LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION
December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION
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J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS

OF THE

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1991

4. A comparison of the advisability of allowing businesses to establish either staggered dates or a common expiration or renewal date for all licenses.

The commissioner shall submit a report with recommendations, including any necessary implementing legislation, to the joint standing committee of the Legislature having jurisdiction over economic development matters and to the Executive Director of the Legislative Council no later than January 30, 1993. The report must include recommendations for reducing the paper-work burden of permitting on businesses and increasing the efficiency of agency licensing procedures. If establishment of a licensing center is recommended, the report must contain an implementation plan and cost estimates for establishing and operating the center.

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

Effective April 6, 1992.

CHAPTER 827

H.P. 1681 - L.D. 2361

An Act to Repeal a State Mandate Requiring a National Plumbing Code

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a plumbing code was issued by the Building Officials Conference of America, BOCA; and

Whereas, many plumbing professionals have expressed dissatisfaction with the input afforded them in this situation; and

Whereas, implementation of the plumbing code would pose a hardship on homeowners and builders and be a great expense for the State; and

Whereas, the State's adoption of the plumbing code may constitute an unfunded state mandate, which will result in undue hardship on our communities; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §42, sub-§3, as amended by PL 1991, c. 548, Pt. A, §16, is further amended to read:

3. Plumbing and subsurface waste water disposal. ~~The department, with the advice and consent of the Plumbers' Examining Board, shall adopt by reference a nationally recognized plumbing code. The department, with the advice and consent of the Plumbers' Examining Board, may adopt, as necessary, amendments to that code.~~ The department shall adopt minimum rules relating to plumbing and subsurface sewage disposal systems. All rules, including installation and inspection rules, must be consistent with Title 30-A, chapter 185, subchapter III, and Title 32, chapter 49, but this does not preempt the authority of municipalities under Title 30-A, section 3001, to adopt more restrictive ordinances. The department shall hold hearings on the first Tuesday of February of each year for the purpose of considering changes in the rules pertaining to plumbing and subsurface sewage disposal systems and the installation and inspection thereof. These rules may regulate the location of water supply wells to provide minimum separation distances from subsurface sewage disposal systems. The department may require a deed covenant or deed restriction when determined necessary.

Any person who violates the rules adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title 30-A, sections 4201 and 4211 or uses a subsurface waste water disposal system not in compliance with rules applicable at the time of installation or modification must be penalized in accordance with Title 30-A, section 4452. Enforcement of the rules is the responsibility of the municipalities rather than the department. The department or a municipality may seek to enjoin violations of the rules or municipal ordinances. In the prosecution of a violation by a municipality, the court shall award reasonable attorney's fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of these fees unjust.

Sec. 2. Retroactivity. This Act applies retroactively to February 1, 1992.

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

Effective April 6, 1992.

CHAPTER 828

S.P. 957 - L.D. 2425

An Act to Ensure Financial Solvency of Insurers through Accreditation

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

Sec. 1. 24-A MRSA §221, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

1. For the purpose of determining its financial condition, fulfillment of its contractual obligations and compliance with the law, the superintendent shall examine the affairs, transactions, accounts, ~~record~~ records and assets of each authorized insurer, and of any person as to any matter relevant to the financial affairs of the insurer or to the examination, as often as ~~he deems~~ the superintendent determines advisable. Except as otherwise expressly provided, ~~he shall so examine each domestic insurer not less frequently than every 5 years~~ domestic insurers must be examined at least once every 3 years, unless the superintendent defers making an examination for a longer period; but in no event may domestic insurers be examined less frequently than once every 5 years. Examination of an alien insurer ~~shall be~~ is limited to its insurance transactions, assets, trust deposits and affairs in the United States, except as otherwise required by the superintendent.

Sec. 2. 24-A MRSA §221, sub-§3, as amended by PL 1973, c. 585, §12, is further amended to read:

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

Sec. 3. 24-A MRSA §222, sub-§2, ¶D-1 is enacted to read:

D-1. "Net gain from operations" or "net operating loss" means the net income or loss, as the case may be, after dividends to policyholders and federal income taxes but before the inclusion of net realized capital gains or losses, except that if the insurer is not a life insurer, all realized capital losses but no capital gains are included.

Sec. 4. 24-A MRSA §222, sub-§3, as amended by PL 1987, c. 399, §1, is further amended to read:

3. Subsidiaries of insurers; investments to acquire interest. This subsection pertains to insurers and their subsidiaries and affiliates.

A. Any domestic insurer may invest in or otherwise acquire one or more subsidiaries as authorized in section 1115 or section 1157.

A-1. A domestic insurer shall notify the superintendent in writing within 30 days after any investment by the insurer or any of its affiliates in any one corporation if the insurer has invested in that corporation and the total investment in that corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

B. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the superintendent may prescribe, unless at any time after ~~such~~ the investment ~~shall have been~~ was made, ~~such~~ the investment ~~shall have~~ met the requirements for investment under any other section of this Title and the insurer has notified the superintendent thereof.

Sec. 5. 24-A MRSA §222, sub-§9, as amended by PL 1991, c. 548, Pt. B, §3, is further amended to read:

9. Transactions with affiliates; standards. ~~Material transactions by registered insurers~~ Transactions by insurers subject to registration with their affiliates ~~occurring~~ that occur after the effective date of this chapter are subject to the following standards:.

A. The terms, including any charges or fees for services performed, must be fair and reasonable;.

B. The books, accounts and records of each party must be so maintained as to disclose clearly and accurately the nature and details of the transaction, including all accounting information necessary to support the reasonableness of any charges or fees~~; and~~.

C. The insurer's surplus to policyholders following any dividends or distributions to stockholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

D. Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

E. A domestic insurer must notify the superintendent in writing at least 30 days in advance, unless the superintendent authorizes a shorter period, before entering into any of the following kinds of transactions with any member of its holding company system:

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments that are equal to or exceed:

(a) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets as of December 31st of the preceeding year or 25% of surplus to policyholders;

(b) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st of the preceding year; or

(c) With respect to nonprofit hospital and medical service organizations and their 100% controlled affiliates that operate as monoline health insurers or health maintenance organizations, the lesser of 5% of the entity's admitted assets as of December 31st of the preceding year or 25% of surplus to policyholders;

(2) Loans or extensions of credit to any person who is not an affiliate, if the insurer makes the loan or extension of credit with the agreement or understanding that the proceeds in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of or make investments in any affiliate of the insurer if the loan, extension of credit, purchase or investment is equal to or exceeds:

(a) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets as of December 31st of the preceding year or 25% of surplus to policyholders;

(b) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st of the preceding year; or

(c) With respect to nonprofit hospital and medical service organizations and their 100% controlled affiliates that operate as monoline health insurers or health maintenance organizations, the lesser of 5% of the entity's admitted assets as of December 31st of the preceding year or 25% of surplus to policyholders;

(3) Reinsurance agreements or modifications to the agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus to policyholders, as of December 31st of the preceding year, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(4) Management agreements, cost-sharing arrangements and service contracts that:

(a) Delegate authority to effectuate reinsurance;

(b) Provide for delegated corporate governance;

(c) Provide for servicing of claims liabilities; or

(d) In any other way contribute an element of expense that is material when related to operations of the insurer;

(5) Any transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the superintendent determines that those separate transactions were entered into over any 12-month period for such a purpose, the superintendent may exercise authority under this subsection; and

(6) Any other material transactions specified by rule that the superintendent has determined may adversely affect the interests of the insurer's policyholders.

The superintendent shall disapprove any such transaction if it violates the standards of this section or other applicable law or adversely affects the interests of policyholders. The superintendent's failure to make a determination on a proposed transaction within 30 days after it has been submitted for review has the effect of an approval, unless the superintendent has issued a notice of adjudicatory hearing on the proposal in accordance with section 230.

Any ~~material transaction not in conformity with~~ violation of this subsection ~~constitutes a violation of this Title and chapter and~~, in addition to the penalties contained in subsection 14, renders the transactions voidable at the initiative of the superintendent or otherwise under applicable law. The superintendent's approval of a transaction in accordance with this section, whether actual or by acquiescence, may not override any applicable law and does not operate to authorize any transaction that would be contrary to law if it involved an insurer not a member of the same holding company system.

Sec. 6. 24-A MRSA §222, sub-§11, ¶E, as enacted by PL 1991, c. 37, §2, is amended to read:

E. Is declared at any time when the insurer has, in any one of the previous 3 years, paid a dividend that exceeded the ~~operating~~ net gain from operations for the calendar year that preceded the payment; or

Sec. 7. 24-A MRSA §223, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

1. Whenever the superintendent determines to examine the affairs of any person, ~~he~~ the superintendent shall designate one or more examiners and instruct them as to the scope of the examination. The superintendent may designate an examiner outside the bureau if the designee is a competent public accountant or an actuary who is a member of the American Academy of Actuaries and is in active practice. The examiner shall, upon demand, exhibit ~~his~~ the examiner's official credentials to the person under examination.

A. An examiner may not be designated by the superintendent if the examiner directly or indirectly has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under sections 221 and 222. This section may not be construed to preclude automatically an examiner from being:

(1) A policyholder or claimant under an insurance policy;

(2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(3) An investment owner in shares of regulated diversified investment companies; or

(4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

Sec. 8. 24-A MRSA §223, sub-§4, as amended by PL 1973, c. 585, §12, is further amended to read:

4. Every person being examined, its officers, attorneys, employees, agents and representatives shall make freely available to the superintendent or ~~his~~ designated examiners the accounts, records, documents, files, information, assets and matters of ~~such~~ that person in ~~his~~ that person's possession or control relating to the subject of the examination and shall facilitate the examination. The refusal of any insurer to submit to examination is grounds for revocation or refusal of a license or renewal license.

Sec. 9. 24-A MRSA §224, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

1. If the superintendent ~~deems~~ considers it necessary to value any asset involved in such an examination, ~~he may make written request of the person being examined to appoint one or more appraisers who by reason of education, experience or special training, and disinterest, are competent to appraise the asset~~ the superintendent may appoint one or more competent disinterested persons as appraisers with authority to appraise the real property of an insurer or any real property on which it holds security. ~~Selection of any such appraiser shall be subject to the written approval of the superintendent. If no such appointment is made within 20 days after the request therefor was delivered to such person, the superintendent may appoint the appraiser or appraisers.~~

Sec. 10. 24-A MRSA §225, sub-§3 is enacted to read:

3. All working papers, recorded information, documents and copies of any of these media produced by, obtained by or disclosed to the superintendent or any other person in the course of an examination made under this chapter must be given confidential treatment, are not subject to subpoena and may not be made public by the superintendent or any other person, except to the extent provided in sections 226 and 227. Access may be granted to the National Association of Insurance Commissioners. Any parties granted access must agree in writing prior to receiving the information to provide the information with the same confidential treatment as required by this section unless prior written consent of the insurer to which the information pertains has been obtained.

Sec. 11. 24-A MRSA §226, sub-§7 is enacted to read:

7. The Maine Insurance Code does not prevent and may not be construed to prohibit the superintendent from disclosing the content of an examination report, preliminary examination report or the results, or any matter related to a report or results, to the Bureau of Insurance of this State or the insurance department of any other state or country, or to law enforcement officials of this State, any other state agency or the federal government at any time. Any such disclosure must be subject to a protective order of confidentiality issued by the superintendent.

Sec. 12. 24-A MRSA §227, as amended by PL 1973, c. 585, §12, is further amended to read:

§227. Examination report

The report of examination of those persons, partnerships, corporations or other business associations ~~which~~ that are subject to examination by the ~~Insurance Superintendent~~ superintendent as provided for in sections 221 and 222 shall, upon satisfaction of the requirements of section 226 and so long as no court of competent jurisdiction has stayed its publication, be filed in the bureau as a public record, except for any information relating to an individual insured or individual applicant for insurance, which ~~shall be~~ is deemed confidential.

Sec. 13. 24-A MRSA §414, sub-§4, as enacted by PL 1989, c. 846, Pt. A and affected by Pt. E, §4, is amended to read:

4. 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. This filing must contain the insurer's current annual statement convention blank and, if requested by the superintendent or the National Association of Insurance Commissioners, publicly available financial reports of any affiliated insurers or other entities necessary for analyzing any insurer licensed in this State. Each statement furnished by an insurer must be manually executed by those persons who are required by section 423 to verify an annual statement utilizing the prescribed jurat. Any amendments and addendums to the annual statement subsequently filed with the superintendent must also be filed with the National Association of Insurance Commissioners. 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.

In the absence of bad faith, fraud or intentional act, an officer or an employee of the National Association of Insurance Commissioners may not be subject to civil liability for libel, slander or any other cause of action in tort as a result of processing data or other information filed by insurers under this subsection or distribution of reports prepared on the basis of that information to insurance regulatory officials of any state that has subscribed to and used the Insurance Regulatory Information System through the National Association of Insurance Commissioners. Information provided to the superintendent that is held confidential by the National Association of Insurance Commissioners must be held confidential by the superintendent unless that information is relevant to any hearing conducted by the superintendent pursuant to section 229 or an order requiring disclosure is issued by the Superior Court.

Sec. 14. 24-A MRSA §423, sub-§5 is enacted to read:

5. The superintendent may adopt rules that prescribe accounting standards applicable to statements filed pursuant to this section. These rules may permit or require any class or classes of insurers domiciled or authorized to do business in this State to conform its financial presentations to the standards of preparation prescribed in the accounting practices and procedures manual of the National Association of Insurance Commissioners.

Sec. 15. 24-A MRSA §601, sub-§21 is enacted to read:

21. Reinsurance intermediary. Reinsurance intermediary application and issuance fees are:

A. Application and issuance fee, $50; and

B. Biennial continuation, $50.

Sec. 16. 24-A MRSA §731-B, sub-§1, ¶¶A and B, as enacted by PL 1989, c. 846, Pt. E, §2 and affected by §4, are amended to read:

A. Is licensed to transact insurance or reinsurance in this State, provided the assuming insurer ~~has~~ maintains surplus ~~to~~ as regards policyholders in an amount not less than the sum of paid-in capital stock ~~required of an authorized foreign stock insurer transacting like kinds of insurance~~, if any, and surplus as otherwise required for a certificate of authority for the kinds and amount of insurance and assumed reinsurance the insurer has in force net of any applicable ceded reinsurance;

B. Is domiciled and licensed in a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section, ~~provided~~ if 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;~~:

(1) Submits to the authority of this State to examine its books and records; and

(2) Except where reinsurance is ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system, maintains a surplus regarding policyholders in an amount not less than $20,000,000;

Sec. 17. 24-A MRSA §731-B, sub-§4, as enacted by PL 1989, c. 846, Pt. E, §2 and affected by §4, is amended to read:

4. For purposes of this section, a "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, is licensed under the laws of the United States or any state~~, and has been granted authority to operate with fiduciary powers~~ of the United States; ~~and~~

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

C. Has been determined by the superintendent or the Securities Valuation Office of the National As-

sociation of Insurance Commissioners to meet standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the superintendent.

Sec. 18. 24-A MRSA §731-B, sub-§4-A is enacted to read:

4-A. "Qualified United States financial institution" means for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust 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 of the United States and has been granted authority to operate with fiduciary powers; and

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

Sec. 19. 24-A MRSA §§732 to 734 are enacted to read:

§732. Deposits and funds withheld under reinsurance treaties

Any ceding insurer must report in its annual statement all funds withheld and deposit funds established pursuant to contracts of ceded reinsurance. Ceding insurers must report this and related information as required by reporting rules established by the National Association of Insurance Commissioners.

§733. Examination of reinsurance agreements

The superintendent may examine the reinsurance agreements or deposit arrangements of a ceding insurer at any time.

§734. Minimum surplus regarding policyholders to assume property and casualty reinsurance

1. Prohibition. Notwithstanding section 731-B, subsection 1, paragraph B, a domestic property or domestic casualty insurer, other than mutual assessment insurers operating pursuant to chapter 51, possessing less than $10,000,000 in surplus regarding policyholders may not, without the prior written approval of the superintendent, assume reinsurance on any risk that it is otherwise permitted to assume except when the reinsurance is:

A. Required by applicable law or rule; or

B. Assumed pursuant to pooling arrangements among members of the same holding company system.

2. Application. This section applies to contracts of reinsurance entered into or renewed after the effective date of this section.

3. Effect. The performance of an activity prohibited by this section does not invalidate any reinsurance contract between the parties to the contract.

Sec. 20. 24-A MRSA c. 9, sub-c. IV is enacted to read:

SUBCHAPTER IV

REINSURANCE INTERMEDIARIES

§741. Definitions

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

1. Actuary. "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

2. Cession. "Cession" means a transfer by a policy originating insurer to a reinsurer of the whole or a portion of a single risk, defined policy or defined division of business as set out in a reinsurance contract.

3. Controlling person. "Controlling person" means any person who directly or indirectly has the power to direct or cause to be directed the management, control or activities of the reinsurance intermediary.

4. Insurer. "Insurer" means every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance who holds an existing certificate of authority to transact insurance in this State pursuant to section 404.

5. Reinsurance intermediary. "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subsections 6 and 7.

6. Reinsurance intermediary-broker. "Reinsurance intermediary-broker" means any person, other than an officer or employee of the ceding insurer who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

7. Reinsurance intermediary-manager. "Reinsurance intermediary-manager" means any person who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such a reinsurer whether known as a reinsurance intermediary-

manager, manager or other similar term. The term does not include:

A. An employee of the reinsurer;

B. A manager of a branch of an alien reinsurer that is located in the United States;

C. An underwriting manager that, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer subject to section 222 and whose compensation is not based on the volume of premiums written; and

D. The manager of a group, association, pool or organization of insurers that engages in joint underwriting or joint reinsurance and who is subject to examination by the public insurance regulatory official of the state or country in which the manager's principal business office is located.

8. Reinsurer. "Reinsurer" means any person who operates as an insurer in any manner under applicable provisions of this Title in the assumption of reinsurance risks.

9. Retrocession. "Retrocession" means a transfer by a reinsurer to another reinsurer of those risks defined in subsection 2.

10. Retrocessionaire. "Retrocessionaire" means an insurer or reinsurer assuming reinsurance risks under a retrocession.

11. Qualified United States financial institution. For purposes of this section, a "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, is licensed under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers;

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

C. Has been determined by the superintendent or the Securities Valuation Office of the National Association of Insurance Commissioners to meet standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the superintendent.

12. Qualified United States financial institution. "Qualified United States financial institution" means for the purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust 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 laws of the United States or any state of the United States 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.

§742. Licensure

1. Qualifications for license. For the protection of the people of this State, the superintendent may not issue, continue or permit to exist any reinsurance intermediary license except in compliance with this subchapter, and as to any individual, unless the individual is an agent or broker in this State duly licensed pursuant to chapter 17.

2. License requirement. A person may not act as a reinsurance intermediary-broker in this State unless licensed pursuant to this subchapter. A person may not act as a reinsurance intermediary-manager in this State unless licensed pursuant to this subchapter.

3. License forms. The superintendent shall prescribe, consistent with the applicable requirements of this subchapter, and furnish all printed forms required under this subchapter in connection with application for and issuance of licenses.

4. Application for license. Application for licensure is governed by this subsection.

A. Written application for a reinsurance intermediary license must be made to the superintendent by the applicant and be accompanied by the applicable license application and issuance fee shown in section 601. The application must be signed and duly sworn to by the applicant.

B. If the applicant is an individual and if the application is not submitted simultaneously with an application for an agent or broker license pursuant to chapter 17, the application must include full answers to questions reasonably necessary to determine the following: the applicant's identity; age; residence; present occupation and occupations over the 5 years preceding the date of the application; financial responsibility; insurance experience; and education in insurance and insurance laws of this State the applicant has had or expects to receive. The application must be accompanied by an imprint of the applicant's fingerprints and a recent

photograph of the applicant. The application must include full answers to questions necessary to understand the purpose for which the license is to be used, whether the applicant will devote all or part of the applicant's efforts to transactions under the license and, if part only, how much time the applicant will devote to transactions and in what other business or businesses the applicant is or will be engaged or employed. The application must contain any other facts as the superintendent may require relative to the applicant's qualifications for the license as those qualifications are stated in this subchapter.

C. If the applicant is a firm, association, partnership or corporation, the application must include, in addition, the names and residence addresses of all members, officers and directors and designate the name and residence address of each individual who is to exercise the license powers. Each individual shall furnish information with respect to the individual as for an individual license.

D. If the application is not submitted simultaneously with an application for an agent or broker license, the application must indicate whether any insurance license was ever refused, suspended, revoked or continuance refused and whether any insurer, general agent, individual or organization claims that the applicant is indebted to it, and if so, the details of the indebtedness and applicant's defense to that indebtedness.

5. Additional requirements. The superintendent may require a reinsurance intermediary-manager to:

A. File a surety bond issued by a licensed insurer, in an amount and format acceptable to the superintendent, for the protection of the reinsurer; or

B. Maintain an errors and omissions policy issued by an insurer licensed in this State in an amount acceptable to the superintendent.

6. Nonresident applicant. If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, must designate the superintendent as agent for service of process in the manner and with the same legal effect provided for by this Title for designation of service of process upon unauthorized insurers. The applicant shall furnish the superintendent with the name and address of a resident of this State upon whom notices or orders of the superintendent or process affecting the nonresident reinsurance intermediary may be served. If a nonresident applicant becomes licensed, the licensee shall promptly notify the superintendent in writing of every change in its designated agent for service of process. Such a change is not effective until acknowledged by the superintendent.

7. Attorneys exempted. Licensed attorneys-at-law of this State when acting in their professional capacity are exempt from this section.

§743. Issuance of license

The superintendent may issue a reinsurance intermediary license to any person that complies with the requirements of this subchapter.

1. Licensing; persons that are not individuals. Licensing of a firm, association, partnership or corporation is subject to this subsection.

A. A license issued to a firm, association, partnership or corporation authorizes all the members of the firm, association, partnership or corporation and any employees of those entities to act as reinsurance intermediaries if each individual is also licensed. Those individuals exercise the license power only for and in the name of the organization. This paragraph does not prevent an individual from being separately licensed and acting in that individual's own behalf and name.

B. The superintendent may not license a firm, association, partnership or corporation unless the license is within purposes stated in the partnership agreement or certificate of organization. All licensees are subject to the applicable standards of section 407, subsection 2.

C. All licensees under this subsection are subject to the same restrictions with regard to deceptively similar names as applied to insurers under section 408, subsection 1.

2. Advertising. Licensees may advertise only in the name under which they are licensed.

3. Notice of change. Licensees shall promptly notify the superintendent of every change in address and notify the superintendent of every change among its members, directors and officers and of other individuals designated in or registered as to the license.

4. Refusal. The superintendent may refuse to issue a license to a reinsurance intermediary if, in the superintendent's judgment, the applicant, any one named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, has given cause for revocation or suspension of such license or has failed to comply with any prerequisite for the issuance of such license, or that any controlling person of an applicant is not trustworthy to act as a reinsurance intermediary.

5. Superintendent review. If the superintendent finds that the application is complete and that the applicant is otherwise qualified for the license applied for, the

superintendent shall promptly issue the license. Otherwise, the superintendent shall refuse to issue the license, promptly notify the applicant of the refusal and state the grounds for refusal.

6. Refund. If the license is refused, the superintendent shall promptly refund to the applicant all fees received for application for a reinsurance intermediary license.

7. Duration. Unless revoked or suspended, a reinsurance intermediary license remains in effect as long as the licensee continues to hold a valid Maine broker or agent license and the licensee pays the biennial fee required by section 601 before the anniversary date of the license.

§744. Required contract provisions; reinsurance intermediary-broker

Transactions between a reinsurance intermediary-broker and the insurer it represents in such a capacity may be entered into only pursuant to a written authorization specifying the responsibilities of each party. The authorization must, at a minimum, provide that:

1. Termination. The insurer may terminate the reinsurance intermediary-broker's authority at any time upon 5 days' written notice to the reinsurance intermediary-broker;

2. Accounting. The reinsurance intermediary-broker shall render timely accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owed, to the reinsurance intermediary-broker and remit all funds due to the insurer within 30 days of receipt;

3. Bank as fiduciary. All funds collected for the insurer's account must be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank that is a qualified United States financial institution;

4. Compliance with law. The reinsurance intermediary-broker shall comply with section 745;

5. Compliance with standards. The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks; and

6. Disclosure. The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer or insurer to which business will be ceded or retroceded.

§745. Books and records; reinsurance intermediary-brokers

1. Records required. For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing:

A. The type of contract, limits, underwriting restrictions, classes of risks and territory;

B. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation;

C. Reporting and settlement requirements of balances;

D. Rate used to compute the reinsurance premium;

E. Names and addresses of assuming reinsurers;

F. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

G. Related correspondence and memoranda;

H. Proof of placement;

I. Details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded;

J. Financial records, including, but not limited to, premium and loss accounts; and

K. When the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(2) Placed through a representative of the assuming reinsurer that is not an employee, written evidence that the reinsurer has delegated binding authority to the representative.

2. Access. The insurer must have access and may copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

§746. Duties of insurers utilizing the services of a reinsurance intermediary-broker

1. License requirements. An insurer may not engage the services of any person to act as a reinsurance intermediary-broker on the insurer's behalf unless that person is licensed as required by this subchapter.

2. Status of intermediary-broker. An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which the insurer transacts business, unless such reinsurance intermediary-broker is under common control with the insurer and subject to section 222.

3. Financial statements. The insurer shall annually obtain a copy of statements of current origin of the financial condition of each reinsurance intermediary-broker with which the insurer transacts business. These statements must be certified reports or reviews performed by a certified public accountant.

§747. Required contract provisions; reinsurance intermediary-managers

Transactions between a reinsurance intermediary-manager and the reinsurer it represents in such capacity may be entered into only pursuant to a written contract, specifying the responsibilities of each party, that must be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through the reinsurance intermediary-manager, a true copy of the approved contract must be filed with the superintendent for approval. The contract must, at a minimum, contain the following terms and conditions.

1. Termination. The reinsurer may terminate the contract for cause upon 5 days' written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

2. Accounting. The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owed, to the reinsurance intermediary-manager and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

3. Bank as fiduciary. All funds collected for the reinsurer's account must be held in trust by the reinsurance intermediary-manager in a fiduciary capacity in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than 3 months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

4. Compliance with law. The reinsurance intermediary-manager shall comply with section 748.

5. Access. The reinsurer must have access to and may copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

6. Nonassignable. The contract may not be assigned in whole or in part by the reinsurance intermediary-manager.

7. Compliance with standards. The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.

8. Commissions; fees. The contract must set forth the rates, terms and purposes of commissions, charges and other fees that the reinsurance intermediary-manager may levy against the reinsurer.

9. Settlement. If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

A. All claims must be reported to the reinsurer in a timely manner;

B. A copy of each claim file must be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(1) Has the potential to exceed the lesser of an amount determined by the superintendent or the limit set by the reinsurer;

(2) Involves a coverage dispute;

(3) May exceed the reinsurance intermediary-manager's claims settlement authority;

(4) Is open for more than 6 months; or

(5) Is closed by payment of the lesser of an amount set by a court of competent jurisdiction or an amount agreed by the reinsurer;

C. All claim files must be the joint property of the reinsurer and the reinsurance intermediary-manager; except that, upon an order of liquidation of the reinsurer, the files become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager must have reasonable access to and may copy the files on a timely basis; and

D. Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may sus-

pend the settlement authority during the pendency of the dispute regarding the cause of termination.

10. Interim profits. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits may not be paid until one year after the end of each underwriting period for property business and 5 years after the end of each underwriting period for casualty business or other period set by the superintendent for other specified kinds of insurance and not until the adequacy of reserves on remaining claims has been verified pursuant to section 750, subsection 3.

11. Financial statements. The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of current origin of its financial condition prepared by an independent certified accountant. These statements must be certified reports or review statements prepared by a certified public accountant.

12. On-site review. The reinsurer shall periodically and no less than semiannually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

13. Disclosure. The reinsurance intermediary-manager shall disclose to the reinsurer any relationship the reinsurer has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

14. Scope of authority. Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf it is acting.

§748. Books, records and powers; reinsurance intermediary-managers

1. Records required. For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

A. The type of contract, limits, underwriting restrictions, classes of risks and territory;

B. Period of coverage, including effective and expiration dates, cancellation provisions and notice required for cancellation, and status of disposition of outstanding reserves on covered risks;

C. Reporting and settlement requirements of balances;

D. Rate used to compute the reinsurance premium;

E. Names and addresses of reinsurers;

F. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

G. Related correspondence and memoranda;

H. Proof of placement;

I. Details regarding retrocessions handled by the reinsurance intermediary-manager including the identity of retrocessionaires and the percentage of each contract assumed or ceded;

J. Financial records, including but not limited to, premium and loss accounts; and

K. When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

§749. Prohibited acts

The reinsurance intermediary-manager may not:

1. Retrocession. Retrocede business on behalf of the reinsurer; except that, the reinsurance intermediary-manager may facultatively retrocede business pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for any such retrocession. The guidelines must include a list of reinsurers with which automatic agreements are in effect, commission schedules and for each reinsurer, the coverages and amounts or percentages that may be reinsured;

2. Use of syndicates. Commit the reinsurer to participate in reinsurance syndicates;

3. Use of other licensees. Make use of any agent or broker without ensuring that the agent or broker is lawfully licensed to transact the kind of reinsurance for which the agent or broker is being used;

4. Claim payment. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder surplus as of December 31st of the next preceding calendar year;

5. Claim recovery. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer;

6. Joint employment. Jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to section 222; or

7. Subcontract. Assign duties under a contract to a subcontracting manager.

§750. Duties of reinsurers utilizing the services of a reinsurance intermediary-manager

1. License required. A reinsurer may not engage the services of any person to act as a reinsurance intermediary-manager on its behalf unless that person is licensed as required by this subchapter.

2. Financial statements. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager that the reinsurer has engaged prepared by an independent certified public accountant in a form acceptable to the superintendent.

3. Actuarial review. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary who specializes in the type of insurance under consideration attesting to the adequacy of loss reserves including losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion is in addition to any other required loss reserve certification.

4. Binding authority. Binding authority for all retrocessional contracts or participation in reinsurance syndicates rests with an officer of the reinsurer who may not be affiliated with the reinsurance intermediary-manager.

5. Notice of termination. Within 30 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of termination to the superintendent.

6. Board member qualifications. A reinsurer may not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by section 222 or chapter 77.

§751. Examination authority

1. Authority. A reinsurance intermediary is subject to examination by the superintendent. The superintendent must have access to all books, bank accounts and records of the reinsurance intermediary in a usable form.

2. Status. A reinsurance intermediary-manager may be examined as if it were the reinsurer.

§752. Penalties and liabilities

1. Violation. A reinsurance intermediary, insurer or reinsurer found by the superintendent, after a hearing conducted in accordance with the Maine Administrative Procedure Act, to be in violation of any provision of this Title, is subject to the following.

A. For each separate violation, a violator must pay a penalty of not less than $5,000 and not more than $100,000 for each separate violation.

B. A violator is subject to revocation or suspension of its license.

C. If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation.

2. Final agency action. The decision, determination or order of the superintendent pursuant to this section is a final agency action and may be appealed pursuant to section 236.

3. Nonexclusivity of penalties. Nothing contained in this section affects the right of the superintendent to impose any other penalties provided in this Title.

4. Rights of others. Nothing contained in this subchapter limits or restricts the rights of policyholders, claimants, creditors or other 3rd parties or confers any rights to those persons.

§753. Rules

The superintendent may adopt reasonable rules for the implementation and administration of the provisions of this subchapter.

§754. Effective date

This subchapter takes effect January 1, 1993. An insurer or reinsurer may not continue to utilize the services of a reinsurance intermediary on and after February 1, 1993 unless utilization is in compliance with this subchapter.

Sec. 21. 24-A MRSA §901, sub-§11, as amended by PL 1973, c. 585, §12, is further amended to read:

11. All assets, whether or not consistent with this section, as may be allowed pursuant to the annual statement form approved by the superintendent for the kinds of insurance to be reported upon ~~therein~~ in that statement; except that unless a standard of valuation of those assets allowed under this subsection is prescribed pursuant to other provisions of this Title, the superintendent may require that valuation standards promulgated by the National Association of Insurance Commissioners be used in determining the value of these assets;

Sec. 22. 24-A MRSA §981, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

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

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

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

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

C-1. The superintendent may require the use of standards of valuation promulgated by the National Association of Insurance Commissioners in determining value to be ascribed to securities subject to this section; and

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

Sec. 23. 24-A MRSA c. 17, sub-c. VII is enacted to read:

SUBCHAPTER VII

MANAGING GENERAL AGENTS

§1881. Short title

This subchapter may be known and cited as the "Managing General Agents Act."

§1882. Definitions

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

1. Actuary. "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

2. Insurer. "Insurer" means a person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance who holds an existing certificate of authority to transact insurance in this State pursuant to section 404.

3. Managing general agent or MGA. "Managing general agent" or "MGA" means a person who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for the insurer, whether known as a managing general agent, manager or other similar term; and who, with or without the authority, either separately or together with affiliates, directly or indirectly, produces and underwrites an amount of gross direct written premium equal to or more than 5% of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter of the year following the last annual statement and adjusts or pays claims in excess of an amount determined by the superintendent or negotiates reinsurance on behalf of the insurer, or both. The term does not include:

A. An employee of the insurer;

B. A manager of a branch of an alien insurer that is located in the United States;

C. An underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to section 222 and whose compensation is not based on the volume of premiums written; and

D. The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

4. Underwrite. "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

§1883. License and registration requirement

1. In-state risks. A person may not act in the capacity of an MGA with respect to risks located in this State for an insurer licensed in this State unless that person holds a valid Maine agent license and appointment authorizing the agent to sell the applicable kinds of insurance and unless registered with the superintendent as a managing general agent pursuant to subsection 5.

2. Out-of-state risks. A person may not act in the capacity of an MGA representing an insurer domiciled in this State with respect to risks located outside this State unless that person holds a valid Maine agent license and appointment in this State and unless registered with the superintendent as a managing general agent pursuant to subsection 5.

3. Bond. The superintendent may require a bond in an amount acceptable to the superintendent for the protection of the insurer.

4. Errors and omissions policy. The superintendent may require the MGA to maintain an errors and omissions policy.

5. Application. Each managing general agent shall file with the superintendent an application for registration as a managing general agent.

A. The superintendent shall prescribe, consistent with the applicable requirements of this subchapter, and furnish forms required under this subchapter in connection with application for and issuance of registration certificates and for notification of termination of contracts pursuant to section 1885.

B. The application for registration must include the name and address of the insurer with whom the agent has an appointment pursuant to section 1533 and with whom the agent has a written contract pursuant to section 1884, a statement of the duties that the agent is expected to perform on behalf of the insurer, the lines of insurance for which the agent is to be authorized to act, and any other information the superintendent may request.

C. If the superintendent finds that the application is complete, the superintendent shall promptly issue a certificate of registration to the agent; otherwise, the superintendent shall refuse to issue the registration and promptly notify the agent and the insurer of the refusal, stating the grounds for refusal. The agent may request a hearing on the superintendent's denial pursuant to section 229.

6. Duration. Unless notification of termination of contract is received pursuant to section 1885, the certificate of registration remains in effect as long as the registrant continues to hold a valid Maine agent license and as long as the registrant complies with the provisions of this subchapter. A certificate of registration expires upon receipt by the superintendent of notification of termination of contract pursuant to section 1885, and the registrant shall promptly deliver the certificate of registration to the superintendent.

§1884. Required contract provisions

A person acting in the capacity of an MGA may not place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies the division of those responsibilities. The contract must contain the following minimum provisions.

1. Termiuatiou. The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination. However, the suspension of an MGA does not relieve the MGA of the responsibility to service business in existence at the time of the suspension.

2. Accounting. The MGA shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

3. Bank as fiduciary. All funds collected for the account of an insurer must be held by the MGA in a fiduciary capacity in a bank that is a member of the Federal Reserve System. This account must be used for all payments on behalf of the insurer. The MGA may retain no more than 3 months' estimated claims payments and allocated loss adjustment expenses.

4. Records. Separate records of business written by the MGA must be maintained. The insurer must have access and may copy all accounts and records related to its business in a form usable by the insurer. The superintendent must have access to all books, bank accounts and records of the MGA in a form usable to the superintendent. These records must be retained according to section 3408.

5. Nonassignable. The contract may not be assigned in whole or part by the MGA.

6. Guidelines. The contract must include appropriate underwriting guidelines including:

A. The maximum annual premium volume;

B. The basis of the rates to be charged;

C. The types of risks that may be written;

D. Maximum limits of liability;

E. Applicable exclusions;

F. Territorial limitations;

G. Policy cancellation provisions; and

H. The maximum policy period.

The insurer has the right to cancel or not to renew any policy of insurance subject to all applicable laws and rules regarding the cancellation and nonrenewal of insurance policies.

7. Settlement authority. If the contract permits the MGA to settle claims on behalf of the insurer:

A. All claims must be reported to the insurer in a timely manner;

B. A copy of the claim file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(1) Has the potential to exceed an amount determined by the superintendent or exceeds the limit set by the insurer, whichever is less;

(2) Involves a coverage dispute;

(3) May exceed the MGA's claims settlement authority;

(4) Is open for more than 6 months; or

(5) Is closed by payment of an amount awarded as a result of a judicial proceeding or an amount set by the insurer, whichever is less;

C. All claim files must be the joint property of the insurer and MGA; except that, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The MGA must have reasonable access to and may copy the files on a timely basis; and

D. Any settlement authority granted to the MGA may be terminated for cause upon written notice by the insurer to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during thependency of any dispute regarding the cause for termination. Upon termination of the MGA's authority to settle claims, the MGA shall desist from any draw on funds of the insurer and shall immediately forward to the insurer all claims files within the MGA's immediate possession and any claims received thereafter. The MGA shall promptly transfer to the insurer any funds owed to the insurer or to any policyholder and shall transfer to the insurer any property of the insurer that is within the MGA's actual or constructive possession.

8. Transmission. Where electronic claims files are in existence, the contract must address the timely transmission of the data.

9. Interim profits. If the contract provides for a sharing of interim profits by the MGA and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits may not be paid to the MGA until one year after they are earned for property insurance business and 5 years after they are earned on casualty business and not until the profits have been verified pursuant to section 1885.

10. Prohibitions. The MGA may not:

A. Bind reinsurance or retrocessions, as defined in section 771, subsection 9, on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for reinsurance both assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

B. Commit the insurer to participate in insurance or reinsurance syndicates;

C. Make use of any agent or broker without ensuring that the agent or broker is lawfully licensed in this State to transact the kind of insurance for which the agent or broker is used;

D. Without prior approval of the insurer, pay or commit the insurer to pay a claim over an amount specified by the insurer, net of reinsurance, which may not exceed one percent of the insurer's policyholder surplus as of December 31st of the preceding year;

E. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

F. Make use of any agent or broker who serves on the insurer's board of directors;

G. Jointly employ an individual who is employed with the insurer; or

H. Assign specific duties under a contract with an insurer to other parties.

§1885. Duties of insurers

1. Records for each MGA. The insurer shall require and maintain on file an independent financial examination of current origin prepared on the basis of statutory accounting prescribed or permitted by the superintendent respecting each MGA with which the insurer has done business.

2. Actuarial review. If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary or actuaries who specialize in the type of insurance under consideration, attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This requirement is in addition to any other required loss reserve certification.

3. On-site review. The insurer shall periodically and at least semiannually conduct an on-site review of the underwriting and claims processing operations of the MGA.

4. Binding authority. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates rests with an officer of the insurer, who may not be affiliated with the MGA.

5. Notice of termination. Within 30 days of termination of a contract with an MGA, the insurer shall provide written notification of that termination to the superintendent.

6. Quarterly review. An insurer shall review its books and records each quarter to determine if any agent as defined by section 1882, subsection 3 has become, by operation of section 1882, subsection 3, a MGA as defined in that section. If the insurer determines that its agent has become a MGA, the insurer shall promptly notify the agent and the superintendent of that determination and the insurer and agent must fully comply with the provisions of this subchapter within 30 days.

7. Board member qualifications. An insurer may not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its managing general agents. This subsection does not apply to relationships governed by section 222 or chapter 77 to the extent that control of an insurer is permissible under section 222 or chapter 77.

§1886. Acts of MGA considered acts of insurer; examination authority

The acts of the MGA are deemed to be the acts of the insurer on whose behalf it is acting. An MGA may be examined as if it were the insurer.

§1887. Penalties and liabilities

1. Penalties. If the superintendent finds after a hearing conducted in accordance with section 229 that any person has violated any provision of this subchapter, the superintendent may order:

A. For each separate violation, any penalty provided for by section 12-A;

B. Revocation or suspension of the agent's license or the insurer's certificate of authority; and

C. The MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this subchapter committed by the MGA.

2. Effect of order. The decision, determination or order of the superintendent pursuant to subsection 1 is subject to judicial review as provided by section 236.

3. Nonexclusivity of penalties. Nothing contained in this section affects the right of the superintendent to impose any other penalties provided for in this Title.

4. Rights of others. Nothing contained in this subchapter limits or restricts the rights of policyholders, claimants and auditors.

§1888. Rules

The superintendent may adopt reasonable rules for the implementation and administration of this subchapter.

§1889. Effective date

This subchapter takes effect January 1, 1993. An insurer may not continue to utilize the services of an MGA on and after February 1, 1993 unless the utilization is in compliance with this subchapter.

Sec. 24. 24-A MRSA §2808-A, sub-§§1 and 2, as amended by PL 1991, c. 696, is further amended to read:

1. Groups with fewer than 25 members. Except as provided in subsection 3, no insurer may charge group health insurance premium rates for groups with fewer than 25 insured members, excluding dependents, that vary based on the claims experience of the group under the policy or based on the duration of the policy.

2. Subgroups; rate differentiation. Except as provided in subsection 3, no insurer may charge group health insurance premium rates on a basis that discriminates between different subgroups of a group according to the claims experience of the subgroup under the policy or based on the duration of the policy. The term "sub-

group," as used in this section, refers to an employer with fewer than 25 insured employees within a multiple employer trust, or to any similar subdivision of a larger group covered by a single group health insurance policy or contract.

Sec. 25. 24-A MRSA §4353, sub-§§16 to 19 are enacted to read:

16. Fair consideration. "Fair consideration" is given for property or an obligation:

A. When in exchange for that property or obligation, as a fair equivalent for the property or obligation and in good faith, property is conveyed, services are rendered, an obligation is incurred or an antecedent debt is satisfied; or

B. When that property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.

17. Guaranty association. "Guaranty association" means the Maine Insurance Guaranty Association established by chapter 57, subchapter III, the Life and Health Insurance Guaranty Association established by chapter 62 and any other similar entity created by the laws of this State for the payment of claims of insolvent insurers.

18. Foreign guaranty association. "Foreign guaranty association" means a guaranty association created by the legislature of any other state.

19. Transfer. "Transfer" includes the sale and every other direct or indirect method of disposing of or of parting with property or an interest in property or with the possession of property or of fixing a lien upon property or upon an interest in property, absolutely or conditionally, voluntarily or by or without judicial proceedings. The retention of a security interest in property delivered to a debtor is a transfer suffered by the debtor.

Sec. 26. 24-A MRSA §4354, sub-§1, as enacted by PL 1969, c. 132, §1, is amended to read:

1. The Superior Court ~~shall have~~ has 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~~ this chapter. A delinquency proceeding may not be commenced under this chapter by anyone other than the superintendent.

Sec. 27. 24-A MRSA §4355, sub-§1, ¶¶B and C, as enacted by PL 1969, c. 132, §1, are amended to read:

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;

Sec. 28. 24-A MRSA §4355, sub-§1, ¶¶D and E are enacted to read:

D. Persons served who are or were at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; and

E. Persons served who are obligated to the insurer in any way whatsoever, in any action on or incident to the obligation.

Sec. 29. 24-A MRSA §4366, sub-§1, as enacted by PL 1969, c. 132, §1, is amended to read:

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, but claimants residing in foreign countries or in states not reciprocal states must file claims in this State. All such claims must be filed on or before the last date fixed for the filing of claims in the domiciliary delinquency proceedings.

Sec. 30. 24-A MRSA §4375, as amended by PL 1973, c. 585, §12, is repealed.

Sec. 31. 24-A MRSA §4375-A is enacted to read:

§4375-A. Voidable property transfers and liens

1. Fraudulent transfers prior to petition. Fraudulent transfers prior to petition are governed by this subsection.

A. A transfer made or suffered and an obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter that is fraudulent according to the terms of this section may be avoided by the receiver except as to a person who in good faith is a purchaser, lienor or obligee for a present fair equivalent value, but any purchaser, lienor or obligee who in good faith has given a consideration less than fair for such transfer, lien, or obligation may retain the property, lien or obli-

gation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver succeeds to and may enforce the rights of the purchaser, lienor or obligee.

B. The determination of when a transfer is made is governed by the following rules.

(1) A transfer of property other than real property is deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract may become superior to the rights of the transferee.

(2) A transfer of real property is deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer may obtain rights superior to the rights of the transferee.

(3) A transfer that creates an equitable lien may not be deemed to be perfected if there are available means by which a legal lien could be created.

(4) Any transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy, but does not include liens that under applicable law are given a special priority over other liens that are prior in time.

(6) A lien obtainable by legal or equitable proceedings may become superior to the rights of a transferee, or a purchaser may obtain rights superior to the rights of a transferee within the meaning of this paragraph if those consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials, but not if any acts subsequent to the obtaining of the lien or subsequent to the purchase require the agreement or concurrence of any 3rd party or require any further judicial action or ruling.

(7) The provisions of this paragraph apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.

C. Any transaction of the insurer with a reinsurer is deemed fraudulent and may be avoided by the receiver under paragraph A if:

(1) The transaction consists of the termination, adjustment or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transaction unless the reinsurer gives a present fair equivalent value for the release; and

(2) Any part of the transaction takes place within one year prior to the date of filing of the petition through which the receivership is commenced.

D. A person receiving any property from the insurer or a benefit from possession or use of the property that is fraudulently transferred is personally liable for the value of the preference and shall account to the liquidator.

2. Fraudulent transfers after petition. Fraudulent transfers after petition are governed by this subsection.

A. After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if the transfer was not made for a present fair equivalent value, then it is valid only to the extent of the present consideration actually paid for the property, for which amount the transferee has a lien on the property so transferred. Constructive notice of the commencement of a proceeding in rehabilitation or liquidation is deemed to be given upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the register of deeds in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state is not impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

B. After a petition for rehabilitation or liquidation has been filed and before either the receiver

takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted the following rules apply.

(1) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then the transfer is valid only to the extent of the present consideration actually paid, for which amount the transferee has a lien on the property so transferred.

(2) A person acting in good faith who is indebted to the insurer or holding property of the insurer may pay the indebtedness or deliver the property or any part of the property to the insurer with the same effect as if the petition were not pending.

(3) A person having actual knowledge of the pending rehabilitation or liquidation who effectuates a transfer of any of the property of the insurer or who benefits by the transfer is deemed not to act in good faith.

(4) A person asserting the validity of a transfer under this section has the burden of proof. Except as elsewhere provided in this section, a transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

C. A person receiving any property from the insurer or a benefit from possession or use of the property that is fraudulently transferred under this subsection is personally liable for the value of the preference and shall account to the liquidator.

3. Voidable preferences. Voidable preferences and liens are governed by this subsection.

A. A preference is a transfer that is made or suffered by the insurer of any of the property of an insurer to or for the benefit of a creditor for or on account of an antecedent debt if the effect of the transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive and the transfer is made within one year before the filing of a successful petition for liquidation under this chapter or, if a liquidation order is entered while the insurer is already subject to a rehabilitation order, if made or suffered within one year before the filing of the successful petition for rehabilitation or within 2 years before the filing of the successful petition for liquidation, whichever time is shorter.

B. Any preference may be avoided by the liquidator if:

(1) The insurer was insolvent at the time of the transfer;

(2) The transfer was made within 4 months before the filing of the petition;

(3) The creditor receiving it or to be benefitted by it or the creditor's agent had reasonable cause to believe that the insurer was insolvent or was about to become insolvent when the transfer was made; or

(4) The creditor receiving it was an officer of the insurer or any employee or attorney or other person who was in fact in a position of comparable influence with the insurer whether or not that person held such a position, or any shareholder holding directly or indirectly more than 5% of any class of any equity security issued by the insurer, or any other person, firm, corporation, association or aggregation of persons with whom the insurer did not deal at arm's length.

C. Where the preference is voidable, the liquidator may recover the property or its value if it has been converted from any person who received or converted the property, except that, where a bona fide purchaser or lienor has given less than fair equivalent value, that person is deemed to have a lien upon the property to the extent of the consideration actually given. When a preference by way of lien or security interest is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator.

D. The determination of when a transfer is made is governed by subsection 1, paragraph B.

E. A transfer of property for or on account of a new and contemporaneous consideration, which is considered under subsection 1, paragraph B to be made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within 21 days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous consideration.

F. If any lien considered voidable under paragraph B is dissolved by the furnishing of a bond or other obligation, the surety that was indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this chapter that results in a liquidation order, the indemnifying transfer or lien is also voidable.

G. The property affected by any lien considered voidable under this subsection must be discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety must pass to the liquidator; except that, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that a conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

H. The court has summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding must be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien. If the court finds that the value is less than the amount for which the property is held as indemnity or the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment to the liquidator of its value as ascertained by the court within a reasonable time as fixed by the court.

I. The liability of the surety under a releasing bond or other like obligation must be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or, when the property is retained under paragraph H, to the extent of the amount paid to the liquidator.

J. If a creditor has been preferred and afterward in good faith gives the insurer further credit for property that becomes a part of the insurer's estate without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference that would otherwise be recoverable.

K. If, within 4 months before the filing of a successful petition for liquidation under this chapter or at any time in contemplation of a proceeding to liquidate an insurer, the insurer pays money or transfers property, directly or indirectly, to an attorney-at-law for services rendered or to be rendered, the transactions may be examined by the court on its own motion and must be examined by the court on petition of the liquidator and may be held valid only to the extent they are reasonable in amount as determined by the court. Any excess may be recovered by the liquidator for the benefit of the estate; except that, where the attorney is in a position of influence in the insurer or an affiliate of the insurer, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered is governed by the provisions of paragraph B, subparagraph (4).

L. An officer, manager, employee, shareholder, member, subscriber, attorney or any other person acting on behalf of the insurer who knowingly participates in giving any preference when that person has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. If the transfer was made within 4 months before the date of filing of a successful petition for liquidation, a presumption arises that there was reasonable cause to believe the insurer was or was about to become insolvent.

M. A person receiving any property from the insurer or a benefit from possession or use of the property as a preference voidable under this subsection is personally liable for the value of that preference and shall account to the liquidator.

N. Nothing in this subsection prejudices any other claim by the liquidator against any person.

4. Claims of holders of void or voidable rights. Claims of holders of void or voidable rights are governed by this subsection.

A. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment or encumbrance voidable under this section is not allowed unless the claimant surrenders the preference, lien, conveyance, transfer, assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment is entered, the claim is not allowed unless the money is paid or the property is delivered to the liquidator within 30 days from the date of the entering of the final judgment; except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

B. A claim allowable under paragraph A by reason of the avoidance, whether voluntary or involuntary, of a preference, lien, conveyance, transfer, assignment or encumbrance may be filed as an excused late filing if filed within 30 days from the

date of the avoidance or within any further time allowed by the court under paragraph A.

5. Negotiable instruments. Nothing in this section impairs the negotiability of currency or negotiable instruments.

Sec. 32. 24-A MRSA §4385, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

1. Whenever in the ~~superintendent~~ superintendent'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 superintendent 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 superintendent may request another superintendent or other resident of another state to petition any appropriate federal district court for the appointment of a federal receiver. The superintendent 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~~ This chapter ~~shall apply~~ applies to the receivership ~~as may be applicable and appropriate~~ except to the extent that the court determines that the insurance rehabilitation and liquidation laws of another state are applicable in any part. Upon the ~~superintendent~~ superintendent's motion, the courts of this State shall relinquish all jurisdiction over the insurer for purposes of rehabilitation or liquidation. No federal law governing proceedings in bankruptcy may be applied to proceedings under this section.

Sec. 33. 24-A MRSA c. 77 is enacted to read:

CHAPTER 77

BUSINESS TRANSACTED WITH BROKER-CONTROLLED PROPERTY OR CASUALTY INSURER

§6401. Short title

This chapter may be known and cited as the "Maine Business Transacted with Broker-Controlled Insurer Act."

§6402. Definitions

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

1. Accredited state. "Accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established by the National Association of Insurance Commissioners.

2. Broker. "Broker" means any person who is not an agent of the insurer and as an independent contractor solicits, negotiates or procures insurance or annuity contracts or the renewal or continuation of those contracts on behalf of insureds or prospective insureds other than the broker.

3. Control or controlled. "Control" or "controlled" has the same meaning as set out in section 222, subsection 2, paragraph B.

4. Controlling broker. "Controlling broker" means a broker who directly or indirectly controls an insurer.

5. Controlled insurer. "Controlled insurer" means a licensed insurer that is controlled directly or indirectly by a broker.

6. Licensed insurer or insurer. "Licensed insurer" or "insurer" means any person licensed to transact a property or casualty insurance business, or both, in this State. The following, inter alia, are not licensed insurers for the purposes of this chapter:

A. All risk retention groups as defined in the federal Superfund Amendments Reauthorization Act of 1986, Public Law No. 99-499, 100 Stat. 1613 (1986) and the Risk Retention Act, 15 United States Code, Section 3901 et seq. and the Maine Liability Risk Retention Act;

B. All residual market pools and joint underwriting authorities or associations; and

C. All captive insurers, which for the purposes of this chapter are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.

7. Producer. "Producer" means an insurance agent or broker licensed pursuant to chapter 17.

8. Subproducer. "Subproducer" means a producer who, for shared commission or other recompense, places business with a controlled insurer through a controlling broker.

§6403. Applicability

This Act applies to licensed insurers as defined in section 6402, either domiciled in this State or domiciled in a state that is not an accredited state with a substantially similar law in effect. Section 222, to the extent not modified by this chapter, continues to apply to all parties within holding company systems subject to this chapter.

§6404. Minimum standards

1. Applicability. This section applies as follows.

A. This section applies if, in any calendar year, the aggregated amount of gross written premium on business placed with a controlled insurer by a controlling broker is equal to or greater than 5% of the admitted assets of the controlled insurer as of September 30th of the preceding year, as reported in the controlled insurer's quarterly statement.

B. Notwithstanding paragraph A, this section does not apply if:

(1) The controlling broker:

(a) Places insurance only with the controlled insurer, only with the controlled insurer and a member or members of the controlled insurer's holding company system or only with the controlled insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and

(b) Accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

(2) The controlled insurer, except for insurance business written through a residual market facility such as the workers' compensation residual market mechanism or the State's automobile assigned risk plan, accepts insurance business only from a controlling broker, a producer controlled by the controlled insurer or a producer that is a subsidiary of the controlled insurer.

2. Required contract provisions. A controlled insurer may not accept business from a controlling broker and a controlling broker may not place business with a controlled insurer unless there is a written contract between the controlling broker and the controlled insurer specifying the responsibilities of each party. The contract must be approved by the board of directors of the insurer and must contain the following minimum provisions.

A. The controlled insurer may terminate the contract for cause upon written notice to the controlling broker. The controlled insurer shall suspend the authority of the controlling broker to write business during the pendency of any dispute regarding the cause for the termination.

B. The controlling broker shall render timely accounts to the controlled insurer detailing all material transactions including information necessary to support all commissions, charges and other fees received by or owed to the controlling broker.

C. The controlling broker shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date must be fixed so that premiums or installments of premiums collected are remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract.

D. All funds collected for the controlled insurer's account must be held in trust by the controlling broker in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with applicable insurance laws. Funds of a controlling broker not licensed in this State must be maintained in compliance with the requirements of the controlling broker's domiciliary jurisdiction.

E. The controlling broker shall maintain separately identifiable records of business written for the controlled insurer. The controlled insurer must have access and may copy all accounts and records related to its business in a form usable by the insurer. The records must be retained according to section 3408.

F. The contract may not be assigned in whole or in part by the controlling broker.

G. The controlled insurer shall provide the controlling broker with its underwriting standards, rules, procedures, rates and conditions. The standards, rules, procedures, rates and conditions must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling broker.

H. The rates of the controlling broker's commissions, charges and other fees may not be greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling brokers. For purposes of this paragraph and paragraph G, examples of "comparable business" include the same lines of insurance, the same kinds of insurance, the same kinds of risks, similar policy limits and similar quality of business.

I. If the contract provides that the controlling broker, on insurance business placed with the insurer, must be compensated contingent upon the insurer's profits on that business, then that compensation may not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. The commis-

sions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims are independently verified pursuant to subsection 3.

J. The controlled insurer shall place a limit on the controlling broker's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling broker when the applicable limit is approached and may not accept business from the controlling broker if the limit is reached. The controlling broker may not place business with the controlled insurer if notified by the controlled insurer that the limit has been reached.

K. The controlling broker may negotiate but may not bind reinsurance on behalf of the controlled insurer on business the controlling broker places with the controlled insurer, except that the controlling broker may bind facultative reinsurance contracts pursuant to obligatory facultative agreements. All such contracts with the controlled insurer must contain underwriting guidelines including, for reinsurance both assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and schedules of the commissions allowed.

3. Audit committee. Every controlled insurer must have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants and an independent casualty actuary acceptable to the superintendent to review the adequacy of the insurer's loss reserves.

4. Reporting requirements. A controlled insurer shall make the following reports.

A. In addition to any other required loss reserve certification, by April 1st of each year, the controlled insurer shall file with the superintendent an opinion of an independent casualty actuary acceptable to the superintendent reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding at the preceding year end, including incurred but not reported losses, on business placed by the controlled broker.

B. The controlled insurer shall report annually to the superintendent the amount of commissions paid to the controlling broker, the percentage that amount represents of the net premiums written and comparable amounts and percentage paid to noncontrolling producers for placement of the same kinds of insurance.

§6405. Disclosure

Prior to the effective date of the policy, the controlling insurer shall cause the controlling broker, to deliver written notice to the prospective insured disclosing the relationship between the broker and the controlled insurer, except that if the business is placed through a subproducer who is not a controlling broker, the controlling insurer shall cause the controlling broker to retain a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the controlling broker and that the subproducer has notified or will notify the insured.

§6406. Penalties

1. Superintendent. The superintendent may take the following actions.

A. If the superintendent finds, after a hearing held in conformity with the Maine Administrative Procedure Act, that the controlling broker or any other person has not complied with this chapter or any rule or order made under this chapter, the superintendent may order the controlling insurer to cease placing business through that controlled broker.

B. If the superintendent further finds that because of that noncompliance the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the superintendent may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages or other appropriate relief for the benefit of the insurer or policyholder.

2. Civil action. If an order for liquidation or rehabilitation of the controlled insurer is entered pursuant to chapter 57 and a receiver is appointed, and the superintendent finds pursuant to subsection 1 that the controlling broker or any other person has not complied with this chapter or any rule or order made under this chapter and that the insurer suffered any loss or damage because of that noncompliance, the receiver appointed under that order may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

3. Other action. Nothing contained in this section affects the right of the superintendent to impose any other penalties provided for in this Title.

4. Other parties. Nothing contained in this section in any manner alters or affects the rights of policyholders, claimants, creditors or other 3rd parties.

§6407. Effective date

This Act takes effect January 1, 1993. Controlled insurers and controlling brokers who are not in compli-

ance with section 6404 on that date have 60 days to come into compliance and shall comply with section 6405 beginning with all policies written or renewed on or after March 1, 1993.

Sec. 34. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1992-93
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF	
Bureau of Insurance	
Positions - Other Count	(2.0)
Personal Services	$119,031
All Other	33,000
Capital Expenditures	11,900
Provides for the allocation of funds for the salary, fringe benefits and operating expenses of 2 Managing Examiner positions to provide greater scrutiny of insurers operating in Maine.	
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION TOTAL	$163,931

See title page for effective date.

CHAPTER 829

H.P. 1712 - L.D. 2397

An Act to Repeal the Sunset on Penalties for Violations of Pesticide Laws

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

Sec. 1. 7 MRSA §616-A, sub-§10, as enacted by PL 1989, c. 841, §3, is repealed.

See title page for effective date.

CHAPTER 830

H.P. 1706 - L.D. 2387

An Act to Encourage Expansion of Certain Residency Programs Related to Primary Care Physicians

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

Sec. 1. 5 MRSA §12004-I, sub-§29-A, as enacted by PL 1991, c. 545, §1, is repealed.

Sec. 2. 10 MRSA c. 110, sub-c. X, as enacted by PL 1991, c. 545, §2, is repealed.

Sec. 3. 20-A MRSA §11811 is enacted to read:

§11811. Curriculum improvements

The authority may allocate a portion of the fund established in section 11808 to support improvements in the curricula of primary care residency programs offered in this State. In accordance with criteria established by rules adopted pursuant to section 11810, the chief executive officer may disburse funds allocated under this section to hospitals that provide primary care residency programs in the amounts necessary to make improvements in the curricula offered in those programs.

Sec. 4. 20-A MRSA c. 424 is enacted to read:

CHAPTER 424

MEDICAL EDUCATION AND RECRUITMENT

§12101. Definitions

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

1. Authority. "Authority" means the Finance Authority of Maine.

2. Chief executive officer. "Chief executive officer" means the Chief Executive Officer of the Finance Authority of Maine.

3. Clinical education. "Clinical education" means any on-location teaching environment ranging from a one-to-one training between a physician and a medical student to a training in a health clinic or hospital with or without a residency program.

4. Health professional shortage area. "Health professional shortage area" means an area in the State lacking in medical professionals as designated by the Commissioner of Human Services.

5. Insufficient veterinary services. "Insufficient veterinary services" means an insufficient number of practitioners of veterinary medicine in either a veterinary specialty or a geographic area, as determined by the Commissioner of Agriculture, Food and Rural Resources.

6. Maine resident. "Maine resident" means a person who has been a resident of the State for a minimum of one year as determined by rule of the authority who shall consider: