LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST SPECIAL SESSION

August 21, 1989 to August 22, 1989

and

SECOND REGULAR SESSION

January 3, 1990 to April 14, 1990

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
July 14, 1990

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1990

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

SECOND REGULAR SESSION

of the

ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

ate. Probation may include such conditions as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or certified person; and such other conditions as the board determines appropriate. Cost incurred in the performance of terms of probation is borne by the applicant or certified person. Failure to comply with the conditions of probation is grounds for disciplinary action against a certificate holder;

E. Suspend or revoke a certificate pursuant to Title 5, section 10004; and

F. Refuse to issue or renew a certificate.

2-B. Consent agreements. The board may execute a consent agreement which resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant, the board and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if in the Administrative Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a certificate. A consent agreement is not subject to review or appeal and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

2-C. Surrender of certificate. The board may require surrender of certificates. In order for a certified person's surrender of a certificate to be effective, a surrender must first be accepted by vote of the board. The board may refuse to accept surrender of the certificate if the certified person is under investigation or is the subject of a pending complaint or proceeding unless a consent agreement is first entered into pursuant to this chapter.

Sec. 14. 32 MRSA §10015, last ¶ is enacted to read:

The jurisdiction to suspend or revoke certificates conferred by this section is concurrent with that of the Administrative Court. Civil penalties accrue to the Ground Water Oil Clean-up Fund. Any nonconsensual action under subsection 2-A taken under authority of this section may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter IV, and is subject to judicial review exclusively in the Administrative Court in accordance with Title 5, chapter 375, subchapter VII, substituting the term "Administrative Court" for "Superior Court," notwithstanding any other provision of law.

Sec. 15. Effective date. Sections 1, 2 and 3 of this Act take effect on July 1, 1990.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective April 17, 1990, unless otherwise indicated.

CHAPTER 846

S.P. 884 - L.D. 2253

An Act to Improve Oversight of the Financial Condition of Insurers

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

PART A

24-A MRSA §414, sub-§4 is enacted to read:

4. Insurance Regulatory Information System. Insurers required to file an annual statement must, as a condition to the issuance or continuance of a certificate of authority, provide the National Association of Insurance Commissioners with all information required for participation in the Insurance Regulatory Information System. Insurers shall provide written certification to the superintendent that they have complied with this subsection when they file their annual statements. This subsection does not apply to any insurer doing business under chapter 51.

PART B

Sec. B-1. 24-A MRSA §1101, as amended by PL 1987, c. 399, §3, is further amended to read:

§1101. Scope of chapter

Except as provided in section 1137, this chapter applies only to domestic insurers ~~which~~ that transact business other than as described in section 702, life insurance; section 703, annuity; or section 704, health insurance. If an insurer subject to this chapter also transacts life insurance, health insurance or an annuity business, that insurer shall, for accounting and financing purposes, establish and maintain distinct accounts dedicated exclusively to those kinds of insurance. The accounts must include reserves and surplus funds adequate to financially support the underwriting activity. All assets allocated to the conduct of life insurance, health insurance or annuity business are subject to chapter 13-A rather than this chapter. The books and records of an insurer writing these additional kinds of business must reflect the assets and operations relating to each underwriting activity in detail sufficient to demonstrate compliance with this chapter and chapter 13-A.

Sec. B-2. 24-A MRSA §1106, first ¶, as enacted by PL 1969, c. 132, §1, is repealed and the following enacted in its place:

Except for those investments subject to the restrictions of chapter 13-A, all investments of an insurer are subject to the following diversification requirements and limitations.

Sec. B-3. 24-A MRSA §1106, sub-§1, ¶C, as enacted by PL 1969, c. 132, §1, is amended to read:

C. 1109 (investment grade corporate obligations);

Sec. B-4. 24-A MRSA §1106, sub-§2, ¶¶C and D, as enacted by PL 1969, c. 132, §1, are amended to read:

C. 1115 (stocks of subsidiaries); ~~and~~

D. 1120, subsection 2 (mutual funds)~~.~~ ; and

Sec. B-5. 24-A MRSA §1106, sub-§2, ¶E is enacted to read:

E. 1109-A (high yield corporate obligations).

Sec. B-6. 24-A MRSA §1109, first ¶, as enacted by PL 1969, c. 132, §1, is amended to read:

An insurer may invest in obligations, other than those eligible for investment under section 1124 (mortgage loans), issued, assumed or guaranteed by any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, ~~which~~ provided that the obligations are not in default as to principal or interest, are investment grade corporate obligations as defined in section 1162, subsection 6, and ~~which~~ are qualified under any of the following~~:~~ .

Sec. B-7. 24-A MRSA §1109-A is enacted to read:

§1109-A. High-yield corporate obligations

Subject to the limitation set forth in section 1106, subsection 2, an insurer may invest in corporate obligations that are high-yield obligations as defined in section 1162, subsection 4, provided the obligations meet the requirements of section 1109, except the requirement that the obligation be an investment grade obligation.

Sec. B-8. 24-A MRSA §1151, as enacted by PL 1987, c. 399, §14, is repealed and the following enacted in its place:

§1151. Scope of chapter

Except as provided in sections 1101 and 1161, this chapter applies only to domestic insurers that transact business exclusively of a type described in sections 702, 703 or 704, or any combination of those types.

PART C

Sec. C-1. 24-A MRSA §221-A, sub-§3, as enacted by PL 1985, c. 330, §1, is amended to read:

3. Audits required. All insurers, excepting insurers transacting business in this State pursuant to the terms of chapter 51, shall cause to be conducted an annual audit by an independent certified public accountant and shall file an audited financial report with the superintendent on or before June 30th for the year ending December 31st preceding. An extension of the filing deadline may be granted by the superintendent upon a showing by the insurer or its accountant that there exists valid justification for such an extension. A firm of independent certified public accountants engaged to perform an audit of an insurer shall substitute the appointed audit partner in charge with another audit partner in charge at least once every 7 years. An accountant substituted for pursuant to this subsection may not serve as a partner in charge of that audit until 2 years from the date of substitution.

Sec. C-2. 24-A MRSA §221-A, sub-§8, ¶A, as enacted by PL 1985, c. 636, is amended to read:

A. The accountant immediately notify in writing ~~the chairman~~ each member of the board of directors of the insurer and the superintendent upon any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported in the annual statement required under section 423 for the year ending December 31st preceding; and

Sec. C-3. 24-A MRSA §414, sub-§5 is enacted to read:

5. The superintendent may require insurers subject to this section to make available any accountant's work papers created during an audit.

A. The superintendent may review the accountant's work papers upon timely notice to the insurer. The superintendent may photocopy or otherwise record the contents of work papers during the review.

B. Any work papers or copies of work papers under the superintendent's custody or control are confidential and are not subject to public inspection.

C. The work papers of an insurer's subsidiaries, parent or other corporate affiliates are deemed to be the insurer's work papers to the extent that the work papers reference transactions between the insurer and the subsidiary, parent or corporate affiliate and affect the insurer's final equity determination.

D. The insurer shall, as a condition of the accountant's engagement, require accountants:

(1) To retain any work papers prepared in connection with an audit of the insurer for at least 6 years after the close of a reporting period; and

(2) To provide the work papers, or a copy, to the insurer at the insurer's request.

E. For purposes of this subsection, the term "work papers" includes, but is not limited to, schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, copies of company records or other documents prepared or obtained by the accountant and the accountant's employees in conducting the examination of the insurer.

PART D

Sec. D-1. 24-A MRSA §601, sub-§18 is enacted to read:

18. Third-party administrators license.

A. Application fee $15

B. Annual fee $50

Sec. D-2. 24-A MRSA c. 18 is enacted to read:

CHAPTER 18

INSURANCE ADMINISTRATORS

§1901. Definitions

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

1. "Administrator" means any person who, on behalf of a plan sponsor, health care service plan, health maintenance organization or insurer, receives or collects charges, contributions or premiums for, or adjusts or settles claims on residents of this State in connection with any type of life, annuity, health or workers' compensation benefit provided in or as an alternative to insurance as defined by sections 702 to 704, or Title 39, other than any of the following:

A. An employer on behalf of the employer's employees or the employees of one or more subsidiary or affiliated corporations of the employer;

B. A union on behalf of its members;

C. A plan sponsor administering its own plan;

D. An insurance company that is:

(1) Authorized to transact insurance business in this State; or

(2) Acting as an insurer with respect to a policy lawfully issued and delivered by that company in and pursuant to the laws of a state in which the insurer was authorized to transact an insurance business;

E. A health care services plan, health maintenance organization, professional service plan corporation, or person in the business of providing continuing care, possessing a valid certificate of authority issued by the Bureau of Insurance, and a sales representative of that person, plan, organization or corporation, if the activities of the plan, organization, corporation or person are limited to the activities permitted under the certificate of authority;

F. An insurance agent or broker licensed in this State, whose activities are limited to the scope of that license;

G. An adjuster licensed in this State, whose activities are limited to the adjustment of claims;

H. A creditor on behalf of the creditor's debtors with respect to insurance covering a debt between the creditor and its debtors;

I. A trust and its trustees, agents, and employees acting pursuant to a trust established in conformity with 29 United States Code, Section 186;

J. A trust exempt from taxation under the federal Internal Revenue Code of 1986, Section 501(a), and the trustees and employees acting pursuant to that trust, or a custodian and its agents and employees, including individuals representing the trustees in overseeing the activities of a service company or administrator, acting pursuant to a custodial account that meets the requirements of the federal Internal Revenue Code of 1986, Section 401(f);

K. A financial institution as defined in section 1514-A or a mortgage lender that collects and remits premiums to licensed insurance agents or authorized insurers concurrently or in connection with mortgage loan payments;

L. A credit card issuing company that advances for and collects premiums or charges from its credit card holders who have authorized that collection if the company does not adjust or settle claims;

M. A person who adjusts or settles claims in the normal course of that person's practice or employment as an attorney and who does not collect charges or premiums in connection with life or health insurance coverage; and

N. A person acting as a trustee, named fiduciary or plan official of an employee benefit plan within the meaning of the federal Employee Retirement Income Security Act of 1974, as amended, 29 United States Code, Section 1001, et seq.

2. "ATF" means an administrator trust fund that is a special fiduciary account, established and maintained by an administrator under section 1909, in which contributions and premiums are deposited.

3. "CASA" means a claims administration services account that is a special fiduciary account, established and maintained by an administrator under section 1909, from which claims and claims adjustment expenses are disbursed.

4. "Charges" means any compensation paid by a plan sponsor, health care service plan, health maintenance organization or insurer for services performed by the administrator.

5. "Contributions" means the value of funds that have been provided or are to be applied by a plan sponsor or other entity to fund the self-insured portion of any plan, or premiums charged to a plan sponsor or other entity by an insurer for coverage under contracts of insurance or excess insurance. Contributions include administrative fees charged to a covered individual. "Administrative fee" means any compensation paid by a covered individual for services performed by the administrator.

6. "Covered individual" means any individual eligible for life, annuity, workers' compensation or health benefits under a plan.

7. "Plan" means any plan, fund or program established or maintained by a plan sponsor, health care service plan, health maintenance organization or insurer to the extent that the plan, fund or program was established or is maintained to provide through insurance or alternatives to insurance any type of life, annuity, health or workers' compensation benefit within the scope of sections 702 to 704 or Title 39.

8. "Plan sponsor" means any person, other than an insurer, who establishes or maintains a plan covering residents of this State, including, but not limited to, plans established or maintained by 2 or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees or other similar group of representatives of the parties that establish or maintain the plan.

9. "Premium" means any money charged a covered individual, plan sponsor or other entity to provide life, accident, workers' compensation or health insurance under a plan. The term "premium" includes amounts paid by or charged to a covered individual plan sponsor or other entity for stop loss or excess insurance.

10. "Quasi-resident" means a nonresident licensee who receives or collects 50% or more of calendar year contributions, premium volume or other funds subject to administration from plan sponsors or insureds resident in this State.

§1902. License required

A person may not act as or profess to be an administrator after August 1, 1990, unless licensed under this chapter. An administrator doing business in this State on August 1, 1990, shall apply for a license by November 1, 1990. In addition to any other penalty that may be imposed for violation of this Title, any person violating this section shall, upon conviction, be punished by a fine of not less than $100 nor more than $1,000 or by imprisonment for less than one year, or both.

§1903. Application

An applicant for a license shall file with the superintendent an application, on a form prescribed by the superintendent, that must include or have attached the following:

1. The names, addresses and official positions of the individuals who are responsible for the conduct of the affairs of the administrator, including, but not limited to, all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers in the case of a corporation or the partners in the case of a partnership; and

2. An application fee, as specified in section 601, that the superintendent shall apply toward the initial administrator annual fee if an administrator's license is granted to the applicant.

§1904. Bond requirements for administrators

1. Every applicant for an administrator's license shall file with the application, and shall maintain in force while licensed, a fidelity bond in favor of the Treasurer of State, for the benefit of covered persons or plan sponsors as their interest may appear, executed by a surety company authorized to do business in this State and payable to any party injured under the terms of the bond. The bond must be continuous in form and in one of the following amounts:

A. For an administrator that maintains an ATF but does not maintain a CASA, the greater of $50,000 or 5% of contributions and premiums projected to be received or collected in the ATF for the following plan year from residents of the State, but not to exceed $1,000,000;

B. For an administrator that maintains a CASA but does not maintain an ATF, the greater of $50,000 or 5% of the claims and claim expenses projected to be held in the CASA for the following year to pay claims and claim expenses for residents of the State, but not to exceed $1,000,000; or

C. For an administrator that maintains an ATF and a CASA, the greater of the amounts determined under paragraph A or B, but not to exceed $1,000,000.

This subsection applies to an administrator who is required to maintain funds in a fiduciary capacity as set forth in section 1909.

2. The bond must remain in force and effect until the surety is released from liability by the superintendent or until the bond is cancelled by the surety. The surety may cancel the bond and be released from further liability under the bond upon 30 days' written notice in advance to the superintendent. The cancellation does not affect any liability incurred or accrued under the bond before the 30-day period expires. Upon receiving any notice of cancellation, the superintendent shall immediately notify the licensee.

3. The administrator's license automatically terminates if the bond required by this section is not in force. Within 30 days after the bond ceases to be in force, the administrator shall return the license to the superintendent for cancellation.

§1905. License

1. Upon receipt of a complete application for an administrator license, the superintendent shall investigate, to the extent the superintendent considers advisable, the applicant's experience, background and fitness for the license. The superintendent may obtain a credit and investigative report relative to the applicant from a recognized and established independent investigation and reporting agency. The superintendent may establish from time to time a reasonable uniform flat amount that the applicant must pay for the report. The report cost must be included with the application. The contents of the report are confidential.

2. If the superintendent finds that the applicant is qualified for an administrator license, the superintendent shall promptly issue the license; otherwise the superintendent shall refuse to issue the license and promptly notify the applicant.

3. Sections 1539 to 1542 apply to licenses issued under this chapter.

4. Unless revoked or suspended under section 1907, an administrator license remains in effect as long as the holder of the license maintains in force and effect the bond required by section 1904 and pays the annual fee required by section 601 before the anniversary date of the license.

§1906. Administrator requirements

1. Each administrator shall identify to the superintendent any ownership interest or affiliation of any kind with any plan sponsor, health care service plan, health maintenance organization or insurer responsible directly or through reinsurance for providing benefits to any plan for which the administrator provides services as an administrator.

2. An administrator shall provide services as an administrator only pursuant to a written agreement between the administrator and the plan sponsor, health care service plan, health maintenance organization or insurer. The administrator shall retain the written agreement as part of its records for the duration of the agreement and for 7 years after the agreement expires.

3. An administrator shall maintain, in its principal office for the duration of the written agreement with any plan sponsor or insurer and for 7 years after the agreement expires, adequate books and records of all transactions involving a plan sponsor, health care service plan, health maintenance organization or insurer and covered individuals and beneficiaries. These books and records must be maintained in accordance with generally accepted standards of business recordkeeping. An administrator is not required to maintain copies of books and records if the originals are returned to the plan sponsor, health care service plan, health maintenance organization or insurer before the end of the 7-year period. The administrator shall maintain evidence of the return of the originals for the balance of the 7-year period.

4. The administrator shall file with the superintendent the names and addresses of the insurers, health care service plans, health maintenance organizations and plan sponsors with whom the administrator has entered into written agreements. If an insurer, health care service plan, health maintenance organization or plan sponsor does not assume or bear the risk, the administrator must disclose the name and address of the ultimate risk bearer. This subsection applies to the initial application for an administrator's license and any renewal of a license.

5. An administrator may use advertising pertaining to the plan only if that advertising has been approved in advance by the plan sponsor, health care service plan, health maintenance organization or insurer.

6. Upon receiving instructions from the plan sponsor, health care service plan, health maintenance organization or insurer, an administrator shall deliver promptly to covered individuals or beneficiaries all policies, certificate booklets, termination notices or other written communications.

7. An administrator may not receive compensation from a plan sponsor, health care service plan, health maintenance organization or insurer that is contingent upon the loss ratio of the plan. This subsection does not, however, prevent the administrator from engaging in cost containment activities with a plan sponsor, health care service plan, health maintenance organization or insurer.

8. An administrator may not receive from any plan sponsor, health care service plan, health maintenance organization, insurer, covered individual or beneficiary under a plan any compensation or other payments except as expressly set forth in the written agreement between the administrator and the plan sponsor, health care service plan, health maintenance organization or insurer.

9. Upon request of the superintendent, an administrator shall make available for examination, either at the Bureau of Insurance or at the licensee's principal place of business, all basic organizational documents, including, but not limited to, articles of incorporation, articles of association, partnership agreements, trade name certificates, trust agreements, shareholder agreements and other applicable documents and all amendments to those documents, bylaws, rules and regulations or similar documents regulating the conduct of the administrator's internal affairs.

§1907. License suspension, revocation or denial

Any license issued under this chapter may be suspended or revoked after notice to the licensee and an opportunity for hearing and any application for license may be denied after notice and opportunity for hearing:

1. For any of the grounds for suspension or revocation of a license set forth in section 1539; or

2. If the licensee or applicant:

A. Is using any method or practice in conducting business that renders further transaction of business in this State hazardous or injurious to covered individuals or the public;

B. Is affiliated with and is under the same general management as another administrator that transacts business in this State without being licensed under this chapter; or

C. Has failed to report a conviction as required by section 1908.

§1908. Criminal convictions

Any administrator and any individual listed on the application, as required by section 1903, who is convicted of a crime punishable by imprisonment for more than one year shall report that conviction to the superintendent within 30 days after judgment is entered. Within that 30-day period, the administrator shall also provide the superintendent with a copy of the judgment and any commitment order and any other relevant documents relating to disposition of the criminal action.

§1909. Fiduciary accounts and duties

1. Administrators shall hold in a fiduciary capacity all contributions and premiums received or collected on behalf of a plan sponsor or insurer, except service fees owed to the administrator pursuant to the written agreement between the plan sponsor, insurer, health care service plan or health maintenance organization and the administrator. These funds may not be used as general operating funds of the administrator. All contributions and premiums received or collected by the administrator from residents of this State that the administrator holds more than 30 days or deposits into an account that is not under the control of the plan sponsor, health care service plan, health maintenance organization or insurer, must be placed in a special fiduciary account, designated as an ATF. All resident and quasi-resident licensees required to maintain an ATF under this section shall maintain the ATF with one or more financial institutions located within the State and subject to jurisdiction of the courts of this State. Funds belonging to 2 or more plans may be held in the same ATF, provided the administrator's records clearly indicate the funds belonging to each plan. Checks drawn on the ATF must indicate on the face of the checks that the checks are drawn on the administrator's ATF.

2. The administrator may make the following disbursements from the ATF:

A. Contributions and premiums due insurers or other persons providing life, accident and health, or workers' compensation coverage for a plan;

B. Return contributions and premiums to a plan or covered individual;

C. Commissions or administrative fees due to the administrator when earned under a written agreement; and

D. Transfers into the CASA of the administrator.

3. For each plan for which an ATF is required, the balance in the ATF must at all times be the amount deposited plus accrued interest, if any, less authorized disbursements. If the balance at the financial institution, with respect to the ATF, is less than the amount deposited plus accrued interest, if any, less authorized disbursements, the administrator is presumed, for purposes of license revocation or suspension, to have misappropriated funds and to have acted in a financially irresponsible manner.

4. Before establishing an ATF that is interest bearing or income producing, the administrator shall disclose the nature of the account to the plan sponsor, health care service plan, health maintenance organization or insurer on whose behalf the funds are to be held. The administrator shall secure written consent and authorization from the plan sponsor, health care service plan, health maintenance organization or insurer for the investment of the money and disposition of the interest or earnings. An administrator may not make any investment that assumes a risk other than the risk that the obligor might not pay the principal when due. The administrator may not use specialized techniques or strategies that incur additional risks to generate higher returns or to extend maturities. Such techniques include, but are not limited to, the use of financial futures or options, buying on margins and pledging of ATF balances.

5. Administrators may place ATF funds in interest bearing or income producing investments and retain the interest or income on the funds, provided the administrator obtains the prior written authorization of the plan

sponsors, health care service plans, health maintenance organizations or insurers on whose behalf the funds are to be held. In addition to savings and checking accounts, an administrator may invest in the following:

A. Direct obligations of the United States or government agency securities with maturities of not more than one year;

B. Certificates of deposit, with a maturity of not more than one year, issued by financial institutions insured by the Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC), provided any such deposit does not exceed the maximum level of insurance protection provided to certificates of deposit held by those institutions;

C. Repurchase agreements with financial institutions or government securities dealers recognized as primary dealers by the Federal Reserve System provided:

(1) The value of the repurchase agreement is collateralized with assets that are allowable investments for ATF funds;

(2) The collateral has a market value, at the time the repurchase agreement is entered into, at least equal to the value of the repurchase agreement; and

(3) The repurchase agreement does not exceed 30 days;

D. Commercial paper, provided the commercial paper is rated at least P-1 by Moody's Investors Service, Inc. or at least A-1 by Standard & Poor's Corporation; or

E. Money market funds, provided the money market fund invests exclusively in assets that are allowable investments pursuant to paragraphs A to D for ATF funds.

Each investment transaction must be made in the name of the administrator's ATF. The administrator shall maintain evidence of any such investments. Each investment transaction must flow through the administrator's ATF.

6. The administrator shall hold in a fiduciary capacity all money that the administrator receives to pay claims and claim adjustment expenses. All resident and quasi-resident licensees shall place all such money for claims and claim adjustment expenses for residents of this State, whether received from a plan sponsor, health care service plan, health maintenance organization or insurer or from the administrator's ATF, in a special fiduciary account in a financial institution located in this State. The account must be designated a CASA. Funds belonging to 2 or more plans may be held in the same CASA, provided the administrator's records clearly indicate the funds belonging to each plan. Checks drawn on the CASA must indicate on the face of the checks that the checks are drawn on the administrator's CASA.

7. No deposit may be made into a CASA and no disbursement may be made from a CASA except for claims and claim adjustment expenses. For each plan for which a CASA is required, the balance in the CASA must at all times be the amount deposited less claims and claims adjustment expenses paid. If the CASA balance is less than that amount, the administrator shall be presumed, for purposes of license revocation or suspension, to have misappropriated funds and to have acted in a financially irresponsible manner.

8. Administrators shall maintain detailed books and records that reflect all transactions involving the receipt and disbursement of:

A. Contributions and premiums received on behalf of a plan sponsor, health care service plan, health maintenance organization or insurer; and

B. Claims and claim adjustment expenses received and paid on behalf of a plan sponsor, health care service plan, health maintenance organization or insurer.

9. The detailed preparation, journalizing and posting of books and records required by subsection 8 must be maintained on a timely basis and all journal entries for receipts and disbursements must be supported by evidential matter that must be referenced in the journal entry so that receipts and disbursements may be traced for verification. Administrators shall prepare and maintain monthly financial institution account reconciliations of any ATF and CASA established by the administrator. Reconciliation of accounts is timely if accomplished not more than 45 days after the end of the month in which the transaction occurred. The reconciliation must include, at a minimum, the following:

A. The source and amount of any money received and deposited by the administrator, and the date of receipt and deposit;

B. The date each disbursement was made, the person to whom the disbursement was made and a written explanation of any difference between the amount disbursed and the amount billed or authorized; and

C. A description of the disbursement in sufficient detail to identify the source document substantiating the purpose of the disbursement.

10. Failure to accurately maintain the required books and records in a timely manner is deemed to be untrustworthy, hazardous or injurious to participants in the plan or the public and financially irresponsible.

§1910. Unauthorized activities

Nothing in this chapter may be construed to permit any person or entity to receive or collect charges, contributions or premiums for, or adjust or settle claims in connection with, any type of life or accident or health benefit, unless the person or entity is authorized through the insurance laws of a state or the Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1001, et seq. as amended, to provide those benefits.

§1911. Audits and examinations

The superintendent may designate examiners or consultants, as appropriate, to perform an audit of an administrator when the superintendent considers an audit necessary. Administrators shall make all records and books of account available to the examiners or consultants, and shall otherwise facilitate the performance of the audit. All claims information respecting individual claimants must be kept confidential.

Sec. D-3. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Part.

	1990-91
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF	
Bureau of Insurance	
Positions	(0.5)
Personal Services	$12,700
All Other	1,000
Capital Expenditures	1,000
Provides funds for a part-time Contract Examiner and related expenses to regulate 3rd-party administrators.	
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION TOTAL	$14,700

PART E

Sec. E-1. 24-A MRSA §731, as amended by PL 1985, c. 330, §§7 to 9, is repealed.

Sec. E-2. 24-A MRSA §§731-A to 731-D are enacted to read:

§731-A. Acceptance of reinsurance

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

§731-B. Credit for reinsurance

1. Credit for reinsurance is allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurance is ceded to a solvent assuming insurer that:

A. Is licensed to transact insurance or reinsurance in this State, provided the assuming insurer has surplus to policyholders in an amount not less than the paid-in capital stock required of an authorized foreign stock insurer transacting like kinds of insurance;

B. Is domiciled and licensed in a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section, provided the insurer has surplus to policyholders in an amount not less than the paid-in capital stock required of an authorized foreign stock insurer transacting like kinds of insurance;

C. Maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest.

(1) The assuming insurer shall report annually to the superintendent information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the superintendent to determine the sufficiency of the trust fund.

(2) In the case of a single assuming insurer, the trust must consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trusteed surplus of at least $20,000,000.

(3) In the case of a group of individuals that constitutes a syndicate of unincorporated alien underwriters, the trust must consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, include a trusteed surplus of at least $100,000,000, which must be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the superintendent an annual certification by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter.

(4) The trust must be established in a form approved by the superintendent. The trust instrument must provide that contested

claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the superintendent. The trust must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(5) The trustees of the trust shall report to the superintendent in writing by February 28th of each year, setting forth the balance of the trust and listing the trust's investments at the end of the preceding year and certifying the date of termination of the trust, if so planned, or certifying that the trust does not expire before December 31st of the current year.

(6) The corpus of the trust is to be valued as any other admitted asset or assets; or

D. Does not meet the requirements of paragraph A, B or C, but only with respect to risks located in a jurisdiction other than the United States, when that reinsurance is required by any applicable law or regulation of that jurisdiction.

2. The credit permitted by subsection 1 is not to be allowed unless the assuming insurer agrees in the reinsurance agreements:

A. That, if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer:

(1) Will submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(2) Will comply with all requirements necessary to give the court jurisdiction; and

(3) Will abide by the final decision of the court or of any Appellate Court in the event of an appeal; and

B. To designate the superintendent or an attorney as its attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company, as required in section 421.

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

3. A reduction from liability for the reinsurance ceded to an assuming insurer not meeting the requirements of subsection 1 is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must equal the value of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the contract, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

A. Cash;

B. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets; or

C. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, provided the Securities Valuation Office of the National Association of Insurance Commissioners has determined that the institution meets the standards that it determines necessary and appropriate to the quality of a financial institution issuing letters of credit for this purpose.

(1) A letter of credit from an issuer determined to be acceptable as of the date of issuance or the date of confirmation of the letter, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continues to be acceptable as security until its expiration, extension, renewal, modification or amendment, whichever first occurs. The ceding insurer shall replace a nonqualifying letter of credit at its earliest opportunity.

(2) The letter of credit must indicate that it is not subject to any condition or qualification outside the letter of credit, and that the beneficiary need only draw a sight draft under the letter and present the letter to obtain funds and that no other document need be presented.

4. For purposes of this section, "qualified United States financial institution" means an institution that:

A. Is organized, or in the case of a United States branch or agency office of a foreign banking organization licensed under the laws of the United States or any state, and has been granted authority to operate with fiduciary powers; and

B. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

5. Credit is allowed as an asset or deduction from liability to any ceding insurer only for reinsurance ceded to an assuming insurer qualified under this section, except that no credit is allowed, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured without diminution because of the insolvency of the ceding insurer.

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

7. The superintendent may adopt rules, subject to Title 5, chapter 375, to implement this section.

§731-C. Bulk reinsurance

The cession of bulk reinsurance by a domestic insurer is subject to section 3483.

§731-D. Notification of reinsurance changes

Upon request of the superintendent, an insurer shall promptly inform the superintendent in writing of the cancellation or any other material change of any of the insurer's reinsurance treaties or arrangements.

Sec. E-3. 24-A MRSA §3483, sub-§6 is enacted to read:

6. The superintendent may adopt rules, subject to Title 5, chapter 375, to effectuate this section.

Sec. E-4. Application. Title 24-A, section 731-B, subsection 2, as enacted by section E-2 of this Act, applies to reinsurance agreements executed or renewed on or after the effective date of this Part. For purposes of this Act, reinsurance agreements are deemed renewed no later than 6 months after the effective date of this Part.

See title page for effective date.

CHAPTER 847

H.P. 1573 - L.D. 2180

An Act to Amend Certain Sales Tax Exemptions

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

Sec. 1. 36 MRSA §1752, sub-§1-D, as enacted by PL 1987, c. 497, §15, is amended to read:

1-D. Casual sale. "Casual sale" means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. "Casual sales" include transactions by a civic, religious or fraternal organization which is not a registered retailer at a bazaar, fair, rummage sale, picnic or similar event~~, but, if any such organization makes such transactions during more than 8 days during a calendar year, all such transactions during the calendar year constitute retail sales~~. The sale by a registered retailer of tangible personal property which that retailer has used in the course of ~~his~~ the retailer's business is not a "casual sale" if that property is of like character to that sold in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which tangible personal property is sold by a representative for the owner's account when that representative is a registered retailer and the registered retailer shall have the same duties respecting any such transaction as if ~~he~~ the representative had sold on ~~his~~ the representative's own account.

Sec. 2. 36 MRSA §1760, sub-§3, ¶D, as repealed and replaced by PL 1985, c. 819, Pt. A, §§40 and 41, is amended to read:

D. Those made from a retail location from which food ordinarily is sold for consumption without further preparation or storage~~, even though the products are packaged or wrapped in bulk quantities~~; and

Sec. 3. 36 MRSA §2013, sub-§3, as amended by PL 1985, c. 411, §2, is further amended to read:

3. Exemption for large purchase after certification. ~~No sales~~ Sales tax ~~may be~~ is not paid on the purchase of a single item of machinery or equipment ~~with a sales price in excess of $1,000,~~ if the purchaser has the certification of the State Tax Assessor that ~~he~~ the purchaser is engaged in commercial agricultural production or commercial fishing, and that ~~he~~ the purchaser may purchase depreciable machinery and equipment without paying Maine sales tax. The seller is required to obtain a copy of the certificate together with an affidavit as prescribed by the State Tax Assessor, to be maintained in the seller's records, attesting to the qualification of the purchase for exemption pursuant to this section. In order to qualify for this exemption, the depreciable machinery or equipment must be ~~suited only for use~~ used directly in commercial agricultural production or commercial fishing.

See title page for effective date.

CHAPTER 848

S.P. 888 - L.D. 2264

An Act to Establish the Taxpayer Bill of Rights

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

Sec. 1. 36 MRSA §112, sub-§3, as enacted by PL 1981, c. 364, §7, is amended to read: