LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION
October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION
October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 13, 1993

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

J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST REGULAR SESSION

of the

ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

If the employer continues, for a period in excess of 30 days from notice of possible denial of renewal or reissuance of a license or certificate of authority, to fail to file or show reason why the person is not required to file or if the employer continues not to pay, the commissioner shall notify the employer in writing of the determination to prevent renewal, reissuance or extension of the license or certificate of authority by the issuing agency.

A review of the determination is available by filing an appeal under section 1226 to the Maine Unemployment Insurance Commission. Either by failure to proceed to the next step of appeal or by exhaustion of the steps of appeal, the determination of the commissioner's right to prevent renewal or reissuance becomes final unless otherwise determined by appeal.

In any event, the license or certificate of authority in question remains in effect until all appeals are taken to their final conclusion. This subsection may not be invoked for any tax liability under appeal.

3. Refusal to renew, reissue or otherwise extend license or certificate. Notwithstanding any other provision of law, any issuing agency that is notified by the commissioner of the commissioner's final determination to prevent renewal or reissuance of a license or certificate of authority under subsection 2 shall refuse to reissue, renew or otherwise extend the license or certificate of authority. Notwithstanding Title 5, sections 10003 and 10005, an action by an issuing agency pursuant to this subsection is not subject to the requirements of Title 5, chapter 375, subchapters IV and VI and no hearing by the issuing agency or in Administrative Court is required. A refusal by an agency to reissue, renew or otherwise extend the license or certificate of authority is deemed a final determination within the meaning of Title 5, section 10002.

4. Subsequent reissuance, renewal or other extension of license or certificate. The agency may reissue, renew or otherwise extend the license or certificate of authority in accordance with the agency's statutes and rules after the agency receives a certificate issued by the commissioner that the person is in good standing with respect to all returns due or with respect to any tax due as of the date of issuance of the certificate. An agency may waive any applicable requirement for reissuance, renewal or other extension if it determines that the imposition of that requirement places an undue burden on the person and that a waiver of the requirement is consistent with the public interest.

5. Financial institutions excluded. This section does not apply to any registration, permit, order or approval issued pursuant to Title 9-B nor does it apply to tax registration certificates issued by the Bureau of Taxation for sales tax, withholding tax and fuel tax.

See title page for effective date.

CHAPTER 313

S.P. 472 - L.D. 1464

An Act to Establish Minimum Regulatory Standards for Insurers to Permit the Bureau of Insurance to Seek National Accreditation

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

Whereas, the National Association of Insurance Commissioners (NAIC) is a voluntary association of the 50 state insurance regulators; and

Whereas, an accreditation process has been developed to ensure consistent, high-quality standards of insurance financial regulation throughout the country; and

Whereas, the regulatory program of the Bureau of Insurance has had a preliminary audit and changes in the insurance laws were required to achieve compliance with NAIC standards; and

Whereas, the financial regulatory program of the Bureau of Insurance will be audited by a team of certified public accountants and attorneys in August 1993; and

Whereas, several additional rules must be implemented by the Superintendent of Insurance to satisfy accreditation standards; and

Whereas, attainment of accreditation is crucial to Maine's domestic insurance industry because serious financial penalties will apply to those insurers seeking to sell insurance outside of Maine if the financial regulatory program of the Bureau of Insurance is not accredited before year end 1993; 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. 5 MRSA 139-A, as amended by PL 1991, c. 780, Pt. Y, §12, is further amended by adding at the end a new paragraph to read:

The Treasurer of State shall obtain the written approval of the Superintendent of Insurance prior to releasing any securities received by the Treasurer of State and deposited in custodial accounts pursuant to the deposit requirements of the Maine Insurance Code.

Sec. 2. 24-A MRSA §221, sub-§1, as amended by PL 1991, c. 828, §1, 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, 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 the superintendent determines advisable. In determining the nature, scope and timing of an examination, the superintendent shall consider criteria, including, but not limited to, the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria adopted by the National Association of Insurance Commissioners and published in its Examiners' Handbook. Except as otherwise expressly provided, 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~~ an authorized insurer be examined less frequently than once every 5 years. Examination of an alien insurer is limited to its insurance transactions, assets, trust deposits and affairs in the United States, except as otherwise required by the superintendent.

Sec. 3. 24-A MRSA §221, sub-§3-A is enacted to read:

3-A. On or after January 1, 1994 the superintendent may accept a full examination report by the insurance regulatory authority of the insurance company's state of domicile or port-of-entry state for any foreign or alien insurer licensed in this State in lieu of an examination by the superintendent if, at the time of the examination, that regulatory authority was accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program or if the examination was performed under the supervision of an accredited insurance regulatory authority or with the participation of one or more examiners who are employed by an accredited insurance regulatory authority and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by the regulatory authority.

Sec. 4. 24-A MRSA §221, sub-§4, as enacted by PL 1969, c. 132, §1, is amended to read:

4. As far as practical, the examination of a foreign or alien insurer ~~shall~~ must be made in cooperation with the insurance supervisory officials of other states in which the insurer transacts business. Duties may be divided among the participating states in any manner consistent with the standards established by the laws of this State that are applicable to foreign and alien insurers.

Sec. 5. 24-A MRSA §221-A, sub-§3, as amended by PL 1989, c. 846, Pt. C, §1 and affected by Pt. E, §4, is further amended to read:

3. Audits required. All insurers, excepting insurers transacting business in this State pursuant to the terms of chapter 51, shall cause to be conducted an annual audit by an independent certified public accountant and ~~shall~~ file an audited financial report with the superintendent on or before June ~~30th~~ 1st for the year ending December 31st preceding. An extension of the filing deadline may be granted by the superintendent upon a showing by the insurer or its accountant that there exists valid justification for such an extension. A firm of independent certified public accountants engaged to perform an audit of an insurer shall substitute the appointed audit partner in charge with another audit partner in charge at least once every 7 years. An accountant substituted for pursuant to this subsection may not serve as a partner in charge of that audit until 2 years from the date of substitution.

Sec. 6. 24-A MRSA §221-A, sub-§4, as enacted by PL 1985, c. 330, §1, is amended to read:

4. Content of annual audited financial reporting. Annual audited financial reporting ~~shall~~ must consist of the following.

A. Financial statements furnished under this section ~~shall~~ must be examined by independent certified public accountants in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants. The opinion of the accountant ~~shall~~ must cover all years for which a financial presentation is made.

The opinion expressed concerning the financial statements filed under this section ~~shall~~ must conform with the accounting practices prescribed or permitted by the superintendent or the insurance supervisory official of the insurer's state of domicile. ~~Insurers may elect to present financial statements filed under this section on the basis of generally accepted accounting principles if such statements contain a reconciliation of shareholders equity, surplus funds, and results of operations to the statutory basis of accounting required for insurers generally~~ An insurer, with the approval of the superintendent, may file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that uses a pooling agreement and such an insurer cedes all of its direct and assumed business to the pool or if the insurer has executed a 100% reinsurance agreement with one or more of the insurers in the group and the pooling or reinsurance agreement affects the solvency of the insurer or the integrity of the

insurer's reserves. In those cases, a columnar consolidating or combining worksheet must be filed with the report.

The opinion ~~shall~~ must be expressed to the insurer by the accountant on ~~his~~ the accountant's letterhead and ~~shall~~ show the address of the office issuing that opinion, ~~shall~~ must be manually executed and ~~shall be~~ dated.

B. Financial statements, as a minimum, ~~shall~~ must consist of:

(1) Balance sheet;

(2) Statement of gain or loss from operations;

(3) Statement of ~~change in financial position~~ cash flow;

(4) Statement of change in capital paid-up, gross paid-in and contributed surplus and unassigned funds, surplus funds; and

(5) Notes to financial statements.

C. The statement ~~shall~~ must include an independent certified public accountant's report respecting evaluation of internal controls.

D. The statement ~~shall~~ must include an independent certified public accountant's letter attesting to ~~his~~ that certified public accountant's qualifications, ~~his~~ possession of license and ~~his~~ subscription to the code of professional ethics and pronouncements issued by the American Institute of Certified Public Accountants.

Sec. 7. 24-A MRSA §222, sub-§2, ¶D-1, as enacted by PL 1991, c. 828, §3, is repealed.

Sec. 8. 24-A MRSA §222, sub-§2, ¶D-2 is enacted to read:

D-2. "Net gains from operations" means:

(1) For life insurers, the net income or loss after dividends to policyholders and federal income taxes but before the inclusion of net realized capital gains or losses; and

(2) For nonlife insurers, the net income or loss after dividends to policyholders and federal income taxes and net realized capital gains or losses.

Sec. 9. 24-A MRSA §222, sub-§2, ¶¶G and H are enacted to read:

G. "Surplus regarding policyholders" means admitted assets less all liabilities.

H. "Unassigned funds" means the undistributed and unappropriated amount of surplus remaining on the balance sheet date as the result of all operations of an insurance company from its commencement of business.

Sec. 10. 24-A MRSA §222, sub-§10, as enacted by PL 1975, c. 356, §1, is amended to read:

10. Insurer's surplus; adequacy factors. For the purposes of this chapter, in determining whether an insurer's surplus to policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, ~~shall~~ may be considered:

A. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

B. The extent to which the insurer's business is diversified among the several lines of insurance;

C. The number and size of the risks insured in each line of business;

D. The extent of the geographical dispersion of the insurer's insured risks;

E. The nature and extent of the insurer's reinsurance program;

F. The quality, diversification and liquidity of the insurer's investment portfolio;

G. The recent past and projected future trend in the size of the insurer's surplus ~~to~~ as regards policyholders;

H. ~~The surplus to policyholders maintained by other comparable insurers~~ The quality and liquidity of investments in subsidiaries or affiliates. The department may discount any such investment or treat any investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders whenever the investment so warrants;

I. The adequacy of the insurer's reserves; ~~and~~

J. ~~The quality and liquidity of investments in subsidiaries or affiliates.~~ The surplus as regards policyholders maintained by other comparable insurers in respect of the factors set out in this subsection; and

K. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.

Sec. 11. 24-A MRSA §222, sub-§11, as amended by PL 1991, c. 828, §6, is repealed.

Sec. 12. 24-A MRSA §222, sub-§§11-A and 11-B are enacted to read:

11-A. Extraordinary dividends. For purposes of this subsection, an extraordinary dividend or distribution is any dividend or distribution that exceeds the greater of:

A. Ten percent of the insurer's surplus to policyholders as of December 31st of the preceding year; or

B. The net gain from operations for the 12-month period ending December 31st of the preceding year.

In addition to the provisions of paragraphs A and B, any dividend or distribution declared at any time within 5 years following any acquisition of control of a domestic insurer or by any person controlling that insurer, as long as that is an extraordinary dividend that has not been approved by a number of continuing directors equal to a majority of the continuing directors in office immediately preceding that acquisition of control is an extraordinary dividend.

A pro rata distribution of any class of the insurer's own securities is not considered an extraordinary dividend or distribution for purposes of this section. An insurer subject to registration under this section may pay an extraordinary dividend or make any other extraordinary distribution to its stockholders upon the expiration of 60 days from the time the superintendent is notified of the declaration if within that period the superintendent has not disapproved the payment or upon the superintendent's approval of that payment within the 60-day period. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the superintendent's approval and such a declaration does not confer any rights to stockholders until the superintendent has approved the payment of the dividend or distribution or the superintendent has not disapproved that payment within the 60-day period. The insurer's surplus following any dividends or distributions to shareholders under this subsection must be reasonable in relation to the insurer's outstanding liabilities and adequate to meet the insurer's financial needs. An extraordinary dividend or distribution that is permissible under statutory terms and conditions in the insurer's state of domicile is deemed to meet the requirements of this section if the value of that dividend or distribution does not materially exceed the value that would be permissible under this section.

11-B. All other dividends and distributions. For purposes of this subsection, unassigned funds exclude an amount equal to 50% of the net of unrealized capital gains and unrealized capital losses reduced by that portion of the asset valuation reserve attributable to equity investments, except that such an amount can not serve to increase unassigned funds. An insurer subject to registration under this section may pay from its unassigned funds, dividends and distributions, other than those defined in subsection 11-A, if the insurer has notified the superintendent within 5 days following the declaration of any dividend under this subsection and at least 10 days prior to the payment of any dividend under this subsection. A dividend or distribution otherwise limited under this subsection may be paid by a foreign insurer to its stockholders if the insurer's domiciliary insurance regulatory authority has given approval prior to that payment. A domestic insurer may pay a dividend or distribution to its stockholders from other than unassigned funds, upon the expiration of 60 days from the time the superintendent is notified of the declaration, if the superintendent has not within that period disapproved the payment or upon the superintendent's approval of that payment within the 60-day period. An insurer's surplus following any dividends or distributions paid to shareholders under this subsection must be reasonable in relation to the insurer's outstanding liabilities and adequate to meet the insurer's financial needs. The superintendent shall review at least annually dividends and distributions declared or paid by an insurer under this subsection. The superintendent shall issue an order restricting or disallowing the payment of dividends and distributions by an insurer upon a determination by the superintendent that the insurer's surplus is not of a maintained value reasonable in relation to the insurance company's outstanding liabilities and is inadequate to that company's financial needs or a determination that the insurer's financial condition constitutes a condition hazardous to policyholders, claimants or the public.

Sec. 13. 24-A MRSA §222, sub-§14-A is enacted to read:

14-A. Recovery.

A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under that order has the right to recover on behalf of the insurer:

(1) From any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of any distributions other than distributions of shares of the same class of stock paid by the insurer on its capital stock; or

(2) Any payment in the form of a bonus, termination settlement or extraordinary

lump-sum salary adjustment made by the insurer or by any subsidiary of that insurer to a director, officer or employee when the distribution or payment pursuant to this subparagraph or subparagraph (1) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, subject to the limitations of paragraphs B, C and D.

B. Such a distribution is not recoverable if the parent corporation or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution could adversely affect the ability of the insurer to fulfill its contractual obligations.

C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time distributions were paid is liable up to the amount of distributions or payments under paragraph A that the person received. Any person who otherwise controlled the insurer at the time the distributions were declared is liable up to the amount of the distributions the person would have received if that person had been paid immediately. If 2 or more persons are liable for the same distributions, those persons are jointly and severally liable.

D. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

E. To the extent that any person liable under paragraph C is insolvent or fails to pay claims due pursuant to paragraph C, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Sec. 14. 24-A MRSA §223, sub-§2, as amended by PL 1973, c. 585, §12, is further amended to read:

2. The superintendent shall conduct each examination in an expeditious, fair and impartial manner, consistent with current guidelines and procedures adopted from time to time by the National Association of Insurance Commissioners and published in its Examiners' Handbook.

Sec. 15. 24-A MRSA §237, first ¶, as amended by PL 1991, c. 334, §3, is further amended to read:

The expense of maintaining the Bureau of Insurance must be assessed annually by the Superintendent of Insurance against all insurers licensed to do business in this State in proportion to their respective direct gross premium written on business in this State during the year ending December 31st immediately preceding the fiscal year for which assessment is made. The annual assessment upon all insurers must be applied to the budget of the bureau for the fiscal year commencing July 1st. For any biennial period, total assessment must be in an amount not exceeding ~~.0015~~ .002 of total direct premiums written. When the superintendent calculates the amount of the annual assessment, the superintendent must consider, among other factors, the staffing level required to administer the responsibilities of the bureau.

Sec. 16. 24-A MRSA §423, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

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

Sec. 17. 24-A MRSA §731-B, sub-§1, ¶C, as amended by PL 1991, c. 38, is further amended by amending subparagraph (7) to read:

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

Sec. 18. 24-A MRSA §731-B, sub-§3, ¶C, as enacted by PL 1989, c. 846, Pt. E, §2 and affected by §4, is amended to read:

C. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution~~, provided the Securities Valuation Office of the National Association of Insurance Commissioners has determined that the~~

~~institution meets the standards that it determines necessary and appropriate to the quality of a financial institution issuing letters of credit for this purpose~~ no later than December 31st of the year for which filing is being made and in the possession of the ceding company on or before the filing date of its annual statement.

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

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

Sec. 19. 24-A MRSA §981, as amended by PL 1991, c. 828, §22, is further amended to read:

§981. Valuation of bonds

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

A. If purchased at par, and not valued by the National Association of Insurance Commissioners, at the par value;

A-1. Pursuant to valuations ascribed by the Securities Valuation Office of the National Association of Insurance Commissioners, either through its most current published valuations or in response to an insurer's required submissions to the Securities Valuation Office; or

B. ~~If purchased~~ If not valued by the National Association of Insurance Commissioners and the purchase is 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~~ that method, according to such accepted method of valuation as is approved by the superintendent;. Purchase price may not 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 securities.

~~C. Purchase price 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 may be carried at above the call price for the entire issue during any period within which the security may be so called.~~

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

3. Unless otherwise provided by valuation established or approved by the superintendent, a security may not be carried at above the call price for the entire issue during any period within which a security may be so called.

Sec. 20. 24-A MRSA §982, as amended by PL 1977, c. 432, §2, is further amended to read:

§982. Valuation of other securities

1. Securities, other than those referred to in section 981, held by an insurer ~~shall~~ must be valued, ~~in the discretion of the superintendent,~~ by the Securities Valuation Office of the National Association of Insurance Commissioners. If such a valuation is not available, the superintendent may determine the value of the securities at their market value, or at their appraised value, or at ~~prices~~ a value determined by ~~him~~ the superintendent as representing their fair market value. The method employed, if the superintendent values or causes such a valuation of securities, must be provided to the insured upon its request.

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

3. The stock of a subsidiary of an insurer ~~shall be~~ is valued on the basis ~~of the greater~~ of the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer ~~or such other value determined pursuant to standards and cumulative limitations con-~~

~~tained in a regulation promulgated by the superintendent or if the superintendent so permits or requires, he may permit or require any class or classes of insurers domiciled or authorized to do business in this State to value their investments or any class or classes thereof in any subsidiary, as of any date heretofore or hereafter in accordance with any applicable valuation or method approved by the National Association of Insurance Commissioners and adopted in a regulation promulgated by the superintendent~~ consistent with applicable valuation methods of the Securities Valuation Office of the National Association of Insurance Commissioners. The insurer shall submit information as required by the Securities Valuation Office to permit that office to appropriately value the subsidiary. If such a valuation is not available, the superintendent may determine value. The method employed, if the superintendent values or causes a valuation of such a subsidiary, must be provided to the insurer upon its request.

Sec. 21. 24-A MRSA §1106, as amended by PL 1989, c. 846, Pt. B, §§2 to 5 and Pt. E, §4, is further amended to read:

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

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

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

A. 1107 (public obligations);

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

C. 1109 (investment grade corporate obligations);

D. 1112 (preferred or guaranteed stocks);

E. 1116 (trustees' or receivers' obligations);

F. 1117 (equipment trust certificates);

G. 1118 (acceptances, bills of exchange);

H. 1119 (savings and loan institutions);

I. 1120 (common trust funds, mutual funds);

J. 1124 (mortgage loans); and

K. 1126 (housing developments).

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

A. 1113 (common stocks);

B. 1114 (insurance stocks);

C. 1115 (stocks of subsidiaries); and

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

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

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

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

A. 1107 (public obligations); and

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

5. The insurer's investments in common stock, preferred stock, debt obligations and other securities of subsidiaries other than insurance subsidiaries are limited to the lesser of 10% of the insurer's admitted assets or 50% of the insurer's surplus as to policyholders except in instances when a greater investment has been approved by the superintendent.

6. The assets of an insurer may be invested in obligations issued, assumed, guaranteed or accepted by domestic institutions, or trustees or receivers of those institutions and preferred shares of any of those institutions, except that, without the prior approval of the superintendent, a domestic insurer may not acquire any high-yield or medium grade obligations of any institution if:

A. The aggregate amount of all medium grade obligations and all high-yield obligations then held by the insurer exceeds the lesser of 20% of its admitted assets or its surplus as to policyholders;

B. The aggregate amount of all high-yield obligations then held by the insurer exceeds 10% of its admitted assets;

C. The aggregate amount of all high-yield obligations rated 5 or 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not rated by the National Association of Insurance Commissioners, rated at the

equivalent of 5 or 6 by Moody's Investors Service, Inc., Standard and Poor's Corporation, Fitch Investors Service, Inc. or Duff and Phelps, Inc. exceeds 3% of admitted assets;

D. The aggregate amount of all high-yield obligations rated 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not rated by the National Association of Insurance Commissioners, rated the equivalent of 6 by Moody's Investors Service, Inc., Standard and Poor's Corporation, Fitch Investors Service, Inc. or Duff and Phelps, Inc., exceeds 1% of admitted assets;

E. The aggregate amount of medium grade obligations issued, guaranteed or insured by any one institution then held by the insurer exceeds 1% of its admitted assets.

F. The aggregate amount of high-yield obligations issued, guaranteed, or insured by any one institution then held by the insurer would exceed 1/2 of 1% of its admitted assets.

Sec. 22. 24-A MRSA §1109, first ¶, as amended by PL 1989, c. 846, Pt. B, §6 and affected by Pt. E, §4, is further amended to read:

§1109. Investment grade obligations

An insurer may invest in obligations, other than those eligible for investment under section 1124 (mortgage loans), issued, assumed or guaranteed by any solvent institution created or existing under the laws of the United States or of Canada, or of any state, province, district or territory thereof, provided that the obligations are not in default as to principal or interest, are investment grade corporate obligations as defined in section ~~1162~~ 1162-A, subsection ~~6~~ 7, and are qualified under any of the following.

Sec. 23. 24-A MRSA §1109-A, as enacted by PL 1989, c. 846, Pt. B, §7 and affected by Pt. E, §4, is repealed.

Sec. 24. 24-A MRSA §1110, sub-§1, ¶B, as amended by PL 1983, c. 759, §1, is repealed.

Sec. 25. 24-A MRSA §1110, sub-§3 is enacted to read:

3. The terms defined in section 1162-A have the same meanings as used in this chapter.

Sec. 26. 24-A MRSA §1156, sub-§2, ¶B, as enacted by PL 1987, c. 399, §14, is repealed and the following enacted in its place:

B. Obligations issued, assumed, guaranteed or accepted by domestic institutions or by trustees or receivers of those institutions, and preferred shares of any of those institutions, provided that without the prior approval of the superintendent, no domestic insurer may acquire any high-yield or medium grade obligations of any institution if:

(1) The aggregate amount of all medium grade obligations and all high-yield obligations then held by the insurer exceeds 20% of its admitted assets;

(2) The aggregate amount of all high-yield obligations then held by the insurer exceeds 10% of its admitted assets;

(3) The aggregate amount of all high-yield obligations rated 5 or 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not valued by the National Association of Insurance Commissioners, rated the equivalent of 5 or 6 by Moody's Investors Service, Inc., Standard and Poor's Corporation, Fitch Investors Service, Inc. or Duff and Phelps, Inc., exceeds 3% of admitted assets;

(4) The aggregate amount of all high-yield obligations rated 6 by the Securities Valuation Office of the National Association of Insurance Commissioners or, if not valued by the National Association of Insurance Commissioners, rated the equivalent of 6 by Moody's Investors Service, Inc., or rated D by Standard and Poor's Corporation, Fitch Investors Service, Inc., or Duff and Phelps, Inc., exceeds 1% of admitted assets;

(5) The aggregate amount of medium grade obligations issued, guaranteed or insured by any one institution then held by the insurer exceeds 1/2 of 1% of its admitted assets; or

(6) The aggregate amount of high-yield obligations issued, guaranteed or insured by any one institution then held by the insurer exceeds 1/2 of 1% of its admitted assets.

Sec. 27. 24-A MRSA §1156, sub-§2, ¶¶D, G and H, as enacted by PL 1987, c. 399, §14, are amended to read:

D. Investments in real property or interests therein located in the United States, held directly or evidenced by partnership interests, stock of corporations, trust certificates or other instruments and acquired:

(1) As an investment for the production of income or to be improved or developed for that investment purpose; or

(2) For the convenient accommodation of the insurer's business.

After giving effect to any of those types of ~~investment~~ investments, the aggregate amount of investments made under subparagraph (1) ~~shall~~ may not exceed 20% of the insurer's total admitted assets; the aggregate amount of investments made under subparagraph (2) ~~shall~~ may not exceed 10% of the insurer's total admitted assets; and the aggregate amount of investments made under this paragraph ~~shall~~ may not exceed 25% of the insurer's total admitted assets. Investments under subparagraph (1) in any single property, including improvements on that property, may not in the aggregate exceed 2% of the insurer's total admitted assets;

G. The following foreign investments:

(1) Canadian securities and investments substantially of the same classes as those eligible for investment under paragraphs A to F, but the aggregate amount of those investments ~~which~~ that are held at any time by any insurer ~~shall~~ may not exceed 10% of total admitted assets, except ~~where~~ when a greater amount is permitted pursuant to subparagraph (2), in which case this subparagraph ~~shall~~ is not ~~be~~ applicable;

(2) In the case of any insurer ~~which~~ that is authorized to do business in a foreign country or possession of the United States or ~~which~~ that has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in a foreign country or possession of the United States, securities and investments in that foreign country or possession that are substantially of the same classes as those eligible for investment under paragraphs A to F, but the aggregate amount of such investments in a foreign country or a possession of the United States and of cash in the currency of that country or possession ~~which~~ that is at any time held by that insurer ~~shall~~ may not, except as provided in paragraph H, exceed 1 1/2 times the amount of its reserves and other obligations under those contracts or the amount ~~which~~ that that insurer is required by law to invest in that country or possession, whichever is greater; and

(3) In addition to the foreign investments permitted under subparagraphs (1) and (2), securities and investments in foreign countries ~~which~~ that are substantially of the same classes as those eligible for investment under paragraphs A to F, but the aggregate amount of those investments made pursuant to this subparagraph ~~shall~~ may not exceed 1% of total admitted assets; and

H. Investments ~~which~~ that do not qualify or are not permitted under any other paragraph of this subsection; ~~provided that~~ as long as:

(1) After giving effect to any investment made under this paragraph, the aggregate amount of those investments ~~shall~~ does not exceed 14% of total admitted assets, except that investments made under this paragraph in institutions or property not located within the State ~~shall~~ may not exceed 10% of total admitted assets; and, if the insurer makes investments described in paragraphs A to G and elects to charge those investments against the quantitative limits in this paragraph instead of the quantitative limits in paragraphs A to G, then the aggregate amount invested under this paragraph in those types of ~~investment~~ investments ~~shall~~ may not exceed 5% of total admitted assets for any one of those types of ~~investment~~ investments;

(2) Investments that are neither interest bearing nor income entitled, including the cost of outstanding bona fide hedging transactions made under section 1153, subsection 2, ~~shall be~~ are subject to all of the provisions of this paragraph; and the aggregate amount of those investments held at any one time ~~shall~~ may not exceed 3% of total admitted assets;

(3) The investment limitations contained in this chapter, qualitative or otherwise, ~~shall~~ may not apply to loans or investments made or acquired under this paragraph, provided that no loan or investment made or acquired under this paragraph may be represented by any item described in section 902; any loan or investment expressly prohibited under section 1160; or ~~agent's~~ agents' balances, or amounts advanced to or owing by agents, except as to policy loans, mortgage loans and collateral loans to those agents otherwise authorized under this chapter; or

(4) The insurer shall keep a separate record of all loans and investments made or acquired under this paragraph. Any such loan or investment that, subsequent to the date of making or acquisition, has attained the standard of eligibility and qualifies under any other provision of this chapter may be considered to have been made or acquired under and in compliance with that provision and ~~shall~~ may no longer be considered to have been made or acquired under this paragraph.

Sec. 28. 24-A MRSA §1156, sub-§3, as enacted by PL 1987, c. 399, §14, is amended to read:

3. Determination of eligibility. The eligibility of any investment under any paragraph of subsection 2 ~~shall~~ must be determined at the time of acquisition, except that investments qualified under subsection 2, paragraph H, may be requalified at a later date under another provision of this chapter, if the relevant conditions are satisfied at the time of such requalification.

Sec. 29. 24-A MRSA §1157, sub-§5, ¶A, as enacted by PL 1987, c. 399, §14, is amended to read:

A. Except with the approval of the superintendent, ~~such~~ that insurer may not make, directly or indirectly, an investment in any subsidiary if that investment would bring the aggregate net cost of investments in all subsidiaries to an amount in excess of the lesser of 10% of the insurer's total admitted assets or 50% of the insurer's surplus as regards policyholders or if that investment would bring the aggregate net investment in that subsidiary to an amount in excess of 2% of those total admitted assets.

Sec. 30. 24-A MRSA §1162, as enacted by PL 1987, c. 399, §14, is repealed.

Sec. 31. 24-A MRSA §1162-A is enacted to read:

As used in this chapter and chapter 13, unless the context indicates otherwise, the following terms have the following meanings.

1. Admitted assets. "Admitted assets" means the definition of "assets" set forth in section 901. For purposes of this chapter and chapter 13, the asset value is that value that may be contained in the annual statement of the corporation filed pursuant to section 423.

2. Aggregate amount of investments. "Aggregate amount of investments" means the aggregate value of those investments, as determined under sections 981 to 984, except as provided in section 1157, subsection 5.

3. Bona fide hedging transaction. "Bona fide hedging transaction" means a purchase or sale of foreign currency or of a contract, option, call, put or right entered into for the purpose of offsetting changes in foreign currency exchange rates, or in the market value of investments held or proposed to be acquired by the insurer, or in the market value of liabilities that the insurer has or expects to incur, pursuant to a duly adopted resolution of the insurer's board of directors and written operations procedure submitted to the superintendent before making any such purchases and sales, as long as:

A. There is a high correlation between changes in the market value of those hedging purchases and sales and the market value of the assets and liabilities to be hedged;

B. Books and records regarding all such purchases and sales are maintained by the insurer in accordance with generally accepted accounting principles; and

C. The superintendent may adopt further rules regarding the form and content of resolutions, operation procedures, books and accounts and further accounting treatment and valuation methods necessary to ensure compliance with these limitations.

4. Domestic institution. "Domestic institution" means an institution created or existing under the laws of the United States or any state, district or territory.

5. High-yield obligations. "High-yield obligations" means obligations that are neither investment grade nor medium grade obligations.

6. Institution. "Institution" means a corporation, a joint-stock association, a business trust, a business partnership, a business joint venture or any other similar entity.

7. Investment grade obligation. "Investment grade obligation" means an obligation that at the time of acquisition by the insurer is rated 1 or 2 by the Securities Valuation Office of the National Association of Insurance Commissioners. If not valued by the Securities Valuation Office of the National Association of Insurance Commissioners, "investment grade obligation" means an obligation that at the time of acquisition by the insurer is rated the equivalent of 1 or 2 by one of the following nationally recognized independent rating agencies: Moody's Investors Service, Inc. Standard and Poor's Corporation, Fitch Investors Service, Inc., or Duff and Phelps, Inc.

8. Medium grade obligation. "Medium grade obligation" means an obligation that at the time of acquisition by the insurer is rated by the Securities Valuation Office of the National Association of Insurance Commissioners as Class 3 quality. If not valued by the Securities Valuation Office of the National Association of Insurance Commissioners, "medium grade obligation" means an obligation that at the time of acquisition by the insurer is rated the equivalent of 3 by Moody's Investors Service, Inc., Standard and Poor's Corporation, Fitch Investors Service, Inc., or Duff and Phelps, Inc.

9. Not acquired by the insurer from an issuer, underwriter or dealer. "Not acquired by the insurer from an issuer, underwriter or dealer" means acquired by the insurer in an exempt transaction described in the United States Securities Act of 1933, Section 4(1) or Section 4(3), 15 United States Code, Section 77d(1) or Section 77d(3), as from time to time amended.

10. Obligations. "Obligations" means bonds, debentures, notes and other evidences of indebtedness, regardless of whether liability for payment extends beyond the security for them as well as participation interests in any of those.

11. Qualified broker or dealer. "Qualified broker or dealer" means a broker or dealer that is organized under the laws of a state, is registered under the United States Securities Exchange Act of 1934, 15 United States Code, Sections 78a to 78kk and has net capital in excess of $250,000,000.

12. Qualified financial institution. "Qualified financial institution" means a bank or a trust company that is organized under the laws of a state or the United States, has assets in excess of $5,000,000,000, has, or its parent corporation has, senior obligations outstanding rated AA or better and has a ratio of primary capital to total assets of a least 5 1/2 and a ratio of total capital to total assets of at least 6%.

13. Qualified for public sale. "Qualified for public sale" means registered under the United States Securities Act of 1933, 15 United States Code, Sections 77a to 77aa.

14. Subsidiary. "Subsidiary" has the meaning as prescribed in section 222, subsection 2, paragraph F. The term "subsidiary" does not include a separate account established under section 2537.

15. United States. "United States" when used to signify place includes those geographical areas and the lands and waters adjacent to those geographical areas under the jurisdiction of the United States.

Sec. 32. 24-A MRSA §4204, sub-§2-A, ¶D, as amended by PL 1989, c. 842, §9, is further amended to read:

D. The health maintenance organization is financially responsible, complies with the minimum surplus requirements of section 4204~~-A,~~ and, among other factors, can reasonably be expected to meet its obligations to enrollees and prospective enrollees.

(1) In a determination of minimum surplus requirements, the following terms have the following meanings.

(a) "Admitted assets" means assets as defined in section 901. For purposes of this chapter, the asset value is that contained in the annual statement of the corporation as of December 31st of the year preceding the making of the investment or contained in any audited financial report, as defined in section 221-A, of more current origin.

(b) "Reserves" means those reserves held by corporations subject to this chapter for the protection of subscribers. For purposes of this chapter, the reserve value is that contained in the annual statement of the corporation as of December 31st of the preceding year or any audited financial report, as defined in section 221-A, of more current origin.

(2) In making the determination whether the health maintenance organization is financially responsible, the superintendent may also consider:

(a) The financial soundness of the health maintenance organization's arrangements for health care services and the schedule of charges used;

(b) The adequacy of working capital;

(c) Any agreement with an insurer, a nonprofit hospital or medical service corporation, a government or any other organization for insuring or providing the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the plan;

(d) Any agreement with providers for the provision of health care services that contains a covenant consistent with subsection 6; and

(e) Any arrangements for insurance coverage or an adequate plan for self-insurance to respond to claims for injuries arising out of the furnishing of health care services.

Sec. 33. 24-A MRSA §4208, sub-§1, as amended by PL 1991, c. 709, §6, is further amended to read:

1. Every health maintenance organization shall file annually, on or before ~~the first day of April~~ March 1st or within any reasonable extension of time that the superintendent for good cause shown may have granted on or before March 1st, ~~file a report verified by at least 2 principal officers~~ with the superintendent ~~with~~ a full and true statement of its financial condition, transactions and affairs as of December 31st of the preceding year, verified by at least 3 principal officers and shall provide a copy of that statement to the Commissioner of Human Services~~, covering the preceding calendar year~~. The superintendent may by rule or order require the filing of quarterly or more frequent reports, which may be re-

quired to include liability for uncovered expenditures as well as an audit opinion.

Sec. 34. 24-A MRSA §4208, sub-§2, as enacted by PL 1975, c. 503, is repealed.

Sec. 35. 24-A MRSA §4208, sub-§§3 and 4 are enacted to read:

3. The annual statement must be prepared in accordance with the National Association of Insurance Commissioners annual statement instructions and must follow practices and procedures prescribed by the National Association of Insurance Commissioners accounting practices and procedures manual for health maintenance organizations. The annual statement must include:

A. A summary of information compiled pursuant to section 4204 in the form required by the Commissioner of Human Services; and

B. Other information related to the performance of the health maintenance organization that is necessary to enable the superintendent to carry out the superintendent's duties under this chapter.

4. The superintendent may refuse to continue or may suspend or revoke the certificate of authority of a health maintenance organization failing to file an annual statement when due.

Sec. 36. 24-A MRSA §4233, as enacted by PL 1989, c. 842, §18, is repealed and the following enacted in its place:

§4233. Registration, regulation and supervision of holding company systems

1. Every domestic health maintenance organization is subject to the requirements of section 222, subsections 2 to 9 and 13 to 18, and is considered an insurer for purposes of chapter 57, subchapters I and II.

2. Every domestic health maintenance organization is subject to the requirements of section 221-A. At the superintendent's request, a domestic health maintenance organization must make available to the superintendent the audit work papers of any accountant who has audited that health maintenance organization.

Upon timely notice to a health maintenance organization, the superintendent may review, photocopy or otherwise record the audit work papers generated by any accountant who has audited that health maintenance organization.

Health maintenance organization work papers under the superintendent's custody or control are confidential and not subject to public inspection.

The work papers of a health maintenance organization's parent, subsidiaries or other corporate affiliates are deemed to be the work papers of that health maintenance organization to the extent the work papers affect the health maintenance organization's final equity determination and reference any transaction between the health maintenance organization and its parent, subsidiaries or corporate affiliates.

As a condition of engaging an auditing accountant, the health maintenance organization shall require the accountant to:

A. Retain for a period of at least 6 years any work papers prepared in connection with the accountant's audit of that health maintenance organization; and

B. Provide, at the request of the health maintenance organization, the original or copies of any work papers created by the accountant in connection with an audit of that health maintenance organization.

For purposes of this subsection, the term "work papers" includes, but is not limited to, originals or copies of any schedules, analyses, reconciliations, abstracts, memoranda, narratives, flow charts, company records or other documents prepared or obtained by the accountant and the accountant's employees in the course of conducting an audit of the health maintenance organization.

Sec. 37. 24-A MRSA §6098, sub-§1, ¶F, as enacted by PL 1987, c. 481, §3, is amended to read:

F. Provide such other information as may be required by the superintendent to verify that the purchasing group is qualified under section 6093, subsection 11 to determine where the purchasing group is located and to determine appropriate tax treatment.

Sec. 38. 24-A MRSA §6098, sub-§4, as enacted by PL 1987, c. 481, §3, is amended to read:

4. Notice of change. A purchasing group ~~which~~ that intends to do business or is doing business in this State shall notify the superintendent ~~as to~~ within 10 days of any subsequent changes in any information or other items provided pursuant to this section.

Sec. 39. 24-A MRSA §6099, sub-§3 is enacted to read:

3. Prohibition on retention of risk. A purchasing group must purchase insurance providing for a deductible or self-insured retention applicable to the group as a whole. That coverage also may provide for a deductible or self-insured retention applicable to individual members.

Sec. 40. 39-A MRSA §409, first ¶, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

The Superintendent of Insurance shall annually assess on self-insuring employers approved pursuant to section 403, respecting the operations of each self-insurer conducted in the State to defray the cost of administration of the Bureau of Insurance. The annual assessment upon approved self-insuring employers must be calculated using the imputed annual standard premium relating to business operations in the State that each self-insurer would have paid during the previous calendar year pursuant to manual rates established by the principal rating organization in the State and using the experience rating procedure approved by the Superintendent of Insurance for that self-insurer. The assessment must be applied to the budget of the bureau for the fiscal year commencing July 1st. The assessment must be in an amount not exceeding ~~1/10~~ 11/100 of 1% of the imputed annual standard premium. When the superintendent calculates the amount of the annual assessment, the superintendent ~~shall~~ may consider, among other things, the staffing level required to administer workers' compensation self-insurance oversight responsibilities of the bureau.

Sec. 41. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1993-94	1994-95
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Bureau of Insurance		
Positions	(2.0)	(2.0)
Personal Services	$124,000	$130,000
All Other	4,000	4,000
Provides funding for continuation of one Managing Insurance Examiner position and one Senior Rate Analyst position; and provides funding for reclassification of one Staff Attorney position to Senior Staff Attorney position, one Clerk IV position to Assistant Company Examiner position and one part-time Market Conduct Examiner position to a full-time Market Conduct Examiner position.		
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION TOTAL	$128,000	$134,000

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

Effective June 11, 1993.

CHAPTER 314

H.P. 816 - L.D. 1102

An Act Related to Suppliers of Compressed Air for Breathing

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

Sec. 1. 22 MRSA §1582, sub-§4 is enacted to read:

4. Tester of compressed air. "Tester of compressed air" means any organization, agency, individual, firm, partnership or corporation that is recognized by the department as qualified to inspect and test suppliers of compressed air.

Sec. 2. 22 MRSA §1583-A is enacted to read:

§1583-A. Inspections

1. Satisfactory inspection. To be eligible for an initial or renewal license, a supplier of compressed air must provide certification from a tester of compressed air based on an inspection in the 6 months prior to application that the compressor equipment, air quality and compressor filling procedures are in compliance with rules of the department.

2. Unsatisfactory inspection. If any aspect of the supplier operation fails to meet department standards, the tester of compressed air shall notify the department of the nature of the deficiencies. The department shall evaluate the deficiencies and determine appropriate licensing action.

If the air provided by a supplier of compressed air exceeds the maximum permissible amount of any contaminant, the tester of compressed air shall notify the supplier that operations must cease and the supplier shall immediately cease operation until the reason is determined, corrections made and a retest conducted to confirm that the contaminant no longer exceeds the maximum permissible amount. The department shall take action to see that the supplier is not operating while this condition exists.

See title page for effective date.