

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND ELEVENTH LEGISLATURE

**SECOND SPECIAL SESSION**

November 18, 1983

AND AT THE

**SECOND REGULAR SESSION**

January 4, 1984 to April 25, 1984

AND AT THE

**THIRD SPECIAL SESSION**

September 4, 1984 to September 11, 1984

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH  
IN ACCORDANCE WITH MAINE REVISED STATUTES  
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

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J.S. McCarthy Co., Inc.  
Augusta, Maine  
1986

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND ELEVENTH LEGISLATURE  
JANUARY 4, 1984 TO APRIL 25, 1984

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lishing a career ladder. The state board shall prepare a report on the results of the study and the results of the pilot projects. The state board shall hold at least one public hearing on an initial draft of the report and submit an interim report, with a summary of comments received, to the joint standing committee of the Legislature having jurisdiction over education, at the Second Regular Session of the 112th Legislature.

The joint standing committee of the Legislature having jurisdiction over education, shall conduct its own review of the effect of this Act, and the pilot projects and the rule making accomplished to date by the state board, conduct at least one public hearing on the pilot projects and state board's interim report, and shall make what recommendations it deems appropriate, including statutory changes, if any, prior to April 1, 1987.

**Sec. 6. Funds.** The funds to carry out the pilot projects set forth in section 4 of this Act are included in the Governor's budget.

**Sec. 7. Effective date.** Sections 1 and 2 become effective on July 1, 1988.

Effective July 25, 1984, unless otherwise indicated.

## CHAPTER 846

H.P. 1852 - L.D. 2453

AN ACT to Establish a Maine Life and Health Insurance Guaranty Association.

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

24-A MRSA c. 62 is enacted to read:

### CHAPTER 62

MAINE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

§4601. Short title

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

§4602. Purpose

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

1. Creation of association. An association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

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

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

§4603. Scope

1. Application. This chapter shall apply to direct life insurance policies, health insurance policies, annuity contracts and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this State at any time.

2. Exceptions. This chapter shall not apply to:

A. That portion of a variable life insurance or variable annuity contract not guaranteed by an insurer;

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

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

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

§4604. Construction

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

§4605. Definitions

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

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

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

3. Contractual obligation. "Contractual obligation" means any obligation under covered policies.

4. Covered policies. "Covered policies" means any policy or contract within the scope of section 4603.

5. Impaired insurer. "Impaired insurer" means:

A. An insurer who, after the effective date of this chapter, is declared insolvent and placed under a final order of liquidation, rehabilitation or conservation by a court of competent jurisdiction; or

B. An insurer who, after the effective date of this chapter, is deemed by the superintendent to be unable to fulfill its contractual obligations.

6. Member insurer. "Member insurer" means any person authorized to transact in this State any kind of insurance to which this chapter applies under section 4603.

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

8. Premiums. "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. Premiums do

not include premiums and considerations on contracts between insurers and reinsurers. As used in section 4609, premiums are those for the calendar year preceding the determination of impairment.

9. Resident. "Resident" means any person who resides in this State at the time the impairment is determined and to whom contractual obligations are owed.

10. Superintendent. "Superintendent" means the Superintendent of Insurance.

§4606. Creation of the association

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

- A. The health insurance account;
- B. The life insurance account; and
- C. The annuity account.

2. Supervision of association. The association shall come under the immediate supervision of the superintendent and shall be subject to the applicable provisions of the insurance laws of this State.

§4607. Board of directors

1. Membership. The board of directors of the association shall consist of not less than 5 nor more than 9 members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the superintendent. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors and initially organize the association, the superintendent shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer

shall be entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the superintendent may appoint the initial members.

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

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

#### §4608. Powers and duties of the association

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

1. Domestic impaired insurer; association action prior to final order of liquidation or rehabilitation. If a domestic insurer is an impaired insurer, the association may, prior to a final order of liquidation or rehabilitation, and subject to any fair and equitable conditions imposed by the association and approved by the impaired insurer and the superintendent, employ any or all of the following actions:

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

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

C. Loan money to the impaired insurer.

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



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

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

C. Loan money to the impaired insurer.

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

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

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

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

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

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

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

C. Provide such moneys, pledges, notes, guarantees or other means as are reasonably necessary to discharge these duties. If the association fails to act within a reasonable period of time,

the superintendent shall have the powers and duties of the association under this chapter with respect to such foreign or alien impaired insurer.

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

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

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

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

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

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

8. Standing to appear before court. The association shall have standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this chapter. This standing shall extend to all matters germane to the powers and

duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

9. Subrogation rights. Any person receiving benefits under this chapter shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this chapter whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of these rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon that person. The association shall be subrogated to these rights against the assets of any impaired insurer.

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

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

11. Other powers. The association may:

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

B. Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 4609;

C. Borrow money to effect the purposes of this chapter;

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

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

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

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

#### §4609. Assessments

1. Assessments; collection. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

2. Classes of assessments. There shall be 3 classes of assessments, as follows.

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

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

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

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

A. The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or Class C assessment shall be divided among the accounts in the proportion that the present value of the liabilities for each account of the impaired insurer bears to the

total liabilities of the impaired insurer. This paragraph shall not be a factor in the determination as to whether the protection provided by statutes for residents of this State by the domiciliary jurisdiction of a foreign or alien insurer, is or is not substantially similar to the protection provided by this chapter for residents of other states.

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

C. Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in that state by the impaired insurer on policies covered by the account bear to the premiums received in all such states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bear to the premiums received on business in each state by all assessed member insurers.

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

4. Abatement or deferral of assessments. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed 2% of the insurer's premiums in this State on the policies covered by the account.

5. Additional assessment for abatements or deferrals. In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection 4, the amount by which the assessment is abated or deferred, shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in that account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

6. Refunds. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

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

#### §4610. Plan of operation

1. Establishment of plan. A plan of operation shall be established as follows.

A. The association shall submit to the superintendent a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the superintendent.

B. If the association fails to submit a suitable plan of operation within 180 days following the effective date of this chapter or if at any time thereafter the association fails to submit suit-

able amendments to the plan, the superintendent shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this chapter. These rules shall continue in force until modified by the superintendent or superseded by a plan submitted by the association and approved by the superintendent.

2. Compliance. All member insurers shall comply with the plan of operation.

3. Requirements of plan. The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:

A. Establish procedures for handling the assets of the association;

B. Establish the amount and method of reimbursing members of the board of directors under section 4607;

C. Establish regular places and times for meetings of the board of directors;

D. Establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;

E. Establish the procedures whereby selections for the board of directors will be made and submitted to the superintendent;

F. Establish any additional procedures for assessments under section 4609; and

G. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

4. Delegation of association powers and duties. The plan of operation may provide that any or all powers and duties of the association, except those under section 4608, subsection 11, paragraph C and section 4609, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association, or its equivalent, in 2 or more states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this paragraph shall take effect only with the approval of

both the board of directors and the superintendent and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

§4611. Duties and powers of the superintendent

In addition to the duties and powers enumerated elsewhere in this chapter:

1. Powers and duties. The superintendent shall:

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

B. Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;

C. When an impairment is declared, pursuant to section 4605, subsection 6, paragraph B, and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice of the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this chapter; and

D. In any liquidation or rehabilitation proceeding involving a domestic insurer, the superintendent shall be appointed as the liquidator or rehabilitator, pursuant to chapter 57. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry other than this State, the superintendent may be appointed conservator or an ancillary receiver.

2. Suspension or revocation of certificate of authority to transact insurance. The superintendent may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this State of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. In lieu of such suspension or revocation, any member insurer which fails to pay an assessment when due or fails to comply with the plan of



operation may be punished by a fine not to exceed the greater of 5% of the unpaid assessment per month or \$100 per month.

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

4. Notification of interested persons. The liquidator, rehabilitator or conservator of any impaired insurer may notify all interested persons of the effect of this chapter.

§4612. Prevention of impairments

To aid in the detection and prevention of insurer impairments, the superintendent shall be notified when:

1. Notification from board of directors; information. The board of directors, upon majority ballot vote to notify the superintendent of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations;

2. Request for examination of member insurer. The board of directors, upon majority vote, request that the superintendent order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations. The superintendent may conduct this examination. The examination may be conducted as a National Association of Insurance Commissioners' examination or may be conducted by such persons as the superintendent designates. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event may the examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the superintendent from his obligation to advise the board of directors in a timely fashion as required in this chapter. The superintendent shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the superintendent but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time subject only if

the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations;

3. Reports and recommendations of board of directors. The board of directors, upon majority vote, makes reports and recommendations to the superintendent upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. These reports and recommendations shall be treated as confidential by the superintendent;

4. Recommendations of board of directors; detection and prevention of impairment. The board of directors, upon majority vote, makes recommendations to the superintendent for the detection and prevention of insurer impairments; and

5. Report of board of directors; history and causes of impairment. The board of directors, at the conclusion of any insurer impairment in which the association carried out its duties under this chapter or exercised any of its powers under this chapter, prepared a report on the history and causes of the impairment, based on the information available to the association. The association shall submit that report to the superintendent.

The superintendent shall report to the board of directors when he has reasonable cause to believe that any member or licensed insurer subject to this chapter may be unable or potentially unable to fulfill its contractual obligations.

#### §4613. Appointment of association nominee

The association may recommend a natural person to serve as a special deputy to act for the superintendent and under his supervision in the liquidation, rehabilitation or conservation of any member insurer.

#### §4614. Miscellaneous provisions

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

2. Records. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 4608. Records of the negoti-

ations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection limits the duty of the association to render a report of its activities under section 4615.

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

4. Factors considered in distributing assets. In distributing assets, the following factors shall be considered.

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

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

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

6. Recovery procedure; provisions. The recovery procedure shall provide that:

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

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

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

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

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

§4615. Examination of the association; annual report

The association shall be subject to examination and regulation by the superintendent. The board of directors shall submit to the superintendent, not later than May 1st of each year, a financial report for

the preceding calendar year in a form approved by the superintendent and a report of its activities during the preceding calendar year.

§4616. Tax exemptions

The association shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except taxes levied on real or personal property.

§4617. Immunity

There shall be no liability on the part of and no cause of action of any nature shall arise against any member or its agents or employees, the association or its agents or employees, members of the board of directors or the superintendent or his representatives, for any action taken by them in the performance of their powers and duties under this chapter.

§4618. Stay of proceedings; reopening default judgments

All proceedings in which the impaired insurer is a party in any court in this State shall be stayed 60 days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict or finding based on default, the association may apply to have the judgment set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

Effective July 25, 1984.

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## CHAPTER 847

H.P. 1851 - L.D. 2450

AN ACT to Provide Funds for an Increase  
in the Aid to Families with Dependent  
Children's Standard of Need.

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

Sec. 1. 22 MRSA §3758, sub-§6 is enacted to read: