

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTIETH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 13, 2002 to November 14, 2002**

**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 2002 to June 14, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**FEBRUARY 13, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 13, 2003**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2003**

may be limited to the extent required to protect the public health.

**3. Depuration certificate.** A person may not take shellfish from closed areas for depuration, processing and transportation without a depuration certificate. The commissioner may issue a depuration certificate to a wholesale seafood license holder that authorizes the holder to take shellfish from closed areas for depuration, processing and transportation. The certificate must establish limits on harvesting, depurating and processing methods and any other provisions required to ~~assure~~ ensure the public safety. The commissioner may permit depuration of shellfish not contaminated by paralytic shellfish poisoning if it is established that the water used during depuration will not contaminate the shellfish with paralytic shellfish poisoning. To ensure consistency with municipal shellfish conservation programs, established pursuant to section 6671, the commissioner must consult with a municipal shellfish conservation committee before taking action to open an area within that municipality for depuration digging. The commissioner may continue to issue controlled purification certificates for areas that were restricted to depuration digging on September 1, 1989, without consulting municipalities.

**4. Rules.** The commissioner may adopt or amend ~~regulations~~ rules concerning:

- A. The procedures for issuing certificates and the required qualifications for each type of certificate;
- B. The minimum sanitation standards for establishments and vehicles;
- C. The sanitation and quality control standards for shellfish and whole scallops and their products;
- D. The methods for taking, handling, shipping, transporting and processing of shellfish and whole scallops taken from closed areas;
- E. The records and reports of takings, purchases, processing, sales, shipping and transporting of shellfish and whole scallops;
- F. The labeling or marking of shipments of shellfish and whole scallops; and
- G. Other ~~regulations~~ rules necessary to the public health.

The ~~regulations~~ rules must be based on the particular operational requirements of each activity, the most recently adopted federal sanitation standards and the most recent generally accepted research data, in a manner so as to protect the public health and safety

while allowing reasonable use of the State's shellfish and whole scallops.

**5. Right of entry.** Whenever a certificate has been issued under this section, the commissioner, or ~~his~~ the commissioner's agent, ~~shall~~ must have access to any establishment or part thereof for the purpose of inspection or collection of samples. Denial of access ~~shall be~~ is grounds for suspension or revocation of any certificate or license under the provisions of section 6373.

**6. Products embargoed and condemned.** The commissioner, or the commissioner's agent, shall indefinitely embargo, condemn or order to be destroyed any shellfish, shellfish product or whole scallop in any establishment whenever it is determined that the product is of unsound quality, contains any filthy, decomposed or putrid substance, or may be poisonous or deleterious to health, or otherwise unsafe. The commissioner and the commissioner's agent shall cooperate with those state and federal agencies, having similar responsibility, in the protection of public health and in enforcing the order to embargo, condemn or destroy.

In the event that any shellfish, shellfish product or whole scallop in any establishment is embargoed, condemned or ordered destroyed, the commissioner, or the commissioner's agent, shall, as soon thereafter as practical, notify the owner in writing of the amount and kind of shellfish, shellfish product or whole scallop embargoed, condemned or destroyed.

**7. Resident depuration harvesters.** When harvesting soft-shelled clams under a depuration certificate, the person holding the certificate shall, to the extent possible, employ one person who is a resident of the municipality as harvester for every person employed as harvester who is not a resident of that municipality.

**8. Payments to municipalities.** A person holding a depuration certificate shall pay each municipality an amount equal to 50¢ for each bushel of soft-shelled clams taken in that municipality under that depuration certificate. When submitting payment to a municipality under this subsection, the depuration certificate holder shall include a copy of the applicable record and report of takings submitted to the department pursuant to rules adopted under subsection 4.

See title page for effective date.

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## CHAPTER 249

S.P. 522 - L.D. 1553

### An Act To Permit Special Purpose Reinsurance Vehicles

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

**Sec. 1. 24-A MRSA §731-B, sub-§1, ¶A,** as amended by PL 1991, c. 828, §16, is further amended to read:

A. Is licensed to transact insurance or reinsurance in this State, provided the assuming insurer maintains surplus as regards policyholders in an amount not less than the sum of paid-in capital stock, 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. If the assuming insurer is licensed as a special purpose reinsurance vehicle pursuant to section 782 and maintains capital and surplus in accordance with the requirements of section 787, credit for reinsurance under a special purpose reinsurance vehicle contract, as defined in section 781, subsection 15, is allowed only to the extent that:

(1) The fair value of the assets held in trust for the benefit of the ceding insurer equals or exceeds the obligations due and payable to the ceding insurer by the special purpose reinsurance vehicle under the special purpose reinsurance vehicle contract;

(2) The assets are held in trust in accordance with the requirements in subchapter 6;

(3) The assets are administered in the manner and pursuant to arrangements under subchapter 6;

(4) The assets are held or invested in one or more of the forms allowed in section 795; and

(5) The contract complies with all other relevant requirements of subchapter 6;

**Sec. 2. 24-A MRSA c. 9, sub-c. 6** is enacted to read:

**SUBCHAPTER 6**

**SPECIAL PURPOSE REINSURANCE VEHICLE**

**§781. Definitions**

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

**1. Aggregate limit.** "Aggregate limit" means the maximum sum payable to the ceding insurer under a special purpose reinsurance vehicle contract.

**2. Catastrophe excess of loss property reinsurance.** "Catastrophe excess of loss property reinsurance" means excess of loss reinsurance for a catastrophe layer of a reinsurance program, written on either a per occurrence or aggregate basis.

**3. Catastrophe life or health reinsurance.** "Catastrophe life or health reinsurance" means reinsurance of life, health or annuity products that transfers mortality, morbidity, survival or other related risks in excess of existing proportional or nonproportional automatic and facultative treaties newly placed or in force on the same risks.

**4. Ceding insurer.** "Ceding insurer" means an insurer that enters into a special purpose reinsurance vehicle contract with a special purpose reinsurance vehicle and includes a reinsurer retroceding assumed reinsurance to a special purpose reinsurance vehicle. A group of affiliated insurers under common control entering into a special purpose reinsurance vehicle contract on a coordinated basis is considered a single ceding insurer.

**5. Control.** "Control," including the terms "controlling," "controlled by" and "under common control," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist. Notwithstanding this subsection, for the purposes of this subchapter, the fact that a special purpose reinsurance vehicle exclusively provides reinsurance to a ceding insurer under a special purpose reinsurance vehicle contract is not by itself sufficient grounds for a finding that the reinsurance vehicle or the special purpose reinsurance vehicle organizer or owner is controlled by or under common control with the ceding insurer.

**6. Fair value.** "Fair value" means:

A. As to cash, the amount of cash; and

B. As to an asset other than cash:

(1) The amount at which that asset could be bought or sold in a current transaction between arms-length, willing parties;

(2) The quoted market price for the asset in active markets must be used if available; and

(3) If quoted market prices are not available, a value determined using the best information available considering values of like assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets or comparison to values of other asset classes the value of which have been historically related to the subject asset.

**7. Fully funded.** "Fully funded" means, with respect to a special purpose reinsurance vehicle contract, that the fair value of the assets held in trust by or on behalf of the special purpose reinsurance vehicle under the special purpose reinsurance vehicle contract on the date on which the special purpose reinsurance vehicle contract is effected, equals or exceeds the aggregate limit as defined in this subchapter.

**8. Indemnity trigger.** "Indemnity trigger" means a transaction term by which the special purpose reinsurance vehicle's obligation to pay the ceding insurer for losses covered by a special purpose reinsurance vehicle contract is triggered by the ceding insurer incurring a specified level of losses.

**9. Insolvency.** "Insolvency" or "insolvent" means that the special purpose reinsurance vehicle is unable to pay its obligations when they are due unless the obligations are the subject of a bona fide dispute.

**10. Nonindemnity trigger.** "Nonindemnity trigger" means a transaction term by which the special purpose reinsurance vehicle's obligation to pay the ceding insurer under a special purpose reinsurance vehicle contract arises from the occurrence or existence of some event or condition other than the ceding insurer incurring a specified level of losses under its insurance or reinsurance contracts.

**11. Permitted investments.** "Permitted investments" means those investments that meet the qualifications under section 795.

**12. Qualified United States financial institution.** "Qualified United States financial institution" means for purposes of meeting the requirements of a trustee as specified in section 784 a financial institution that is eligible to act as a fiduciary of a trust and:

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

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

**13. Reinsurance vehicle.** "Reinsurance vehicle" means a special purpose reinsurance vehicle.

**14. Special purpose reinsurance vehicle.** "Special purpose reinsurance vehicle" means an entity domiciled in and organized under the laws of this State that has received a limited certificate of authority from the superintendent under this subchapter exclusively for the limited purpose of entering into and effectuating special purpose reinsurance vehicle insurance securitizations, special purpose reinsurance vehicle contracts and other related transactions permitted by this subchapter.

**15. Special purpose reinsurance vehicle contract; contract.** "Special purpose reinsurance vehicle contract" or "contract" means a contract between the special purpose reinsurance vehicle and the ceding insurer pursuant to which the special purpose reinsurance vehicle agrees to pay the ceding insurer an agreed amount upon the occurrence of a triggering event.

**16. Special purpose reinsurance vehicle insurance securitization; insurance securitization.** "Special purpose reinsurance vehicle insurance securitization" or "insurance securitization" means a package of related risk transfer instruments and facilitating administrative agreements by which proceeds are obtained by a special purpose reinsurance vehicle through the issuance of securities and are held in trust pursuant to the requirements of this subchapter to secure the obligations of the special purpose reinsurance vehicle under a special purpose reinsurance vehicle contract with one or more ceding insurers, and in which the special purpose reinsurance vehicle's obligation to return the full initial investment to the holders of such securities pursuant to the transaction terms is contingent upon the funds not being used to pay the obligations of the special purpose reinsurance vehicle to the ceding insurers under the special purpose reinsurance vehicle contract.

**17. Special purpose reinsurance vehicle organizer; organizer.** "Special purpose reinsurance vehicle organizer" or "organizer" means one or more persons that have organized or intend to organize a special purpose reinsurance vehicle under authority obtained as specified in this subchapter.

**18. Special purpose reinsurance vehicle securities; securities.** "Special purpose reinsurance vehicle securities" or "securities" means the securities issued by a special purpose reinsurance vehicle.

**19. Triggering event.** "Triggering event" means an event or condition that if and when it occurs or exists obligates the special purpose reinsurance vehicle to make a payment to the ceding insurer under the provisions of a special purpose reinsurance vehicle contract.

**§782. Limited certificate of authority required**

**1. Limited certificate of authority.** In order to securitize one or more ceding insurers' risks, a special purpose reinsurance vehicle shall obtain a limited certificate of authority from the superintendent according to the provisions of this section.

**2. Application.** A special purpose reinsurance vehicle organizer seeking to obtain a limited certificate of authority for a special purpose reinsurance vehicle shall file an application for a limited certificate of authority with the superintendent and pay the application fee specified in section 601, subsection 1. A complete application must include the following:

A. An affidavit verifying that each prospective organizer meets the requirements of this subchapter;

B. A representation that the prospective organizer intends to form a special purpose reinsurance vehicle that operates in accordance with the requirements under this subchapter;

C. The proposed name of the special purpose reinsurance vehicle;

D. Biographical affidavits of all organizers setting forth their legal names, any names under which they have conducted or are conducting their affairs and any names of any person affiliated, as defined in section 222, with any organizer, together with such other biographical information as the superintendent may request;

E. The source and form of the minimum capital to be contributed to the special purpose reinsurance vehicle;

F. Any persons with which the special purpose reinsurance vehicle is or upon formation will be affiliated as defined in section 222;

G. The names and biographical affidavits of the proposed members of the board of directors and principal officers of the special purpose reinsurance vehicle pursuant to section 790, setting forth their legal names, any names under which they have conducted or are conducting their affairs and any names of any person affiliated, as defined in section 222, with any proposed director or officer, together with such other biographical information as the superintendent may request;

H. A plan of operation, consisting of a description of the contemplated insurance securitization, the special purpose reinsurance vehicle contract and related transactions, which must include:

(1) Draft documentation or at the discretion of the superintendent a written summary of all material agreements that are planned in order to effectuate the insurance securitization and the related contract, including the names of the ceding insurers, the nature of the risks being assumed and the maximum amounts, purpose and nature and the interrelationships of the various transactions required to effectuate the insurance securitization;

(2) The investment strategy of the special purpose reinsurance vehicle and a representation that the investment strategy complies with the investment requirements set forth in this subchapter and that the strategy includes investment practices or other provisions to preserve asset values that facilitate attainment of full funding during the term of the insurance securitization with assets that can be monetized in response to a triggering event without a substantial loss in value;

(3) A description of the method by which losses covered by the contract that may develop after the termination of the contract period are to be addressed under the provisions of the contract; and

(4) A representation that the trust agreement under section 784, subsection 2, paragraph E and the trusts holding assets that secure the obligations of the special purpose reinsurance vehicle under the contract and the contract with the ceding insurers in connection with the contemplated insurance securitization are structured in accordance with the requirements under this subchapter.

**3. Additional information.** The superintendent shall notify the special purpose reinsurance vehicle organizer if any additional information is needed in order to review the application and shall approve or deny the application within 60 days after determining that the application is complete.

A. The superintendent shall approve the application and issue a limited certificate of authority under this section if the superintendent finds that:

(1) The proposed plan of operation provides a reasonable expectation of a successful operation;

(2) The terms of the contract and related transactions comply with this subchapter and any applicable rules adopted by the superintendent;

(3) The proposed plan of operation is not hazardous to any ceding insurer or to policyholders; and

(4) The insurance regulator of the state of domicile of each ceding insurer has notified the superintendent in writing that it has not disapproved the transaction. The superintendent may waive this requirement for a ceding insurer whose domiciliary state does not have a substantially similar law if the superintendent finds that the domiciliary regulator has had notice and adequate opportunity to review the proposal and has not objected.

B. In evaluating the expectation of a successful operation, the superintendent shall consider, among other factors, whether the proposed organizer, directors and officers of the proposed special purpose reinsurance vehicle are of good character and not reasonably believed to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions or other insurance or business relations, with any person known to have been involved in the improper manipulation of assets, accounts or reinsurance.

C. If the superintendent denies the application or if the superintendent withholds consent to a proposed transaction involving a domestic ceding insurer under a similar law of another jurisdiction the proposed organizer or ceding insurer has the right to a hearing upon a timely request filed pursuant to section 229.

4. Approval. Upon approval of the application by the superintendent and the issuance of a limited certificate of authority, the special purpose reinsurance vehicle may be acquired or formed and, in accordance with the approved plan of operation, the special purpose reinsurance vehicle may enter into contracts and conduct other activities within the scope of the filed plan of operation.

5. Reinsurance activities. The limited certificate of authority must state that the special purpose reinsurance vehicle's authorization to be involved in the business of insurance is limited only to the reinsurance activities that the special purpose reinsurance vehicle is allowed to conduct pursuant to this subchapter.

6. Documentation of insurance securitization. The special purpose reinsurance vehicle organizer shall provide a complete set of the documentation of the insurance securitization to the superintendent upon closing of any transactions, including an opinion of legal counsel with respect to compliance with this

subchapter and any other applicable laws as of the effective date of any transaction. Any material change to the special purpose reinsurance vehicle's plan of operation filed pursuant to subsection 2, including, but not limited to, the issuance of new securities to continue the insurance securitization activities of the special purpose reinsurance vehicle pursuant to this subchapter after expiration and full satisfaction of the initial securitization transactions, requires prior approval of the superintendent. A change in the counterparty to swap transactions for an existing insurance securitization as allowed under this subchapter is not considered a material change unless the special purpose reinsurance vehicle's managers know or should know that the new counterparty presents a substantial risk of default.

**§783. Limited purpose of special purpose reinsurance vehicle**

Special purpose reinsurance vehicles authorized under this subchapter are created for the limited purpose of entering into insurance securitization transactions with investors and related agreements to pay one or more ceding insurers agreed-upon amounts under a special purpose reinsurance vehicle contract upon the occurrence of triggering events related to the insurance business of the ceding insurer. A special purpose reinsurance vehicle may not issue a contract for assumption of risk or indemnification of loss other than a special purpose reinsurance vehicle contract.

**§784. Approved transactions and operation of special purpose reinsurance vehicles**

1. Contracts. Special purpose reinsurance vehicles authorized under this subchapter may enter into and effectuate special purpose reinsurance vehicle contracts with one or more ceding insurers as long as the contracts:

A. Obligate the reinsurance vehicle to indemnify the ceding insurer for losses;

B. Are securitized in full through a single special purpose reinsurance vehicle insurance securitization; and

C. Are fully funded and secured with assets held in trust in accordance with the requirements of this section pursuant to agreements proposed under this subchapter, and invested in a manner that meets the criteria set forth in section 795.

2. Eligible lines of business. A special purpose reinsurance vehicle contract may only provide catastrophe excess of loss property reinsurance coverage or catastrophe life or health reinsurance coverage, unless the superintendent adopts rules pursuant to section 797 specifying additional lines of

business that may be reinsured by a special purpose reinsurance vehicle.

**3. Multiple ceding insurers.** A special purpose reinsurance vehicle may enter into contracts with multiple ceding insurers only if:

A. The special purpose reinsurance vehicle reinsures no more than 10 ceding insurers; and

B. Each ceding insurer has no more than \$50,000,000 in surplus as reported in its most recent financial statement filed with its domiciliary regulator, as of the date the special purpose reinsurance vehicle is licensed. A group of ceding insurers under common control may elect to be treated as separate insurers for purposes of this subsection, but only if each insurer in the group that is reinsured by the same special purpose reinsurance vehicle is counted separately for purposes of the 10-cedent limit.

**4. Terms of operation.** A special purpose reinsurance vehicle may enter into agreements with 3rd parties and conduct business necessary to fulfill its obligations and administrative duties incident to the insurance securitization and the special purpose reinsurance vehicle contract. The agreements may include entering into swap agreements or other transactions that have the objective of leveling timing differences in funding upfront or ongoing transaction expenses or managing credit or interest rate risk of the investments in trust to ensure that the assets held in trust are sufficient to satisfy payment or repayment of the securities issued pursuant to an insurance securitization transaction or the obligations of the special purpose reinsurance vehicle under the contract. In fulfilling its function, the special purpose reinsurance vehicle shall adhere to the following requirements and shall, to the extent of its powers, ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with the following requirements and guidelines.

A. A special purpose reinsurance vehicle must have a distinct name, which must include the designation "SPRV" or "Special Purpose Reinsurance Vehicle." The name of the reinsurance vehicle may not be deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this State.

B. Unless otherwise provided in the plan of operation, the principal place of business and office of any reinsurance vehicle organized under this subchapter must be located in this State.

C. The assets of a reinsurance vehicle must be preserved and administered by or on behalf of

the reinsurance vehicle to satisfy the liabilities and obligations of the reinsurance vehicle incident to the insurance securitization and other related agreements including the contract.

D. Assets of the reinsurance vehicle that are pledged to secure obligations of the reinsurance vehicle to a ceding insurer under a contract must be held in trust and administered by a qualified United States financial institution serving as trustee. The qualified United States financial institution may not control, be controlled by or be under common control with the reinsurance vehicle or any ceding insurer.

E. The agreement governing the trust described in paragraph D must create one or more trust accounts into which all pledged assets must be deposited and held until distributed in accordance with the trust agreement. The pledged assets must be held by the trustee at the trustee's office in the United States and may be held in certificated or electronic form.

F. The provisions for withdrawal by ceding insurers of funds from the trust must be clean and unconditional, subject only to the following requirements:

(1) The ceding insurer has the right to withdraw assets from the trust account at any time without notice to the reinsurance vehicle subject only to written notice to the trustee from the ceding insurer that funds in the amount requested are due and payable by the reinsurance vehicle;

(2) No other statement or document need be presented in order to withdraw assets, except that the ceding insurer may be required to acknowledge receipt of withdrawn assets;

(3) The trust agreement described in paragraph E must indicate that it is not subject to any conditions or qualifications outside of the trust agreement;

(4) The trust agreement described in paragraph E may not contain references to any other agreements or documents; and

(5) Reference may not be made to the fact that these funds may represent reinsurance premiums or that the funds have been deposited for any specific purpose.

G. The trust agreement described in paragraph E must be established for the sole use and benefit of the ceding insurer at least to the full extent of the reinsurance vehicle's obligations to the ced-



ing insurer under the contract. In the case of more than one ceding insurer, a separate trust agreement must be entered into with each ceding insurer and a separate trust account must be maintained for each ceding insurer.

H. The trust agreement described in paragraph E must provide for the trustee to:

(1) Receive assets and hold all assets in a safe place;

(2) Determine that all assets are in a form that the ceding insurer or the trustee, upon direction by the ceding insurer, may whenever necessary negotiate the assets, without consent or signature from the reinsurance vehicle or any other person or entity;

(3) Furnish to the reinsurance vehicle, the superintendent and the ceding insurer a statement of all assets in the trust account referred to in paragraph E reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;

(4) Notify the reinsurance vehicle and the ceding insurer within 10 days of any deposits to or withdrawals from the trust account referred to in paragraph E;

(5) Upon written demand of the ceding insurer, immediately take steps necessary to transfer absolutely all right, title and interest in the assets held in the trust account referred to in paragraph E to the ceding insurer and deliver physical custody of the assets to the ceding insurer; and

(6) Allow no substitutions or withdrawals of assets from the trust account referred to in paragraph E except on written instructions from the ceding insurer.

I. The trust agreement described in paragraph E must provide that at least 30 days but not more than 45 days before termination of the trust account written notification of termination must be delivered by the 3rd party to the ceding insurer.

J. The trust agreement described in paragraph E may be made subject to and governed by the laws of any state in addition to the requirements for the trust as provided in this subchapter as long as the state is disclosed in the plan of operation filed with and approved by the superintendent.

K. The trust agreement described in paragraph E must prohibit invasion of the trust account re-

ferred to in paragraph E for the purpose of paying compensation to or reimbursing the expenses of the trustee.

L. The trust agreement described in paragraph E must provide that the trustee be liable for the trustee's own negligence, willful misconduct or lack of good faith.

(1) Notwithstanding the provisions of paragraph F, subparagraphs (3) to (5) and paragraph M, subparagraph (5), when a trust agreement described in paragraph E is established in conjunction with a contract, then the trust agreement may provide that the ceding insurer shall undertake to use and apply any amounts drawn upon the trust account without diminution because of the insolvency of the ceding insurer or the reinsurance vehicle for the following purposes:

(a) To pay or reimburse the ceding insurer amounts due to the ceding insurer under the contract, including, but not limited to, unearned premiums due to the ceding insurer if not otherwise paid by the reinsurance vehicle in accordance with the terms of that trust agreement; or

(b) When the ceding insurer has received notification of termination of the trust account referred to in paragraph E and when some or all of the reinsurance vehicle's obligations under the specific contract remain unliquidated and undischarged 10 days before the termination date, to withdraw amounts equal to the undischarged obligations and deposit the amounts in a separate account in the name of the ceding insurer in any qualified United States financial institution apart from its general assets in trust for the sole purpose of discharging any contractual obligations of the reinsurance vehicle that may remain executory after the withdrawal and for any period after the termination date. Assets so held must revert to the reinsurance vehicle when they are no longer necessary to secure the obligations of the reinsurance vehicle and may not exceed the sum of the following amounts as determined in good faith by the ceding insurer:

(i) Losses and loss expenses paid by the ceding insurer but

not recovered from the reinsurance vehicle;

(ii) Reserves for losses reported and outstanding;

(iii) Reserves for losses incurred but not reported;

(iv) Reserves for loss expenses;

(v) Reserves for unearned premiums; and

(vi) Any additional amount necessary to maintain full funding of the aggregate limit remaining under the contract if the period of coverage or the agreed-upon period of loss development has yet to expire.

(2) The provisions to be included in the trust agreement described in paragraph E pursuant to this paragraph may instead be included in the underlying contract.

M. A special purpose reinsurance vehicle contract must contain provisions that:

(1) Require the reinsurance vehicle to enter into a trust agreement described in paragraph E and to establish a trust account referred to in paragraph E for the benefit of the ceding insurer and specifying what recoverables or reserves or both the trust agreement is to cover;

(2) Stipulate that assets deposited in the trust account be valued according to their current fair value and may consist only of permitted investments;

(3) Require the reinsurance vehicle, before depositing assets with the trustee, to execute assignments or endorsements in blank or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments in order that the ceding insurer or the trustee upon the direction of the ceding insurer may whenever necessary negotiate any such assets without consent or signature from the reinsurance vehicle or any other entity;

(4) Require that all settlements of account between the ceding insurer and the reinsurance vehicle be made in cash or its equivalent; and

(5) Stipulate that the reinsurance vehicle and the ceding insurer agree that the assets

in the trust account referred to in paragraph E and established pursuant to the provisions of the contract may be withdrawn by the ceding insurer at any time notwithstanding any other provisions in the contract and must be used and applied by the ceding insurer or any successor by operation of law of the ceding insurer, including, but not limited to, and subject to the provisions of section 793, any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the reinsurance vehicle, only for the following purposes:

(a) To transfer all such assets into one or more trust accounts pursuant to Paragraph L for the benefit of the ceding insurer pursuant to the terms of the contract and in compliance with this subchapter; and

(b) To pay any other amounts that the ceding insurer claims are due under the contract.

N. The contract entered into by the reinsurance vehicle may contain provisions that give the reinsurance vehicle the right to seek approval from the ceding insurer to withdraw from the trust account referred to in paragraph E all or part of the assets contained in the trust account and to transfer the assets to the reinsurance vehicle as long as:

(1) The reinsurance vehicle shall at the time of the withdrawal replace the withdrawn assets with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the requirements of section 795; and

(2) After the withdrawals and transfer, the fair value of the assets in the trust account referred to in paragraph E securing the obligations of the reinsurance vehicle under the contract is no less than an amount needed to satisfy the full funding requirement of the contract. The ceding insurer has the sole discretion to determine whether these provisions have been satisfied but may not unreasonably nor arbitrarily withhold its approval.

O. The contract must provide that investors in the reinsurance vehicle agree that any obligation to repay principal, interest or dividends on the securities issued by the reinsurance vehicle must be reduced upon the occurrence of a triggering

event, to the extent that the assets of the reinsurance vehicle held in trust for the benefit of the ceding insurer are remitted to the ceding insurer in fulfillment of the obligations of the reinsurance vehicle under the contract.

P. Assets held by a reinsurance vehicle in trust must be valued at their fair value.

Q. The proceeds from the sale of securities by the reinsurance vehicle to investors must be deposited with the trustee as described in this subchapter and must be held or invested by the trustee in accordance with the requirements of section 795.

R. A reinsurance vehicle organized under this subchapter may engage only in fully funded contracts to support in full the ceding insurer's exposures assumed by the reinsurance vehicle. A contract must be indemnity-triggered unless the superintendent adopts rules pursuant to section 797 authorizing nonindemnity-triggered contracts and addressing the treatment of the portion of the risk that is nonindemnity-based, including accounting, disclosure, risk-based capital treatment and the manner in which risks associated with a nonindemnity-based contract may be evaluated and managed. Assets of the reinsurance vehicle may be used to pay interest or other consideration on any outstanding debt or other obligation of the reinsurance vehicle and nothing in this paragraph may be construed or interpreted to prevent a reinsurance vehicle from entering into a swap agreement or other transaction that has the effect of guaranteeing interest or other consideration.

S. In the special purpose reinsurance vehicle insurance securitization, the contracts or other relating documentation must contain provisions identifying the reinsurance vehicle that enters into the reinsurance securitization and the contracts or other documentation must clearly disclose that the assets of the reinsurance vehicle and only those assets are available to pay the obligations of that reinsurance vehicle. Notwithstanding this paragraph, and subject to the provisions of this subchapter and any other applicable law, the failure to include such language in the contracts or other documentation may not be used as the sole basis by creditors, reinsurers or other claimants to circumvent the provisions of this subchapter.

T. A reinsurance vehicle is not authorized to:

(1) Issue or otherwise administer primary insurance policies;

(2) Have any obligation to the policyholders or reinsureds of the ceding insurer;

(3) Enter into a contract with a person that is not licensed or otherwise authorized to conduct the business of insurance or reinsurance in at least its state or country of domicile; or

(4) Assume or retain exposure to insurance or reinsurance losses for its own account that is not initially fully funded by proceeds from an insurance securitization that meets the requirements of this subchapter.

U. At the cessation of business of a reinsurance vehicle, the limited certificate of authority granted by the superintendent under section 782 expires and the reinsurance vehicle may no longer be authorized to conduct activities pursuant to this subchapter until a new certificate of authority is issued pursuant to a new filing in accordance with section 782.

V. It is unlawful for a reinsurance vehicle to lend or otherwise invest or place in custody, trust or under management any of its assets with or to borrow money or receive a loan or advance from, other than by issuance of the securities pursuant to an insurance securitization, from anyone convicted of a felony, anyone who is untrustworthy or of known bad character or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation or corruption.

### **§785. Powers**

**1. Powers.** A special purpose reinsurance vehicle authorized under this subchapter has the powers to enter into contracts and to conduct other commercial activities necessary to fulfill the purposes of this subchapter. These activities may include, but are not limited to, entering into contracts, issuing securities of the special purpose reinsurance vehicle and complying with the terms of the contracts, entering into trust agreements, swap agreements and any other agreements necessary to effectuate an insurance securitization in compliance with the limitations and pursuant to the authorities granted to the reinsurance vehicle under this subchapter or the plan of operation approved by the superintendent.

**2. Bylaws.** A special purpose reinsurance vehicle organized or doing business under this subchapter is capable of suing or being sued and may make or enforce contracts in relation to the business of the reinsurance vehicle; may have and use a common seal and in the name of the reinsurance vehicle or by a trustee chosen by the board of directors is capable of

taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of its organization; and may by its board of directors, trustees, officers or managers make bylaws and amendments to the bylaws not inconsistent with the laws or the constitution of this State or of the United States. The bylaws must define the manner of electing directors, trustees or managers and officers of the reinsurance vehicle, together with their qualifications, duties and term of office.

#### **§786. Affiliation**

Notwithstanding the provisions of section 222, the special purpose reinsurance vehicle, the special purpose reinsurance vehicle organizer or subsequent debt or equity investors in special purpose reinsurance vehicle securities are not deemed affiliates of the ceding insurer by virtue of the special purpose reinsurance vehicle contract between the ceding insurer and the reinsurance vehicle, the securities of the reinsurance vehicle or related agreements necessary to implement the special purpose reinsurance vehicle insurance securitization. The reinsurance vehicle may not be controlled by, may not control and may not be under common control with any ceding insurer that is a party to a contract.

#### **§787. Capitalization**

A special purpose reinsurance vehicle must have minimum initial capital of not less than \$5,000. All of the initial capital must be received by the reinsurance vehicle in cash. The minimum initial capital required and all other funds of the reinsurance vehicle in excess of its minimum initial capital, including funds held in trust to secure the obligations of the reinsurance vehicle pursuant to its special purpose reinsurance vehicle contracts, must be invested as provided in section 795.

#### **§788. Dividends**

The special purpose reinsurance vehicle may not declare or pay dividends in any form to its owners unless the dividends do not decrease the capital of the reinsurance vehicle below \$5,000 and, after giving effect to the dividends, the assets of the reinsurance vehicle, including assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to meet its obligations. Except for dividends specifically provided for in the approved plan of operation under section 782, subsection 2, paragraph H, the prior approval of the superintendent is required for any dividend paid during the term of coverage or while the reinsurance vehicle has undischarged obligations to the ceding insurer. The dividends may be declared by the board of directors of the reinsurance vehicle if the dividends would not violate the provisions of this subchapter or the approved plan of

operation and would not jeopardize the fulfillment of the obligations of the reinsurance vehicle or the trustee pursuant to the special purpose reinsurance vehicle insurance securitization, the special purpose reinsurance vehicle contract or any related transaction. The provisions of section 222, subsections 11-A and 11-B do not apply to such dividends.

#### **§789. Records and financial reports**

**1. Records.** The records of the special purpose reinsurance vehicle must be maintained in this State and must be available for examination by the superintendent at any time. No later than 5 months after the end of the fiscal year of the reinsurance vehicle, the reinsurance vehicle shall file with the superintendent an audit by a certified public accounting firm of the financial statements of the reinsurance vehicle and the trust accounts referred to in section 784, subsection 2, paragraph E.

**2. Statement of operation.** Each special purpose reinsurance vehicle organized under this subchapter shall file with the superintendent no later than March 1st of each year a statement of operations, including a statement of income, a balance sheet and a detailed listing of invested assets, including identification of assets held in trust to secure the reinsurance vehicle's obligations under the special purpose reinsurance vehicle contract, for the year ending the prior December 31st. The statements must be prepared in accordance with statutory accounting principles consistent with section 901-A on forms required by the superintendent.

**3. Financial statement.** The special purpose reinsurance vehicle shall keep its books and records in such manner that its financial condition, affairs and operations can be ascertained and so that its financial statements filed with the superintendent can be readily verified and its compliance with the provisions of this subchapter determined. The books and records may be photographed, reproduced on film or stored and reproduced electronically.

**4. Preservation.** All books, records, documents, accounts and vouchers must be preserved and kept available in this State for the purpose of examination and until authority to destroy or otherwise dispose of the records is secured from the superintendent. The original records may, however, be kept and maintained outside this State if, according to a plan adopted by the special purpose reinsurance vehicle's board of directors and approved by the superintendent, it maintains suitable records in lieu of the original records.

#### **§790. Officers and directors**

The directors of a special purpose reinsurance vehicle shall elect officers that they consider necessary

to carry out the purposes of the reinsurance vehicle pursuant to this subchapter. The provisions of Title 13-C, section 857 apply to the indemnification of officers and directors of reinsurance vehicles organized under this subchapter.

**1. Appointment; election of officers; directors.** Each special purpose reinsurance vehicle authorized to do business in this State shall notify the superintendent within 30 days after the appointment or election of any new officers or directors.

**2. Removal of officer; director.** When the superintendent determines that an officer or director does not meet the standards set forth in this section, the superintendent shall, after notice and opportunity for hearing afforded to the officer or director, and after a finding that the officer or director is incompetent or untrustworthy or of known bad character, order the removal of the person. If the reinsurance vehicle does not comply with a removal order within 30 days, the superintendent may suspend that reinsurance vehicle's limited certificate of authority until such time as the order is complied with.

**3. Loans with affiliate.** The reinsurance vehicle may make no loans to any special purpose reinsurance vehicle organizer, owner, director, officer, manager or affiliate of the reinsurance vehicle.

#### **§791. Fees and taxes**

A special purpose reinsurance vehicle application under section 782, subsection 2 is subject to the application fee specified in section 601, subsection 1. A reinsurance vehicle is also responsible for expenses and costs incurred by the bureau in accordance with section 228. The reinsurance vehicle is not subject to state premium or other taxes incidental to the operation of its business as long as the business remains within the limitations of this subchapter.

#### **§792. Dissolution**

A special purpose reinsurance vehicle operating under this subchapter may be dissolved at any time by a vote of its directors under section 790 and after the action has been approved by the superintendent. Voluntary dissolution may not be effected or allowed until and unless all of the obligations of the reinsurance vehicle pursuant to the insurance securitization have been fully and finally satisfied pursuant to their terms. In the case of voluntary dissolution, the disposition of the affairs of the reinsurance vehicle, including the settlement of all outstanding obligations, must be made by the officers or directors of the reinsurance vehicle and when the liquidation has been completed and a final statement in acceptable form has been filed with and approved by the superintendent the provisions for voluntary dissolution under section

3484 must be followed to dissolve the reinsurance vehicle.

#### **§793. Conservation, rehabilitation or liquidation**

**1. Authorized insurer.** A special purpose reinsurance vehicle is considered an authorized insurer for purposes of section 4351, subsection 1 and the provisions of chapter 57 apply to a reinsurance vehicle except to the extent modified by this section.

**2. Grounds for action.** Notwithstanding the provisions of sections 4356 and 4357, the Superior Court may issue an order authorizing the superintendent to conserve, rehabilitate or liquidate a special purpose reinsurance vehicle domiciled in this State only if the superintendent proves by clear and convincing evidence or the reinsurance vehicle stipulates after notice and opportunity for hearing that:

A. There has been embezzlement, wrongful sequestration, dissipation or diversion of the assets of the reinsurance vehicle intended to be used to pay amounts owed to the ceding insurer or the holders of special purpose reinsurance vehicle securities; or

B. The reinsurance vehicle is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose reinsurance vehicle securities request or consent to conservation, rehabilitation or liquidation under this subchapter.

**3. Receiver.** Notwithstanding any contrary provision of this Title, rules adopted under this Title or any other applicable law, upon any order of conservation, rehabilitation or liquidation of the special purpose reinsurance vehicle, a receiver is bound to deal with the reinsurance vehicle's assets and liabilities in accordance with the requirements under this subchapter.

**4. Recoverable amounts.** With respect to amounts recoverable under a special purpose reinsurance vehicle contract, the amount recoverable by the receiver may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation or liquidation with respect to the ceding insurer, notwithstanding any provisions to the contrary in the contracts or other documentation governing the special purpose reinsurance vehicle insurance securitization.

A. Notwithstanding the provisions of chapter 57, an application or petition in any delinquency proceeding relating to a ceding insurer or any temporary restraining order or injunction issued in any such proceeding may not prohibit the transaction of any business by a reinsurance vehicle, including any payment by a reinsurance vehicle made pursuant to a special purpose rein-

insurance vehicle security or any action or proceeding against a reinsurance vehicle or its assets.

B. Notwithstanding the provisions of chapter 57, subchapter 2, the commencement of a summary proceeding or other interim proceeding commenced prior to a formal delinquency proceeding with respect to a reinsurance vehicle and any order issued by the court in such proceeding may not prohibit a reinsurance vehicle from making a payment pursuant to a special purpose reinsurance vehicle security or contract or from taking any action required to make the payment.

**5. Nonfraudulent transfer.** Notwithstanding any other provision of chapter 57 or other state law:

A. A receiver of a ceding insurer may not avoid a nonfraudulent transfer by a ceding insurer to a special purpose reinsurance vehicle of money or other property made pursuant to a special purpose reinsurance vehicle contract; and

B. A receiver of a special purpose reinsurance vehicle may not void a nonfraudulent transfer by the reinsurance vehicle of money or other property made to a ceding insurer pursuant to a special purpose reinsurance vehicle contract or made to or for the benefit of any holder of a special purpose reinsurance vehicle security on account of the special purpose reinsurance vehicle security.

**6. Fulfillment of obligations.** With the exception of the fulfillment of the obligations under a special purpose reinsurance vehicle contract and notwithstanding any other provisions of this subchapter or other law of this State to the contrary the assets of a special purpose reinsurance vehicle including assets held in trust may not be consolidated with or included in the estate of a ceding insurer in any delinquency proceeding against the ceding insurer under this subchapter for any purpose, including, without limitation, distribution to creditors of the ceding insurer.

**7. Domiciliary receiver.** Notwithstanding any other provision of this subchapter:

A. The domiciliary receiver of a special purpose reinsurance vehicle domiciled in another state is vested by operation of law with the title to all of the assets, property, contracts and rights of action and all of the books, accounts and other records of the reinsurance vehicle located in this State. The domiciliary receiver has the immediate right to recover all such vested property, assets and causes of action of the reinsurance vehicle located in this State.

B. An ancillary proceeding may not be commenced or prosecuted in this State against a special purpose reinsurance vehicle domiciled in another state.

**§794. Not subject to guaranty funds; residual market or similar arrangements**

**1. Guaranty funds.** The special purpose reinsurance vehicle or the activities, assets and obligations relating to the reinsurance vehicle are not subject to the provisions of chapter 57, subchapter 3 or chapter 62 and a reinsurance vehicle may not be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in this State with respect to the activities, assets or obligations of a reinsurance vehicle or the ceding insurer.

**2. Residual market.** The special purpose reinsurance vehicle may not be required to participate in any residual market, so-called "FAIR" plan or other similar plan to provide insurance coverage, take out policies, assume risks, make capital contributions, pay or be otherwise obligated for assessments, surcharges or fees or otherwise support or participate in such plans or arrangements.

**§795. Asset and investment limitations**

**1. Assets.** Assets of the special purpose reinsurance vehicle held in trust to secure obligations under the special purpose reinsurance vehicle contract must at all times be held in:

A. Cash and cash equivalents;

B. Securities listed by the Securities Valuation Office of the National Association of Commissioners or its successor organization and qualifying as admitted assets under statutory accounting principles pursuant to section 901-A; or

C. Any other form of security acceptable to the superintendent.

**2. Investment practices.** In addition, the special purpose reinsurance vehicle may enter into swap agreements or other transactions that have the objective of leveling timing differences in funding of upfront or ongoing transaction expenses or managing credit or interest rate risk of the investments in the trust to ensure that the investments are sufficient to ensure payment or repayment of the securities and related interest or principal payments issued pursuant to a special purpose reinsurance vehicle insurance securitization transaction or the reinsurance vehicle's obligations under the special purpose reinsurance vehicle contract.

**§796. No transaction of insurance business by investors in securities**

The securities issued by the special purpose reinsurance vehicle pursuant to a special purpose reinsurance vehicle insurance securitization are not deemed to be insurance or reinsurance contracts. An investor in such securities issued pursuant to insurance securitization or any holder of such securities may not by sole means of this investment or holding be deemed to be transacting an insurance business in this State. The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives and advisors involved in an insurance securitization are not deemed to be conducting an insurance or reinsurance agency, brokerage, intermediary, advisory or consulting business by virtue of their activities in connection with the special purpose reinsurance vehicle or with the insurance securitization.

**§797. Authority to adopt rules**

The superintendent may adopt rules necessary to effectuate the purposes of this subchapter. Any rules so adopted do not affect a special purpose reinsurance vehicle insurance securitization in effect at the time of adoption. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**§798. Exemption from insurance laws within limitations**

1. Titles consistent. A special purpose reinsurance vehicle is subject to chapters 1, 3 and 5 to the extent consistent with this subchapter.

2. Provisions not applicable. No other provisions of this Title are applicable to a special purpose reinsurance vehicle organized under this subchapter, except as expressly provided in this subchapter or in rules adopted by the superintendent pursuant to section 797.

See title page for effective date.

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**CHAPTER 250**

**S.P. 479 - L.D. 1441**

**An Act To Establish New License Fee Caps**

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

**PART A**

**Sec. A-1. 32 MRSA §3112, sub-§5, ¶D,** as enacted by PL 1979, c. 555, §2, is repealed.

**Sec. A-2. 32 MRSA §3114-A, sub-§2, ¶B,** as amended by PL 1999, c. 386, Pt. K, §4, is further amended to read:

B. Pay an application fee ~~established by the board in an amount not to exceed \$75 as set under section 3116-A.~~

**Sec. A-3. 32 MRSA §3115,** as amended by PL 1983, c. 413, §136, is further amended to read:

**§3115. Licensure**

The board shall license ~~any~~ an applicant who meets the requirements of this chapter and pays the biennial licensure fee ~~specified in section 3116 as set under section 3116-A.~~ The fee for original licenses effective for one year or less during the biennial licensing period ~~shall be~~ is 1/2 the fee ~~specified in section 3116 set under section 3116-A.~~ Each person licensed ~~shall receive~~ receives a certificate. Every certificate of licensure and renewal certificate for the current biennium ~~shall~~ must be conspicuously displayed at the place of employment of the licensee. A certificate of licensure as a physical therapist ~~shall entitle~~ entitles the person to whom it is granted to engage in the practice of physical therapy anywhere in this State and to use the words "physical therapist" or letters "P.T." to indicate that ~~he~~ the person is licensed in this State. A certificate of licensure as a physical therapist assistant ~~shall entitle~~ entitles the person to whom it is granted to act as a physical therapist assistant and to use the words "physical therapist assistant" or letters "P.T.A." to indicate that ~~he~~ the person is licensed in this State.

**Sec. A-4. 32 MRSA §3116,** as amended by PL 1999, c. 386, Pt. K, §5, is further amended to read:

**§3116. Biennial licensure renewal**

All licenses must be renewed biennially on or before March 31st of each even-numbered year or at such other times as the Commissioner of Professional and Financial Regulation may designate upon application by the licensee accompanied by the fee set under section 3116-A. ~~The biennial licensure renewal fee may not exceed \$60.~~ Any license not renewed by March 31st automatically expires. The board may renew an expired license if the renewal notice is returned within 90 days of the expiration date and upon payment of a late fee ~~of \$10~~ in addition to the renewal fee. ~~Any~~ A person who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter, except that the