MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

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December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
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THE GENERAL EFFECTIVE DATE FOR
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2005

determines the defect occurred in other similar manufactured housing, the board shall notify all ascertainable purchasers of the housing, in accordance with the records obtained from the manufacturer and dealer of their possible right of action under this subchapter. Failure of the manufacturer ~~or~~, dealer or developer dealer to retain reasonable business records~~,~~ or to provide access to those records in response to a request by the board pursuant to this subchapter~~, shall be considered~~ is a violation of this chapter.

Sec. 22. 10 MRSA §9047, sub-§1, ¶A, as amended by PL 1993, c. 642, §28, is further amended to read:

A. Notification by mail to the first purchaser of the manufactured housing, other than a dealer or developer dealer of the manufacturer, and to any subsequent purchaser whose identity the manufacturer knows;

Sec. 23. 10 MRSA §9047, sub-§1, ¶B, as enacted by PL 1981, c. 152, §14, is amended to read:

B. Notification by mail or some expeditious means to the ~~dealer or~~ dealers and developer dealers of the manufacturer to whom the manufactured housing was delivered; and

Sec. 24. 10 MRSA §9051, sub-§3, as enacted by PL 1993, c. 642, §30, is amended to read:

3. Notice for purposes of limitation of actions. If a consumer files a written complaint with the manufacturer, dealer, developer dealer, installer, mechanic or board within one year and 10 days after installation of new manufactured housing, receipt of the written complaint by the manufacturer, dealer, developer dealer, installer, mechanic or board tolls the statute of limitations for purposes of bringing an action to enforce any applicable warranty concerning the defect that is the subject of the written complaint.

See title page for effective date.

CHAPTER 345

H.P. 403 - L.D. 548

An Act To Enhance the Prosecution of Child Pornography Cases

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

Sec. 1. 17-A MRSA §284, sub-§1, ¶A, as enacted by PL 2003, c. 711, Pt. B, §12, is amended to read:

A. Intentionally or knowingly transports, exhibits, purchases or possesses any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

(1) The other person has not in fact attained ~~14~~ 16 years of age; or

(2) The person knows or has reason to know that the other person has not attained ~~14~~ 16 years of age~~;~~.

Violation of this paragraph is a Class D crime;

Sec. 2. 17-A MRSA §284, sub-§§3 and 4, as enacted by PL 2003, c. 711, Pt. B, §12, are amended to read:

3. The age of the person depicted and that the person depicted is an actual person may be reasonably inferred from the depiction. Competent medical evidence or other expert testimony may be used to establish the age and authenticity of the person depicted.

4. Any material that depicts a person who has not attained ~~14~~ 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.

See title page for effective date.

CHAPTER 346

H.P. 652 - L.D. 933

An Act To Amend the Maine Life and Health Insurance Guaranty Association Act

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

Sec. 1. 24-A MRSA §§4601 and 4602, as enacted by PL 1983, c. 846, are amended to read:

§4601. Short title

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

§4602. Purpose

The purpose of this chapter, subject to certain limitations, is to maintain public confidence in the promises of insurers by providing a mechanism for

protecting policyholders, insureds, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts and supplemental contracts against failure in the performance of fair and equitable contractual obligations due to the impairment or insolvency of the member insurer issuing these policies or contracts. To provide this protection:

1. Creation of association. An association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages as limited by this chapter;

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

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

Sec. 2. 24-A MRSA §4603, as amended by PL 1989, c. 751, §§8 to 10, is further amended to read:

§4603. Scope

1. Application. This chapter ~~shall apply~~ applies to direct nongroup life insurance policies, health insurance policies, annuity contracts and contracts supplemental to life and health insurance policies and annuity contracts ~~issued by persons authorized to transact insurance in this State at any time~~ and to certificates under direct group life insurance policies, health insurance policies and annuity contracts, except as limited by this chapter. For the purposes of this chapter, annuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities and any immediate or deferred annuity contracts.

1-A. Persons covered. This chapter ~~shall provide~~ provides coverage for the policies and contracts specified in subsection 1:

A. To any person, regardless of where the person resides, except for a nonresident certificate holder under a group policy or contract, who is the beneficiary, assignee or payee of a person covered under paragraph B; ~~and~~

B. To any person who owns, or is a certificate holder under, a policy or contract specified in subsection 1 ~~or, in the case of an unallocated annuity contract, to a person who is the contract holder and~~, other than a structured settlement annuity, who:

(1) Is a resident; or

(2) Is not a resident, if all the following conditions are met:

~~(i)~~ (a) The insurer that issued the policy or contract is domiciled in this State;

~~(ii)~~ (b) The insurer never held a license or certificate of authority in the state in which the person resides;

~~(iii)~~ (c) The state in which the person resides has an association similar to the Maine Life and Health Insurance Guaranty Association; and

~~(iv)~~ (d) The person is not eligible for coverage by the association in that state~~.~~; and

C. To any person who is a payee under a structured settlement annuity, or to a beneficiary or beneficiaries of a payee if the payee is deceased, if the payee:

(1) Is a resident, regardless of where the contract owner resides; or

(2) Is not a resident, if all of the conditions of either division (a) or (b) are met:

(a) The contract owner of the structured settlement annuity is a resident; or

(b) The contract owner of the structured settlement annuity is not a resident, but:

(i) The insurer that issued the structured settlement annuity is domiciled in this State;

(ii) The state in which the contract owner resides has an association similar to the association created by this chapter; and

(iii) The payee or beneficiary and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

This chapter does not provide coverage to a person who is a payee or beneficiary of a contract owner who is a resident of this State if the payee or beneficiary is afforded any coverage by a similar association of another state.

This chapter is intended to provide coverage to a person who is a resident, and, in special circumstances as provided by this section, to a person who is not a resident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter is provided coverage under the laws of any other state, that person may not be provided coverage under this chapter. In determining the application of the provisions of this subsection in a situation in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary or assignee, this chapter must be construed in conjunction with other state laws to result in coverage by only one association.

2. Exceptions. This chapter ~~shall~~ does not apply to:

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

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

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

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

E. Any portion of a policy or contract to the extent that the rate of interest on which it is based, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(1) Averaged over a period of 4 years before the date on which the ~~association becomes obligated with respect to the policy or contract~~ member insurer becomes an impaired insurer or becomes an insolvent insurer under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged over the same 4-year period or for a lesser period if the policy or contract was issued less than 4 years before the ~~association became obligated~~ member insurer becomes an impaired insurer or becomes an insolvent insurer, whichever is earlier; and

(2) ~~After~~ On or after the date on which the ~~association becomes obligated with respect to the policy or contract~~ member insurer becomes an impaired insurer or becomes an insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's Corporate Bond Yield Average as most recently available.~~:~~

F. Any portion of a policy or contract issued to a plan or program of an employer, association or other person to provide life, health or annuity benefits to its employees, members or others, to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association or other person under:

(1) A multiple employer welfare arrangement as defined in 29 United States Code, Section 1144;

(2) A minimum premium group insurance plan;

(3) A stop loss group insurance plan; or

(4) An administrative-services-only contract;

G. Any portion of a policy or contract to the extent that it provides for:

(1) Dividends or experience rating credits;

(2) Voting rights; or

(3) Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

H. Any policy or contract issued in this State by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this State;

I. Any portion of a policy or contract to the extent that the assessments required by section 4609 with respect to the policy or contract are preempted by federal or state law;

J. Any obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:

(1) Claims based on marketing materials;

(2) Claims based on side letters, riders or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(3) Misrepresentations of or regarding policy benefits;

(4) Extra-contractual claims; or

(5) Claims for penalties or consequential or incidental damages;

K. Any contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, neither of which is an affiliate of the member insurer;

L. Any unallocated annuity contract; and

M. Any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired insurer or becomes an insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this paragraph, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

3. Benefits; limitations of coverage. The benefits that the association may become obligated to cover may not exceed the least of:

A. The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer;

B. With respect to one life, regardless of the number of policies or contracts:

(1) Three hundred thousand dollars in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(2) The following limits for health insurance benefits:

(a) Three hundred thousand dollars for coverages not defined as disability insurance or basic hospital, medical and surgical insurance or major medical insurance, including any net cash surrender and net cash withdrawal values;

(b) Three hundred thousand dollars for disability and long-term care insurance; or

(c) Five hundred thousand dollars for basic hospital, medical and surgical insurance or major medical insurance; or

(3) One hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; or

C. With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, $100,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values.

4. Maximum obligation in benefits. Notwithstanding subsection 3, the association is not in any event obligated to cover more than:

A. An aggregate of $300,000 in benefits with respect to any one life under subsection 3, paragraph B except with respect to benefits for basic hospital, medical and surgical insurance and major medical insurance under subsection 3, paragraph B, subparagraph (2), in which case the aggregate liability of the association may not exceed $500,000 with respect to any one individual; or

B. Five million dollars in benefits, regardless of the number of policies and contracts held by the owner, with respect to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons.

5. Subrogation and assignment rights. The limitations set forth in subsections 3 and 4 are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed

to the association pursuant to its subrogation and assignment rights.

6. Material economic benefits; contractual obligations. In performing its obligations to provide coverage under section 4608, the association is not required to guarantee, assume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

Sec. 3. 24-A MRSA §4604, as enacted by PL 1983, c. 846, is amended to read:

§4604. Construction

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

Sec. 4. 24-A MRSA §4605, as amended by PL 2001, c. 44, §11 and affected by §14, is repealed.

Sec. 5. 24-A MRSA §4605-A is enacted to read:

§4605-A. Definitions

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

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

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

3. Authorized assessment. "Authorized assessment" or "authorized" when used in the context of assessments means that a resolution by the board of directors of the association has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount; an assessment is authorized when the resolution is passed.

4. Benefit plan. "Benefit plan" means a specific employee, union or association of natural persons benefit plan.

5. Board of directors. "Board of directors" means the board of directors of the association.

6. Called assessment. "Called assessment" or "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice; an authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.

7. Contractual obligation. "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof, for which coverage is provided under section 4603.

8. Covered policy. "Covered policy" means a policy or contract or portion of a policy or contract for which coverage is provided under section 4603.

9. Extra-contractual claims. "Extra-contractual claims" includes, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages or attorney's fees and costs.

10. Impaired insurer. "Impaired insurer" means a member insurer that, after the effective date of this section, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

11. Insolvent insurer. "Insolvent insurer" means a member insurer that, after the effective date of this section, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

12. Member insurer. "Member insurer" means an insurer that is licensed or that holds a certificate of authority to transact in this State any kind of insurance for which coverage is provided under section 4603 and includes an insurer whose license or certificate of authority in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

A. A hospital or medical service organization, whether profit or nonprofit;

B. A health maintenance organization;

C. A fraternal benefit society;

D. A mandatory state pooling plan;

E. A mutual assessment company or other person that operates on an assessment basis;

F. An insurance exchange;

G. An organization that has a certificate or license limited to the issuance of charitable gift annuities under this Title; or

H. An entity similar to any of those listed in this subsection.

13. Moody's Corporate Bond Yield Average. "Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor to that index.

14. Owner. "Owner" with respect to a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. "Owner," "contract owner" and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

15. Person. "Person" means an individual, corporation, limited liability company, partnership, association, governmental body or entity or voluntary organization.

16. Premiums. "Premiums" means amounts or considerations by whatever name called received on covered policies or contracts less returned premiums, considerations and deposits and less dividends and experience credits. "Premiums" does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under section 4603, except that assessable premiums may not be reduced on account of the provisions of section 4603 relating to interest limitations and relating to limitations with respect to one individual, one participant and one contract owner. "Premiums" does not include:

A. Premiums on an unallocated annuity contract; or

B. With respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, premiums in excess of $5,000,000 with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

17. Principal place of business. "Principal place of business" has the following meaning.

A. "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors:

(1) The state in which the primary executive and administrative headquarters of the entity is located;

(2) The state in which the principal office of the chief executive officer of the entity is located;

(3) The state in which the board of directors of the entity or similar governing body of the entity conducts the majority of its meetings;

(4) The state in which the executive or management committee of the board of directors of the entity or similar governing body of the entity conducts the majority of its meetings;

(5) The state from which the management of the overall operations of the entity is directed; and

(6) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the factors listed in subparagraphs (1) to (5). However, in the case of a plan sponsor, if more than 50% of the participants in the benefit plan are employed in a single state, that state is deemed to be the principal place of business of the plan sponsor.

B. The principal place of business of a plan sponsor of a benefit plan is deemed to be the principal place of business of the association, committee, joint board of trustees or other similar group of representatives of the parties who establish or maintain the benefit plan, which, in lieu of a specific or clear designation of a principal place of business, is deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

18. Receivership court. "Receivership court" means the court in the impaired or insolvent insurer's state having jurisdiction over the conservation, rehabilitation or liquidation of the insurer.

19. Resident. "Resident" means a person to whom a contractual obligation is owed and who resides in this State on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, whichever occurs first. A person may be a resident of only one state, which in the case of a person other than a natural person is its principal place of business. Citizens of

the United States that are either residents of foreign countries or residents of United States possessions, territories or protectorates that do not have an association similar to the association created by this chapter are deemed residents of the state of domicile of the insurer that issued the policies or contracts.

20. Structured settlement annuity. "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

21. State. "State" means a state, the District of Columbia, Puerto Rico or a United States possession, territory or protectorate.

22. Supplemental contract. "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health or annuity policy or contract.

23. Unallocated annuity contract. "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

Sec. 6. 24-A MRSA §§4606, 4607 and 4608, as enacted by PL 1983, c. 846, are amended to read:

§4606. Creation of the association

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

A. The health insurance account;

B. The life insurance account; and

C. The annuity account, which must include annuity contracts owned by a governmental retirement plan or its trustee established under Section 401, Section 403(b) or Section 457 of the United States Internal Revenue Code.

2. Supervision of association. The association ~~shall come~~ is under the immediate supervision of the superintendent and ~~shall be~~ is subject to the applicable provisions of the insurance laws of this State. Meetings or records of the association may be open to the public upon majority vote of the board of directors of the association.

§4607. Board of directors

1. Membership. The board of directors of the association ~~shall~~ must consist of not less than 5 nor more than 9 members representing member insurers serving terms as established in the plan of operation pursuant to section 4610. The members of the board ~~shall be~~ are selected by member insurers subject to the approval of the superintendent. Vacancies on the board ~~shall~~ must be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors and initially organize the association, the superintendent shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer ~~shall be~~ is entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the superintendent may appoint the initial members.

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

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

§4608. Powers and duties of the association

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

1. Impaired insurer; association action. If a ~~domestic~~ member insurer is an impaired insurer, the association may, ~~prior to a final order of liquidation or rehabilitation, and~~ subject to any fair and equitable conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by ~~the impaired insurer and~~ the superintendent~~, employ any or all of the following actions~~:

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

B. Provide such ~~moneys~~ money, pledges, loans, notes, guarantees or other means as are proper to

effectuate paragraph A and assure payment of the appropriate contractual obligations of the impaired insurer pending action under paragraph A; or.

C. Loan money to the impaired insurer.

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

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

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

C. Loan money to the impaired insurer.

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

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

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

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

3-A. Impaired and insolvent insurer; association action. If a member insurer is an insolvent insurer, the association may, in its discretion, either:

A. Take the following actions:

(1) Guarantee, assume or reinsure or cause to be guaranteed, assumed or reinsured the policies or contracts of the insolvent insurer, or assure payment of the contractual obligations of the insolvent insurer; and

(2) Provide money, pledges, loans, notes, guarantees or other means reasonably necessary to discharge the association's duties; or

B. Provide benefits and coverages in accordance with this paragraph.

(1) With respect to life and health insurance policies and annuities, the association shall assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(a) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies and contracts; and

(b) With respect to nongroup policies, contracts and annuities, not later than the earlier of the next renewal date if any under the policies or contracts and one year, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies or contracts.

(2) The association shall make diligent efforts to provide all known insureds or annuitants for nongroup policies and contracts, or group policy owners with respect to group policies and contracts, 30 days' notice of the termination of the benefits provided.

(3) With respect to nongroup life and health insurance policies and annuities covered by the association, the association shall make available to each known insured or annuitant, or owner if other than the insured or annuitant, and, with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subparagraph (4), if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to con-

tinue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(4) In providing substitute coverage, the association may offer either to reissue the terminated coverage or to issue an alternative policy in accordance with the following:

(a) Alternative or reissued policies must be offered without requiring evidence of insurability and may not provide for any waiting period or exclusion that would not have applied under the terminated policy;

(b) The association may reinsure any alternative or reissued policy;

(c) Alternative policies adopted by the association are subject to the approval of the superintendent and the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency;

(d) Alternative policies must contain at least the minimum statutory provisions required in this State and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it adopts. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten; and

(e) Any alternative policy issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(5) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium must be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the superintendent and the receivership court.

(6) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy must cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured or the association.

(7) When proceeding under this paragraph with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 4603.

(8) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this chapter with respect to the policy or coverage, except with respect to any claims incurred or any net cash surrender value that may be due in accordance with the provisions of this chapter.

(9) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(10) The protection provided by this chapter does not apply when any guaranty protection is provided to residents of this State by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this State.

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

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

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

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

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

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

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

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

5-A. Policy liens; contract liens; moratoriums on payments. In carrying out its duties under subsection 3-A, the association may:

A. Subject to approval by a court in this State, impose permanent policy or contract liens in connection with a guarantee, assumption or reinsurance agreement, if the association finds that the amounts that can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest; and

B. Subject to approval by a court in this State, impose temporary moratoriums or liens on payments of cash values and policy loans or on any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

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

6-A. Failure to act. If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subsection 3-A, the superintendent has the powers and duties of the association under this chapter with respect to the insolvent insurer.

6-B. Retention of deposit; final order of liquidation or rehabilitation plan. A deposit in this State, held pursuant to law or required by the superintendent for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this State or in a reciprocal state, pursuant to this Title must be promptly paid to the association. The association is entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this State related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association and not retained pursuant to this subsection. Any amount so paid to the association less the amount not retained by it must be treated as a distribution of estate assets pursuant to chapter 57 or similar provision of the state of domicile of the impaired or insolvent insurer.

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

8. Standing to appear before court. The association ~~shall have~~ has standing to appear or intervene before any court or agency in this State with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise. This standing ~~shall extend~~ extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying or guaranteeing the covered policies or contracts and contractual obligations of the impaired or insolvent insurer and the determination of the covered policies or contracts and contractual obligations. The association also has the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

9. Subrogation rights. Any person receiving benefits under this chapter ~~shall be~~ is deemed to have assigned ~~his~~ that person's rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter whether the benefits are payments of or on account of contractual obligations ~~or~~, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of these rights and cause of action by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon that person. The association ~~shall be~~ is subrogated to these rights against the assets of any impaired or insolvent insurer.

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

In addition, the association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary or payee of a policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary or payee of the annuity, to the extent of benefits received pursuant to this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under Section 130 of the federal Internal Revenue Code.

If the provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations must be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion thereof covered by the association.

If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in this subsection, the person shall pay to the association the portion of the recovery attributable to the policies or portion thereof covered by the association.

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

11. Other powers. The association may:

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

B. ~~Sue~~ Subject to the provisions of section 4617, sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 4609 or to settle claims or potential claims against it;

C. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets;

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

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

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

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

H. Organize itself as a corporation or in other legal form permitted by the laws of this State;

I. Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request;

J. Join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association; and

K. Take necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.

12. Reinsurance of obligations; election by association. At any time within one year after the date on which the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of the member insurer that accrue on or after the coverage date and that relate to contracts covered in whole or in part by the association under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. However, the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election is effected by a notice to the receiver, rehabilitator or liquidator and to the affected reinsurers. If the association makes an election, the following requirements apply with respect to the agreements selected by the association.

A. For contracts covered in whole or in part by the association, the association is responsible for all unpaid premiums due under the agreements for periods both before and after the coverage date and for the performance of all other obligations to be performed after the coverage date. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association.

B. The association is entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association in whole or in part, except that, upon receipt of any such amounts, the association is obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of the amount received by the association over the benefits paid by the association on account of the policy or contract less the retention of the impaired or insolvent insurer applicable to the loss or event.

C. Within 30 days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each reinsurance agreement as of the date of the association's election, giving full credit to all items paid by either the member insurer or its receiver, rehabilitator or liquidator or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or indemnity reinsurer shall pay the net balance due the other within 5 days of the completion of the calculation. If the receiver, rehabilitator or liquidator has received any amounts due the association pursuant to paragraph B, the receiver, rehabilitator or liquidator shall remit them to the association as promptly as practicable.

D. If the association, within 60 days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association in whole or in part, the reinsurer is not entitled to terminate the reinsurance agreements insofar as the agreements relate to contracts covered by the association in whole or in part and is not entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association.

E. In the event the association transfers its obligations to another insurer and if the association and the other insurer agree, the other insurer must succeed to the rights and obligations of the association under this chapter effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in this subsection, except that:

(1) The indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary; and

(2) The obligations described in this chapter no longer apply on and after the date the indemnity reinsurance agreement is transferred to the 3rd-party insurer.

This paragraph does not apply if the association has previously expressly determined in writing that it will not exercise the election.

F. This subsection supersedes the provisions of any law of this State or of any affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator or rehabilitator of an insolvent insurer. The receiver, rehabilitator or liquidator is entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods prior to the coverage date subject to applicable set-off provisions.

G. Except as otherwise expressly provided, this subsection does not alter or modify the terms and conditions of the indemnity reinsurance agreements of an insolvent insurer. This subsection may not be construed to abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. This subsection may not be construed to give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

13. Discretion. The board of directors of the association has discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.

14. No additional benefits. When the association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

15. Venue. Venue in a suit against the association arising under this chapter is Kennebec County. The association may not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

16. Issuance of substitute coverage. In carrying out its duties in connection with guaranteeing, assuming or reinsuring policies or contracts under this section, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with this subsection.

A. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for:

(1) A fixed interest rate;

(2) Payment or dividends with minimum guarantees; or

(3) A different method for calculating interest or changes in value.

B. There may not be a requirement for evidence of insurability, waiting period or other exclusion that would not have applied under the replaced policy or contract.

C. The alternative policy or contract must be substantially similar to the replaced policy or contract in all other material terms.

Sec. 7. 24-A MRSA §4609, as amended by PL 1989, c. 751, §12, is further amended to read:

§4609. Assessments

1. Assessments; collection. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. ~~The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.~~ Assessments are due not less than 30 days after prior written notice to the member insurers and accrue interest at 10% annually on and after the due date.

~~**2. Classes of assessments.** There shall be 5 classes of assessments, as follows.~~

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

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

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

~~D. To the extent that the maximum 2% has not been assessed, an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph shall be assessed when immediately necessary for the payment of claims and expenses. Payment of this assessment shall be assured by one of the means set forth in this paragraph. Any amount drawn by the association under any line of credit shall be considered a payment toward the member insurer's obligation provided for in this paragraph. The maximum line of credit or preinsolvency assessment for each account shall be as follows:~~

~~Account~~	~~Maximum~~
~~Life~~	~~$1,400,000~~
~~Health~~	~~$1,500,000~~
~~Annuity~~	~~$500,000~~

~~(1) The association shall obtain a line of credit for the benefit of each account, in an amount not to exceed the applicable maximum to ensure the immediate availability of funds for purposes of future claims and expenses attributable to an insurer insolvency in that account. That line of credit shall be obtained from a qualified financial institution. At no time may a qualified financial institution participate in a line of credit in excess of 20% of its equity capital. The line of credit shall provide for a 30-day notice of termination or nonrenewal to the superintendent and the association and shall provide funding to the association within one business day of receipt of notice from the superintendent of an impaired insurer in that account as defined in section 4605. Each member insurer upon notice from the association shall make immediate payment for its proportionate share of the amount borrowed based on the premium for the preceding calendar year. The line of credit provided for in this paragraph shall be subject to prior review and approval by the superintendent at the time of origination and at any subsequent renewal.~~

~~(2) If the association cannot obtain a line of credit, a member insurer may obtain a line of credit from a qualified financial institution or may extend a line of credit itself directly to and for the benefit of the member insurer's account by submitting to the association a duly authorized and executed line of credit agreement providing that the member insurer shall provide funding to the association under the line of credit within one business day of receipt of a written notice from the superintendent of an impaired insurer as defined in section 4605 and receipt of a written request from the association for a drawdown under the line of credit. The line of credit agreement shall be subject to prior review and approval by the superintendent at the time of origination and at any subsequent renewal. It shall include such commercially reasonable provisions as the association or the superintendent may deem advisable, including a provision that the line of credit is irrevocable or for a stated period of time and provides for a 30-day notice to the association and the superintendent that the line is being terminated or not renewed. Any line of credit issued under this paragraph may be replaced with another line of credit and the existing line of credit shall be released by the association once a substitute line of credit has been provided or the assessment provided for in this paragraph has been paid.~~

~~(3) If a line of credit is not given as provided for in subparagraph (2), the member insurer shall be responsible for payment of an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph which shall be paid into a preinsolvency assessment fund in each account. Funds in each account shall only be used for the payment of claims and expenses of an insolvent insurer in that account.~~

~~(4) All materials and information submitted or considered under this paragraph shall be matters of public record.~~

~~E. Class E assessments shall be made to the extent necessary to carry out the powers and duties of the association under subsection 8.~~

2-A. Classes of assessments. There are 2 classes of assessments, as set out in this subsection.

A. Class A assessments are authorized and called for the purpose of meeting administrative costs and other general expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer.

B. Class B assessments are authorized and called to the extent necessary to carry out the powers and duties of the association under section 4608 with regard to an impaired or an insolvent insurer.

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

~~A. The amount of any Class A, Class D or Class E assessment for each account shall be determined by the board. The amount of any Class B or Class C assessment shall be divided among the accounts in the proportion that the present value of the liabilities for each account of the impaired insurer bears to the total liabilities of the impaired insurer. This paragraph shall not be a factor in the determination as to whether the protection provided by laws for residents of this State by the domiciliary jurisdiction of a foreign or alien insurer is or is not substantially similar to the protection provided by this chapter for residents of other states.~~

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

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

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

3-A. Determination of assessments. Assessments must be determined as follows:

A. The amount of any Class A assessment, as described in subsection 2-A, for each account must be determined by the board of directors and may be authorized and called on a pro rata or non-pro rata basis. The amount of any Class B assessment, as described in subsection 2-A, must be allocated for assessment purposes among the accounts pursuant to an allocation formula that may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard determined by the board in its sole discretion as being fair and reasonable under the circumstances. This paragraph may not be a factor in the determination as to whether the protection provided by laws for residents of this State by the domiciliary jurisdiction of a foreign or alien insurer is or is not substantially similar to the protection provided by this chapter for residents of other states.

B. Class A assessments, as described in subsection 2-A, against member insurers for each account must be in the proportion that the premiums received on business in this State by each assessed member insurer on policies or contracts covered by each account for the calendar year for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the calendar year for which information is available preceding the year in which the insurer became impaired bears to premiums received on business in this State for the calendar year by all assessed member insurers.

C. Class B assessments, as described in subsection 2-A, against member insurers for each account must be in the proportion that the premiums received on business in this State by each assessed member insurer on policies or contracts covered by each account for the calendar year for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the calendar year for which information is available preceding the year in which the insurer became impaired bears to premiums received on business in this State for the calendar year by all assessed member insurers.

D. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer may not be authorized or called until necessary to implement the purposes of this chapter. Classification of assessments under subsection 2-A and computation of assessments under this paragraph must be made with a reasonable degree of accuracy, recogniz-

ing that exact determinations may not always be possible.

4. Abatement or deferral of assessments. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board of directors, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association. The total of all assessments upon a member insurer for each account ~~shall~~ may not in any one calendar year exceed 2% of the insurer's premiums in this State on the policies covered by the account.

5. Additional assessment for abatements or deferrals. In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection 4, the amount by which the assessment is abated or deferred ~~shall~~ must be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

6. Refunds. The board of directors may, ~~subject to the preinsolvency funding requirement of section 4609, subsection 2, paragraph D,~~ by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

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

8. Assessment shortfalls. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any one account an amount sufficient to make all necessary payments from that account, the shortfall ~~shall~~ must be assessed as an obligation of the other accounts of the association. Each member insurer's assessment ~~shall~~ must be in the proportion that its premium for the calendar year preceding the assessment on the kinds of insurance in the accounts to be assessed bears to the total premium of all member insurers for the same calendar year on the kinds of insurance in those accounts. The total of assessments against a member insurer for shortfalls under this section and section 4440 in any one calendar year ~~shall~~ may not exceed 2% of that member insurer's premiums in this State or for policies covered by the account. ~~Within 7 days after the board of directors votes to levy an assessment under this subsection, the chair of the board of directors shall notify the chairs of the joint standing committee of the Legislature having jurisdiction over banking and insurance matters that the association has voted to make that assessment. The notification must be in writing and must include the total amount to be assessed against each account and the name of the account to which the assessed funds will be credited.~~

9. Certificate of contribution. The association shall issue to each insurer paying an assessment under this chapter, other than a Class A assessment, a certificate of contribution, in a form prescribed by the superintendent, for the amount of the assessment so paid. All outstanding certificates are of equal dignity and priority without reference to amounts or dates of issue.

Sec. 8. 24-A MRSA §4611, sub-§1, ¶¶ A and C, as enacted by PL 1983, c. 846, are amended to read:

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

C. When an impairment is ~~declared, pursuant to section 4605~~ determined, as defined in section 4605-A, subsection ~~6, paragraph B~~ 10, and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice ~~of~~ to the impaired insurer ~~shall constitute~~ constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand ~~shall~~ does not excuse the association from the performance of its powers and duties under this chapter; and

Sec. 9. 24-A MRSA §4611, sub-§3, as enacted by PL 1983, c. 846, is amended to read:

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

Sec. 10. 24-A MRSA §4612, as enacted by PL 1983, c. 846, is repealed.

Sec. 11. 24-A MRSA §4612-A is enacted to read:

§4612-A. Prevention of impairments and insolvencies

To aid in the detection and prevention of insurer impairments and insolvencies, the following provisions apply.

1. Action by superintendent. The superintendent shall:

A. Notify the insurance commissioners of all the other states, territories of the United States and the District of Columbia, within 30 days following the action taken or the date the action occurs, when the superintendent takes any of the following actions against a member insurer:

(1) Revokes a license;

(2) Suspends a license; or

(3) Makes a formal order that the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the State, reinsure all or any part of its business or increase capital, surplus or any other account for the security of policy owners or creditors.

B. Report to the board of directors when the superintendent has taken any of the actions set forth in paragraph A or has received a report from any other insurance commissioner indicating that any such action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.

C. Report to the board of directors when the superintendent has reasonable cause to believe from an examination, whether completed or in process, of any member insurer that the insurer may be an impaired or insolvent insurer.

D. Furnish to the board of directors the National Association of Insurance Commissioners Insurance Regulatory Information System ratios and listings of companies not included in the ratios. The board may use the information contained therein in carrying out its duties and responsibilities under this section. The report and the information contained therein must be kept confidential by the board until such time as made public by the superintendent or other lawful authority.

2. Advice and recommendations. The superintendent may seek the advice and recommendations of the board of directors concerning any matter affecting the duties and responsibilities of the superintendent regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this State.

3. Action by board of directors. The board of directors, upon majority ballot vote, shall:

A. Notify the superintendent of any information indicating any member insurer may be an impaired or insolvent insurer;

B. Make reports and recommendations to the superintendent upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this State. These reports and recommendations must be treated as confidential by the superintendent; and

C. Make recommendations to the superintendent for the detection and prevention of insurer insolvencies.

Sec. 12. 24-A MRSA §§4614 and 4617, as enacted by PL 1983, c. 846, are amended to read:

§4614. Miscellaneous provisions

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

2. Records. Records ~~shall~~ must be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 4608. Records of the negotiations or meetings ~~shall~~ may be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection limits the duty of the association to render a report of its activities under section 4615.

3. Association deemed to be creditor of impaired or insolvent insurer. For the purpose of carrying out its obligations under this chapter, the association ~~shall be~~ is deemed to be a creditor of the impaired insurer to the extent of assets attributable to

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

As creditors of the impaired or insolvent insurer, the association and other similar associations are entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within 120 days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association is entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

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

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

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

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

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

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

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

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

D. The maximum amount recoverable under this section ~~shall be~~ 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 on a fair and equitable basis; and

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

§4617. Immunity

There ~~shall be~~ is no liability on the part of and no cause of action of any nature ~~shall~~ may arise against any member insurer or its agents or employees, the association or its agents or employees, ~~members of~~ the board of directors or any member of the board or the superintendent or ~~his~~ the superintendent's representatives, for any ~~action taken~~ act or omission by them in the performance of their powers and duties under this chapter. Immunity extends to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

Sec. 13. 24-A MRSA §4619, as enacted by PL 1989, c. 751, §13, is repealed.

Sec. 14. 24-A MRSA §§4620 and 4621 are enacted to read:

§4620. Prohibited advertisement of association in insurance sales

A person, including an insurer or an agent or affiliate of an insurer, may not make, publish, disseminate, circulate or place before the public or cause directly or indirectly to be made, published, disseminated, circulated or placed before the public in any newspaper, magazine or publication or in the form of a notice, circular, pamphlet, letter or poster or over any radio station or television station or in any other way any advertisement, announcement or statement, written or oral, that uses the existence of the association for the purpose of sales, solicitation or inducement to purchases of any form of insurance covered by this chapter. This section does not apply to the Maine Life and Health Insurance Guaranty Association or any other entity that does not sell or solicit insurance.

§4621. Credits for assessments paid; tax offsets

1. Credit allowed. A member insurer may offset against its premium tax liability to this State an assessment described in section 4609, subsection 2-A, paragraph B and for which a certificate under section 4609, subsection 9 is issued, to the extent of 20% of the amount of the assessment for each of the 5 calendar years following the year in which the assessment was paid. In the event a member insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

2. Refunds. Any sums that are acquired by refund, pursuant to section 4609, subsection 6, from the association by member insurers, and that have been offset against premium taxes as provided in subsection 1, must be recaptured in such manner as required by the State Tax Assessor under Title 36. The association shall notify the superintendent and the State Tax Assessor that refunds have been made. The association also shall provide the State Tax Assessor with a list of all members who were issued refunds and the dates and amounts of such refunds.

3. Application. This section applies to assessments paid to the association by a member insurer on or after January 1, 2005.

Sec. 15. 36 MRSA §2530 is enacted to read:

§2530. Maine Life and Health Insurance Guaranty Association credit

A taxpayer is allowed a credit against the tax otherwise due under this chapter as determined under Title 24-A, section 4621.

Sec. 16. Application. This Act does not apply to any insurer that is insolvent or unable to fulfill its contractual obligations on the effective date of this Act.

See title page for effective date.

CHAPTER 347

H.P. 1071 - L.D. 1524

An Act To Update Professional and Occupational Licensing Laws

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

PART A

Sec. A-1. 5 MRSA §5301, sub-§2, ¶E, as repealed and replaced by PL 1995, c. 625, Pt. A, §11, is amended to read:

E. Convictions for which incarceration for less than one year may be imposed and that involve sexual misconduct by an applicant for massage therapy licensure or a licensed massage therapist or an applicant or licensee of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Examiners, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the Board of Chiropractic Licensure, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of Examiners on Speech-language Pathology and Audiology, the Board of Hearing Aid Dealers and Fitters, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine Board of Pharmacy, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Nursing and the Emergency Medical Services' Board.

Sec. A-2. 5 MRSA §5303, sub-§2, as repealed and replaced by PL 1995, c. 625, Pt. A, §12, is amended to read: