,000.

C. Only insurance of the owner's interest in real property may be included.

D. Must include insurance of legal liability for bodily injury and property damage, to which the maximum and minimum insured amounts apply.

E. The maximums provided for in this column (F) are net of applicable reinsurance.

F. The deposit of surplus in the amount specified in columns (G) and (H) must thereafter be maintained unimpaired. The deposit is subject to the provisions of chapter 15 (administration of deposits).

Expendable surplus: In addition to surplus deposited and thereafter to be maintained as shown in columns (G) or (H) above, the insurer when first authorized must have on hand surplus funds, which it can thereafter expend in the conduct of its business, in amount not less than 50% of the applicable deposited and maintained surplus required of it under the above schedule.

3. An insurer may initially qualify for authority to transact both life and health insurances by fulfilling the foregoing requirements as to each such kind of insurance; and may in like manner initially qualify for authority to transact both property and casualty insurance. An insurer shall not, however, so qualify to transact any other combination of such insurances except as provided in section 3357.

§ 3353. Qualifying applications for insurance; bond or deposit

1. Before soliciting any applications for insurance required under section 3352 as qualification for the original certificate of authority, the incorporators of the proposed insurer shall file with the commissioner a corporate surety bond in the penalty of \$15,000, in favor of the State of Maine and for use and benefit of the State of Maine and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:

- A. For the prompt return to applicant members of all premiums collected in advance;
- B. For payment of all indebtedness of the corporation; and
- C. For payment of costs incurred by the State of Maine in event of any legal proceedings for liquidation or dissolution of the corporation;

all in the event the corporation fails to complete its organization and secure a certificate of authority within one year after the date of its certificate of organization.

2. In lieu of such bond, the incorporators may deposit with the commissioner \$15,000 in cash or United States government bonds, negotiable and payable to the bearer, with a market value at all times of not less than \$15,000 and to be held in trust upon the same conditions as required for the bond.

3. The commissioner shall release and discharge any such bond filed or deposit or remaining portion thereof held under this section upon settlement and termination of all liabilities against it.

§ 3354. Qualifying applications for insurance; solicitation

1. Upon receipt of the commissioner's approval of the bond or deposit as provided in section 3353, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.

2. All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this State.

3. All such applications shall provide that:

A. Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;

B. No insurance is in effect unless and until the certificate of authority has been issued; and

C. The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date which date shall be not later than one year after the date of the certificate of organization.

4. All qualifying premiums collected shall be in cash.

5. Solicitation for such qualifying applications for insurance shall be by licensed agents of the corporation, and the commissioner shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to subsection 3, paragraph C to individuals qualified as for a resident agent's license except as to the taking or passing of an examination. The commissioner may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents in general under chapter 17.

§ 3355. Deposit of qualifying premiums; effective date of insurance

1. All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this State under a written trust agreement consistent with this section and with section 3354, subsection 3, paragraph C. The corporation shall file an executed copy of such trust agreement with the commissioner.

2. Upon issuance to the corporation of a certificate of authority as an insurer for the kind or kinds of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

§ 3356. Failure to complete and qualify

If the proposed domestic mutual insurer fails to complete its organization and to secure its original certificate of authority within one year from and after date of its certificate of organization its corporate powers shall cease, and the commissioner shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premium held in trust under section 3355.

§ 3357. Authority to transact additional kinds of insurance

After being authorized to transact one kind or combination of kinds of insurance as provided in section 3352, a mutual insurer may be authorized by the commissioner to transact such additional kinds of insurance as are permitted under section 409 (combinations of insuring powers), while otherwise in compliance with this Title and while maintaining unimpaired surplus and guaranty capital funds in an amount not less than the amount of paid-in capital stock required to be maintained by a like domestic stock insurer transacting the same kinds of insurance.

§ 3358. Guaranty capital shares

1. A mutual insurer formed to transact or transacting any kind of insurance shall have the right to provide for guaranty capital shares in its certificate of organization. Outstanding guaranty capital shares at the par value thereof shall take the place of a like amount of basic surplus otherwise re-

quired for authority to transact insurance.

2. Shares of guaranty capital stock shall have a par value of \$100 each, and shall be paid for in cash. Nothing in this Title shall be deemed to prohibit the sale of such shares at a price above such par value in order to provide the insurer with capital surplus.

3. Only one class of such guaranty capital shares shall be provided for, and each such share outstanding shall have equal voting, dividend, retirement and other rights with every other such share. Each such share shall have one vote on matters coming to a vote at meetings of the insurer's shareholders and members. Policyholders of the insurer shall have the same voting rights as would exist in the absence of such guaranty capital.

4. Noncumulative dividends not exceeding in any one year 7% of the amount paid to the insurer for the same, may be declared and paid by the insurer on outstanding guaranty capital shares out of that portion of the insurer's expendable surplus representing net realized earnings from its operations; and may be so paid even though the amount of the insurer's expendable surplus is then less in amount than any prior total of expendable contributed, borrowed, or paid-in surplus. Such a dividend may be paid in cash or in guaranty capital shares, or part in each. An amount equal to the par value of shares so distributed as dividend shall be transferred from the insurer's earned surplus account to its guaranty capital shares account.

5. If the guaranty capital becomes impaired, the impairment shall be cured as provided in section 3423 (impairment of capital funds).

6. The insurer shall retire and cancel the guaranty capital shares in part and in whole as soon as is reasonably possible, out of expendable surplus resulting from net realized earnings from its operations, or out of surplus created through issuance of agreements authorized by section 3415. The insurer shall retire and cancel the guaranty capital shares in their entirety when such retirement would, in the commissioner's opinion, leave the insurer with surplus as to policyholders reasonably adequate to enable it to continue to transact the kinds and volume of insurance business transacted.

7. In any liquidation of the insurer outstanding guaranty capital shares shall have the same rights and priority as to the insurer's assets as are possessed by the stockholders of a like stock insurer.

§ 3359. Bylaws

1. A domestic mutual insurer shall have bylaws for the government of its affairs. The insurer's initial board of directors shall adopt original bylaws, subject to the approval of the insurer's members at the next meeting of members.

2. The bylaws shall contain provisions, consistent with this Title, relating to:

A. The voting rights of members;

- B. Election of directors, and the number, qualifications, terms of office and powers of directors;
- C. Annual and special meetings of members;
- D. The number, designation, election, terms and powers and duties of the respective corporate officers;
- E. Deposit, custody, disbursement and accounting for corporate funds;
- F. Fidelity bonds covering such officers and employees of the insurer as handle its funds, to be issued by a corporate surety and to be in such amount as may be reasonable; and
- G. Such other matters as may be customary, necessary, or convenient for the management or regulation of corporate affairs.

3. The insurer shall promptly file with the commissioner a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The commissioner shall disapprove any bylaw provision deemed by him, after a hearing held thereon, to be unlawful, unreasonable, inadequate, unfair or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

§ 3360. Members are policyholders

1. Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, as the charter and as the policy shall so specify.

2. Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee or fiduciary may be a member of a domestic, foreign, or alien mutual insurer. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, and shall not be personally liable upon any contract of insurance for acting in such representative capacity.

3. Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which such corporation is organized, and as much granted as the rights and powers expressly conferred.

§ 3361. Meetings of members, in general

1. Meetings of members of a domestic mutual insurer shall be held in the city or town of its principal office in this State, except as may otherwise be provided in the insurer's bylaws with the commissioner's approval.

2. Each such insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its members to fill vacancies existing or

occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs and transact such other business as may properly be brought before it.

3. Written notice of the time and place of the annual meeting of members shall be given members not less than 30 days prior to the meeting. Notice may be given by imprinting the notice plainly on the policies issued by the insurer or in any other appropriate manner. Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change, among other appropriate methods may be given:

A. By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting; or

B. Unless the commissioner otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the 24 months immediately following such meeting.

4. If more than 6 months are allowed to elapse after an annual meeting of members is due to be held and without such annual meeting being held, the commissioner shall, upon written request of any officer, director, or member of the insurer, cause written notice of such meeting to be given to the insurer's members, and the meeting shall be held as soon as reasonably possible thereafter.

§ 3362. Special meetings of members

1. A special meeting of the members of a mutual insurer may be held for any lawful purpose. The meeting shall be called by the corporate secretary pursuant to request of the insurer's president or of its board of directors, or upon request in writing signed by not less than 1/10 of the insurer's members. The meeting shall be held at such time as the secretary may fix, but not less than 10 nor more than 30 days after receipt of the request. If the secretary fails to issue such call, the president, directors, or members making the request may do so.

2. Not less than 10 days' written notice of the meeting shall be given. Notice addressed to the insurer's members at their respective post office addresses last of record with the insurer and deposited, postage prepaid, in a letter depository of the United State post office, shall be deemed to have been given when so mailed. In lieu of mailed notice the insurer may publish the notice in such publication or publications as shall afford a majority of its members a reasonable opportunity to have actual advance notice of the meeting. The notice shall state the purposes of the meeting, and no business shall be transacted at the meeting of which notice was not so given.

§ 3363. Voting rights of members

1. Each member of a mutual insurer is entitled to one vote upon each matter coming to a vote at a meeting of members, or to such other vote as

may be provided for on a reasonable basis in the insurer's bylaws with the commissioner's approval.

2. A member shall have the right to vote in person or by his written proxy filed with the corporate secretary not less than 20 days prior to the meeting. No such proxy shall be made irrevocable, nor be valid beyond the earlier of the following dates:

- A. The date of expiration set forth in the proxy; or
- B. The date of termination of membership; or
- C. 5 years from the date of execution of the proxy.

3. No member's vote upon any proposal to divest the insurer of its business or assets, or the major part thereof, shall be registered or taken except in person or by proxy newly executed and specific as to the matter to be voted upon.

§ 3364. Contingent liability of members

1. Except as provided otherwise in section 3367 with respect to non-assessable policies, each member of a domestic mutual insurer shall have a contingent liability, prorata and not one for another, for the discharge of its obligations, which contingent liability shall be in such maximum amount—not less than 1 or more than 6 times the annual premium for the member's policy at the annual premium rate—as shall be specified in the insurer's certificate of organization or bylaws.

2. Every policy issued by the insurer shall contain a plain and legible statement of the contingent liability upon either the face or back thereof.

3. Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion of the obligations of the insurer which accrued while the policy was in force.

4. Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

§ 3365. Levy of contingent liability

1. If at any time the assets of a domestic mutual insurer are less than its liabilities, exclusive of guaranty capital shares, if any, at par value, and the minimum amount of surplus required to be maintained by it under this Title for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors may, if the same is approved by the commissioner as being reasonable and in the best interests of the insurer and its members, levy an assessment only on its members who held the policies providing for contingent liability at any time within the 12 months next preceding the date the levy was authorized by the board of directors, and such members shall be liable to the insurer for the amount so assessed.

2. The levy of assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed 5% of the sum of the insurer's liabilities and such minimum required surplus as of the date of the levy.

3. As to the respective policies subject to the levy, the assessment shall be computed upon the basis of premium earned during the period covered by the levy.

4. No member shall have an offset or counterclaim against any assessment for which he is liable, on account of any claim for unearned premium or loss payable.

5. As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the commissioner as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held or to be held by the insurer to the credit of the member's policy.

§ 3366. Enforcement of contingent liability

1. The insurer shall notify each member of the amount of assessment to be paid, and the date—not less than 20 days after mailing date—by which payment is to be made, by written notice mailed to the member at his address last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

2. If a member fails to pay the assessment within the period specified in the notice, the insurer may institute suit to collect the same.

§ 3367. Nonassessable policies; limits of assessability; use of funds; combination operations

1. A domestic mutual insurer may extinguish the contingent liability to assessment of its members as to cash premium plan policies in force and may omit provisions imposing contingent liability in such policies currently issued while it has and maintains surplus, as determined by its financial statement filed with the commissioner as of the year end next preceding, of not less than \$100,000 as to an insurer formed prior to January 1, 1968, and of not less than \$200,000 as to an insurer formed after January 1, 1968.

2. If the insurer after qualifying to issue such a nonassessable policy fails to maintain the applicable above requirement, it shall cease to issue non-assessable policies until it has again met and maintained the requirement for a period of one year.

3. Any assessment levied under the contingent liability provisions of the policy shall be for the exclusive benefit of the holders of policies subject to contingent liability, and such policyholders shall not be liable to assessment in an amount greater in proportion to the total deficiency than the ratio that

the deficiency attributable to the contingently liable business bears to the total deficiency. An assessment shall apply only to the holders of the type of policy or plan under which the deficiency occurred, and funds received from the assessment shall be for the exclusive benefit of such holders.

4. Nothing in this chapter shall be deemed to prohibit a domestic mutual insurer formed prior to January 1, 1968 from at any one time transacting, in respective departments or divisions of its operations, insurance business on any two or all of the following bases:

- A. Cash premium plan, without contingent liability to assessment, and issuance of nonassessable policies if qualified therefor as above provided in this section;
- B. Cash premium plan, with contingent liability to assessment; and
- C. Assessment plan.

SUBCHAPTER III

PROVISIONS APPLYING TO

STOCK AND MUTUAL INSURERS

§ 3408. Home office, records, assets to be in State; exceptions

1. Every domestic insurer shall have and maintain its principal place of business and home office in this State, and shall keep therein accurate and complete accounts and records of its assets, transactions and affairs in accordance with the usual and accepted principles and practices of insurance accounting and record keeping as applicable to the kinds of insurance transacted by the insurer.

2. Every domestic insurer shall have and maintain its assets in this State, except as to:

- A. Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this State, and
- B. Such property of the insurer as may be customary, necessary and convenient to enable and facilitate the operation of its branch offices located outside this State as referred to in subsection 4.

3. No person shall remove all or a material part of the records or assets of a domestic insurer from this State except pursuant to a plan of merger, consolidation, or bulk reinsurance approved by the commissioner under this Title, or for such reasonable purposes and periods of time as may be approved by the commissioner in writing in advance of such removal, or conceal such records or assets or such material part thereof from the commissioner. Any person who removes or attempts to remove such records of assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this State with the intent to remove the same from this State, or who conceals or attempts to conceal the same from the commissioner, in violation of this section, shall upon

conviction thereof be guilty of a felony, punishable by a fine of not more than \$10,000, or by imprisonment in the penitentiary for not more than 5 years or by both such fine and imprisonment in the discretion of the court. Upon any removal or attempted removal of such records of assets, or upon retention of such records or assets or material part thereof outside this State, beyond the period therefor specified in the commissioner's consent under which the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the commissioner may institute delinquency proceedings against the insurer pursuant to the provisions of chapter 57.

4. This section shall not be deemed to prohibit or prevent an insurer from:

A. Establishing and maintaining regional home offices or branch offices in other states or countries where necessary or convenient to the transaction of its business, and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the commissioner at his request.

B. Having, depositing or transmitting funds and assets of the insurer in or to jurisdictions outside of this State required by the law of such jurisdiction or as reasonably and customarily required or convenient in the regular course of its business.

§ 3409. Vouchers for expenditures

1. No insurer shall make any disbursement of \$50 or more, unless evidenced by a voucher or other document correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money.

2. If the disbursement is for services and reimbursement, the voucher or other document, or some other writing referred to therein, shall describe the services and itemize the expenditures.

3. If in a particular instance such a voucher cannot be obtained, the expenditure must be supported by an affidavit executed by an officer of the insurer stating the reasons for such inability and the particulars of such expenditure as otherwise hereinabove required.

§ 3410. Destruction of records

1. An insurer may destroy its obsolete records after expiration of such reasonable period after completion of the transactions to which they relate as the insurer may deem proper. The insurer may so destroy its closed files relating to losses and claims arising under its policies after the first to occur of the following events:

A. Completion of a regular examination of the insurer by the commissioner and to which the closed file was subject; or

B. Expiration of 6 years after the file was duly closed.

2. Records preserved on microfilm or other similar process and freely retrievable shall not be deemed to have been destroyed.

3. This section shall not relieve the insurer of any responsibility or liability otherwise arising under law with respect to the existence and availability of any record.

§ 3411. Directors

1. The affairs of every domestic insurer shall be managed by a board of directors consisting of not less than 7 directors or more than 21 directors.

2. Directors, other than initial directors named in the insurer's certificate of organization, shall be elected by the members or stockholders of a domestic insurer at the annual meeting of stockholders or members. Directors may be elected for terms of not more than 3 years each and until their successors are elected and have qualified; and if to be elected for terms of more than one year the insurer's bylaws may provide for a staggered term system under which the terms of a proportionate part of the members of the board of directors shall expire on the date of each annual meeting of stockholders or members. A directorship becoming vacant before expiration of the term may be filled by the board of directors for the remainder of the term.

§ 3412. Officers; notice of change

1. An insurer's board of directors shall elect one of their number as president, and shall elect a corporate secretary and such other officers as may be provided for in the bylaws or otherwise required by law. Any such officer shall serve for such term as may be fixed in the bylaws or by the board of directors, but shall be subject to removal as an officer by the board of directors at any time.

2. Each officer shall have such powers and duties as may be prescribed by or pursuant to the insurer's charter or bylaws.

§ 3413. Prohibited pecuniary interest of officials and others; use of confidential information prohibited

1. Any officer or director, or any member of any committee or any employee of a domestic insurer, having the duty or power of investing or handling the insurer's funds, shall not deposit or invest such funds except in the insurer's name; shall not borrow the funds of the insurer; or be pecuniarily interested in any loan, pledge, deposit, security, investment, sale, purchase, exchange, reinsurance or other similar transaction or property of the insurer except as a stockholder, member, employee or director, unless the transaction is authorized or approved by the insurer's board of directors, with knowledge and recording of such pecuniary interest, by affirmative vote of not less than $\frac{2}{3}$ of the directors; and shall not take or receive to his own use any fee, brokerage, commission, gift or other similar consideration for or on account of any such transaction made by or on behalf of the insurer.

2. No director, officer or employee of a domestic insurer shall directly or indirectly use for his own private pecuniary advantage confidential information concerning the insurer or its past, existing or proposed affairs or transactions acquired by him in the course of his services as such director, officer, or employee. The amount of any financial gain realized directly or indirectly by any such individual and accompanied by violation of this subsection shall belong to the insurer, and shall be recoverable by the insurer by civil suit. This subsection shall not apply as to transactions in shares of a stock insurer which are subject to section 16 of the Securities Exchange Act of 1934, as amended.

3. No insurer shall guarantee the financial obligation of any of its officers or directors.

4. This section shall not prohibit such a director, officer, member of a committee, or employee from becoming a policyholder of the insurer and enjoying the usual rights of a policyholder or from participating as beneficiary in any pension trust, deferred compensation plan, profit sharing plan, stock option plan or similar plan authorized by the insurer and to which he may be eligible; or prohibit any director or member of a committee from receiving a reasonable fee for lawful services actually rendered to the insurer.

5. The commissioner may, by regulation from time to time, define and permit additional exceptions to the prohibition contained in subsection 1 solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which a director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director, corporation or firm.

§ 3414. Management, commission, exclusive agency contracts

1. No domestic insurer shall hereafter make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the material exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, or, if an officer, director or otherwise part of the insurer's management, is to receive any commission, bonus or compensation based upon the volume of the insurer's business or transactions, unless the contract is filed with and not disapproved by the commissioner. The contract shall become effective in accordance with its terms unless disapproved by the commissioner within 20 days after date of filing, subject to such reasonable extension of time as the commissioner may require by notice given within such 20 days. Any disapproval shall be delivered to the insurer in writing stating the grounds therefor.

2. Any such contract shall provide that any such manager, producer of its business or contract holder shall within 90 days after expiration of each calendar year furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, with specification of the emoluments received therefrom by the respective directors, officers and other principal management personnel of the manager or producer, and with

such classification of items and further detail as the insurer's board of directors may reasonably require.

3. The commissioner shall disapprove any such contract if he finds that it:

A. Subjects the insurer to excessive charges; or

B. Is to extend for an unreasonable length of time; or

C. Does not contain fair and adequate standards of performance; or

D. Contains other inequitable provision or provisions which impair the proper interests of stockholders or members of the insurer.

4. The commissioner may, after a hearing held thereon, disapprove any such contract theretofore permitted to become effective, if he finds that the contract should be disapproved on any of the grounds referred to in subsection 3.

5. This section does not apply as to contracts entered into prior to the effective date of this Act, or to amendment of such contracts other than extensions thereof.

6. This section shall not be deemed to prohibit receipt of commissions on insurance written personally by a director or officer who is duly licensed and regularly engaged in business as an insurance agent or broker; or to prohibit receipt of vested commissions by a director or officer based upon insurance business theretofore written by him.

§ 3415. Borrowed capital funds

1. A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding per annum a rate 2 percentage points in excess of the then current discount rate of the Federal Reserve Bank, Boston, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan, except that if sale is made of the loan securities through established securities brokers or by public offering the insurer may pay the reasonable costs thereof approved by the commissioner.

2. Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any set-off or counterclaim; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

3. Any such loan shall be subject to the commissioner's approval. The

insurer shall, in advance of the loan, file with the commissioner a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within 15 days after date of such filing the insurer is notified of the commissioner's disapproval and the reasons therefor. The commissioner shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

4. Any such loan to a mutual insurer or substantial portion thereof may be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan, whether heretofore or hereafter outstanding shall be made, other than as provided in the loan agreement, unless approved in advance by the commissioner.

5. This section shall not apply to other kinds of loans obtained by the insurer in ordinary course of business, or to loans secured by pledge or mortgage of assets.

6. Loans authorized under this section may be made by domestic insurers as well as by other persons; but such a loan shall not constitute an asset in any determination of the financial condition of the lending insurer.

§ 3416. Dividends to stockholders

1. A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and net realized capital gains.

2. A cash dividend otherwise lawful may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed or paid-in surplus.

3. A stock dividend may be paid out of any available surplus funds, other than "surplus" resulting from borrowed capital funds such as provided for under section 3415.

§ 3417. Participating policies

1. If provided for in its certificate of organization or charter, a stock insurer or mutual insurer may issue any or all of its policies or contracts with or without participation in profits, savings, unabsorbed portions of premiums or surplus; may classify policies issued and perils insured on a participating and nonparticipating basis, and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination shall be reasonable, and shall not unfairly discriminate as between policies so classified.

2. A life insurer may issue both participating and nonparticipating policies or contracts if the right or absence of right to participate is reasonably related to the premium charged.

3. After the first policy year, no dividend, otherwise earned under a life or health insurance policy or annuity contract, shall be made contingent upon the payment of renewal premium on any such policy or contract; except, that a participating life or health insurance policy providing for participation at the end of the first or second policy year may provide that the dividend or dividends will be paid subject to payment of premium for the next ensuing year.

§ 3418. Dividends to policyholders

1. The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its accumulated surplus funds which represents net realized savings, net realized earnings and net realized capital gains, all in excess of the surplus required by law to be maintained by the insurer.

2. A dividend otherwise proper may be payable out of such savings, earnings and gains even though the insurer's total surplus is then less than the aggregate of contributed surplus remaining unpaid by the insurer.

3. A domestic stock insurer may pay dividends to holders of its participating policies out of any available surplus funds.

4. No dividend shall be paid which is inequitable, or which unfairly discriminates as between classifications of policies or policies within the same classifications.

§ 3419. Pension and other plans for employees and others

1. Pursuant to the terms of a pension plan or plans or any modification thereof, heretofore or hereafter adopted by the insurer's board of directors and approved by the commissioner, any domestic stock or mutual insurer may pay the whole or any part of the cost of retirement or disability pensions for such of its officers, employees or full-time insurance agents as are specified in such plan or plans or modifications thereof. If so specified in the plan or plans, in lieu of such pensions actuarially equivalent benefits may be paid to such officers, employees or full-time agents or to their designated beneficiaries.

2. The commissioner shall approve any such plan unless he finds the same not to be within the reasonable financial resources of the insurer or not fair and equitable as between the respective classifications of participants therein.

3. Nothing contained in this section or in section 3420 shall be deemed to prohibit profit-sharing, stock option or similar plans for an insurer's officers, employees or agents.

§ 3420. Insurance benefits for employees and others

Pursuant to vote of its board of directors heretofore or hereafter made, any domestic stock or mutual insurer may provide for its officers, employees or full-time insurance agents, a plan or plans of insurance, to be issued under

group or individual policies. The insurer may pay the cost, in whole or in part, of such insurance; or, if duly authorized by its charter and bylaws, may itself provide such benefits directly as the insurer thereof, without requirement of placement through a licensed insurance agent, and in such case may adjust the premium rate for the insurance to reflect such savings in expense as the insurer may deem applicable.

§ 3421. Solicitation, insuring in other states

1. No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which not then licensed as an authorized insurer. This subsection shall not prohibit advertising through publications and radio, television and other media originating outside such reciprocating state, if the insurer is licensed in the state in which the advertising originates and the advertising is not specifically directed to residents of such reciprocating state. This subsection shall not apply as to surplus lines insurance, or reinsurance, or prohibit insurance covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed, or insurance otherwise effectuated in accordance with the laws of the reciprocating state. A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

2. A domestic insurer duly authorized to transact insurance in another jurisdiction may frame and issue policies for delivery in such jurisdiction pursuant to applications for insurance solicited and obtained therein, in accordance with the laws thereof, subject only to such restrictions, if any, as may be contained in the insurer's certificate of organization or bylaws; and subject, in the case of health insurers, to the provisions of section 2732 (policies issued for delivery in another state).

§ 3422. Purchase of own shares by stock insurer

A domestic stock insurer shall have the right to purchase or acquire shares of its own stock only as follows:

1. For elimination of fractional shares.
2. Incidental to the enforcement of rights of the insurer with respect to lawful transactions previously entered into in good faith for purposes other than the acquisition of such shares.
3. For the purposes of a general savings and investment plan for employees or agents of the insurer.
4. For mutualization of the insurer, as provided in section 3472.
5. For retirement or otherwise of the shares under a plan submitted to and approved in writing by the commissioner. The commissioner shall not approve a plan unless found by him to be reasonable, fair and equitable as to remaining stockholders of the insurer, and not materially adverse to the protection of the insurer's policyholders.

§ 3423. Impairment of capital funds

1. If a domestic stock insurer's paid-in capital stock, as represented by the aggregate par value of its outstanding capital stock, becomes impaired, or the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of basic surplus required to be maintained by it under this Title for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to cure the deficiency and file proof thereof with him within the period specified in the notice, which period shall be not less than 30 nor more than 90 days from the date of the notice. Such notice may be so served by delivery to the insurer, or by mailing to the insurer addressed to its registered office in this State.

2. The deficiency may be made good in cash or in assets eligible under chapter 13 (investments) for the investment of the insurer's funds or by amendment of the insurer's certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient paid-in capital stock, if a stock insurer, or surplus, if a mutual insurer, under this Title; or, if a stock insurer, by reduction of the number of shares of the insurer's authorized capital stock or the par value thereof through amendment of its certificate of organization, to an amount of authorized and unimpaired paid-in capital stock not below the minimum required for the kinds of insurance thereafter to be transacted.

3. If the deficiency is not made good and proof thereof filed with the commissioner within the period required by the notice as specified in subsection 1, the insurer shall be deemed insolvent and the commissioner shall institute delinquency proceedings against it under chapter 57.

§ 3424. Restrictions during impairment; penalty

1. During the existence of impairment of the capital stock or surplus of an insurer, as referred to in section 3423, the commissioner shall require such restriction of, or arrangements as to, operations of the insurer while the impairment exists as he deems advisable for protection of policyholders, the insurer or the public.

2. Any officer, director, representative or employee of the insurer who knowingly violates or fails to comply with any such restriction or requirement shall upon conviction thereof be subject to fine of not less than \$500 or more than \$5,000, or imprisonment for less than one year or to both such fine and imprisonment.

SUBCHAPTER IV

CONVERSION, AMALGAMATION, DISSOLUTION

§ 3471. Scope of subchapter

The applicable provisions of this subchapter apply as to domestic stock and mutual insurers whether heretofore or hereafter formed, and to such domestic insurers chartered under special legislative Acts where feasible and not in conflict with specific provisions of the Act, as heretofore amended, under which the insurer was so organized.

§ 3472. Mutualization of stock insurer

1. A stock insurer other than a title insurer may become a mutual insurer, or a combination stock and mutual insurer, under such plan and procedure as may be approved by the commissioner after a hearing thereon.

2. The commissioner shall not approve any such plan, procedure, or mutualization unless:

A. It is equitable to stockholders and policyholders;

B. It is subject to approval by the holders of not less than $\frac{2}{3}$ of the insurer's outstanding capital stock having voting rights, and by not less than $\frac{2}{3}$ of the insurer's policyholders who vote on such plan in person, by proxy or by mail pursuant to such notice and procedure as may be approved by the commissioner;

C. If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies, and whose policies have been in force for more than one year;

D. Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;

E. The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by the general corporation law of the State as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations;

F. The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and

G. The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance, and for the kinds of insurance included in its certificates of authority in such states.

3. Any such combination stock and mutual insurer referred to in subsection 1 above must have and maintain separate paid-in capital stock and basic surplus in respective amounts as would be required under this Title of separate domestic stock and mutual insurers transacting the same kind or kinds of insurance.

4. No director, officer, agent or employee of the insurer, or any other person, shall receive any fee, commission or other valuable consideration whatsoever, other than their customary salaries or other regular compensation, for in any manner aiding, promoting or assisting in the mutualization, except as set forth in the plan of mutualization as approved by the commissioner.

5. This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 57.

§ 3473. Conversion of stock insurer to ordinary business corporation

1. A domestic stock insurer may convert to a Maine ordinary business corporation through the following procedures:

A. The insurer must give the commissioner written notice of its intent to convert to an ordinary business corporation;

B. The insurer must bulk reinsure all of its insurance, if any, in force, with another authorized insurer under a bulk reinsurance agreement approved by the commissioner as provided in section 3483. The agreement of bulk reinsurance may be made contingent upon approval of stockholders as provided in paragraph D;

C. The insurer must set aside funds in a special reserve in such amount and subject to such administration as may be found by the commissioner to be reasonable and adequate for the purpose, for payment of all obligations, if any, of the insurer incurred by it and remaining unpaid under its insurance contracts prior to the effective date of such bulk reinsurance, or make other reasonable disposition satisfactory to the commissioner for such payment;

D. The proposed conversion must be approved by affirmative vote of not less than $\frac{2}{3}$ of each class of outstanding securities of the insurer having voting rights, at a special meeting of holders of such securities called for the purpose; and at such meeting and by a like vote the certificate of organization of the corporation must be amended to remove therefrom the power to transact an insurance business as an insurer, to provide for such new powers and purposes authorized by the general corporation laws of this State as may be consistent with the purposes for which the corporation is thereafter to exist, and to make such further alterations in the certificate of organization as may be required under such general corporation laws of an ordinary business corporation;

E. Security holders of the corporation who dissent from such proposed conversion shall have the same applicable rights as exist under such general corporation laws with respect to dissent from a proposed merger of the corporation; and

F. Upon compliance with paragraphs A to D, and upon filing of the amendment of the certificate of organization with the commissioner and otherwise as required by laws applicable to ordinary business corporations, the conversion shall thereupon become effective.

2. An insurer which has once converted to an ordinary business corporation shall not have power thereafter to convert to an insurer; and no ordinary business corporation shall have power to convert to an insurer.

§ 3474. Merger, consolidation of stock insurers

1. A domestic stock insurer may merge or consolidate with one or more domestic or foreign stock insurers, by complying with the applicable provisions of the statutes of this State governing the merger or consolidation of stock corporations formed for profit, but subject to subsections 2 and 3. A domestic stock insurer shall not merge or consolidate with any corporation not formed for the purpose of transacting insurance as an insurer.

2. No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the commissioner and approved in writing by him after a hearing thereon after notice to the stockholders of each insurer involved. The commissioner shall give such approval within a reasonable time after such filing unless he finds that the plan or agreement:

A. Is contrary to law; or

B. Is unfair or inequitable to the stockholders of any insurer involved; or

C. Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this State or elsewhere; or

D. Would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or

E. Is subject to other material and reasonable objections.

3. No director, officer, agent or employee of any insurer party to the merger or consolidation shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in the plan or agreement.

4. If the commissioner does not approve the plan or agreement, he shall so notify the insurer in writing specifying his reasons therefor.

§ 3475. Exchange of securities between insurers

1. Upon application of any domestic insurer, the commissioner is authorized to approve the fairness of the terms and conditions of the issuance by the insurer of any shares of its capital stock or of guaranty capital or bonds or its other securities or obligations in exchange for one or more bona fide outstanding securities, claims or property interest of any other insurer or corporation, domestic or foreign, or partly in such exchange and partly for cash; but only after a hearing has been held by the commissioner upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear and be heard.

2. Notice of such hearing and conduct thereof shall be as provided in chapter 3 (the insurance commissioner).

§ 3476. Acquisition of controlling stock

1. Any person proposing to acquire the controlling capital stock or guaranty capital shares of any domestic stock insurer and thereby to change the control of the insurer, other than through merger or consolidation or affiliation as provided for in this chapter, shall first apply to the commissioner in writing for approval of such proposed change of control. The application shall state the names and addresses of the proposed new owners of the controlling stock or shares and contain such additional information as the commissioner may reasonably require.

2. The commissioner shall not approve the proposed change of control if he finds:

- A. That the proposed new owners are not qualified by character, experience and financial responsibility to control and operate the insurer, or cause the insurer to be operated, in a lawful and proper manner; or
- B. That as a result of the proposed change of control the insurer may not be qualified for a certificate of authority under section 407 (ownership, management); or
- C. That the interests of the insurer or other stockholders of the insurer or policyholder would be impaired through the proposed change of control; or
- D. That the proposed change of control would tend materially to lessen competition, or to create any monopoly, in a business of insurance in this State or elsewhere.

3. If the commissioner does not by affirmative action approve or disapprove the proposed change of control within 30 days after the date such application was so filed with him, the proposed change may be made without such approval. Except, that if the commissioner gives notice to the parties of a hearing to be held by him with respect to the proposed change of control, and the hearing is held within such 30 days or on a date mutually acceptable to the commissioner and the parties, the commissioner shall have 10 days after the conclusion of the hearing within which to so approve or disapprove the proposed change; and if not so approved or disapproved, the change may thereafter be made without the commissioner's approval.

4. If the commissioner disapproves the proposed change he shall give written notice thereof to the parties, setting forth in detail the reasons for disapproval.

5. The commissioner shall suspend or revoke the certificate of authority of any insurer the control of which has been changed in violation of this section.

§ 3477. Conversion of mutual to stock insurer

1. A mutual insurer may become a stock insurer, or a combination stock and mutual insurer, under such reasonable plan and procedure as may be approved by the commissioner after a hearing thereon of which notice was given to the insurer, its directors or trustees, its officers, employees and its members, all of whom shall have the right to appear and be heard at the hearing.

2. The commissioner shall not approve any such plan or procedure unless:

A. Its terms and conditions are fair and equitable;

B. It is subject to approval by vote of not less than $\frac{2}{3}$ of the insurer's current members entitled to vote and voting thereon in person, by proxy, or by mail at a meeting of members entitled to vote and called for the purpose pursuant to such reasonable notice and procedure as may be

approved by the commissioner; if a life insurer, right to vote shall be limited to members who hold policies other than group policies or term policies for terms of less than 20 years, and whose policies have been in force for not less than one year;

C. The equity of each member in the insurer is determinable under a fair and reasonable formula approved by the commissioner, which such equity shall be based upon the insurer's entire surplus as shown by the insurer's financial statement filed with the commissioner, including all voluntary reserves but excluding contingently repayable funds and outstanding guaranty capital shares at the redemption value thereof, and without taking into account the value of nonadmitted assets or of insurance business in force;

D. The plan gives to each member of the insurer as specified in paragraph E, a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, or all of the stock of a proposed parent corporation of the insurer, within a designated reasonable period, as such part is determinable under the plan of conversion, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under paragraph C;

E. The members entitled to participate in the purchase of stock or distribution of assets shall include not less than all current policyholders of the insurer and each existing person who had been a policyholder of the insurer within 3 years prior to the date such plan was submitted to the commissioner;

F. Shares are to be offered to members at a price not greater than to be thereafter offered under the plan to others;

G. The plan provides for payment to each member not electing to apply his equity in the insurer for or upon the purchase price of stock to which preemptively entitled, of cash in an amount found to be reasonable by the commissioner but not in excess of 50% of the amount of his equity not so used for the purchase of stock, and which cash payment together with stock so purchased, if any, shall constitute full payment and discharge of the member's equity or property interest in such mutual insurer;

H. The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital stock required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance, together with expendable surplus funds in amount not less than $\frac{1}{2}$ of such required capital stock; and

I. The commissioner finds that the insurer's management has not, through reduction in volume of new business written, or cancellation or through any other means sought to reduce, limit, or affect the number or identity of the insurer's members to be entitled to participate in such plan, or to secure for the individuals comprising management any unfair advantage through such plan.

3. Any such combination stock and mutual insurer referred to in subsection 1 must have and maintain separate paid-in capital stock and basic

surplus in respective amounts as would be required under this Title of separate domestic stock and mutual insurers transacting the same kind or kinds of insurance.

4. Subsection 2 shall not be deemed to prohibit the inclusion in the conversion plan of provisions under which the individuals comprising the insurer's management and employee group shall be entitled to purchase for cash at the same price as offered to the insurer's members, shares of stock not taken by members on the preemptive offering to members, in accordance with such reasonable classification of such individuals as may be included in the plan and approved by the commissioner.

5. No director, officer, agent or employee of the insurer, or any other person, shall receive any fee, commission or other valuable consideration whatsoever, other than their usual regular salaries and compensation, for in any manner aiding, promoting or assisting in such conversion except as set forth in the plan approved by the commissioner. This provision shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys at law, accountants and actuaries for services performed in the independent practice of their professions, even though also directors of the insurer.

§ 3478. Merger, consolidation of mutual insurers authorized

1. Any one or more mutual insurers existing under any of the laws of this State, may absorb by merger or consolidation, or be merged into or consolidate with, any one or more domestic or foreign mutual insurers either authorized to transact insurance in this State or qualified for such authority. The procedure for effectuation of such merger or consolidation shall be as set forth in sections 3479 to 3482.

2. Nothing in this section shall authorize the merger or consolidation of a mutual insurer with a stock insurer.

§ 3479. Same — Plan, agreement of merger, consolidation; approval by corporations

1. The plan and agreement for a merger or consolidation referred to in section 3478 shall be in writing signed by the duly authorized officers and under the corporate seals of the respective insurers; and shall be acknowledged to be the act, deed and agreement of the insurer by one of the executing officers of the respective insurers before an officer authorized by law to take acknowledgments of deeds. The plan and agreement shall be approved and authorized by vote of the majority of the directors of the respective insurers, and approved by vote of at least $\frac{2}{3}$ of such policyholders of the respective insurers who are entitled to vote and do vote thereon in person or by proxy at a special meeting of such members call for the purpose.

2. Notice of such special meeting of members shall be given by publishing the same once weekly for 3 consecutive weeks in a newspaper circulated in each county of this State, the last such publication to be at least 7 days prior to such meeting. Notice to its members by a foreign insurer shall be in accordance with the laws of its domiciliary jurisdiction.

3. All of the members of the insurer shall be bound by the vote of policyholders as above provided for, and shall not have thereafter any right as to dissent or appraisal.

§ 3480. Same — Approval by commissioner

1. The plan and agreement referred to in section 3479 shall not be effectuated until filed with and approved by the commissioner in writing. The insurers shall furnish the commissioner such additional information in relation to the proposed merger or consolidation as the commissioner may reasonably require.

2. The commissioner shall approve the plan and agreement unless he finds that it:

A. Is contrary to law; or

B. Is inequitable to the policyholders of any domestic insurer involved; or

C. Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer; or

D. Would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or

E. Is subject to other material and reasonable objections.

3. If the commissioner does not approve the plan and agreement he shall so notify the insurers parties thereto in writing, specifying his reasons therefor.

§ 3481. Same — Review by Attorney General:
filing with Secretary of State

1. Upon approval by the commissioner as provided in section 3480, the plan and agreement of merger or consolidation shall be submitted to the Attorney General and be examined by him. If the Attorney General finds the plan and agreement to be properly drawn and signed and otherwise in conformity with the Constitution and laws of this State, he shall so certify thereon in writing.

2. Within 60 days from date of approval by the commissioner, both an original and a copy of the plan and agreement showing thereon the certificate of the Attorney General, shall be delivered to the office of the Secretary of State. The Secretary of State shall file such copy and enter the date of filing on both the copy and the original, shall record the copy and return the original to the surviving merged or consolidated corporation.

3. From time of filing the copy of the plan and agreement in the office of the Secretary of State, the agreement shall be deemed to be the agreement and act of merger or consolidation of the insurers, and the original of such agreement or a certified copy thereof shall be evidence of the existence of such merged or consolidated corporation and of the performance of all acts and conditions necessary for the effectuation of such merger or consolidation.

4. If a domestic insurer is merged into or consolidated with a foreign insurer, the foreign insurer shall not transact insurance in this State until it has procured a certificate of authority from the commissioner therefor under this Title.

§ 3482. Same — Effective date of merger, consolidation; effect as to assets, liabilities, rights and powers

1. When the plan and agreement for merger or consolidation has been so signed, acknowledged, approved, authorized, certified, filed and recorded as provided in sections 3478 to 3481, then the separate existence of all of the constituent corporations other than the surviving corporation into which the other corporation or corporations parties have merged or consolidated, shall cease.

2. The surviving corporation shall be the merged or consolidated corporation by the name provided for in the agreement; and shall thereby possess all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and shall thereby be subject to all the liabilities, restrictions and duties, of each of the merged or consolidated corporations, and have all and singular the rights, privileges, powers, franchises and immunities of each of such corporations, together with all property, real, personal and mixed, wheresoever located, and all debts due to any of such constituent corporations on whatever account; and all other things in action of each of such corporations, are by virtue of such merger or consolidation automatically vested in such surviving corporation.

3. All such property, rights, privileges, powers, franchises and immunities and all and every other such interest shall be thereafter as effectually the property of the surviving corporation as they were of the respective constituent corporations; and title to any real estate, whether by deed or otherwise, under the laws of this State, vested in any of such constituent corporations shall not revert or be in any way impaired by reason of such merger or consolidation. All rights of creditors and all liens upon the property of any of such constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the merger or consolidation; and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to the surviving corporation and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

§ 3483. Bulk reinsurance

1. A domestic insurer may reinsure, and thereby transfer its direct liability as the insurer with respect to, all or substantially all of its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the commissioner, or if disapproved by him.

2. The commissioner shall disapprove such agreement within a reasonable time after filing if he finds:

A. That the plan and agreement are unfair and inequitable to any insurer or to policyholders involved; or

B. That the reinsurance, if effectuated, would substantially reduce the protection or service to the policyholders of any domestic insurer involved; or

C. That the agreement does not embody adequate provisions by which the reinsuring insurer becomes liable to the original insureds for any loss or damage occurring under the policies reinsured in accordance with the original terms of such policies; or

D. That the assuming reinsurer is not authorized to transact such insurance in this State, or is not qualified as for such authorization or will not appoint the commissioner and his successors as its irrevocable attorney for service of process, so long as any policy so reinsured or claim thereunder remains in force or outstanding; or

E. That such reinsurance would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or

F. That the proposed bulk reinsurance is not free of other reasonable objections.

3. If the commissioner disapproves the agreement he shall forthwith notify in writing each insurer involved, specifying his reasons therefor.

4. If for reinsurance of all or substantially all of the business in force of an insurer at a time when the insurer's capital, if a stock insurer, or surplus, if a mutual insurer, is not impaired, the plan and agreement of such reinsurance must be approved by a vote of not less than $\frac{2}{3}$ of the insurer's outstanding stock having voting rights, if a stock insurer, or of members, if a mutual insurer, voting thereon, at a meeting of stockholders or members called for the purpose pursuant to such reasonable notice and procedure as is provided for in the agreement. If a mutual life insurer, right to vote may be limited to members otherwise entitled to vote and whose policies are other than term policies for terms of less than 20 years, or group policies, and have been in effect for more than one year.

5. No director, officer, agent or employee of any insurer party to such reinsurance, or any other person, shall receive any special compensation for arranging or with respect to, any such reinsurance except as is set forth in the reinsurance agreement filed with the commissioner.

§ 3484. Voluntary dissolution

1. A solvent domestic stock or mutual insurer, which then is not the subject of a delinquency proceeding under chapter 57, may voluntarily dissolve under a plan therefor in writing authorized by its board of directors, approved or adopted by stockholders or members as hereinafter provided, and filed with

and approved by the commissioner. The plan shall provide for the disposition, by bulk reinsurance or other lawful procedure, of all insurance in force in the insurer, for full discharge of all obligations of the insurer, and designate or provide for trustees to conduct and administer the settlement of the insurer's affairs.

2. The commissioner shall approve the plan unless found by him to be unlawful or unfair or inequitable or prejudicial to the interests of any stockholder, policyholder or creditor.

3. If a mutual insurer, the plan must have been approved by vote of not less than $\frac{2}{3}$ of the policyholders voting thereon at a special meeting of such policyholders called and held for the purpose pursuant to such reasonable notice and information as the commissioner may have approved.

4. If a stock insurer, the plan must have been adopted by vote of not less than $\frac{2}{3}$ of all outstanding voting securities of the insurer at a special meeting of such security holders called and held for the purpose.

5. Following approval of the dissolution and plan therefor by members or adopted thereof by stockholders as above provided, and approval by the commissioner, the trustees designated or provided for in the plan shall proceed to execute the plan. When all liabilities of the corporation have been discharged or otherwise adequately provided for, and all assets of the corporation have been liquidated and distributed in accordance with the plan, the trustees shall so certify in quadruplicate under oath in writing. The trustees shall deliver the original and the 3 copies of such certificate to the commissioner. The commissioner shall make such examination of the affairs of the corporation, and of the liquidation and distribution of its assets and discharge of or provision for its liabilities as he deems advisable. If upon such examination he finds that the facts set forth in the certificate of the trustees are true, he shall inscribe his approval on the certificate, file the original thereof so inscribed in the office of the Secretary of State, file a copy thereof in the department, and return the remaining 2 copies to the trustees. The trustees shall file one of such copies for recording in the registry of deeds of the county in this State in which the corporation's principal place of business is located, and retain the fourth copy for the corporate files.

6. Upon filing the certificate of the trustees with the Secretary of State as provided in subsection 5, the Secretary of State shall issue to the trustees his certificate of dissolution, and the corporate existence of the corporation shall thereupon forever terminate. The Secretary of State shall charge and collect a fee of \$25 for the filing of the trustee's certificate, and shall deposit the same with the Treasurer of State for credit to the General Fund.

§ 3485. Mutual member's share of assets on liquidation

1. Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, retirement of guaranty fund capital shares and payment of expenses of administration and of the dissolution and liquidation procedure, shall be distributed to currently existing persons who had been members of the insurer for at least a year and who were its members at any time within 36 months next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority, whichever date is the earlier; except, that if the commissioner

has reason to believe that those in charge of the insurer's management have caused or encouraged the reduction of the number of members of the insurer, or changed the identity thereof, in anticipation of liquidation and for the purpose of reducing or controlling thereby the number or identity of persons who may be entitled to share in distribution of the insurer's assets, he may enlarge the qualification period in such manner as he deems to be reasonable.

2. The insurer shall make a reasonable classification of its policies so held by such members, and a formula based upon such classification for determination of the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the commissioner, who shall approve the same except for reasonable cause.

CHAPTER 49 CONTINUITY OF MANAGEMENT

§ 3551. Purpose

Enemy attack could seriously disrupt the management functions of an insurance organization. Prompt resumption of insurance operations following attack is in the public interest and requires provisions for the continuity of management. It is essential that advance corporate action be taken to provide for the reconstitution of the board of directors or substitute governing body, for the succession of key personnel and for the designation of alternate headquarters.

§ 3552. Definitions; interpretation of chapter

When use in this chapter, the following terms shall mean and include the following:

1. **Acting director.** Acting director means an acting director elected or appointed in accordance with this chapter.

2. **Acting officer.** Acting officer means an acting officer appointed in accordance with this chapter.

3. **Acute emergency.** Acute emergency means a period, as formally declared and proclaimed by the Governor of this State, in which, by reason of loss of life, epidemic disease, destruction or damage of property, contamination of property by radiological, chemical or bacteriological means, or disruption of the means of transportation or communication, resulting from an attack, it is impossible or impractical for the business of insurance in this State to be conducted in strict accord with the provision of law or charters applicable thereto.

4. **Attack.** Attack means any attack, actual or imminent, or series of attacks by an enemy of a foreign nation upon the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, shell fire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.

5. **Board.** Board means the board of directors, board of trustees, committee or similar body having control of the affairs of an insurance organization.

6. Charter. Charter means the certificate of organization or incorporation or special law incorporating a corporation together with its bylaws, or the agreement establishing a fund or association together with its constitution and bylaws.

7. Commissioner. Commissioner means the State Insurance Commissioner or person duly designated to exercise the powers of that office during an attack or acute emergency.

8. Director. Director means the director, trustee or member of the board.

9. Domestic organization. Domestic organization means any insurance organization which is domiciled in this State.

10. Insurance organization. Insurance organization means any insurer, rating organization, service or advisory organization, joint underwriting association, welfare or pension fund, which is subject, in whole or in part, to the insurance laws of this State.

11. Officer. Officer means an officer of a domestic insurance organization.

12. Quorum. Quorum means the minimum number of directors required by charter and bylaw, exclusive of the provisions of this chapter, to be present for valid action to be taken at a meeting of a board with respect to each particular item of business which may come before such meeting.

This chapter does not and shall not be construed to limit the powers of, or permit or require, any insurance organization which is not domiciled in this State or of any branch office, or agents of such insurance organization, or the directors, officers, members, policyholders, or stockholders of any such organization to act, or fail to act, in such fashion as would violate the laws of the jurisdiction wherein such organization has its domicile.

§ 3553. Emergency bylaws

1. With the approval of the commissioner, any domestic organization may, at any time, adopt, in the same manner as in the case of ordinary bylaws, emergency bylaws to become operative during a period of acute emergency. Emergency bylaws may contain provisions with respect to the number of directors capable of acting which shall constitute its board, the number of such directors which shall constitute a quorum at a meeting of the board, the number of votes necessary for action by such board, the manner in which vacancies on the board shall be filled, the line of succession of its officers, and the interim management of the affairs of the insurance organization; such provisions, if approved by the commissioner, need not comply with the requirement of the charter of such domestic organization or of the insurance or incorporation laws of this State.

2. Section 3554 and section 3555, subsections 2 to 6, shall not be applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the commissioner.

§ 3554. Change of location; emergency boards of directors

Notwithstanding any provision of its charter, any domestic insurance organization, without complying with any provision of law requiring approval, or application for approval, of a change of location of its principal office may, from time to time, change the location thereof during an acute emergency to a suitable location within the United States, and may carry on its business at such new location during such acute emergency, and for a reasonable time thereafter. Any insurance organization which changes the location of its principal office during an acute emergency shall notify the commissioner thereof in writing as soon as practical, stating the address of the new location, the address of the former location, and the dates when business is ceasing at the former location and commencing at the latter location.

Notwithstanding any contrary provision of law or with its charter, if at any time during an acute emergency affecting any domestic insurance organization, no person otherwise empowered to call meetings of the board is capable of acting, a meeting thereof may be called by any director or acting director or if no director or acting director is capable of acting, by any officer or acting officer. If it shall be impracticable or impossible to give notice of a meeting of the board in the manner prescribed by charter and law, other than this chapter, the person calling such a meeting may give notice thereof by making such reasonable efforts as circumstances may permit to notify each director and acting director of the time and place of the meeting, but need not specify the purposes thereof. Failure of any director or acting director to receive actual notice of a meeting of directors and acting directors shall not affect the power of the directors and acting directors present at such meeting to exercise the powers of an emergency board of directors as prescribed in this section. Nothing in this chapter shall be construed as requiring a meeting of the board of such an organization to be convened in any manner different from that prescribed by its charter and by the provisions of law other than this chapter.

If 3 or more directors and acting directors of any domestic insurance organization are present at any meeting of its board duly convened during an acute emergency affecting such domestic insurance organization, they shall constitute its emergency board of directors which, notwithstanding any contrary provision of law or of its charter, shall have the power, subject to the limitations prescribed by this chapter, by a majority of those present, to take any and every action which may be necessary to enable such domestic insurance organization to meet the exigencies of the acute emergency and conduct its business during such period, but no other powers. The powers of an emergency board of directors shall include, but shall not be limited to, the following powers:

1. Fill vacancies and absentees. At any meeting, to elect such acting directors as it may deem necessary, without regard to the number of directors which would otherwise be required, to serve in any positions on such board which are vacant or in place of any directors or acting directors who are absent from such meeting, but not to elect any director on a permanent basis.

2. Acting officers and duties. To elect such acting officers as it may deem necessary, without regard to the number of officers which would otherwise be required, to serve in any offices which are vacant or in place of any officers or acting officers who fail to appear and assume their duties, to fix the compensation and determine the powers and duties of acting officers and to remove acting officers but not to remove any officer or to fill any vacancy on a

permanent basis or to cause the insurance organization to enter into any contract of employment for a term in excess of one year.

3. Change of location. To cause the insurance organization to change the location of its principal office, pursuant to this section, or any of its places of business, and to authorize such action as it may deem appropriate to acquire space and facilities at new locations, but not to acquire for use as its principal office property in fee or for a term in excess of one year.

4. Postpone meetings. To postpone any meeting of the stockholders, policyholders or members or directors of such organization if, in the judgment of majority of the members of such emergency board of directors, it would be impracticable to hold such meeting at the time it would otherwise have been held or conducted.

5. Call meetings. If it shall appear to an emergency board of directors that a quorum of the board cannot be assembled within a reasonable time, to call a meeting of the stockholders, policyholders or members of the insurance organization to be held as soon as the circumstances may reasonably permit, at a place to be designated by the emergency board of directors within this State or a contiguous state, for the purpose of electing directors to fill vacancies on the board, but for no other purpose, and to propose nominees for such election. Any such meetings of stockholders, policyholders or members shall be held upon notice given in accordance with the charter of the organization and applicable law other than this section.

As soon as practicable after each meeting of an emergency board of directors, the person who presided thereat shall notify the commissioner in writing of the time and place of such meeting, of the manner in which notice thereof was given, of the persons present and of all actions taken at such meeting.

No person prohibited by law or by the charter of a domestic insurance organization from serving as a member of its board shall be eligible to serve as an acting director except that no person shall be disqualified to serve as an acting director by reason of his not being a stockholder, policyholder or member of such insurance organization, by reason of his not being a resident of this State or of a contiguous state, or by reason of the number of directors or acting directors who are officers, acting officers or employees of the insurance organization. Any person may serve as an acting director of a fund who is a director, acting director, officer or acting officer of an organization which is a party to the agreement creating the fund. No oath of acting directors shall be required.

Acting directors elected under this section or appointed under section 3555 shall be entitled to vote at all meetings of emergency board of directors equally with directors. Acting directors shall not be entitled to take part in the deliberations or to vote at any meeting of the board which is duly convened in accordance with the applicable provisions of its charter and of law other than this chapter and at which a quorum is present. Each acting director shall serve until the director or acting director in whose place he was elected or appointed shall attend the meeting of the board or until the director is duly elected to fill the vacancy in which such acting director has been serving, whichever event occurs earlier. An acting director shall be entitled to the compensation, if any, payable to a director.

Acting officers elected pursuant to this section shall have powers and duties and receive such compensation as may from time to time be determined by the emergency board of directors. Each acting officer shall serve until the officer in whose place he was elected shall appear and assume his duties or until his successor officer or acting officer shall be elected, whichever event occurs earlier.

This section shall not be deemed applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the commissioner.

§ 3555. Powers of the commissioner

1. Designate additional acting directors. If at any time during an acute emergency, the number of directors or acting directors of a domestic insurance organization who are capable of acting shall be less than 3, as determined by the commissioner after a reasonable investigation, the commissioner shall have the power to designate additional acting directors in such number as will bring to 3 the number of directors and acting directors who are capable of acting.

2. Resolve controversies. To resolve controversy as to the power of any group of persons purporting to act as an emergency board of directors so to act, the commissioner shall, upon a determination that such action will tend to promote the safe and sound and orderly conduct of the business of any domestic insurance organization, have power to issue orders declaring that any such group shall or shall not have the powers of an emergency board of directors, or confirming, modifying or vacating in whole or in part any action taken or purportedly taken by any such group or by removing any acting director.

3. Declare provisions of law operative or inoperative. At any time after an attack, upon his determination that such action will tend to promote certainty as to the powers of insurance organizations or individuals pursuant to this chapter or that such action is desirable to enable insurance organizations to take preparatory precautions prior to the occurrence of an acute emergency, the commissioner shall have power to declare that any provision of this chapter which he may specify shall be operative with respect to any domestic insurance organization or to the Maine business of any other insurance organization which he may designate. Upon such declaration such organization and its directors, officers, acting directors and acting officers shall have all powers conferred by this chapter. The failure of the commissioner so to declare shall not be deemed to limit the powers of any organization or its directors, officers, acting directors or acting officers where an acute emergency exists in fact.

At any time after the commencement of an acute emergency or after the commissioner shall have declared any provision of this chapter operative under this subsection upon his determination that an insurance organization is able, in whole or in part, to carry on its business in compliance with its charter and the laws, other than this chapter, the commissioner shall have power to declare that any provision of this chapter which he may specify shall be inoperative with respect to any domestic insurance organization or in the Maine business of any other insurance organization which he may designate. Upon such declaration, such organization shall be governed by its

charter and the provisions of law other than this chapter, except insofar as they remain inoperative.

4. Possession of business and property. Upon the determination that, as a result of an acute emergency, the business and affairs of an insurance organization cannot otherwise be conducted in a safe and sound manner, the commissioner may forthwith take possession of the business and property of the insurance organization within this State or, if a domestic insurance organization, its business and property wherever situated. This chapter shall be applicable in any case in which the commissioner takes possession of an insurance organization under this subsection as though the insurance organization were an insurer of which the commissioner had taken possession under this chapter, except that no such provision shall be applicable which the commissioner shall have declared inapplicable under this subsection. The commissioner shall have power to declare inapplicable any such provision upon his determination that the same is inappropriate or unnecessary to protect the interest of the public or the stockholders or creditors of the insurance organization, in view of the acute emergency and the nature of the organization.

5. When powers exercised. The powers given the commissioner by subsections 2 and 4 shall be exercised by him only in the event that there is no court of competent jurisdiction available to which an application can be made for an order permitting him to exercise such powers with respect to a particular insurance organization. The powers conferred by subsection 4 shall not be exercised in a case of an insurance organization which is not insolvent within the meaning of this chapter, unless the commissioner finds that such insurance organization lacks personnel able to manage its business in the interest of the public stockholders and policyholders.

6. Regulations. The commissioner shall have power to issue general and specific regulations, directives and orders consistent with and in furtherance of the purposes of this chapter.

§ 3556. General provisions

1. Presumption. In any action or proceeding it shall be presumed that an acute emergency existing within any city or county within this State constitutes an acute emergency affecting every insurance organization doing business within such city or county.

2. Powers of board. During an acute emergency the board of a domestic insurance organization which has adopted emergency bylaws approved by the commissioner shall have all of the powers conferred by such bylaws, and no other or different powers with respect to the subject matter of this chapter, and the board of a domestic insurance organization which has not adopted emergency bylaws approved by the commissioner shall have all of the powers of an emergency board of directors as the same are provided for under this chapter.

§ 3557. Governor's authority; effect of other laws

The Governor of this State, or his successor in office, alone shall have the power to proclaim and declare the fact that a period of "acute emergency" exists at any time or times or has terminated, as such term is defined in this chapter. Nothing in this chapter shall be deemed or construed to affect sec-

tions 471 to 479, to the extent that the latter sections may be inconsistent herewith.

CHAPTER 51
DOMESTIC MUTUAL ASSESSMENT INSURERS

§ 3601. Scope of chapter

1. This chapter applies only as to domestic mutual insurers heretofore or hereafter authorized to transact and transacting fire and related insurances in this State on the assessment plan, as defined in section 3603, and to the assessment department of insurers also transacting insurance on the cash premium plan.

2. Insurers to the extent to which subject to this chapter may in this chapter be referred to as "mutual assessment insurers."

§ 3602. Chapter exclusive

Nothing in this Title shall either directly or indirectly apply to such mutual assessment insurers except as contained or referred to in this chapter.

§ 3603. Mutual assessment plans; definitions

1. For the purposes of this Title a mutual assessment insurer is a mutual insurer which is doing business on:

- A. A post-loss assessment plan; or
- B. On an advance assessment or contingent liability plan.

2. A post-loss assessment plan insurer is one which depends in whole or substantial part on regular or special assessments levied upon its members after a loss or series of losses for payment of losses and expenses. A post-loss assessment plan insurer may collect from each member such initial amount as it may deem proper prior to or at the time of the effectuation of the member's insurance. Future regular or special assessments may be secured by use of a premium note signed by the policyholder.

3. An advance assessment plan insurer shall by its bylaws and policies fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than one or more than 6 times the advance assessment for the member's policy at the annual advance assessment rate for a term of one year. Such an advance assessment plan insurer may issue both assessable and nonassessable advance cash premium policies. Any assessment, special or regular, levied under the contingent liability provisions of this chapter shall be for the exclusive benefit of the holders of policies subject to assessment, and such policyholders shall not be liable to an assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the assessable business bears to the total deficiency.

4. Nothing in this chapter shall be deemed to prohibit the acquisition, accumulation and maintenance of surplus and unallocated funds.

§ 3604. Insuring powers; reinsurance

1. An assessment plan insurer shall have authority to transact, and shall transact only such insurance as is permitted by its charter and by its certificate of authority.

2. Any such insurer shall have power to cede reinsurance of any risk or part thereof which it is authorized to insure direct; and shall have power to accept reinsurance from other domestic assessment plan insurers of any risk which it has authority to insure direct.

§ 3605. Formation of new assessment plan insurers

Assessment plan insurers shall hereafter be formed under the applicable provisions of sections 3306 (incorporation of domestic stock, mutual insurers) to 3309 (completion of incorporation; general powers, duties); except, that the certificate of organization of the corporation shall stipulate that the corporation is formed to transact insurance on the assessment plan, and other provisions contained in the certificate shall be consistent with the applicable provisions of this chapter.

§ 3606. Certificate of authority required

No such insurer shall transact insurance in this State except as authorized by a subsisting certificate of authority issued to the insurer by the commissioner.

§ 3607. Capital funds required; existing insurers

1. A mutual assessment insurer heretofore organized to transact and transacting only fire, marine and glass insurance shall not have a net retention of liability on any one risk in excess of \$200 until its gross assets exceed \$2,000, after which its net retention of liability shall be as provided in section 3623.

2. Mutual insurers organized prior to January 1968 to transact and transacting kinds of insurance other than fire, marine and glass shall have a guaranty capital fund in amount not less than as required under laws in force immediately prior to the effective date of this Act, and if organized on or after January 1, 1968, shall have guaranty capital funds of not less than \$500,000. Such an insurer shall not be authorized to transact insurance until at least $\frac{1}{4}$ of its guaranty capital funds have been paid in, in cash, and invested in such manner as is provided in chapter 13.

3. If an insurer operating under this section fails to comply with the commissioner's request to increase its paid-in guaranty capital funds within the amount otherwise required by law, it shall cease to write any class or kind of insurance other than fire, marine or glass until such time as the commissioner's request has been complied with.

4. Except as hereinabove provided, all such insurers holding subsisting certificates of authority immediately prior to the effective date of this Act may continue to be so authorized as long as qualified for such authority as under laws in force immediately prior to such effective date.

§ 3608. Capital funds required; new mutual assessment insurers

A mutual insurer hereafter organized to transact property insurance on the assessment plan shall not be authorized to transact insurance unless it:

1. Establishes and maintains guaranty capital funds of at least \$50,000, all of which shall have been paid in, in cash, and
2. Receives not less than 25 bona fide written applications from not less than 25 persons for insurance of the kind proposed to be transacted, of not less than \$100,000 in amount at risk as to principal hazards to be insured, and
3. Receives or collects the initial payment on the premium for the insurance applied for, together with such premium notes as it is contemplated to use in connection with applications for insurance in general, and
4. Is otherwise qualified for such authority under this chapter.

§ 3609. New assessment plan insurers; conversion

Mutual insurers hereafter organized to transact insurance on the assessment plan shall not be authorized to transact any kind of insurance other than property insurance, or to transact insurance of any kind on the cash premium plan, unless the insurer qualifies for such authority in accordance with the requirements of domestic mutual insurers hereafter organized under chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers), and by appropriate amendment to its certificate of organization converts to such a legal reserve insurer.

§ 3610. Guaranty capital shares; dividends, investment, deposit, voting rights

1. Where the insurer is permitted or required to have guaranty capital shares such capital shall be divided into shares of \$100 each and certificates shall be issued therefor.
2. The holders of guaranty capital shares may receive dividends not exceeding 7% of the amount received by the insurer for issuance of such shares in any one calendar year from the net earnings of the insurer after providing for all expenses, losses, reserves and liabilities then incurred.
3. Guaranty capital resulting from shares shall be invested in such manner as is provided in chapter 13.
4. Guaranty capital shareholders and members of the insurer shall be subject to the same provisions of law relative to their right to vote as apply respectively to stockholders in stock insurers and policyholders in purely mutual insurers.

§ 3611. Guaranty capital shares; increase of paid-in capital

If an insurer heretofore or hereafter has been authorized to transact insurance upon the basis of guaranty capital shares not 100% paid-in, the unpaid portion of such guaranty or so much thereof as the commissioner deems necessary, shall be paid in at such times as in the opinion of the commissioner is necessary for the adequate protection of the policyholders.

§ 3612. Guaranty capital shares; deficiency and assessment

When the cash and other available assets of an insurer with guaranty capital shares are exhausted, such part of the guaranty capital fund as may be required shall, with the approval of the commissioner, be drawn and used to pay losses then due. When such fund is so drawn upon, the directors of the insurer shall make good the amount so drawn by assessments upon the contingent funds or notes of the insurer or by borrowed funds as provided for under section 3415; and unless such fund is restored within 6 months from the date of withdrawal, the holders of guaranty fund shares shall be assessed in proportion to the amount of such shares owned by them for the purpose of restoring such capital.

§ 3613. Guaranty capital shares; retirement

Guaranty capital shares may be retired by vote of the policyholders of the insurer when the insurer's surplus, over and above all liabilities including guaranty capital, equals or exceeds the amount of the guaranty capital shares. The guaranty capital shares may be retired in part when the insurer's remaining net surplus and guaranty fund will not thereby be reduced below the amount of original guaranty capital.

§ 3614. Notice of contingent liability; reduction

Where contingent liability of policyholders is provided for, notice of the existence of such liability shall be plainly and legibly given in each policy. Whenever any reduction is made in the contingent liability of members, the reduction shall apply proportionally to all policies in force.

§ 3615. Delivery, acceptance of policy

The delivery of the policy to the insured and payment by the insured of the final charge shall be deemed an acceptance of the contract.

§ 3616. Assessment; remedy if not paid

If any lawful assessment is not paid within 30 days after written demand by the insurer or its agent, the directors may declare the policy suspended until the assessment is paid or may at their option sue for and collect the amount due on such assessment. Mailing such demand addressed to the insured at his address last of record with the insurer, or delivering it to him in hand by an authorized agent or officer of the insurer, shall be deemed conclusive proof that demand has been duly made.

§ 3617. Assessment — Court review; adjustment of claims where no assessment made

1. Whenever the directors of a mutual assessment insurer make an assessment or call on its members for money, or by vote determine that there exists a necessity for such assessment or call, they, or any person interested in the insurer as an officer, policyholder or creditor, may file in the Superior Court in any county, a complaint praying the court to examine the assessment or call or to determine the necessity therefor and all matters connected therewith, and to ratify, amend or annul the assessment or call or to order that the same be made as law and justice may require.

2. The decision on such complaint, when filed by any party except the insurer, or a receiver, or the commissioner, shall rest in the discretion of the court.

3. Whenever the directors unreasonably neglect to make an assessment or call to satisfy an admitted or ascertained claim upon the insurer, any judgment creditor, or any person holding such admitted or ascertained claim, or the commissioner may make the application. Upon such application, if made by the directors, or upon order of court if made by application of any other party, the directors shall set forth the claims against the insurer, its assets and all other facts and particulars appertaining to the matter.

§ 3618. Same — Order of notice to parties interested, and proceedings

The court before which the complaint described in section 3617 is filed shall order notice to all parties interested, by publication or otherwise. Upon the return thereof, the court shall proceed to examine the assessment or call, the necessity therefor and all matters connected therewith. Any parties interested may appear and be heard thereon, and all questions that may arise shall be heard and determined as in other civil actions in which equitable relief is sought. The court may refer the apportionment or calculation to any competent person, and upon the examination may ratify, amend or annul the assessment or call, or order one to be made. In case the assessment or call is altered or amended, or one is ordered, the directors shall forthwith proceed to vote the same in legal form and the record of such vote shall be set forth in a supplemental answer.

§ 3619. Same — Proceedings before master or auditor

Whenever the court appoints a master or auditor to make the apportionment or calculation for an assessment, such master or auditor shall appoint a time and place to hear all parties interested in the assessment or call, and shall give personal notice thereof, in writing, to the commissioner, and through the post office or in such other manner as the court directs, so far as he is able, to all persons liable upon the assessment or call. The auditor or master shall hear the parties and make report to the court of all his doings respecting such assessment or call and all matters connected therewith, and all parties interested in such report or assessment have a right to be heard by the court respecting the same, in the same manner as is provided.

§ 3620. Same — When assessment final; costs; control of funds and payment of assessments

1. When an assessment or call has been ratified, ascertained or established as provided for in sections 3617 to 3619, a decree shall be entered which shall be final and conclusive upon the insurer and all parties liable to the assessment

or call as to the necessity of the same, the authority of the insurer to make or collect it, the amount thereof and all formalities connected therewith. Where an assessment or call is altered or amended by vote of directors and decree of the court thereon, such amended or altered assessment or call is binding upon all parties who would have been liable under it as originally made, and in all legal proceedings shall be held to be such original assessment or call.

2. All proceedings shall be at the cost of the insurer, unless the court for cause otherwise orders.

3. In all cases the court may control the disposal of the funds collected under these proceedings, and may issue all necessary processes to enforce the payment of such assessments against all persons liable therefor.

§ 3621. Same — Assessment not sufficient; collection stayed by court

Whenever it shall appear to the court before which the complaint provided for in section 3617 is pending, that the net proceeds of any assessment or call will not be sufficient to furnish substantial relief to those having claims against the insurer, it may decree that no assessment shall be collected. When, on application of the commissioner or any person interested, the court is of opinion that further attempts to collect an assessment then partially collected will not benefit those having claims against the insurer, it may stay its further collection.

§ 3622. Nonassessable policies; assessable, nonassessable liability

1. A mutual insurer heretofore formed and transacting insurance under this chapter may issue nonassessable advance cash premium policies in this State upon compliance with either of the following requirements:

A. Surplus. The insurer shall have and maintain a surplus to policyholders, as determined by its last annual statement filed with the commissioner, of not less than \$100,000, or

B. Surplus and unearned premium reserve. The insurer shall have and maintain a surplus to policyholders, as determined by its latest annual statement filed with the commissioner, of not less than \$75,000, provided its unearned premium reserve is at all times less than its surplus to policyholders.

2. If such an insurer, after qualifying to issue a nonassessable cash premium policy, fails to maintain one of the above requirements it shall cease to issue a nonassessable policy until it has again met and maintained the requirements for a period of one year.

§ 3623. Limit of risk

1. Except as provided in section 3607, subsection 1, an insurer shall not retain liability as to any one risk in an amount exceeding 10% of its gross assets, including 80% of the amount at any time due on its premium notes.

2. Valid reinsurance ceded by the insurer and then in force shall be deducted from the gross risk assumed in determining net risk retained.

§ 3624. Unearned premium reserve

An insurer which collects a cash premium or advance assessment shall maintain an unearned premium reserve equal to 50% of the cash premium or advance assessment on its policies in force.

§ 3625. Directors' residence, compensation

1. A majority of the board of directors of the insurer shall be residents of, and actually reside in, this State.

2. The salary or compensation for services of the directors of the insurer shall be fixed by the policyholders at their annual meeting.

§ 3626. Annual statement by directors

The directors of every insurer shall cause a detailed account of its expenses for the year preceding, the amount of property actually insured at that time, the amount due on its premium notes and the amount of all debts due to and from the insurer to be laid before the policyholders at the annual meeting.

§ 3627. Agents; liability

Any person who solicits insurance on behalf of any insurer or transmits for a person other than himself an application for, or a policy of, insurance to or from such insurer, or in any manner acts in the negotiation of such insurance, or in the inspection or valuation of the property insured shall be deemed the agent of the insurer, and except as otherwise provided, shall become liable to all the duties, requirements, liabilities and penalties to which an agent of any insurer is subject.

§ 3628. Agents — Licensing

All agents of insurers subject to this chapter shall be subject to the applicable requirements of chapter 17 (agents, brokers, consultants, adjusters), except that:

1. No personal examination shall be required of the applicant and no examination fee shall be charged, as to an applicant for a license as an agent of an insurer writing insurance solely on the assessment plan, if on the effective date of this Act the applicant was also a director or officer of such insurer.

2. No fee shall be required by the commissioner for license as resident agent issued to any individual referred to in subsection 1, as agent of such an insurer.

§ 3629. Other provisions applicable

The following chapters and provisions of this Title, where and to the extent not inconsistent with this chapter and the reasonable implications thereof, also apply as to domestic mutual assessment insurers which are subject to this chapter:

1. Chapter 1 (general definitions and provisions).
2. Chapter 3 (the insurance commissioner), except that an insurer transacting insurance only on the assessment plan shall not be subject to section 228 (examination expense), and shall not be required to pay the expense of examination of the insurer.
3. Chapter 5 (authorization of insurers and general requirements), except that the following sections or provisions shall not apply:
 - A. Section 410 (capital funds required);
 - B. Section 411 (insuring combinations without additional capital funds);
 - C. Section 413 (application for certificate of authority), to the extent that payment is required of a fee for application for or issuance of a certificate of authority of an insurer transacting insurance on the assessment plan only;
 - D. Section 415 (continuance, expiration, reinstatement of certificate of authority), to the extent that payment of fee for continuance of certificate of authority is required of an insurer transacting insurance on the assessment plan only; and
 - E. Section 423 (annual statement), to the extent that payment of a fee for filing the annual statement is required of an insurer transacting insurance on the assessment plan only.
4. Chapter 7 (fees and taxes), except as otherwise expressly provided in this chapter, and that no fee shall be charged for the certificate of authority of an insurer transacting insurance on the assessment plan only.
5. Chapter 9 (kinds of insurance), except the following sections:
 - A. Section 702 ("life insurance" defined);
 - B. Section 709 ("title insurance" defined); and
 - C. Section 721 (limits of risk).
6. The following sections of chapter 11 (assets and liabilities):
 - A. Section 901 ("assets" defined);
 - B. Section 902 (assets not allowed);
 - C. Section 922 (disallowance of "wash" transactions); and
 - D. Sections 981 through 984 (valuation of assets).
7. Chapter 13 (investments).

8. Chapter 15 (administration of deposits).
9. Chapter 17 (agents, brokers, consultants, adjusters).
10. Chapter 23 (trade practices and frauds).
11. Chapter 25 (rates and rating organizations), except as provided in such chapter 25.
12. Chapter 27 (the insurance contract); except that section 2415 (charter, bylaw provisions) shall not apply as to insurance written on the mutual assessment plan.
13. Chapter 39 (casualty insurance contracts).
14. Chapter 41 (property insurance contracts).
15. Chapter 43 (surety insurance contracts).
16. Chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers), except as to the following sections:
 - A. Sections 3352 to 3358 (initial qualification, qualifying applications for insurance, guaranty capital, and related subjects); and
 - B. Sections 3364 to 3367 (provisions relative to contingent liability and nonassessable policies).
17. Chapter 49 (continuity of management).
18. Chapter 57 (delinquent insurers; rehabilitation and liquidation).

CHAPTER 53.

RECIPROCAL INSURERS

§ 3851. "Reciprocal" insurance defined

"Reciprocal" insurance is that resulting from an interchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interchange being effectuated through an "attorney-in-fact" common to all such persons.

§ 3852. Scope of chapter — existing insurers

1. All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

2. Existing authorized reciprocal insurers shall after the effective date of this Act comply with the provisions of this chapter, and shall make such amendments to their subscribers' agreement, power of attorney, policies and other documents and accounts and perform such other acts as may be required

for such compliance.

§ 3853. Insuring powers of reciprocals

1. A reciprocal insurer may, upon qualifying therefor as provided for by this Title, transact any kind or kinds of insurance defined by this Title, other than life or title insurances.

2. Such an insurer may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance it is authorized to transact direct.

§ 3854. Name; suits

A reciprocal insurer shall:

1. Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting" or "association."

2. Sue and be sued in its own name.

§ 3855. Attorney

1. "Attorney", as used in this chapter, refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm or corporation.

2. The attorney of a foreign reciprocal insurer, which insurer is duly authorized to transact insurance in this State, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this State, be thereby deemed to be doing business in this State within the meaning of any laws of this State applying to foreign persons, firms or corporations.

3. The subscribers and the attorney-in-fact comprise a reciprocal insurer and a single entity for the purposes of chapter 7 as to all operations under the insurer's certificate of authority.

§ 3856. Organization of reciprocal insurer

1. Twenty-five or more persons domiciled in this State may organize a domestic reciprocal insurer and make application to the commissioner for a certificate of authority to transact insurance.

2. The proposed attorney shall fulfill the requirements of and shall execute and file with the commissioner when applying for a certificate of authority, a declaration setting forth:

A. The name of the insurer;

B. The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this State;

- C. The kinds of insurance proposed to be transacted;
- D. The names and addresses of the original subscribers;
- E. The designation and appointment of the proposed attorney and a copy of the power of attorney;
- F. The names and addresses of the officers and directors of the attorney, if a corporation, or its members if a firm;
- G. The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof;
- H. That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
- I. A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the commissioner;
- J. A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by section 410 is on hand; and
- K. A copy of each policy, endorsement and application form it then proposes to issue or use.

The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

§ 3857. Certificate of authority

1. The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

2. The commissioner may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, for failure of the attorney to comply with any applicable provision of this Title.

§ 3858. Power of attorney

1. The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

2. The power of attorney must set forth:

A. The powers of the attorney;

B. If a domestic reciprocal insurer, that the attorney is empowered to

accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;

C. The general services to be performed by the attorney;

D. The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and

E. Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one nor more than 10 times the premium or premium deposit stated in the policy.

3. The power of attorney may:

A. Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;

B. Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;

C. Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and

D. Contain other lawful provisions deemed advisable.

4. The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this State until approved by the commissioner.

§ 3859. Modifications

Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto.

§ 3860. Attorney's bond

1. Concurrently with the filing of the declaration provided for in section 3856, the attorney of a domestic reciprocal insurer shall file with the commissioner a bond in favor of this State for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his bond as set forth in subsection 2. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the commissioner's approval.

2. The bond shall be in the penal sum of \$25,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his hands, and that he will not withdraw or appropriate to his own use from the funds of the insurer, any moneys or property to which he is not entitled under the power of attorney.

3. The bond shall provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney and the commissioner.

§ 3861. Deposit in lieu of bond

In lieu of the bond required under section 3860, the attorney may maintain on deposit with the Treasurer of State through the office of the commissioner, a like amount in cash or in value of securities qualified under this Title as insurers' investments, and subject to the same conditions as the bond.

§ 3862. Action on bond

Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond.

§ 3863. Service of process; judgment

1. Legal process shall be served upon a domestic reciprocal insurer by serving the insurer's attorney at his principal offices or by serving the commissioner as the insurer's process agent under sections 421 and 422.

2. Any judgment based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear, but in an amount not exceeding their respective contingent liabilities, if any, the same as though personal service of process was had upon each such subscriber.

§ 3864. Contributions to insurer

The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the commissioner. This section does not apply to bank loans, or to other loans made upon security.

§ 3865. Financial conditions; method of determining

In determining the financial condition of a reciprocal insurer the commissioner shall apply the following rules:

1. He shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

2. The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit.

3. The surplus deposits of subscribers shall not be charged as a liability.
4. All premium deposits delinquent less than 90 days shall be allowed as assets.
5. An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.
6. The contingent liability of subscribers shall not be allowed as an asset.
7. The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

§ 3866. Who may be subscribers

Individuals, partnerships and corporations of this State may make application, enter into agreement for and hold policies or contracts in or with and be a subscriber of any domestic, foreign or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this State shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations. Government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees or fiduciaries are authorized to exchange nonassessable reciprocal interinsurance contracts with each other and with individuals, partnerships and corporations to the same extent that individuals, partnerships and corporations are herein authorized to exchange reciprocal interinsurance contracts. Any officer, representative, trustee, receiver or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity.

§ 3867. Subscribers' advisory committee

1. The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt.
2. Not less than 2/3 of such committee shall be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney.
3. The committee shall:
 - A. Supervise the finances of the insurer;
 - B. Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney;
 - C. Procure the audit of the accounts and records of the insurer and of

the attorney at the expense of the insurer; and

D. Have such additional powers and functions as may be conferred by the subscribers' agreement.

§ 3868. Subscribers' liability

1. The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several and proportionate liability, and not joint.

2. Except as to a nonassessable policy, each subscriber shall have a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual losses and expenses incurred while his policy was in force. Such contingent liability may be at the rate of not less than one nor more than 10 times the premium or premium deposit stated in the policy, and the maximum aggregate thereof shall be computed in the manner set forth in section 3872.

3. Each assessable policy issued by the insurer shall contain a statement of the contingent liability, set in type of the same prominence as the insuring clause.

§ 3869. Subscribers' liability on judgment

1. No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days.

2. Any such judgment shall be binding upon each subscriber only in such proportion as his interests may appear and in amount not exceeding his contingent liability, if any.

§ 3870. Assessments

1. Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the commissioner; or by the commissioner in liquidation of the insurer.

2. Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his aggregate contingent liability as computed in accordance with section 3872, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.

3. In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.

4. No subscriber shall have an offset against any assessment for which

he is liable, on account of any claim for unearned premium or losses payable.

§ 3871. Time limit for assessments

Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his share of any assessment, as computed and limited in accordance with this chapter, if:

1. While his policy is in force or within one year after its termination, he is notified by either the attorney or the commissioner of his intentions to levy such assessment, or

2. If an order to show cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while his policy is in force or within one year after its termination.

§ 3872. Aggregate liability

No one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year, in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year.

§ 3873. Nonassessable policies

1. If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock and surplus required to be maintained by a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the commissioner shall issue his certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this State, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this State for so long as all such surplus remains unimpaired.

2. Upon impairment of such surplus, the commissioner shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.

3. The commissioner shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualified to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

§ 3874. Subscribers' share in assets

Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus, and the return of any unused premium, savings or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were such within the 12 months prior to the last termination of its certificate of authority, according to such reasonable formula as the commissioner may approve.

§ 3875. Merger or conversion

1. A domestic reciprocal insurer upon affirmative vote of not less than $\frac{2}{3}$ of its subscribers who vote on such merger pursuant to due notice and the approval of the commissioner of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

2. Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

3. The commissioner shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his interest in the reciprocal insurer as determined in accordance with section 3874 and a reasonable length of time within which to exercise such right.

§ 3876. Impaired reciprocals

1. If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.

2. If the attorney fails to make up such deficiency or to make the assessment within 30 days after the commissioner orders him to do so, or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this Title.

3. If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the commissioner determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

CHAPTER 55.

FRATERNAL BENEFIT SOCIETIES

§ 4101. Fraternal benefit societies defined

1. Any incorporated society, order or supreme lodge, without capital stock, including one exempted under section 4142, whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which makes provision for the payment of benefits in accordance with this chapter, is hereby declared to be a fraternal benefit society.

2. When used in this chapter the word "society," unless otherwise indicated, shall mean fraternal benefit society.

§ 4102. Lodge system defined

A society having a supreme legislative or governing body and subordinate lodges or branches by whatever name known, into which members are elected, initiated or admitted in accordance with its constitution, laws, ritual and rules, which subordinate lodges or branches shall be required by the laws of the society to hold regular meetings at least once in each month, shall be deemed to be operating on the lodge system.

§ 4103. Representative form of government defined

A society shall be deemed to have a representative form of government when:

1. It provides in its constitution or laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members of such body as may be prescribed by the society's constitution and laws;

2. The representatives elected constitute a majority in number and have not less than $\frac{2}{3}$ of the votes nor less than the votes required to amend its constitution and laws;

3. The meetings of the supreme legislative or governing body and the election of officers, representatives or delegates are held as often as once in 4 calendar years;

4. The society has a board of directors charged with the responsibility for managing its affairs in the interim between meetings of its supreme legislative or governing body, subject to control by such body and having powers and duties delegated to it in the constitution or laws of the society;

5. Such board of directors is elected by the supreme legislative or governing body, except in case of filling a vacancy in the interim between meetings of such body;

6. The officers are elected either by the supreme legislative governing body or by the board of directors; and

7. The members, officers, representatives or delegates shall not vote by proxy.

§ 4104. Organization

The organization of a society shall be governed as follows :

1. Seven or more citizens of the United States, a majority of whom are citizens of this State, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated :

A. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing ;

B. The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this chapter, provided that any lawful, social, intellectual, educational, charitable, benevolent, moral, fraternal or religious advantages may be set forth among the purposes of the society ; and

C. The names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

2. Such articles of incorporation, duly certified copies of the constitution, laws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the commissioner, who may require such further information as he deems necessary. The bond with sureties approved by the commissioner shall be in such amount, not less than \$5,000 nor more than \$25,000, as required by the commissioner. All documents filed are to be in the English language. If the purposes of the society conform to the requirements of this chapter and all provisions of law have been complied with, the commissioner shall so certify, retain and file the articles of incorporation and furnish the incorporators a preliminary certificate authorizing the society to solicit members as hereinafter provided.

3. No preliminary certificate granted under this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the commissioner upon cause shown, unless the 500 applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

4. Upon receipt of a preliminary certificate from the commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one regular monthly premium in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow or offer or promise to pay or allow, any death or disability benefit to any person until:

A. Actual bona fide applications for death benefits have been secured aggregating at least \$500,000 on not less than 500 lives;

B. All such applicants for death benefits shall have furnished evidence of insurability satisfactory to the society;

C. Certificates of examinations or acceptable declarations of insurability have been duly filed and approved by the chief medical examiner of the society;

D. Ten subordinate lodges or branches have been established into which the 500 applicants have been admitted;

E. There has been submitted to the commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

F. It shall have been shown to the commissioner by sworn statement of the treasurer, or corresponding officer of such society, that at least 500 applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least \$2,500, all of which shall be credited to the fund or funds from which benefits are to be paid and no part of which may be used for expenses. The advance premiums shall be held in trust during the period of organization and if the society has not qualified for a certificate of authority within one year, as herein provided, such premiums shall be returned to the applicants.

5. The commissioner may make such examination and require such further information as he deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to the society a certificate to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate shall be prima facie evidence of the existence of the society at the date of such certificate. The commissioner shall cause a record of such certificate to be made. A certified copy of such record may be given in evidence with like effect as the original certificate.

6. Every society shall have the power to adopt a constitution and laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of its members

from time to time. It shall have the power to change, alter, add to or amend such constitution and laws and shall have such powers as are necessary and incidental to carrying into effect the objects and purposes of the society.

§ 4105. Corporate powers retained

Any incorporated society authorized to transact business in this State at the time this chapter becomes effective may thereafter exercise all the rights, powers and privileges prescribed in this chapter and in its charter or articles of incorporation as far as consistent with this chapter. A domestic society shall not be required to reincorporate.

§ 4106. Voluntary associations

No unincorporated or voluntary association shall be permitted to transact business in this State as a fraternal benefit society.

§ 4107. Location of office—place of meeting

The principal office of any domestic society shall be located in this State. The meetings of its supreme legislative or governing body may be held in any state, district, province or territory wherein such society has at least 5 subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State.

§ 4108. Consolidations and mergers

A domestic society may consolidate or merge with any other society by complying with the provisions of this section.

It shall file with the commissioner:

1. A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;

2. A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the commissioner but not earlier than December 31, next preceding the date of the contract;

3. A certificate of such officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a 2/3 vote of the supreme legislative or governing body of each society; and

4. Evidence that at least 60 days prior to the action of the supreme legislative or governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official organ of each society.

If the commissioner finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, he shall approve the contract and issue his certificate to such effect. Upon

such approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. In such event the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of such state or territory and a certificate of such approval filed with the commissioner or, if the laws of such state or territory contain no such provision, then the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of such state or territory and a certificate of such approval filed with the commissioner of this State.

Upon the consolidation or merger becoming effective as herein provided, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds, and the title to any real estate or interest therein, vested under the laws of this State in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after such consolidation or merger.

The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that such notice or document has been duly addressed and mailed, shall be prima facie evidence that such notice or document has been furnished the addressees.

§ 4109. Conversion of fraternal benefit society into mutual life insurance company

Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of section 3352 if such plan of conversion has been approved by the commissioner. Such plan shall be prepared in writing setting forth in full the terms and conditions thereof. The board of directors shall submit such plan to the supreme legislative or governing body of such society at any regular or special meeting thereof by giving a full, true and complete copy of such plan with the notice of such meeting. Such notice shall be given as provided in the laws of the society for the convocation of a regular or special meeting of such body, as the case may be. The affirmative vote of $\frac{2}{3}$ of all members of such body shall be necessary for the approval of such agreement. No such conversion shall take effect unless and until approved by the commissioner who may give such approval if he finds that the proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

§ 4110. Qualifications for membership

A society may admit to benefit membership any person not less than 15 years of age, nearest birthday, who has furnished evidence of insurability acceptable to the society. Any such member who shall apply for additional benefits more than 6 months after becoming a benefit member shall furnish additional evidence of insurability acceptable to the society unless such additional benefits are issued pursuant to an existing contract under the terms of which such member is entitled to purchase such additional benefits without

furnishing evidence of insurability.

Any person admitted prior to attaining the full age of 21 years shall be bound by the terms of the application and certificate and by all the laws and rules of the society and shall be entitled to all the rights and privileges of membership therein to the same extent as though the age of majority had been attained at the time of application. A society may also admit general or social members who shall have no voice or vote in the management of its insurance affairs.

§ 4111. Articles of incorporation, constitution and laws—amendments

A domestic society may amend its articles of incorporation, constitution or laws in accordance with the provisions thereof by action of its supreme legislative or governing body at any regular or special meeting thereof or, if its articles of incorporation, constitution or laws so provide, by referendum. Such referendum may be held in accordance with the provisions of its articles of incorporation, constitution or laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members or by the vote of local lodges or branches. No amendment submitted for adoption by referendum shall be adopted unless, within 6 months from the date of submission thereof, a majority of all the voting members of the society shall have signified their consent to such amendment by one of the methods herein specified.

No amendment to the articles of incorporation, constitution or laws of any domestic society shall take effect unless approved by the commissioner, who shall approve such amendment if he finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this State or with the character, objects and purposes of the society. Unless the commissioner shall disapprove any such amendment within 60 days after the filing of same, such amendment shall be considered approved. The approval or disapproval of the commissioner shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case he disapproves such amendment, the reasons therefor shall be stated in such written notice.

Within 90 days from the approval thereof by the commissioner, all such amendments, or a synopsis thereof, shall be furnished to all members of the society either by mail or by publication in full in the official organ of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that such amendments or synopsis thereof, have been furnished the addressee.

Every foreign or alien society authorized to do business in this State shall file with the commissioner a duly certified copy of all amendments of, or additions to, its articles of incorporation, constitution or laws within 90 days after the enactment of same.

Printed copies of the constitution or laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

§ 4112. Institutions

It shall be lawful for a society to create, maintain and operate charitable, benevolent or educational institutions for the benefit of its members and their families and dependents and for the benefit of children insured by the society. For such purpose it may own, hold or lease personal property or real property located within or without this State, with necessary buildings thereon. Such property shall be reported in every annual statement but shall not be allowed as an admitted asset of such society.

Maintenance, treatment and proper attendance in any such institution may be furnished free or a reasonable charge may be made therefor, but no such institution shall be operated for profit. The society shall maintain a separate accounting of any income and disbursements under this section and report them in its annual statement. No society shall own or operate funeral homes or undertaking establishments.

§ 4113. No personal liability

The officers and members of the supreme, grand or any subordinate body of a society shall not be personally liable for payment of any benefits provided by a society.

§ 4114. Benefits

1. A society authorized to do business in this State may provide for the payment of:

- A. death benefits in any form;
- B. endowment benefits;
- C. annuity benefits;
- D. temporary or permanent disability benefits as a result of disease or accident;
- E. hospital, medical or nursing benefits due to sickness or bodily infirmity or accident; and
- F. monument or tombstone benefits to the memory of deceased members not exceeding in any case the sum of \$300.

2. Such benefits may be provided on the lives of members or, upon application of a member, on the lives of the member's family, including the member, the member's spouse and minor children, in the same or separate certificates.

§ 4115. Benefits on lives of children

A society may provide for benefits on the lives of children under the minimum age for adult membership but not greater than 21 years of age at time of application therefor, upon the application of some adult person, as its laws

or rules may provide, which benefits shall be in accordance with the provisions of section 4114, subsection 1. A society may, at its option, organize and operate branches for such children. Membership and initiation in local lodges shall not be required of such children, nor shall they have a voice in the management of the society.

A society shall have power to provide for the designation and changing of designation of beneficiaries in the certificates providing for such benefits and to provide in all other respects for the regulation, government and control of such certificates and all rights, obligations and liabilities incident thereto and connected therewith.

§ 4116. Nonforfeiture benefits, cash surrender values, certificate loans and other options

A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans and such other options as its laws may permit. As to certificates issued on and after the effective date of this Act, a society shall grant at least one paid-up nonforfeiture benefit; except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts or contracts of term insurance of uniform amount of 15 years or less expiring before age 66.

In the case of certificates other than those for which reserves are computed on the Commissioners 1941 Standard Ordinary Mortality Table, the Commissioners 1941 Standard Industrial Table or the Commissioners 1958 Standard Ordinary Mortality Table, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the excess, if any, of 1 over 2 as follows:

1. The reserve under the certificate determined on the basis specified in the certificate; and
2. The sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrender charge equal to $2\frac{1}{2}\%$ of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be the ultimate face amount of the certificate, if death benefits provided therein are graded.

However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American Men Ultimate Table of Mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than 130% of those shown by the mortality table specified in the certificate for the computation of the reserve.

In the case of certificates for which reserves are computed on the Commissioners 1941 Standard Ordinary Mortality Table, the Commissioners 1941 Standard Industrial Table or the Commissioners 1958 Standard Ordinary Mortality Table, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this State applicable to life insurers issuing policies containing like insurance benefits based upon such tables.

§ 4117. Beneficiaries

The member shall have the right at all times to change the beneficiary or beneficiaries in accordance with the constitution, laws or rules of the society. Every society by its constitution, laws or rules may limit the scope of beneficiaries and shall provide that no beneficiary shall have or obtain any vested interest in the proceeds of any certificate until the certificate has become due and payable in conformity with the provisions of the insurance contract.

A society may make provision for the payment of funeral benefits to the extent of such portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member, provided the portion so paid shall not exceed the sum of \$500.

If, at the death of any member, there is no lawful beneficiary to whom the insurance benefits shall be payable, the amount of such benefits, except to the extent that funeral benefits may be paid as hereinbefore provided, shall be payable to the personal representative of the deceased member.

§ 4118. Benefits not attachable

No money or other benefit, charity, relief or aid to be paid, provided or rendered by any society, shall be liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society.

§ 4119. The contract

Every society authorized to do business in this State shall issue to each benefit member a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the charter or articles of incorporation, the constitution and laws of the society, the application for membership, and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the agreement, as of the date of issuance, between the society and the member, and the certificate shall so state. A copy of the application for membership and of the declaration of insurability, if any, shall be endorsed upon or attached to the certificate.

All statements purporting to be made by the member shall be representations and not warranties. Any waiver of this provision shall be void.

Any changes, additions or amendments to the charter or articles of incorporation, constitution or laws duly made or enacted subsequent to the issuance of the certificate, shall bind the member and the beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership, except that no change, addition or amendment shall destroy or diminish benefits which the society contracted to give the member as of the date of issuance.

Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

A society shall provide in its constitution or laws that if its reserves as to all or any class of certificates become impaired its board of directors or corresponding body may require that there shall be paid by the member to the society the amount of the member's equitable proportion of such deficiency as ascertained by its board, and that if the payment be not made it shall stand as an indebtedness against the certificate and draw interest not to exceed 5% per annum compounded annually.

§ 4120. Life benefit certificate provisions, standard and prohibited

No life benefit certificate shall be delivered or issued for delivery in this State unless a copy of the form shall have been filed with the commissioner and approved by him as conforming to the requirements of this section and not inconsistent with any other provisions of law applicable thereto. A certificate shall be deemed approved unless disapproved by the commissioner within 60 days from the date of such filing.

1. The certificate shall contain in substance the following standard provisions or, in lieu thereof, provisions which are more favorable to the member :

A. Title on the face and filing page of the certificate clearly and correctly describing its form ;

B. A provision stating the amount of rates, premiums or other required contributions, by whatever name known, which are payable by the insured under the certificate ;

C. A provision that the member is entitled to a grace period of not less than a full month, or 30 days at the option of the society, in which the payment of any premium after the first, may be made. During such grace period the certificate shall continue in full force, but in case the certificate becomes a claim during the grace period before the overdue payment is made, the amount of such overdue payment or payments may be deducted in any settlement under the certificate ;

D. A provision that the member shall be entitled to have the certificate reinstated at any time within 3 years from the due date of the premium in default, unless the certificate has been completely terminated through the application of a nonforfeiture benefit, cash surrender value or certificate loan, upon the production of evidence of insurability satisfactory to the society and the payment of all overdue premiums and any other indebtedness to the society upon the certificate, together with interest on such premiums and such indebtedness, if any, at a rate not exceeding 6% per annum compounded annually ;

E. Except in the case of pure endowment, annuity or reversionary annuity contracts, reducing term insurance contracts, or contracts of term insurance of uniform amount of 15 years or less expiring before age 66, a provision that, in the event of default in payment of any premium after 3 full years' premiums have been paid or after premiums for a lesser period have been

paid if the contract so provides, the society will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on the plan stipulated in the certificate, effective as of such due date, of such value as specified in this chapter. The certificate may provide, if the society's laws so specify or if the member shall so elect prior to the expiration of the grace period of any overdue premium, that default shall not occur so long as premiums can be paid under the provisions of an arrangement for automatic premium loan as may be set forth in the certificate;

F. A provision that one paid-up nonforfeiture benefit as specified in the certificate shall become effective automatically unless the member elects another available paid-up nonforfeiture benefit, not later than 60 days after the due date of the premium in default;

G. A statement of the mortality table and rate of interest used in determining all paid-up nonforfeiture benefits and cash surrender options available under the certificate, and a brief general statement of the method used in calculating such benefits;

H. A table showing in figures the value of every paid-up nonforfeiture benefit and cash surrender option available under the certificate for each certificate anniversary either during the first 20 certificate years or during the term of the certificate whichever is shorter;

I. A provision that the certificate shall be incontestable after it has been in force during the lifetime of the member for a period of 2 years from its date of issue except for nonpayment of premiums, violation of the provisions of the certificate relating to military, aviation, or naval service and violation of the provisions relating to suspension or expulsion as substantially set forth in the certificate. At the option of the society, supplemental provisions relating to benefits in the event of temporary or permanent disability or hospitalization and provisions which grant additional insurance specifically against death by accident or accidental means, may also be excepted. The certificate shall be incontestable on the ground of suicide after it has been in force during the lifetime of the member for a period of 2 years from date of issue. The certificate may provide, as to statements made to procure reinstatement, that the society shall have the right to contest a reinstated certificate within a period of 2 years from date of reinstatement with the same exceptions as herein provided;

J. A provision that in case the age or sex of the member or of any other person is considered in determining the premium and it is found at any time before final settlement under the certificate that the age or sex has been misstated, and the discrepancy and premium involved have not been adjusted, the amount payable shall be such as the premium would have purchased at the correct age and sex; but if the correct age or sex was not an insurable age or sex under the society's charter or laws, only the premiums paid to the society, less any payments previously made to the member, shall be returned or, at the option of the society, the amount payable under the certificate shall be such as the premium would have purchased at the correct age and sex according to the society's promulgated rates and any extension thereof based on actuarial principles;

K. A provision or provisions which recite fully, or which set forth the substance of, all sections of the charter, constitution, laws, rules or regulations of the society, in force at the time of issuance of the certificate, the violation of which will result in the termination of, or in the reduction of, the benefit or benefits payable under the certificate; and

L. If the constitution or laws of the society provide for expulsion or suspension of a member, any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentations in such member's application for membership shall have the privilege of maintaining his insurance in force by continuing payment of the required premium.

Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance or because the certificate is an annuity certificate may to the extent inapplicable, be omitted from the certificate.

2. No life benefit certificate shall be delivered or issued for delivery in this State containing in substance any of the following provisions:

A. Any provision limiting the time within which any action at law or in equity may be commenced to less than 2 years after the cause of action shall accrue;

B. Any provision by which the certificate shall purport to be issued or to take effect more than 6 months before the original application for the certificate was made, except in case of transfer from one form of certificate to another in connection with which the member is to receive credit for any reserve accumulation under the form of certificate from which the transfer is made; or

C. Any provision for forfeiture of the certificate for failure to repay any loan thereon or to pay interest on such loan while the total indebtedness, including interest, is less than the loan value of the certificate.

3. The word "premiums" as used in this chapter means premiums, rates, or other required contributions by whatever name known.

§ 4121. Accident and health insurance and total and permanent disability insurance certificates

No society shall issue or deliver in this State any certificate or other evidence of any contract or accident insurance or health insurance or of any total and permanent disability insurance contract unless and until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the commissioner and approved by him as conforming to reasonable rules and regulations from time to time made by him and as not inconsistent with any other provisions of law applicable thereto. The commissioner shall, within a reasonable time after the filing of any such form, notify the society filing the same either of his approval or of his disapproval of such form. The commissioner may approve any such form which in his opinion contains provisions on any one or more of the several requirements made by him which are more favorable to the members than the one or ones so required. The commissioner shall have

power, from time to time, to make, alter and supersede reasonable regulations prescribing the required, optional and prohibited provisions in such contracts, and such regulations shall conform, as far as practicable, to the provisions of chapter 33. Where the commissioner deems inapplicable, either in part or in their entirety, the provisions of the foregoing sections, he may prescribe the portions or summary thereof of the contract to be printed on the certificate issued to the member. Any filing made hereunder shall be deemed approved unless disapproved within 60 days from the date of such filing.

§ 4122. Waiver

The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society. Such provisions shall be binding on the society and every member and beneficiary of a member.

§ 4123. Reinsurance

A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make such reinsurance and authorized to do business in this State, or if not so authorized, one which is approved by the commissioner, but no such society may reinsure substantially all of its insurance in force without the written permission of the commissioner. It may take credit for the reserves on such ceded risks to the extent reinsured, but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after the effective date of this Act, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

§ 4124. Annual license

Societies which are now authorized to transact business in this State may continue such business until the first day of July next succeeding the effective date of this Title. The authority of such societies and all societies hereafter licensed, may thereafter be renewed annually but in all cases to terminate on the first day of the succeeding July. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner \$50. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

§ 4125. Foreign or alien society—admission

No foreign or alien society shall transact business in this State without a license issued by the commissioner. Any such society may be licensed to transact business in this State upon filing with the commissioner:

1. A duly certified copy of its charter or articles of incorporation;

2. A copy of its constitution and laws, certified by its secretary or corresponding officer;
3. A power of attorney to the commissioner as prescribed in section 4129;
4. A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the commissioner of this State;
5. A certificate from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;
6. Copies of its certificate forms; and
7. Such other information as he may deem necessary; and upon a showing that its assets are invested in accordance with the provisions of this chapter.

Any foreign or alien society desiring admission to this State shall have the qualifications required of domestic societies organized under this chapter.

§ 4126. Injunction—liquidation—receivership of domestic society

1. When the commissioner upon investigation finds that a domestic society:

- A. Has exceeded its powers;
- B. Has failed to comply with any provision of this chapter;
- C. Is not fulfilling its contracts in good faith;
- D. Has a membership of less than 400 after an existence of 1 year or more;
or
- E. Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business;

he shall notify the society of such deficiency or deficiencies and state in writing the reasons for his dissatisfaction. He shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After such notice the society shall have a 30-day period in which to comply with the commissioner's request for correction, and if the society fails to comply the commissioner shall notify the society of his findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action in quo warranto should not be commenced against the society.

If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner may present the facts relating thereto to the Attorney

General who shall, if he deems the circumstances warrant, commence an action to enjoin the society from transacting business or in quo warranto.

The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order.

2. No society so enjoined shall have the authority to do business until:

A. The commissioner finds that the violation complained of has been corrected;

B. The cost of such action shall have been paid by the society if the court finds that the society was in default as charged;

C. The court has dissolved its injunction; and

D. The commissioner has reinstated the certificate of authority.

3. If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

4. No action under this section shall be recognized in any court of this State unless brought by the Attorney General upon request of the commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner as such receiver.

5. The provisions of this section relating to hearing by the commissioner, action by the Attorney General at the request of the commissioner, hearing by the court, injunction and receivership shall be applicable to a society which shall voluntarily determine to discontinue business.

§ 4127. Suspension, revocation or refusal of license of foreign or alien society

1. When the commissioner upon investigation finds that a foreign or alien society transacting or applying to transact business in this State:

A. Has exceeded its powers;

B. Has failed to comply with any of the provisions of this chapter;

C. Is not fulfilling its contracts in good faith; or

D. Is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public;

he shall notify the society of such deficiency or deficiencies and state in writing the reasons for his dissatisfaction. He shall at once issue a written notice to the society requiring that the deficiency, or deficiencies which exist are cor-

rected. After such notice the society shall have a 30-day period in which to comply with the commissioner's request for correction, and if the society fails to comply the commissioner shall notify the society of his findings of non-compliance and require the society to show cause on a date named why its license should not be suspended, revoked or refused. If on such date the society does not present good and sufficient reason why its authority to do business in this State should not be suspended, revoked or refused, he may suspend or refuse the license of the society to do business in this State until satisfactory evidence is furnished to him that such suspension or refusal should be withdrawn or he may revoke the authority of the society to do business in this State.

2. Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein.

§ 4128. Licensing of agents

1. Agents of societies shall be licensed in accordance with the provisions of this section.

2. Insurance agents defined. The term "insurance agent" as used in this section means any authorized or acknowledged agent of a society who acts as such in the solicitation, negotiation or procurement or making of a life insurance, accident and health insurance or annuity contract, except that the term "insurance agent" shall not include:

A. Any regular salaried officer or employee of a licensed society who devotes substantially all of his services to activities other than the solicitation of fraternal insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained; or

B. Any agent or representative of a society who devotes, or intends to devote, less than 25% of his time to solicitation and procurement of insurance contracts for such society. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of \$25,000, or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than 25 individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, 25% of his time to the solicitation or procurement of insurance contracts for such society.

3. License required. Any persons who in this State acts as insurance agent for a society without having authority so to do by virtue of a license issued and in force pursuant to the provisions of this section shall, except as provided in subsection 2, be guilty of a misdemeanor.

4. Payment of commissions forbidden. No society doing business in this State shall pay any commission or other compensation to any person for any services in obtaining in this State any new contract of life, accident or health insurance, or any new annuity contract, except to a licensed insurance agent of such society and except an agent exempted under subsection 2, paragraph B.

5. Prerequisites, issuance and renewal of insurance agents' licenses.

A. The commissioner may issue a license to any person who has paid an annual license fee as provided in section 601 (fee schedule) and who has complied with the requirements of this section, authorizing such licensee to act as an insurance agent on behalf of any society named in such license which is authorized to do business in this State.

B. Before any insurance agent's license shall be issued there shall be on file in the office of the commissioner of insurance the following documents:

(1) A written application by the prospective licensee in such form or forms and supplements thereto, and containing such information, as the commissioner may prescribe; and

(2) A certificate by the society which is to be named in such license, stating that such society has satisfied itself that the named applicant is trustworthy and competent to act as such insurance agent and that the society will appoint such applicant to act as its agent if the license applied for is issued by the commissioner. Such certificates shall be executed and acknowledged by an officer or managing agent of such society.

C. No written or other examination shall be required of any individual seeking to be named as licensee to represent a fraternal benefit society as its agent.

D. The commissioner may refuse to issue or renew any insurance agent's license if in his judgment the proposed licensee is not trustworthy and competent to act as such agent, or has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance or renewal, as the case may be, of such license.

E. License years shall be from July 1st of each calendar year to the last day of June of the next calendar year. Every license issued pursuant to this section, and every renewal thereof, shall expire on July 1st of the license year for which issued.

F. If the application for a renewal license shall have been filed with the commissioner on or before December 31st of the year in which the existing license was issued, the applicant named in such existing license may continue to act as insurance agent under such existing license, unless same shall be revoked or suspended, until the issuance by the commissioner of the renewal license or until the expiration of 5 days after he shall have refused to renew such license and shall have served written notice of such refusal on the applicant. If the applicant shall, within 30 days after such notice is given, notify the commissioner in writing of his request for a hearing on such refusal, the commissioner shall, within a reasonable time after receipt of such notice, grant such hearing, and he may, in his discretion, reinstate such license.

G. Any such renewal license of an insurance agent may be issued upon the application of the society named in the existing license. Such application

shall be in the form or forms prescribed by the commissioner and shall contain such information as he may require. Such application shall contain a certificate executed by the president, or by a vice president, a secretary, an assistant secretary, or corresponding officer by whatever name known, or by an employee expressly designated and authorized to execute such certificate of a domestic or foreign society or by the United States manager of an alien society, stating that the addresses therein given of the agents of such society for whom renewal licenses are requested therein have been verified in each instance immediately preceding the preparation of the application. Notwithstanding the filing of such application, the commissioner may, after reasonable notice to any such society, require that any or all agents of such society to be named as licensees in renewal licenses shall execute and file separate applications for the renewal of such licenses, as hereinbefore specified, and he may also require that each such application shall be accompanied by the certificate specified in subsection 5, paragraph B, subparagraph (2).

6. Notice of termination of appointment of agent. Every society doing business in this State shall, upon the termination of the appointment of any agent licensed to represent it in this State, forthwith file with the commissioner a statement, in such form as he may prescribe, of the facts relative to such termination and the cause thereof. Every statement made pursuant to this section shall be deemed a privileged communication.

7. Revocation or suspension of agent's license.

A. The commissioner may revoke, or may suspend for such period as he may determine, any insurance agent's license if, after notice and hearing as specified in this section, he determines that the licensee has:

- (1) Violated any provision of, or any obligation imposed by, this section, or has violated any law in the course of his dealings as agent;
- (2) Made a material misstatement in the application for such license;
- (3) Been guilty of fraudulent or dishonest practices;
- (4) Demonstrated his incompetency or untrustworthiness to act as an insurance agent; or
- (5) Been guilty of rebating as defined by the laws of this State applicable to life insurance companies.

B. The revocation or suspension of any insurance agent's license shall terminate forthwith the license of such agent. No individual whose license has been revoked shall be entitled to obtain any insurance agent's license under the provisions of this section for a period of one year after such revocation or, if such revocation be judicially reviewed, for one year after the final determination thereof affirming the action of the commissioner in revoking such license.

Every society authorized to do business in this State shall appoint in writing the commissioner and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree in such writing that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this State. Copies of such appointment, certified by the commissioner, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

Service shall only be made upon the commissioner, or if absent, upon the person in charge of his office. It shall be made in duplicate and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, he shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. Legal process shall not be served upon a society except in the manner herein provided. At the time of serving any process upon the commissioner, the plaintiff or complainant in the action shall pay to the commissioner a fee of \$5.

§ 4130. Injunction

No application or petition for injunction against any domestic, foreign or alien society, or branch thereof, shall be recognized in any court of this State unless made by the Attorney General upon request of the commissioner.

§ 4131. Review

All decisions and findings of the commissioner made under the provisions of this chapter shall be subject to review by proper proceedings in any court of competent jurisdiction in this State.

§ 4132. Funds

All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in the contract.

A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of such society.

Every society, the admitted assets of which are less than the sum of its accrued liabilities and reserves under all of its certificates when valued according to standards required for certificates issued after one year from the effective date of this chapter, shall, in every provision of the laws of the society for payments by members of such society, in whatever form made, distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions thereto shall be used for expenses.

§ 4133. Investments

A society shall invest its funds only in such investments as are authorized by the laws of this State for the investment of assets of life insurers and subject to the limitations thereon. Any foreign or alien society permitted or seeking to do business in this State which invests its funds in accordance with the laws of the state, district, territory, country or province in which it is incorporated, shall be held to meet the requirements of this section for the investment of funds.

§ 4134. Reports and valuations

Reports shall be filed and synopses of annual statements shall be published in accordance with the provisions of this section.

1. Every society transacting business in this State shall annually, on or before the 1st day of March, unless for cause shown such time has been extended by the commissioner, file with the commissioner a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay a fee of \$50 for filing same. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the commissioner.

2. A synopsis of its annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society not later than June 1 of each year, or, in lieu thereof, such synopsis may be published in the society's official publication.

3. As a part of the annual statement herein required, each society shall, on or before the 1st day of March, file with the commissioner a valuation of its certificates in force on December 31 last preceding, provided the commissioner may, in his discretion for cause shown, extend the time for filing such valuation for not more than 2 calendar months. Such report of valuation shall show, as reserve liabilities, the difference between the present midyear value of the promised benefits provided in the certificates of such society in force and the present midyear value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present midyear value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the net tabular value. Such net tabular value as to certificates issued prior to one year after the effective date of this chapter shall be determined in accordance with the provisions of law applicable prior to the effective date of this chapter and as to certificates issued on or after one year from the effective date of this chapter shall not be less than the reserves determined according to the commissioner's reserve valuation method as hereinafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

4. Reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of certificates 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 certificates, over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of A over B, as follows:

A. A net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate 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 certificate on which a premium falls due; provided however, that 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 1 year higher than the age at issue of such certificate; and

B. A net one-year term premium for such benefits provided for in the first certificate year.

Reserves according to the commissioner's reserve valuation method for:

- (1) life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums,
- (2) annuity and pure endowment benefits,
- (3) disability and accidental death benefits in all certificates and contracts, and
- (4) all other benefits except life insurance and endowment benefits, shall be calculated by a method consistent with the principles of this subsection.

5. The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in the following subsection.

6. Such valuation and underlying data shall be certified by a competent actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

A. The minimum standards of valuation for certificates issued prior to the effective date of this chapter shall be those provided by the law applicable immediately prior to the effective date of this chapter but not lower than the standards used in the calculating of rates for such certificates.

B. The minimum standard of valuation for certificates issued after the effective date of this chapter shall be $3\frac{1}{2}\%$ interest and the following tables:

- (1) For certificates of life insurance: American Men Ultimate Table of

Mortality, with Bowerman's or Davis' extension thereof or with the consent of the commissioner, the Commissioners 1941 Standard Ordinary Mortality Table, the Commissioners 1941 Standard Industrial Mortality Table or the Commissioners 1958 Standard Ordinary Mortality Table, using actual age of the insured for male risks and an age more than 3 years younger than the actual age of the insured for female risks;

(2) For annuity and pure endowment certificates, excluding any disability and accidental death benefits in such certificates: The 1937 Standard Annuity Mortality Table or the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;

(3) For total and permanent disability benefits in or supplementary to life insurance certificates: Hunter's Disability Table, or the class III disability table (1926) modified to conform to the contractual waiting period, or 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. Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance certificates;

(4) For accidental death benefits in or supplementary to life insurance certificates: The Inter-company Double Indemnity Mortality Table or the 1959 Accidental Death Benefits Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance certificates; and

(5) For noncancellable accident and health benefits: The class III disability table (1926) with conference modifications or, with the consent of the commissioner, tables based upon the society's own experience.

The commissioner may, in his discretion, accept other standards for valuation if he finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The commissioner may, in his discretion, vary the standards of mortality applicable to all certificates of insurance on substandard lives or other extra hazardous lives by any society authorized to do business in this State. Whenever the mortality experience under all certificates valued on the same mortality table is in excess of the expected mortality according to such table for a period of 3 consecutive years, the commissioner may require additional reserves when deemed necessary in his judgment on account of such certificates.

Any society, with the consent of the insurance supervisory officer of the state of domicile of the society and under such conditions, if any, which he may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any insured member shall not be affected thereby.

7. A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit \$100 for each day during which such neglect continues, and, upon notice by the commissioner to that effect, its authority to do business in this State shall cease while such default continues.

The commissioner, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society and he shall make such examination at least once in every 3 years. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all books, papers and documents that relate to the business of the society. The minutes of the proceedings of the supreme legislative or governing body and of the board of directors or corresponding body of a society shall be in the English language. In making any such examination the commissioner may summon and qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society. A summary of the report of the commissioner and such recommendations or statements of the commissioner as may accompany such report, shall be read at the first meeting of the board of directors or corresponding body of the society following the receipt thereof, and if directed so to do by the commissioner, shall also be read at the first meeting of the supreme legislative or governing body of the society following the receipt thereof. A copy of the report, recommendations and statements of the commissioner shall be furnished by the society to each member of such board of directors or other governing body. The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the commissioner.

§ 4136. Examination of foreign and alien societies

The commissioner, or any person whom he may appoint, may examine any foreign or alien society transacting or applying for admission to transact business in this State. He may employ assistants and he, or any person he may appoint, shall have free access to all books, papers and documents that relate to the business of the society. He may in his discretion accept, in lieu of such examination, the examination of the insurance department of the state, territory, district, province or country where such society is organized. The compensation and actual expenses of the examiners making any examination or general or special valuation shall be paid by the society examined or by the society whose certificate obligations have been valued, upon statements furnished by the commissioner.

§ 4137. No adverse publications

Pending, during or after an examination or investigation of a society, either domestic, foreign or alien, the commissioner shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any society, until a copy thereof shall have been served upon the society at its principal office and the society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

§ 4138. Misrepresentation

No person shall cause or permit to be made, issued or circulated in any form:

1. Any misrepresentation or false or misleading statement concerning the terms, benefits or advantages of any fraternal insurance contract now issued or to be issued in this State, or the financial condition of any society;

2. Any false or misleading estimate or statement concerning the dividends or shares of surplus paid or to be paid by any society on any insurance contract; or

3. Any incomplete comparison of an insurance contract of one society with an insurance contract of another society or insurer for the purpose of inducing the lapse, forfeiture or surrender of any insurance contract. A comparison of insurance contracts is incomplete if it does not compare in detail:

A. The gross rates, and the gross rates less any dividend or other reduction allowed at the date of the comparison; and

B. Any increase in cash values, and all the benefits provided by each contract for the possible duration thereof as determined by the life expectancy of the insured; or if it omits from consideration:

C. Any benefit or value provided in the contract;

D. Any differences as to amount or period of rates; or

E. Any differences in limitations or conditions or provisions which directly or indirectly affect the benefits. In any determination of the incompleteness or misleading character of any comparison or statement, it shall be presumed that the insured had no knowledge of any of the contents of the contract involved.

Any person who violates any provision of this section or knowingly receives any compensation or commission by or in consequence of such violation, shall upon conviction be punished by a fine not less than \$100 nor more than \$500, or by imprisonment in the county jail not less than 30 days nor more than 11 months, or both fine and imprisonment and shall in addition, be liable for a civil penalty in the amount of 3 times the sum received by such violator as compensation or commission, which penalty may be sued for and recovered by any person or society aggrieved for his or its own use and benefit in accordance with the provisions of civil practice.

§ 4139. Discrimination and rebates

No society doing business in this State shall make or permit any unfair discrimination between insured members of the same class and equal expectation of life in the premiums charged for certificates of insurance, in the dividends or other benefits payable thereon or in any other of the terms and conditions of the contracts it makes.

No society, by itself or any other party, and no agent or solicitor, personally or by any other party, shall offer, promise, allow, give, set off or pay, directly or indirectly, any valuable consideration or inducement to, or for insurance, on any risk authorized to be taken by such society, which is not specified in the certificate. No member shall receive or accept, directly or indirectly, any rebate of premium, or part thereof, or agent's or solicitor's commission thereon, payable on any certificate or receive or accept any favor or advantage or share in the dividends or other benefits to accrue on, or any valuable consideration or inducement not specified in the contract of insurance.

§ 4140. Taxation

Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax other than taxes on real estate and office equipment.

§ 4141. Exemptions

Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of this State, not only in governmental relations with the state, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein.

§ 4142. Exemption of certain societies

Nothing contained in this chapter shall be so construed as to affect or apply to:

1. Grand or subordinate lodges of societies, orders or associations now doing business in this State which provide benefits exclusively through local or subordinate lodges;

2. Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

3. Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than \$400 or disability benefits of not more than \$350 to any person in any one year, or both; or

4. Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than \$400 or for disability benefits of not more than \$350 to any one person in any one year, or both.

Any such society or association described in subsections 3 or 4 supra which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in subsection 4 which has more than 1,000 members, shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

No society which, by the provisions of this section, is exempt from the requirements of this chapter, except any society described in subsection 2 supra, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions

thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from this chapter.

Societies, exempted under this section, shall also be exempt from all other provisions of the insurance laws of this State.

§ 4143. Penalties

Any person who willfully makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any society, shall upon conviction be fined not less than \$100 nor more than \$500 or imprisonment in the county jail not less than 30 days nor more than 11 months, or both.

Any person who willfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of a member for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of perjury and shall be subject to the penalties therefor prescribed by law.

Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in this State shall upon conviction be fined not less than \$50 nor more than \$200.

Any person guilty of a willful violation of, or neglect or refusal to comply with, the provisions of this chapter for which a penalty is not otherwise prescribed, shall upon conviction, be subject to the penalties provided by section 12 (general penalty).

CHAPTER 57

DELINQUENT INSURERS

SUBCHAPTER I

REHABILITATION AND LIQUIDATION

§ 4351. Scope of provisions

The applicable provisions of this chapter shall apply as to:

1. All insurers authorized to transact insurance in this State;
2. All insurers having policyholders resident in this State;
3. All insurers against whom a claim under an insurance contract may arise in this State;
4. All persons in process of organization, or holding themselves out as

organizing, or proposing to organize in this State for the purpose of becoming an insurer; and

5. All other persons as to whom such provisions are otherwise expressly made applicable by law.

§ 4352. Short title

This chapter constitutes and may be cited as the "insurance rehabilitation and liquidation law."

§ 4353. Definitions

For the purposes of this chapter :

1. "Insurer," in addition to persons so defined under section 4, includes also persons purporting to be insurers, or organizing or holding themselves out as organizing in this State for the purpose of becoming an insurer.

2. "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to sections 4351 to 4385 for the purpose of conserving, rehabilitating, reorganizing or liquidating the insurer, or the proceedings authorized by sections 4401 to 4407.

3. "State" has the meaning ascribed in section 7.

4. "Domiciliary state" means the state in which an insurer is incorporated or organized, or as to an alien insurer, the state in which, at the commencement of delinquency proceedings the larger amount of the insurer's assets are held in trust or on deposit for the benefit of policyholders and creditors in the United States of America.

5. "Ancillary state" means any state other than a domiciliary state.

6. "Reciprocal state" means any state other than this State in which in substance and effect the uniform insurers liquidation act, as defined in section 4363, is in force, including provisions requiring that the Insurance Commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer, and in which effective provisions exist for avoidance of fraudulent conveyances and unlawful preferential transfers.

7. "Foreign country" means territory not in any state.

8. "Impairment" exists as to a stock insurer when the insurer's assets do not at least equal the sum of its liabilities and its paid-in capital stock; and as to a mutual insurer when the insurer's assets do not at least equal the sum of the insurer's liabilities and the minimum basic surplus required under this Title to be maintained for authority to transact the kinds of insurance transacted.

9. "Insolvency" exists when the insurer fails to meet its obligations as they mature or when a stock insurer's assets are less than the sum of its liabilities and the minimum paid-in capital stock required for its authority to transact

insurance in this State; or when a mutual insurer's assets are less than the sum of its liabilities and the minimum basic surplus required to be maintained by the insurer under this Title for authority to transact the kinds of insurance transacted; or as otherwise expressly provided in this Title.

10. "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons; and as to such specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby. Assets held in trust or on deposit for the security or benefit of all policyholders or all policyholders and creditors in the United States of America are deemed general assets.

11. "Preferred claim" means any claim accorded priority of payment from the insurer's general assets under applicable law.

12. "Special deposit claim" means any claim secured by deposit made under statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

13. "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets through judicial process and not invalidated.

14. "Receiver" means receiver, liquidator, rehabilitator, or conservator, as context requires.

15. "Creditor" means a person having a claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, or absolute, fixed or contingent.

§ 4354. Jurisdiction of delinquency proceedings; venue; exclusiveness of remedy; appeal

1. The Superior Court shall have original jurisdiction of delinquency proceedings under this chapter, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of such sections.

2. The venue of delinquency proceedings against a domestic insurer shall be in the county in this State of the insurer's principal place of business; or, if the principal place of business is located in another state, in any county in this State selected by the commissioner for the purpose. The venue of proceedings against foreign insurers shall be in any county in this State selected by the commissioner for the purpose.

3. At any time after commencement of a proceeding the commissioner or any other party may apply to the court for an order changing the venue of, and removing, the proceeding to any other county of this State in which the proceeding may most conveniently, economically and efficiently be conducted.

4. No court shall have jurisdiction to entertain, hear or determine any petition or complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation or receivership of any insurer, or for an injunction or restraining order or other relief preliminary, incidental or relating to such proceedings, other than in accordance with this chapter.

5. An appeal shall lie to the Supreme Judicial Court from any court granting or refusing rehabilitation, liquidation, conservation or receivership and from every order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein.

§ 4355. Jurisdiction over related persons and transactions

1. A court of this State in which an order of rehabilitation or liquidation has been entered in delinquency proceedings against a domestic insurer or alien insurer domiciled in this State, has jurisdiction also over persons, served as provided in subsection 2, in an action brought by the insurer's receiver on or arising out of such obligation or relationship, as follows:

A. Persons obligated to the insurer as a result of agency or brokerage or transactions between such persons and the insurer;

B. Reinsurers of the insurer, and their representatives; and

C. Past or present officers, managers, trustees, directors, organizers and promoters of the insurer, and other persons in positions of similar responsibility with the insurer.

2. As to those of such persons who are in this State, personal service of process shall be made as in other civil actions. As to those of such persons who cannot be found in this State at the time process is to be served, personal service of process shall be made thereon by a public officer of the jurisdiction in which such person may be found, in the same manner as personal service of process is required to be made within this State under the laws of this State; and the affidavit or certificate under oath setting forth the facts of such service shall be filed in the court in this State in which the action is pending.

§ 4356. Grounds for rehabilitation of domestic insurer or domiciled alien insurer

The commissioner may petition for an order directing him to rehabilitate a domestic insurer or an alien insurer domiciled in this State on any one or more of the following grounds:

1. On any ground for liquidation of the insurer under section 4357, if the commissioner believes rehabilitation possible without substantial increase of risk to creditors, policyholders or the public;

2. If the insurer is in unsound condition, or is using or has been subject to, such methods and practices in conduct of its business as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, or creditors, or the public;

3. If the insurer's solvency is endangered by illegal action;
4. For material falsification of the insurer's records, reports or financial condition;
5. If the commissioner finds after hearing that any individual exercising executive power with respect to or otherwise materially influencing or controlling the insurer, directly or indirectly, is dishonest or untrustworthy in matters affecting the insurer, and has not been or cannot effectively and permanently be removed from such power, influence or control;
6. For unlawful concealment or removal by the insurer of any of its records or assets;
7. For failure of the insurer, or its parent corporation, or subsidiary or affiliated person controlled by the insurer, to submit its books, accounts, records and affairs to the reasonable inspection or examination of the commissioner or his examiner as authorized under this Title; or if any individual exercising any executive authority in the affairs of the insurer, or parent corporation, or subsidiary or affiliated person has refused to be examined under oath, by the commissioner or his examiner thereunto duly authorized, whether within this State or otherwise, concerning the pertinent affairs of the insurer, or parent corporation, or subsidiary, or affiliated person, or if examined under oath refuses to divulge pertinent information reasonably known to him; or for failure of officers, employees and other representatives of the insurer or parent corporation or subsidiary or affiliated person to comply promptly with the reasonable requests of the commissioner or his examiner for the purposes of and during the conduct of any such examination;
8. That a deadlock exists in the insurer's board of directors relative to the general management of the insurer's affairs, that the insurer's stockholders or members, as to a mutual insurer, are unable to break the deadlock, and that the same threatens irreparable injury to the insurer or its creditors or its policyholders or to the public;
9. If the insurer has transferred or attempted to transfer substantially its entire property or business, or has entered into any transaction the effect of which is to merge or consolidate substantially its entire property or business in that of any other insurer, without first having obtained the written approval of the commissioner as required under this Title;
10. If the controlling stock of the insurer has been transferred to others without compliance with the requirements of section 3476 (acquisition of controlling stock), except where such transfer is by testamentary bequest or inheritance;
11. If the insurer has willfully violated its charter or a law of this State, or has willfully exceeded its corporate powers;
12. If the insurer has requested or consented to rehabilitation by vote or written authorization of a majority of its directors, or stockholders, or members, as to mutual insurers; or
13. If the insurer has failed to pay any valid judgment against it within

30 days after the same became final.

§ 4357. Grounds for liquidation of domestic insurer or domiciled alien insurer

The commissioner may apply to the court for an order appointing him as receiver, if his appointment as receiver is not then in effect, and directing him to liquidate the business of a domestic insurer or of the United States branch of an alien insurer having trusteed assets in this State, whether or not there has been a prior order directing him to rehabilitate the insurer, upon any one or more of the following grounds:

1. That the insurer has failed to cure an impairment of surplus or capital or assets within the time allowed therefor by any lawful order of the commissioner;

2. That the insurer is insolvent, or has commenced voluntary liquidation or dissolution, or attempts to commence or prosecute or is the object, in this State or elsewhere, of any action of proceeding to liquidate its business or affairs or to dissolve its corporate charter or to procure the appointment of a receiver, trustee, custodian or sequestrator under any law except this Title. This provision shall not apply as to the conversion of a stock insurer to an ordinary business corporation as authorized under section 3473 or to voluntary dissolution of the insurer pursuant to section 3484;

3. That the insurer has ceased for a period of one year to transact insurance business;

4. If a proposed insurer has not completed its organization and obtained a certificate of authority as an insurer within the time allowed therefor under any applicable law;

5. That efforts to rehabilitate the insurer and remove the causes or adverse effects thereof for which rehabilitation was instituted, have failed despite all reasonable efforts by the commissioner, or cannot be continued without material increase of risk of loss to the insurer's creditors or policyholders; or

6. If the insurer has requested or consented to liquidation by vote or written authorization of a majority of its directors or stockholders, or members if a mutual insurer.

§ 4358. Ground for conservation, foreign and alien insurers

The commissioner may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this State, of a foreign or alien insurer upon any of the applicable ground specified in sections 4356 or 4357, or upon the ground that the insurer's property has been sequestrated in its domiciliary sovereignty or in any other sovereignty; or, in the case of an alien insurer that the insurer has failed to make good an impairment of its trusteed funds within the time required therefor by order of the commissioner.

§ 4359. Grounds for ancillary liquidation, foreign and alien insurers

The commissioner may apply to the court for an order appointing him to liquidate the business of a foreign or alien insurer having assets, business or claims in this State upon the appointment in the domiciliary sovereignty of such insurer of a receiver, liquidator, conservator, rehabilitator or other officer by whatever name called for the purpose of liquidating the business of the insurer.

§ 4360. Commencement of proceeding

1. The commissioner shall commence a delinquency proceeding authorized under this chapter, the Attorney General representing him, by filing a petition in a court of proper jurisdiction praying for appointment of the commissioner as receiver of the insurer.

2. Upon the filing of the petition the court shall issue an order directing the insurer to appear in court on the day fixed in the order and show cause why the petition should not be granted. Unless good cause is shown for a shorter period, the order shall require the insurer to so show cause not less than 15 or more than 30 days from date of the order.

3. The order to show cause and service thereof on the insurer shall constitute due and legal process and shall be in lieu of any other process otherwise provided by law.

§ 4361. Service of process

A certified copy of any order to show cause issued under section 4360, and a copy of the petition upon which the same is made, shall be served upon the insurer by delivering the same to its president, vice-president, secretary, treasurer, director or to its managing agent or attorney in fact, if a reciprocal insurer; or if no such officer or functionary can readily be found in this State, then such process may be served upon the insurer by service thereof upon the commissioner pursuant to sections 421 and 422.

§ 4362. Injunctions

1. Upon application by the commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

2. The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

3. Notwithstanding any other provision of law, no bond shall be required of the commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

§ 4363. Uniform Insurers Liquidation Act; severability; interpretation

1. This section, section 4353 (definitions), and sections 4364 to 4369 comprise and may be cited as the Uniform Insurers Liquidation Act.

2. If any provision of the Uniform Insurers Liquidation Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

3. This Uniform Insurers Liquidation Act shall be so interpreted as to effectuate its general purpose to make uniform the laws of those states which enact it. To the extent that its provisions, when applicable, conflict with other provisions of this Title, the Uniform Insurers Liquidation Act shall control.

§ 4364. Conduct of delinquency proceedings against domestic insurers and certain alien insurers

1. Whenever under this chapter a receiver is to be appointed in delinquency proceedings for an insurer, the court shall appoint the commissioner as such receiver. The court shall order the commissioner forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

2. As a domiciliary receiver, the commissioner shall be vested by operation of law with the title to all of the property, contracts and rights of action and all of the books and records of the insurer, wherever located, as of the date of entry of the order directing him to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this State, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this State as to assets located in this State.

3. The filing or recording of the order directing possession to be taken, or a certified copy thereof, in any office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

4. The commissioner as domiciliary receiver shall be responsible for the proper administration of all assets coming into his possession or control. The court may at any time require a bond from him or his deputies if deemed desirable for the protection of such assets.

5. Upon taking possession of the assets of an insurer, the domiciliary receiver shall immediately proceed to conduct the business of the insurer or to take such steps as are authorized by this chapter for the purpose of rehabilitating, liquidating or conserving the affairs or assets of the insurer.

6. In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners to act for him and he may employ such counsel, clerks and assistants as he deems necessary. The compensation of the special deputies, counsel, clerks or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver and shall be paid out of the funds or assets of the insurer. Within the limits of duties imposed upon them, special deputies shall possess all the powers given to and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to such proceedings.

7. During such receivership the commissioner shall file in the court, at regular intervals not less frequently than quarterly, his true reports in summary form of the insurer's affairs under the receivership, and of progress being made in accomplishing the objectives of the receivership. All such reports, together with such additional or special reports as the court may reasonably require, shall be subject to review by the court; and all actions of the receiver therein reported shall be subject to the court's approval, but the court shall not withhold approval or disapprove any such action unless found by the court after a hearing thereon in open court to be unlawful, or arbitrary, or capricious.

§ 4365. Conduct of delinquency proceedings against foreign insurers

1. Whenever under this chapter an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this State, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment on the grounds set forth in sections 4358 or 4359:

A. If he finds that there are sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver, or

B. If 10 or more persons resident in this State having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

2. The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer located in this State and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this State. He shall also be entitled to recover the other assets of the insurer located in this State, except that upon the appointment of an ancillary receiver in this State, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this State.

3. The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this State to recover any assets of such insurer to which he may be entitled under the laws of this State.

§ 4366. Claims of nonresidents against domestic insurers

1. In a delinquency proceeding begun in this State against a domestic insurer, claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

2. Controverted claims belonging to claimants residing in reciprocal states may either:

A. Be proved in this State, or

B. If ancillary proceedings have been commenced in such reciprocal states, may be proved in those proceedings. In the event a claimant elects to prove his claim in ancillary proceedings, if notice of the claim and opportunity to appear and be heard is afforded the domiciliary receiver of this State, as provided in section 4367 with respect to ancillary proceedings in this State, the final allowance of such claim by the courts in the ancillary state shall be accepted in this State as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within the ancillary state.

§ 4367. Claims against foreign insurers

1. In a delinquency proceeding in a reciprocal state against an insurer domiciled in that state, claimants against such insurer who reside within this State may file claims either with the ancillary receiver, if any, appointed in this State, or with the domiciliary receiver. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

2. Controverted claims belonging to claimants residing in this State may either:

A. Be proved in the domiciliary state as provided by the law of that state, or

B. If ancillary proceedings have been commenced in this State, be proved in those proceedings. In the event that any such claimant elects to prove his claim in this State, he shall file his claim with the ancillary receiver and shall give notice in writing to the receiver in the domiciliary state, either by registered or certified mail or by personal service at least 40 days prior to the date set for hearing. The notice shall contain a concise statement of the amount of the claim, the facts on which the claim is based and the priorities asserted, if any. If the domiciliary receiver within 30 days after the giving of such notice shall give notice in writing to the ancillary receiver and to the claimant, either by registered or certified mail or by personal service, of his intention to contest such claim, he shall be entitled to appear or to be represented in any proceeding in this State involving

adjudication of the claim. The final allowance of the claim by the courts of this State shall be accepted as conclusive as to its amount and shall also be accepted as conclusive as to its priority, if any, against special deposits or other security located within this State.

§ 4368. Form of claim; notice; hearing

1. All claims against an insurer against which delinquency proceedings have been begun shall set forth in reasonable detail the amount of the claim, or the basis upon which such amount can be ascertained, the facts upon which the claim is based, and the priorities asserted, if any. All such claims shall be verified by the affidavit of the claimant or someone authorized to act on his behalf and having knowledge of the facts, and shall be supported by such documents as may be material thereto.

2. All claims filed in this State shall be filed with the receiver, whether domiciliary or ancillary, in this State, on or before the last date for filing as specified in this chapter.

3. Within 10 days of the receipt of any claim, or within such further period as the court may fix for good cause shown, the receiver shall report the claim to the court, specifying in such report his recommendation with respect to the action to be taken thereon. Upon receipt of such report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to such persons as shall appear to the court to be interested therein. All such notices shall specify the time and place of the hearing and shall concisely state the amount and nature of the claim, the priorities asserted, if any, and the recommendation of the receiver with reference thereto.

4. At the hearing, all persons interested shall be entitled to appear and the court shall enter an order allowing, allowing in part, or disallowing the claim. Any such order shall be deemed to be an appealable order.

§ 4369. Attachment and garnishment of assets

During the pendency of delinquency proceedings in this or any reciprocal state, no action or proceeding in the nature of an attachment, garnishment or execution shall be commenced or maintained in the courts of this State against the delinquent insurer or its assets. Any lien obtained by any such action or proceeding within four months prior to the commencement of any such delinquency proceeding or at any time thereafter shall be void as against any rights arising in such delinquency proceeding.

§ 4370. Limitations on appointment of receiver; action
by judgment creditor

No order, judgment or decree enjoining, restraining or interfering with the prosecution of the business of any insurer or for the appointment of a temporary or permanent receiver of a domestic insurer shall be made or granted otherwise than upon the petition of the commissioner represented by the Attorney General as provided in this chapter.

§ 4371. Deposit of monies

The monies collected by the commissioner in a proceeding under this chapter shall be from time to time deposited in one or more state or national banks, savings banks or trust companies, and in the case of the insolvency or voluntary or involuntary liquidation of any such depository which is an institution organized and supervised under the laws of this State, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking laws of this State. The commissioner may in his discretion deposit such monies or any part thereof in a national bank or trust company as a trust fund.

§ 4372. Exemption from fees

The commissioner shall not be required to pay any fee to any public officer in this State for service of process, filing, recording, issuing a transcript or certificate or authenticating any paper or instrument pertaining to the exercise by the commissioner of any of the powers or duties conferred upon him under this chapter, whether or not such paper or instrument be executed by the commissioner or his deputies, employees or attorneys of record and whether or not it is connected with the commencement of any action or proceeding by or against the commissioner, or with the subsequent conduct of such action or proceeding.

§ 4373. Escrowing on pledge of assets

For the purpose of facilitating the rehabilitation, liquidation, conservation or dissolution of an insurer pursuant to this chapter, the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property, whether real, personal or mixed, of such insurer, and the commissioner subject to the approval of the court shall have power to take any and all other action necessary and proper to consummate any such loan and to provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity to repay any loan made pursuant to this section.

§ 4374. Termination of rehabilitation

If at any time the court finds, after hearing in open court, upon petition of the commissioner or of the insurer or of his own motion, that the objectives of an order to rehabilitate a domestic insurer or an alien insurer domiciled in this State have been accomplished, and that the insurer can be returned to its own management without further jeopardy to the insurer and its creditors or policyholders or stockholders or to the public, the court may, upon a full report and accounting by the commissioner relative to the conduct of the insurer's affairs during the rehabilitation and of the insurer's current financial condition, terminate the rehabilitation and by order return the insurer, its assets and affairs, to the insurer's management.

§ 4375. Prohibited and voidable transfers, liens

1. No insurer shall make any transfer of or create any lien upon any of its

property with the intent of giving to, or enabling any creditor or policyholder to obtain a greater percentage of his debt than any other creditor or policyholder of the same class.

2. Any transfer of, or lien upon, any property of any insurer made or created within 4 months prior to the filing of a petition for an order to show cause under this chapter, which gives to any creditor or policyholder or enables him to obtain a greater percentage of his debt than any other creditor or policyholder in the same class, and which is accepted by a creditor or policyholder having reasonable cause to believe that such a preference will occur, shall be voidable. Where the preference consists in a transfer, such period of 4 months shall not expire until 4 months after the date of the recording or registering of the transfer if by law such recording or registering is required.

3. Every director, officer, employee, stockholder, member or any other person acting on behalf of such insurer, who, within 2 years prior to the filing of a petition for an order to show cause against such insurer under this chapter, shall knowingly participate in the making of any transfer or the creation of any lien prohibited by subsection 1, and every person receiving any property of, or cash surrender from, such insurer or the benefit thereof as a result of a transaction voidable under subsection 2, shall be jointly and severally liable therefor and shall be bound to account to the commissioner as receiver, rehabilitator, liquidator or conservator, as the case may be.

4. The commissioner as receiver, rehabilitator, liquidator or conservator may avoid any transfer of or lien upon the property of an insurer which any creditor, stockholder or member of such insurer might have avoided and may recover the property so transferred or its value from the person to whom it was transferred unless he was a bona fide holder for value prior to the date of the entry of an order to show cause under this chapter. Such property may be recovered or its value collected from whoever may have received it except a bona fide holder for value.

§ 4376. Date rights fixed on liquidation

The rights and liabilities of the insurer and of its creditors, policyholders, stockholders, members, subscribers and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date on which the order directing the liquidation of the insurer is filed in the office of the clerk of the court which made the order, subject to this chapter with respect to the rights of claimants holding contingent claims.

§ 4377. Time to file claims

1. If upon the entry of an order of liquidation under this chapter or at any time thereafter during liquidation proceedings the insurer is not clearly solvent, the court shall, upon hearing after such notice as it deems proper, make and enter an order adjudging the insurer to be solvent.

2. After the entry of the order of insolvency, regardless of any prior notice that may have been given to creditors, the commissioner shall notify all persons who may have claims against the insurer to file such claims with him, at a place and within the time specified in the notice, or that such claims shall

be forever barred. The time specified in the notice shall be as fixed by the court for filing of claims and which shall be not less than 6 months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

§ 4378. Allowance of contingent and other claims

1. No contingent claim shall share in a distribution of assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to section 4377, except that such claims shall be considered, if properly presented, and may be allowed to share where:

A. The claim becomes absolute against the insurer on or before the last day fixed for filing of proofs of claim against the assets of the insurer, or

B. There is a surplus and the liquidation is thereafter conducted upon the basis that the insurer is solvent.

2. Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of the insurer, shall have the right to file a claim in the liquidation proceeding, regardless of the fact that the claim may be contingent, and the claim may be allowed:

A. If it may be reasonably inferred from the proof presented upon the claim that such person would be able to obtain a judgment upon such cause of action against such insured; and

B. If such person shall furnish suitable proof, unless the court for good cause shown shall otherwise direct, that no further valid claims against the insurer arising out of his cause of action other than those already presented can be made; and

C. If the total liability of the insurer to all claimants arising out of the same act of its insured shall be no greater than its maximum liability would be were it not in liquidation.

3. No judgment against such an insurer, referred to in subsection 2, taken after the date of the entry of the liquidation order shall be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default, inquest or by collusion prior to the entry of the liquidation order shall be considered as conclusive evidence in the liquidation proceeding either of the liability of the insured to such person upon such cause of action or of the amount of damages to which such person is therein entitled.

4. No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for the fixation of rights and liabilities as provided in section 4376 unless the claimant shall surrender his security to the liquidator and in which event the claim shall be allowed in the full amount for which it is valued.

§ 4379. Priorities in distribution of assets

The priorities in distribution of assets from the insurer's estate shall be in the order as shown in this section. The first \$50 of the amount allowed on each claim in the classes under subsections 2 to 6 shall be deducted from the claim and included in the class under subsection 8. Claims shall not be cumulated by assignment to avoid application on the \$50 deductible provision. Subject to the \$50 deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment thereof before claims of the next succeeding class receive any payment. No subclasses shall be established within any class:

1. Administration costs. The costs and expenses of administration, including but not limited to the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.

2. Wages. Debts due to employees of the insurer, other than officers, for services performed, not to exceed \$1,000 to each employee and earned within 1 year immediately prior to the filing of the petition for liquidation. This priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of such employees.

3. Loss claims. All claims under policies for losses incurred, including third party claims, and all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, except the first \$200 of losses otherwise payable to any claimant under this subsection. All claims under life insurance policies and annuity contracts, whether for death proceeds, annuity proceeds or investment values, shall be treated as loss claims. Claims shall not be cumulated by assignment to avoid application of the \$200 deductible provision. That portion of any loss for which indemnification is provided by other benefits or advantages recovered or recoverable by the claimant shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment made by an employer to his employee shall be treated as a gratuity.

4. Unearned premiums and small loss claims. Claims under nonassessable policies for unearned premiums or other premium refunds and the first \$200 or loss excepted by the deductible provision in subsection 3.

5. Residual classification. All other claims, including claims of the federal or any state or local government, not falling within other classes under this section. Claims, including those of any governmental body, for a penalty or forfeiture shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection 8.

6. Judgments. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it

would have received in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.

7. Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under subsections 1 through 6 from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the court's approval, may make reasonable classifications of claims for purpose of computing interest, may make approximate computations and may ignore certain classifications and time periods as de minimis.

8. Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subsection 7:

A. The first \$50 of each claim in the classes under subsections 2 through 6 subordinated under this section;

B. Claims subordinated by section 4380 (subordination of claims for non-cooperation);

C. Claims filed late;

D. Portions of claims subordinated under subsection 5; and

E. Claims or portions of claims payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.

9. Preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in subsections 7 and 8.

10. Proprietary claims. The claims of stockholders or other owners of the insurer.

§ 4380. Subordination of claims for noncooperation

If an ancillary receiver, by whatever name called, in another state or foreign country fails to transfer to the domiciliary liquidator in this State any assets within his control other than special deposits, diminished only by the expenses, if any, of the ancillary receivership, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, shall be placed in the class of claims under section 4379, subsection 8.

§ 4381. Offsets

1. In all cases of mutual debts or mutual credits between the insurer and another person in connection with any action or proceeding under this chapter, such credits and debts shall be set off and the balance only shall be allowed or paid except as provided in subsection 2.

2. No offset shall be allowed in favor of any such person where:

- A. The obligation of the insurer to such person would not at the date of the entry of any liquidation order or otherwise, as provided in section 4376, entitle him to share as a claimant in the assets of the insurer, or
- B. The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as an offset, or
- C. The obligation of such person is to pay an assessment levied against the members of a mutual insurer, or against the subscribers of a reciprocal insurer, or is to pay a balance upon the subscription to the capital stock of a stock insurer.

§ 4382. Report and petition for assessment

Within 3 years after the date of the entry of an order of rehabilitation or liquidation of a domestic mutual insurer or a domestic reciprocal insurer, the commissioner may make and file his report and petition to the court setting forth:

- 1. The reasonable value of the assets of the insurer;
- 2. The liabilities of the insurer to the extent thus far ascertained by the commissioner;
- 3. The aggregate amount of the assessment, if any, which the commissioner deems reasonably necessary to pay all claims, the costs and expenses of the collection of the assessments and the costs and expenses of the delinquency proceedings in full; and
- 4. Any other information relative to the affairs or property of the insurer that the commissioner deems material.

§ 4383. Order and levy of assessment

1. Upon the filing and reading of the report and petition provided for in section 4382, the court, ex parte, may order the commissioner to assess all members or subscribers of the insurer who may be subject to such an assessment, in such an aggregate amount as the court finds reasonably necessary to pay all valid claims as may be timely filed and proved in the delinquency proceedings, together with the costs and expenses of levying and collecting assessments and the costs and expenses of the delinquency proceedings in full. Any such order shall require the commissioner to assess each such member or subscriber for his proportion of the aggregate assessment, according to such reasonable classification of such members or subscribers and formula as may be made by the commissioner and approved by the court.

2. The court may order additional assessments upon the filing and reading of any amendment or supplement to the report and petition referred to in subsection 1, if such amendment or supplement is filed within 3 years after the date of the entry of the order of rehabilitation or liquidation.

3. After the entry of the order to levy and assess members or subscribers of an insurer referred to in subsections 1 and 2, the commissioner shall levy

and assess members or subscribers in accordance with the order.

4. The total of all assessments against any member or subscriber with respect to any policy, whether levied pursuant to any other provision of this Title, shall be for no greater amount than that specified in the policy or policies of the member or subscriber and as limited under this Title, except as to any policy which was issued at a rate of premium below the minimum rate lawfully permitted for the risk insured, in which event the assessment against any such policyholder shall be upon the basis of the minimum rate for such risk.

5. No assessment shall be levied against any member or subscriber with respect to any nonassessable policy issued in accordance with this Title.

§ 4384. Assessment prima facie correct; notice; payment; proceedings to collect

1. Any assessment of a subscriber or member of an insurer made by the commissioner pursuant to the order of court fixing the aggregate amount of the assessment against all members or subscribers and approving the classification and formula made by the commissioner under section 4383, subsection 1 shall be prima facie correct.

2. Each member or subscriber shall be notified of the amount of assessment to be paid by him by written notice mailed to the address of the member or subscriber last of record with the insurer. Failure of the member or subscriber to receive the notice so mailed, within the time specified therein or at all, shall be no defense in any proceeding to collect the assessment.

3. If any such member or subscriber fails to pay the assessment within the period specified in the notice, which period shall not be less than 20 days after mailing, the commissioner may obtain an order in the delinquency proceedings requiring the member or subscriber to show cause at a time and place fixed by the court why judgment should not be entered against such member or subscriber for the amount of the assessment together with all costs, and a copy of the order and a copy of the petition therefor shall be served upon the member or subscriber within the time and in the manner designated in the order.

4. If the subscriber or member after due service of a copy of the order and petition referred to in subsection 3 is made upon him:

A. Fails to appear at the time and place specified in the order, judgment shall be entered against him as prayed for in the petition; or

B. Appears in the manner and form required by law in response to the order, the court shall hear and determine the matter and enter a judgment in accordance with its decision.

5. The commissioner may collect any such assessment through any other lawful means.

§ 4385. Federal receivership

1. Whenever in the commissioner's opinion, liquidation of a domestic insurer or an alien insurer domiciled in this State would be facilitated by a federal receivership, and when any ground exists upon which the commissioner might petition the court for an order of rehabilitation or liquidation of the insurer under this chapter, or if such an order has already been entered, the commissioner may request another commissioner or other resident of another state to petition any appropriate federal district court for the appointment of a federal receiver. The commissioner may intervene in any such action to support or oppose the petition, and may accept appointment as the receiver if so designated. So much of this chapter shall apply to the receivership as may be applicable and appropriate. Upon the commissioner's motion, the courts of this State shall relinquish all jurisdiction over the insurer for purposes of rehabilitation or liquidation.

2. If he is appointed receiver under this section, the commissioner shall comply with requirements necessary to give him title to and control over the assets and affairs of the insurer.

SUBCHAPTER II

SUMMARY PROCEEDINGS

§ 4401. Summary proceedings. Commissioner's corrective orders authorized

1. If the commissioner determines after a hearing that any insurer has committed or engaged in, or is committing or engaging in, or is about to commit or engage in any act, practice or transaction that would subject it to formal delinquency proceedings under section 4351 to 4407, he may make and serve upon the insurer and other persons involved, such orders, other than seizure orders under sections 4404 and 4405, as he deems reasonably necessary to correct, eliminate or remedy such conduct, condition or ground. Orders to cure impairment of capital or surplus of a domestic insurer are subject to sections 3423 and 3424.

2. If the commissioner believes that irreparable harm to the insurer or its policyholders, creditors or the public may occur unless his order is issued with immediate effect, he may make and serve his order without notice and before hearing, and shall simultaneously therewith serve upon the insurer and other persons involved the notice of hearing as required under subsection 3.

3. The commissioner's order and notice of hearing hereunder shall be served by personal service in any manner provided by the laws of this State for service of process in civil actions.

§ 4402. Same; appeal from commissioner's order

If the commissioner has issued a summary order before hearing as provided in section 4401, subsection 2, any person upon whom such order is served may waive the commissioner's hearing and apply for any immediate judicial relief available under law and without first exhausting administrative remedies. Section 236 (appeal from commissioner) shall apply as to appeals from the commissioner's order made after hearing.

§ 4403. Same; enforcement, penalty

1. The commissioner may apply for and any superior court may grant such restraining orders, temporary and permanent injunctions and other orders as may be deemed necessary to enforce the commissioner's order.

2. Violation of any order of the commissioner issued under section 4401 by any person as to whom the order is in effect shall subject such person to a penalty of not to exceed \$10,000, to be collected in a civil action brought by the Attorney General in the name of the State of Maine. The Attorney General shall deposit all funds so collected with the Treasurer of State to the credit of the insurance division regulatory revolving fund.

§ 4404. Same; seizure under court order

1. Upon filing by the commissioner in any Superior Court of this State of his verified petition alleging any ground for a formal delinquency proceeding against an insurer under sections 4351 to 4385 and that the interests of the insurer's policyholders or creditors or the public will be jeopardized by delay, and setting forth the order deemed necessary by the commissioner, the court shall, ex parte and without notice or hearing, issue the requested order. The requested order may:

A. Direct the commissioner to take possession and control of all or part of the property, books, accounts, and records of the insurer and the premises occupied by it for transaction of its business; and

B. Until further order of court, enjoin the insurer and its officers, managers, agents, and employees from removal, concealment, or other disposition of its property, and from transaction of its business, except with the commissioner's written consent.

2. The court's order shall be for such duration, specified in the order, as the court deems necessary to enable the commissioner to ascertain the insurer's condition. On motion of any party or on its own motion, the court may hold such hearings as it deems desirable after such notice as it deems appropriate, and extend or shorten the duration or modify the terms of the order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under sections 4351 to 4385 after reasonable opportunity to do so; and a seizure order is automatically vacated by issuance of the court's order pursuant to formal delinquency proceedings under such sections of this chapter.

3. Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

§ 4405. Same; seizure under the commissioner's order

1. If it appears to the commissioner that the interests of policyholders, creditors or the public will be jeopardized by delay incident to requesting a court seizure order, then on any ground which would justify a court seizure order under section 4404, and without notice and without applying to the court, the commissioner may issue a seizure order which must contain a statement verified by him of the grounds of his action. As directed by the

seizure order, the commissioner's representatives shall forthwith take possession and control of all or part of the property, books, accounts and records of the insurer, and of the premises occupied by the insurer for transaction of its business. The commissioner shall retain possession and control until the order is vacated or is replaced by an order of court pursuant to subsection 2 or pursuant to a formal proceeding under this chapter.

2. At any time after seizure under subsection 1 the insurer may apply to the Superior Court for Kennebec County or for the county in this State in which the insurer's principal office is located. The court shall thereupon order the commissioner to appear forthwith and shall thereafter proceed as if the order were a court seizure order issued under section 4404.

3. Every law enforcement officer of this State shall assist the commissioner in making and enforcing any such seizure, and every sheriff's and police department shall furnish him with such deputies, patrolmen or officers as are necessary for the purpose.

4. Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

§ 4406. Same; conduct of hearings, both administrative and by the court, in summary proceedings

1. The commissioner shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing shall be public.

2. The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.

3. In all summary proceedings and judicial reviews thereof, all records of the insurer, other documents, and all insurance department files and court records and papers, so far as they pertain to or are part of the record of the summary proceedings, shall be and remain confidential except as necessary to obtain compliance therewith, unless the court after hearing arguments by the parties in chambers, shall order otherwise, or unless the insurer requests that the matter be made public. Until the court otherwise orders, all papers filed with the clerk of court shall be held by him in a confidential file.

4. If at any time it appears to the court that any person whose interest is or will be substantially affected by an order did not appear at the hearing and has not been served, the court may order that notice be given and the proceedings be adjourned to give such person opportunity to appear, on such terms as may be reasonable and just.

§ 4407. Same; penalty for refusal to deliver property, etc.

Any person having possession or custody of and refusing to deliver to the commissioner or his representative upon request any of the property, books, accounts, documents or other records of an insurer against which a seizure order or a summary order has been issued by the commissioner or by the court, as provided under sections 4401 to 4406, shall upon conviction thereof

be subject to a fine of not over \$10,000 or imprisonment for less than one year, or by both such fine and imprisonment.

CHAPTER 59

INSURANCE OF PUBLIC EMPLOYEES AND PROPERTY

§ 4501. Insurance, annuities, pensions for public employees ; payment of premiums and charges

1. The State, any county, city or town may make contracts of insurance with any insurer authorized to transact such business within the State insuring its employees or any class or classes thereof under a policy or policies of group insurance covering life, health or accident insurance and may contract with any such insurer granting annuities or pensions for the pensioning of such employees and for such purposes may agree to pay part or all of the premiums or charges for carrying such contract, raise money by taxation therefor and appropriate out of its treasury money necessary to pay such premiums or charges or portions thereof.

2. Like authority to make contracts of insurance and appropriate out of its treasury, money necessary to pay such premiums or charges or portions thereof, is granted to any water district or other quasi-municipal corporation chartered and organized as such under the laws of this State. Any such water district or other quasi-municipal corporation may provide for the retirement and pensioning of its employees and for such purpose may create and set aside out of its treasury funds for a reserve or reserves, or it may contract with any insurer authorized to transact such business within the State and grant annuities for the retirement and pensioning of its employees, and for such purposes may agree to pay a part or all of the premiums or annual charges for carrying out such contracts or for creating such annuity reserves.

§ 4502. Tax sheltered annuities for school employees

1. In order to extend to the employees of any school administrative unit, school or educational institution located in the State of Maine the benefits of tax sheltered annuities available under the Internal Revenue Code, it is declared to be the policy of the Legislature that any such school administrative unit, school, or institution may contract with any insurer authorized to contract such business within the State to provide one or more individual or group annuities for the pensioning of any employees of such unit, school or institution and for such purposes may agree to pay part or all of the premiums or charges for carrying such contracts, raise money by taxation therefor where otherwise lawful and appropriate out of its treasury money necessary to pay such premiums or charges or portions thereof.

2. It is the intent of the Legislature that employees of any school administrative unit, school or educational institution located in the State of Maine shall be extended the opportunity to share in the benefits of tax sheltered annuities and all laws and regulations of the State of Maine shall be construed liberally to enable such employees to come within the Internal Revenue Code, section 403(b) without loss to themselves, or to the school administrative unit, school or educational institution to which they belong, of any benefits, subsidies or opportunities therefor that they might otherwise be entitled to under the laws of the State of Maine.

CHAPTER 61
UNCLAIMED FUNDS OF LIFE INSURERS

§ 4551. Short title

This chapter shall be known as the Unclaimed Funds Act of Life Insurers.

§ 4552. Scope

This chapter shall apply to unclaimed funds, as defined in section 4553, of any life insurer doing business in this State where the last known address, according to the records of the insurer, of the person entitled to the funds is within this State; but if a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the insurer, or if it is not definite and certain from the records of the insurer what person is entitled to the funds, then in either event it shall be presumed for the purposes of this chapter that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the insurer.

§ 4553. Definitions

1. As used in this chapter :

A. "Life insurer" means any association or corporation, including a fraternal benefit society as defined by section 4101, transacting within this State the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

B. "Unclaimed funds" means all moneys held and owing by any life insurer doing business in this State which shall have remained unclaimed and unpaid for 7 years or more after it is established from the records of the insurer that such moneys became due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated.

2. A life insurance policy not matured by actual proof of the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be "due and payable" within the meaning of this chapter if the policy is in force when the insured shall have attained the limiting age under the mortality table on which the reserve is based.

3. Moneys otherwise admittedly due and payable shall be deemed to be "held and owing" within the meaning of this chapter although the policy or contract shall not have been surrendered as required.

§ 4554. Reports

1. Every life insurer shall on or before May 1st of each year make to the

commissioner a written report of all unclaimed funds, as defined in section 4553, held and owing by it on December 31st next preceding, but the report shall not be required to include amounts of less than \$5, or amounts which have been paid to another state or jurisdiction prior to the effective date of this Act, or amounts representing claims which have been barred by the statute of limitations prior to such effective date.

2. The report shall be signed and sworn to by an officer of the insurer and shall set forth:

A. In alphabetical order, the full name of the insured or annuitant, his last-known address according to the insurer's records, and the policy or contract number.

B. The amount appearing from the insurer's records to be due on the policy or contract.

C. The date the unclaimed funds became payable.

D. The name and last-known address of each beneficiary or other person who, according to the insurer's records, may have an interest in the unclaimed funds.

E. Items of value under \$25 each may be reported in the aggregate.

F. Such other identifying information as the commissioner may require.

§ 4555. Notice of unclaimed funds; publication

1. On or before September 1st following the making of the reports under section 4554, the commissioner shall cause to be published notices based on the information contained in the reports and entitled "notice of certain unclaimed funds held and owing by life insurance companies." Such a notice shall be published once a week for 2 successive weeks in a newspaper published or having a general circulation in each county of this State in which is located the last known address of a person appearing to be entitled to such funds.

2. Each notice shall set forth in alphabetical order the names of the insureds or annuitants under policies or contracts where the last known address of the person appearing to be entitled to such funds is in the county of publication or general circulation, together with:

A. The amount reported due and the date it became payable.

B. The name and last known address of each beneficiary or other person who, according to the insurer's reports, may have an interest in the unclaimed funds.

C. The name and address of the insurer.

3. The notice shall also state that the unclaimed funds will be paid by the insurer to persons establishing to its satisfaction before the following Decem-

ber 1 their right to receive the same, and that not later than the following December 20 such unclaimed funds still remaining will be paid to the commissioner who shall thereafter be liable for the payment thereof.

4. It shall not be obligatory upon the commissioner to publish any item of less than \$50 in such notice, unless the commissioner deems such publication to be in the public interest.

5. The expenses of publication shall be charged against the special trust fund provided for in section 4559.

§ 4556. Payment to commissioner

1. All unclaimed funds contained in the report required to be filed by section 4554, excepting those which have ceased to be unclaimed funds, shall be paid over to the commissioner on or before the following December 20.

2. The commissioner shall have the power, for cause shown, to extend for a period of not more than one year the time within which a life insurer shall file any report and in such event the time for publication and payment required by this chapter shall be extended for a like period.

§ 4557. Custody of unclaimed funds in State; insurers indemnified

Upon the payment of unclaimed funds to the commissioner, the State shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of the unclaimed funds, and the life insurer making such payment shall immediately and thereafter be relieved of and held harmless by the State from any and all liability for any claim or claims which exist at such time with reference to the unclaimed funds or which thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

§ 4558. Reimbursement for claims paid by insurers

Any life insurer which has paid moneys to the commissioner pursuant to this chapter may make payment to any person appearing to such insurer to be entitled thereto, and upon proof of such payment the commissioner shall forthwith reimburse such insurer for such payment out of the special trust fund in his custody or, if the special trust fund shall be insufficient, out of the General Fund of the State.

§ 4559. Special trust fund; administration

Upon receipt of any unclaimed funds from life insurers by the commissioner, he shall pay forthwith three-fourths of the amount thereof into the State Treasury for credit to the General Fund of the State for the use of the State. The remaining one-fourth shall be administered by him as a special trust fund for the purposes of this chapter, and deposited in the manner provided by law for the deposit of such funds. At the end of each calendar year, any unclaimed funds which shall have been a part of such special trust fund for a period of 7 years or more shall be paid into the General Fund of the State for the use of the State, but the special trust fund shall never be so reduced to less than \$1,000.

§ 4560. Determination and review of claims

Any person claiming to be entitled to unclaimed funds paid to the commissioner may file a claim at any time with the commissioner. The commissioner shall possess full authority to accept or reject any such claim. If he rejects a claim or fails to act thereon within 90 days after receipt of the claim, the claimant may make application to the Superior Court of Kennebec County, upon not less than 30 days' notice to the commissioner, for an order to show cause why he should not accept and pay the claim.

§ 4561. Payment of allowed claims

Any claim which is accepted by the commissioner or ordered to be paid by him by a court of competent jurisdiction shall be paid out of the special trust fund in his custody or, if such special trust fund shall be insufficient, it shall be paid out of the General Fund of the State.

§ 4562. Records required

The commissioner shall keep in his office a public record of each payment of unclaimed funds received by him from any life insurer. The record shall show in alphabetical order the name and last-known address of each insured or annuitant, and of each beneficiary or other person who, according to the insurer's reports, may have an interest in such unclaimed funds, and with respect to each policy or contract, its number, the name of the insurer and the amount due.

§ 4563. Inapplicability of other statutes

No other statute of this State relating to escheat or unclaimed funds in force on the effective date of this Act shall apply to life insurers nor shall any such statute enacted after the effective date of this Act so apply unless specifically made applicable by its terms.

CHAPTER 63

ROAD OR TOURIST SERVICE

§ 4701. Licensed companies only

No person shall perform or offer to perform in this State, for a stipulated fee covering a certain period, any form of road or other tourist service relating to the repair, operation and care of automobiles or to the protection and assistance of automobile owners or drivers, other than licensed insurers; or furnish or offer to furnish tourist service by selling or offering to sell to any proprietor of any so-called roadside house, motel or camp furnishing or offering to furnish meals or lodging to the traveling public, any form of sign or other insignia indicating that said roadside house, motel or camp has been approved by any person, without being licensed therefor by the commissioner.

§ 4702. Licenses; fee

1. If the commissioner is of the opinion that an applicant is reliable and entitled to confidence, such applicant shall be granted a license to perform

such road or other service in this State, and the license shall expire on December 31st succeeding the date of issuance, but may be renewed annually thereafter so long as the commissioner regards the licensee as financially responsible and entitled to confidence.

2. The applicant shall pay a license fee to the commissioner as provided in section 601 (fee schedule).

§ 4703. Agents

No person, for himself or in behalf of any other person, shall sell or offer to sell any such road or other service without being licensed therefor by the commissioner.

§ 4704. Agent's license; fee

The commissioner shall grant a license to sell such service in behalf of any person licensed therefor to any applicant who shall furnish the commissioner with satisfactory evidence of his integrity and authority to sell the service offered. Such license, when granted, shall expire on December 31st thereafter, and annually thereafter may be renewed so long as the commissioner shall be satisfied of the licensee's integrity, authority and responsibility to provide the service stipulated.

The applicant shall pay a license fee to the commissioner as provided in section 601 (fee schedule).

§ 4705. Revocation

The commissioner may revoke a license for cause, at any time, after hearing.

§ 4706. Penalties

Any person, firm, association or corporation, or any officer, agent, servant or employee thereof, who shall violate any of the provisions of this chapter shall be punished by a fine of not more than \$300 or by imprisonment for not more than 6 months, or by both.

Sec. 2. R. S., T. 5, § 86, amended. The 5th, 6th, 7th and 8th paragraphs of section 86 of Title 5 of the Revised Statutes are amended to read as follows:

For receiving, filing and recording copy of certificate of organization of a corporation organized under ~~Title 13, chapters 1 to 21~~ Title 24-A, \$5 in advance.

For receiving, filing and recording certificate of organization of officers of a proposed insurance company, and issuing certificates of organization, \$20; for receiving and filing certificate of increase of capital stock of an insurance company, \$10.

For receiving, filing and recording certificate of officers of a proposed fraternal benefit society and issuing certificate of organization, \$5.

For filing power of attorney of a foreign corporation under ~~Title 13, section 591~~ Title 24-A, §10; for filing instrument revoking such power of attorney, \$5; for filing copy of charter under ~~Title 13, section 592~~ Title 24-A, §10 additional; for filing certificate of increase or reduction of stock of a foreign corporation, \$10.

Sec. 3. R. S., T. 5, § 121, amended. The 4th, 5th and 6th paragraphs of section 121 of Title 5 of the Revised Statutes are repealed, as follows:

~~The Treasurer of State shall receive for the use of the State:~~

~~For each certificate of securities deposited by a domestic insurance company under Title 24, sections 321 and 326, \$5; and for each certificate granted by him upon change of such securities, \$5.~~

~~For services required of him in case of proceedings under Title 24, section 328, 2% of the amount received and disbursed by him.~~

Sec. 4. R. S., T. 9, § 3729, sub-§ 2, amended. Subsection 2 of section 3729 of Title 9 of the Revised Statutes, as enacted by section 1 of chapter 501 of the public laws of 1965, is amended to read as follows:

2. Prohibited charges. No home repair contractor or any other person shall charge, collect or receive from any owner, directly or indirectly, any further or other amount for costs, charges, examination, appraisal service, brokerage, commission, interest, discount, expense, fee, fine, penalty or other thing of value in connection with a home repair contract other than the charges permitted by this chapter, except court costs, attorney's fees, the expenses of retaking and storing repossessed goods which are authorized by law, and insurance premiums as authorized by ~~Title 24, sections 1201 to 1214~~ Title 24-A, chapter 37.

Sec. 5. R. S., T. 24, § 2301, sub-§ 1, amended. The last sentence of subsection 1 of section 2301 of Title 24 of the Revised Statutes, as enacted by section 1 of chapter 114 of the public laws of 1967, is amended to read as follows:

The State, any county, city, town or other quasi-municipal corporation shall have the same right to contract with any corporation subject to this chapter as it may have under ~~section 1701~~ Title 24-A, section 4501 with respect to insurance companies.

Sec. 6. R. S., T. 24, § 2301, sub-§ 5, additional. Section 2301 of Title 24 of the Revised Statutes is amended by adding thereto a new subsection 5 to read as follows:

5. "Commissioner" defined. As used in this chapter "commissioner" means the Insurance Commissioner of this State.

Sec. 7. R. S., T. 24, § 2305, amended. The first paragraph of section 2305 of Title 24 of the Revised Statutes is amended to read as follows:

The commissioner shall issue a license on payment of a fee ~~as provided in section 371, subsection 3~~ of \$20 if the applicant meets the following requirements:

Sec. 8. R. S., T. 24, § 2313, amended. The last paragraph of section 2313 of Title 24 of the Revised Statutes is amended to read as follows:

The applicant shall pay a license fee to the commissioner ~~as provided in section 371, subsection 3~~ of \$2.

Sec. 9. R. S., T. 29, § 781, sub-§ 1, ¶ A, amended. The first sentence of paragraph A of subsection 1 of section 781 of Title 29 of the Revised Statutes is amended to read as follows:

“Certificate,” the certificate of an insurance company authorized to transact the business specified in Title ~~24~~ 24-A, that it has issued to or for the benefit of any person a motor vehicle liability policy covering the motor vehicle, trailer or semitrailer involved in the accident as a result of which the action at law to recover damages referred to in section 783, subsection 2, was commenced as respects such accident; or the certificate of a surety company authorized to transact business under Title ~~24~~ 24-A that it has issued to or for the benefit of any person a motor vehicle liability bond covering the motor vehicle, trailer or semitrailer involved in the accident as a result of which the action at law to recover damages referred to in section 783, subsection 2, was commenced as respects such accident.

Sec. 10. R. S., T. 36, § 2520, amended. The first sentence of section 2520 of Title 36 of the Revised Statutes is amended to read as follows:

Every attorney, agent or other representative by or through whom are issued policies or contracts of indemnity ~~of the kind referred to in Title 24, chapter 7, subchapter 2~~ by a reciprocal insurer as identified in Title 24-A, chapter 5, in lieu of all other taxation, state, county or municipal, in this State, shall annually pay a tax at the rate of 2% on gross premiums or deposits actually received during the year after deducting amounts actually returned to policyholders as the unused part of such premium or deposit, or such part as may be credited on the renewal or extension of the indemnity.

Sec. 11. Repealing clause. The following chapters of Titles 13 and 24 of the Revised Statutes are repealed:

Title 13, chapter 89, as amended by section 1 of chapter 412 of the public laws of 1967; Title 24, chapter 1, as amended by section 5 of chapter 412 and section 18 of chapter 476, both of the public laws of 1967; chapter 3, as amended by chapter 467 of the public laws of 1965 and by chapter 92, section 1 of chapter 93, chapters 118, 196 and 381, all of the public laws of 1967; chapter 5, as amended by chapter 163 of the public laws of 1965; chapter 7, as amended by section 6 of chapter 412 of the public laws of 1967; chapter 9, as amended by chapter 73 of the public laws of 1967; chapter 11; chapter 13, as amended by section 5 of chapter 186 of the public laws of 1965; chapters 15 and 17; chapter 21, as amended by chapter 358 of the public laws of 1965 and by chapters 183, 185 and 379, all of the public laws of 1967; chapter 23; chapter 25, as amended by chapter 296 of the public laws of 1965 and by section 1 of chapter 131 and by chapter 350, both of the public laws of 1967; chapter 26, as enacted by chapter 111 of the public laws of 1965; chapter 27; and chapter 28, as enacted by chapter 124 of the public laws of 1965.

Sec. 12. Existing certificates of authority continuation. Every certificate

of authority of an insurer in force immediately prior to the effective date of this Act and existing under any law herein repealed shall be valid until midnight of the last day of June next following such effective date, unless earlier terminated in accordance with this Act. Such certificate of authority upon first renewal under this Act shall be replaced by a certificate of authority in form as consistent with this Act, and shall thereafter be subject to continuance, suspension, revocation or termination as though originally issued under this Act.

Sec. 13. Existing licenses, continuation

1. Every license of an agent, broker, surplus lines broker or adjuster in force immediately prior to the effective date of this Act and existing under any law herein repealed shall be valid until midnight of the date next following the effective date of this Act as shown below, unless earlier suspended, revoked, or terminated in accordance with this Act:

A. Agent licenses, at midnight on June 30th.

B. Broker and surplus lines broker licenses, at midnight on December 31st; unless any particular such license would otherwise by its term expire earlier; and in which case the old license shall be extended until such midnight on December 31st upon payment by the licensee to the commissioner of an applicable proportion of the license fee of a full license year at the rate provided for in section 601 (fee schedule).

C. Adjuster licenses, at midnight on December 31st.

2. The respective such licenses upon first renewal under this Act shall be replaced by a license in form consistent with this Act, and shall thereafter be subject to continuation, suspension, revocation, or termination as though originally issued under this Act.

Sec. 14. Existing forms and filings. Every form of insurance document and every rate or other filing lawfully in use immediately prior to the effective date of this Act may continue to be so used or be effective until the commissioner otherwise prescribes pursuant to this Act; except, that before expiration of one year from and after such effective date neither this Act nor the commissioner shall prohibit the use of any such document, rate, or filing because of any power, prohibition, or requirement contained in this Act which did not exist under laws in force immediately prior to such effective date.

Sec 15. Department, commissioner's tenure preserved. Continuation by this Act of the Insurance Department and the office of Insurance Commissioner, existing under any law repealed herein, preserves such department and tenure of the individual holding such office at the effective date of this Act.

Sec. 16. Advisory boards; continuation. Continuation by this Act of the advisory boards with respect to the licensing of agents and existing under any law repealed herein, preserves such boards and the tenures of the individuals serving as members thereof at the effective date of this Act.

Sec. 17. Continuation of deposits. Any deposit made in this State under any law repealed herein, with or through the department, or the commissioner, or the Treasurer of State, or by any insurer in compliance with a condition

precedent to or in connection with its certificate of authority to transact insurance in this State, or any other state or country, and so on deposit immediately prior to the effective date of this Act, shall be given full recognition as fulfillment, to the extent of such deposit, of any deposit so required for similar purposes under this Act. The deposit shall hereafter be held for the purpose applicable thereto as specified in this Act, and shall be subject in all respects to the provisions of this Act applicable to similar deposits newly made under this Act.

Sec. 18. "Chapter" defined. As used in this Act and except as otherwise required by context, "chapter" means a particular numbered chapter of this Act as indicated by context.

Sec. 19. Saving clause. This Act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture, or punishment incurred, prior to the time this Act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this Act had not been passed.

Sec. 20. Constitutionality and severability. If any section, subsection, subdivision, paragraph, sentence, part or provision of this Act shall be found to be invalid or ineffective by any court it shall be conclusively presumed that this Act would have been passed by the Legislature without such invalid section, subsection, subdivision, paragraph, sentence, part or provision, and this Act as a whole shall not be declared invalid by reason of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, parts or provisions may be so found invalid.

Sec. 21. Effective date. Except as otherwise expressly provided the respective provisions of this Act, and this Act, shall be in full force and effect on and after September 1, 1969.

Director's note: Title 24-A of the Revised Statutes was amended by the following 1969 Public Laws:
Chapter 177
Chapter 374
Chapter 402
Chapter 433, sections 59 to 64
Chapter 504, sections 40-A, 55 and 56

Effective October 1, 1969

Chapter 133

AN ACT Relating to Funds and Personal Property of Deceased Patients and Inmates of State Institutions.

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

R. S., T. 34, § 9, amended. The first paragraph of section 9 of Title 34 of the Revised Statutes, as enacted by section 1 of chapter 324 of the public laws of 1967, is amended to read as follows:

If any patient or inmate of any institution under the control of the department shall die, leaving on deposit in his personal account at such institution an amount not exceeding \$500, ~~or leaving in the custody of the head thereof~~