

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2008 to June 13, 2009

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

Augusta, Maine
2009

the appointment of the person holding a kennel license issued under section 3923-C, the Governor shall consider nominations made by state-based dog clubs.

See title page for effective date.

CHAPTER 334

H.P. 909 - L.D. 1306

An Act To Require Interscholastic Athletic Organizations To Comply with the Public Proceedings Provisions of the Freedom of Access Laws for Certain Meetings

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

Sec. 1. 1 MRSA §402, sub-§2, ¶E, as amended by PL 1995, c. 608, §2, is further amended to read:

E. The board of directors of a nonprofit, non-stock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees; ~~and~~

Sec. 2. 1 MRSA §402, sub-§2, ¶F, as enacted by PL 1995, c. 608, §3, is amended to read:

F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; ~~and~~

Sec. 3. 1 MRSA §402, sub-§2, ¶G is enacted to read:

G. The committee meetings, subcommittee meetings and full membership meetings of any association that:

(1) Promotes, organizes or regulates statewide interscholastic activities in public schools or in both public and private schools; and

(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.

This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach.

Sec. 4. 1 MRSA §402, sub-§4 is enacted to read:

4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.

See title page for effective date.

CHAPTER 335

S.P. 520 - L.D. 1436

An Act To Create Economic Development in the State by Modernizing the State's Captive Insurance Laws

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

Sec. 1. 24-A MRSA §6701, sub-§2, as enacted by PL 1997, c. 435, §1, is amended to read:

2. Association. "Association" means any legal association of individuals, corporations, limited liability companies, partnerships or associations that have been in continuous existence for at least one year, ~~except labor organizations,~~ the member organizations of which ~~collectively:~~

A. Own, control or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; ~~or~~

B. Have complete voting control over an association captive insurance company incorporated as a mutual or reciprocal insurer; ~~or~~

C. Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

Sec. 2. 24-A MRSA §6701, sub-§4, as enacted by PL 1997, c. 435, §1, is amended to read:

4. Captive insurance company. "Captive insurance company" means any pure captive insurance company, sponsored captive insurance company, association captive insurance company or industrial insured captive insurance company formed or licensed under this chapter.

Sec. 3. 24-A MRSA §6701, sub-§5, ¶C, as enacted by PL 1997, c. 435, §1, is repealed.

Sec. 4. 24-A MRSA §6701, sub-§5, ¶D is enacted to read:

D. Has all its risks managed by a pure captive insurance company in accordance with this chapter.

Sec. 5. 24-A MRSA §6701, sub-§8, ¶A, as enacted by PL 1997, c. 435, §1, is amended to read:

A. A group of industrial insureds that collectively:

(1) Owns, controls or holds with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer; ~~or~~

(2) Has complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or

(3) Constitutes all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer; or

Sec. 6. 24-A MRSA §6701, sub-§9, as enacted by PL 1997, c. 435, §1, is amended to read:

9. Member organization. "Member organization" means any individual, corporation, limited liability company, partnership or association that belongs to an association.

Sec. 7. 24-A MRSA §6701, sub-§10, as enacted by PL 1997, c. 435, §1, is amended to read:

10. Parent. "Parent" means a corporation, limited liability company, partnership or individual that directly or indirectly owns, controls or holds with power to vote more than 50% ~~or~~ of the outstanding voting securities of a pure captive insurance company organized as a stock corporation or 50% of the membership interests of a pure captive insurance company organized as a nonprofit corporation.

Sec. 8. 24-A MRSA §6701, sub-§11, as enacted by PL 1997, c. 435, §1, is amended to read:

11. Pure captive insurance company. "Pure captive insurance company" means any company that insures risks of its parent; and affiliated companies or controlled unaffiliated businesses; but does not include those insurers that otherwise qualify for and elect to hold a certificate of authority as an insurer under section 414. "Pure captive insurance company" includes, with respect to operations in this State unless otherwise restricted by the superintendent, a branch captive insurance company.

Sec. 9. 24-A MRSA §6702, as amended by PL 1997, c. 583, §§1 to 3, is further amended to read:

§6702. Licensing; authority

1. Authority. A captive insurance company may not engage in the business of insurance in this State unless the company:

A. Obtains a license from the superintendent authorizing the company to do insurance business in this State;

B. Holds at least one meeting of its board of directors, or other governing body, each year in this State. For pure captive insurance companies and pure nonprofit captive insurance companies, the annual in-state meeting requirement may be satisfied by a teleconferenced or videoconferenced meeting if at least one Maine resident member of the board of directors, or other governing body, participates in the meeting from this State;

C. Maintains its principal place of business in this State; and

D. Appoints a resident agent to accept service of process and to otherwise act on its behalf in this State.

2. Charter and bylaws. In order to receive a license, a captive insurance company must file with the superintendent a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition and any other statements or documents required by the superintendent.

3. Information required. In addition to the information required by subsection 2, an applicant captive insurance company must file with the superintendent evidence of the following:

A. The amount and liquidity of its assets relative to the risks to be assumed;

B. The adequacy of the expertise, experience and character of the person or persons who will manage it;

C. The overall soundness of its plan of operation;

D. The adequacy of the loss prevention programs of its parent or member organizations, as applicable;

E. The character, reputation, financial standing and purposes of the incorporators;

F. The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors; and

G. Any other factors determined relevant by the superintendent in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

4. License. If the superintendent is satisfied that the documents and statements filed by the captive in-

insurance company under subsections 2 and 3 comply with this chapter, the superintendent may grant a license authorizing it to do insurance business. A captive insurance company shall comply with all applicable federal and state laws relating to the risks insured pursuant to the license granted by the superintendent.

5. Fees. A captive insurance company shall pay filing, issuance, annual continuation and reinstatement fees as provided for domestic insurers pursuant to section 601, subsection 1.

~~**6. Activities.** A captive insurance company may engage in the business of the following types of insurance:~~

~~A. Casualty insurance as defined by section 707, excluding the direct writing of workers' compensation insurance. Workers' compensation risks may be reinsured by a captive insurer only as provided in section 6711;~~

~~B. Marine and transportation insurance as defined by section 708, subsection 1;~~

~~C. Marine protection and indemnity insurance, as defined by section 708, subsection 1;~~

~~D. Wet marine and transportation insurance as defined by section 708, subsection 2;~~

~~E. Property insurance as defined by section 705;~~

~~F. Surety insurance as described in section 706;~~

~~G. Title insurance as defined by section 709;~~

~~H. Reinsurance of credit life insurance and credit health insurance, as defined by section 2853, to the extent provided in section 6711;~~

~~I. Reinsurance of life insurance as defined by section 702, annuities as defined by section 703 and health insurance as defined by section 704 written in connection with the employee benefit plan or plans of the single or association parent of a captive insurer to the extent provided in section 6711; and~~

~~J. Financial guaranty insurance as defined in section 709-A.~~

7. Permitted activities. A captive insurance company, when permitted by its articles of association or charter, may apply to the superintendent for a license to provide any insurance described in ~~subsection 6~~ this Title, including annuities, except that:

A. A pure captive insurance company may not insure or reinsure any risks other than those of its parent and affiliated companies or controlled unaffiliated businesses;

B. An association captive insurance company may not insure or reinsure any risks other than those of the member organizations of its association and their affiliated companies;

C. An industrial insured captive insurance company may not insure or reinsure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;

D. A captive insurance company may not provide personal motor vehicle or homeowner's insurance coverage or any component thereof; ~~and~~

E. A captive insurance company may not accept or cede reinsurance except as provided in section 6711; ~~and~~

F. A captive insurance company may not provide workers' compensation insurance except for reinsurance of workers' compensation risk as permitted in section 6711.

8. Certificate of good standing. Prior to its organization or incorporation with the Secretary of State, the organizers or incorporators of a captive insurance company shall petition the superintendent to issue a certificate stating the superintendent's finding that the establishment and continued existence of the proposed captive insurance company, however organized, will promote the general good of the State. In making such a finding, the superintendent shall consider:

A. The character, reputation, financial standing and purpose of the organizers or incorporators;

B. The character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors of the proposed captive insurance company; and

C. Any other relevant information determined by the superintendent.

Any certificate issued by the superintendent pursuant to this subsection must be filed with the Secretary of State to be recorded with the articles of incorporation of the captive insurance company.

Sec. 10. 24-A MRSA §6704, as enacted by PL 1997, c. 435, §1, is amended to read:

§6704. Minimum capital and surplus

1. Minimum capital and surplus. ~~A pure captive insurance company, an association captive insurance company incorporated as a stock insurer or an industrial insured captive insurance company incorporated as a stock insurer~~ may not be issued a license unless the company has and maintains unimpaired paid-in capital and surplus of:

A. In the case of a pure captive insurance company, not less than ~~\$100,000~~ \$250,000;

B. In the case of an association captive insurance company ~~incorporated as a stock insurer~~, not less than ~~\$400,000~~ \$750,000; ~~and~~

C. In the case of an industrial insured captive insurance company ~~incorporated as a stock insurer,~~ not less than \$200,000; \$500,000;

D. In the case of a sponsored captive insurance company, not less than \$500,000; and

E. In the case of a risk retention group, not less than \$1,000,000.

The superintendent may prescribe additional capital based upon the type, volume and nature of insurance business transacted.

2. Letter of credit. The required capital may be in the form of cash, an irrevocable letter of credit issued by a bank chartered in this State or a member bank of the Federal Reserve System or any other security approved by the superintendent.

3. Dividends. A captive insurance company may not pay a dividend out of or make any other distribution with respect to capital and surplus in excess of the limitations under section 222 without the prior approval of the superintendent. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital and surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the superintendent. Notwithstanding the provisions of Title 13-B or 13-C, a captive insurance company organized under the provisions of either Title may make such distributions as are in conformity with its purposes with the prior approval of the superintendent.

Sec. 11. 24-A MRSA §6705, as enacted by PL 1997, c. 435, §1, is repealed.

Sec. 12. 24-A MRSA §6706, as corrected by RR 2001, c. 2, Pt. B, §45 and affected by §58, is amended to read:

§6706. Formation of captive insurance companies in this State

1. Pure captive insurance company. A pure captive insurance company must be ~~incorporated:~~

A. ~~As Incorporated as~~ a stock insurer with capital divided into shares and held by the stockholders; ~~or~~

B. ~~As Incorporated as~~ a nonprofit corporation whose votes of membership interest are held by a parent organization formed under a nonprofit law or by such nonprofit ~~parent and its affiliated companies;~~ corporation with one or more members; or

C. Organized as a manager-managed limited liability company.

2. Association captive insurance company. An association captive insurance company or an industrial insured captive insurance company may be ~~incorporated:~~

A. ~~As Incorporated as~~ a stock insurer with its capital divided into shares and held by the stockholders; or

B. ~~As Incorporated as~~ a mutual insurer without capital stock, the governing body of which must be elected by the member organizations of its association; or

C. Organized as a reciprocal insurer in accordance with this Title; or

D. Organized as a manager-managed limited liability company.

3. Incorporators. A captive insurance company may not have fewer than 3 incorporators, ~~and at least 2 incorporators~~ or 3 organizers of whom at least one must be residents a resident of this State. If the captive insurance company is a limited liability company, at least one manager must be a resident of this State.

4. Applicability of chapter 47. To the extent not inconsistent with this chapter, a captive insurance company is subject to the procedures applicable to domestic insurers pursuant to chapter 47 except that, if the surviving entity after a merger, consolidation, conversion or mutualization is a captive insurance company, a captive insurance company is subject to this chapter. With respect to mergers, consolidations, conversions and mutualizations, the superintendent, in the superintendent's discretion, may ~~waive any public hearing requirement;~~

A. Waive any public hearing requirement;

B. Permit an alien insurer as a party to a merger as long as the requirements for a merger between a captive insurance company and a foreign insurer apply. For the purposes of this paragraph, an alien insurer must be treated as a foreign insurer and the jurisdiction of the alien insurer is considered a state; or

C. Approve the conversion of a captive insurance company organized as a stock insurer to a non-profit corporation with one or more members or a limited liability company.

5. Issuance of stock. ~~The~~ If the capital stock of a captive insurance company incorporated as a stock insurer ~~may not be~~ is issued at ~~less than~~ par value, stock may not be issued at less than par value.

6. Board of directors. ~~At~~ If formed as a corporation, then at least one of the members of the board of directors of a captive insurance company incorporated in this State must be a resident of this State. If formed as a reciprocal insurer, then at least one of the members of the subscriber's advisory committee must be a resident of this State. If organized as a limited liability company, then at least one manager must be a resident of this State.

7. Captive insurance company. A captive insurance company formed under this chapter, except for a pure nonprofit captive insurance company, has the privileges granted by and is subject to Title 13-C and this chapter. In the event of conflict between Title 13-C and this chapter, this chapter controls.

8. Pure nonprofit captive insurance company. A pure nonprofit captive insurance company formed under this chapter has the privileges granted by and is subject to Title 13-B and this chapter. In the event of conflict between Title 13-B and this chapter, this chapter controls.

9. Quorum. If formed as a corporation, the articles of incorporation or bylaws of a captive insurance company may authorize a quorum of its board of directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined under Title 13-B or 13-C. If formed as a reciprocal insurer, the subscribers' agreement or other organizing document may authorize a quorum of its subscribers' advisory committee to consist of no fewer than 1/3 of the number of its members.

Sec. 13. 24-A MRSA §6708, sub-§3 is enacted to read:

3. Examinations. At least once in 3 years, and whenever the superintendent determines it to be prudent, the superintendent shall personally, or by some competent person appointed by the superintendent, visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of this chapter. The superintendent may enlarge the 3-year period to 5 years, as long as the captive insurance company is subject to a comprehensive annual audit during the period of a scope satisfactory to the superintendent by independent auditors approved by the superintendent. The expenses and charges of the examination must be paid to the State by the company or companies examined.

Sec. 14. 24-A MRSA §6709, sub-§1, ¶B, as enacted by PL 1997, c. 435, §1, is amended to read:

B. Failure to meet the requirements of section 6704 ~~or 6705~~;

Sec. 15. 24-A MRSA §6709, sub-§1, ¶D, as enacted by PL 1997, c. 435, §1, is amended to read:

D. Failure to comply with the provisions of the company's charter or bylaws or other organizational document;

Sec. 16. 24-A MRSA §6710, as enacted by PL 1997, c. 435, §1, is amended to read:

§6710. Legal investments

A pure captive insurance company is not subject to ~~the~~ any restrictions on allowable investments in-

cluding those provided under chapter 13 and chapter 13-A, except that a pure captive insurance company may petition the superintendent for approval of investments that are not specified in this Title may prohibit or limit any investment that threatens the solvency or liquidity of such insurance company. A pure captive insurance company may not make a loan to or investments in its parent or affiliated companies without the prior written approval of the superintendent. A loan of any minimum capital and surplus funds required by section 6704 is prohibited. Except as otherwise authorized by the superintendent, association captive insurance companies and industrial insured captive insurance companies are subject to the restrictions on allowable investments applicable to admitted insurers transacting the same type of business. With respect to investments of association captive insurance companies, the superintendent may approve the use of alternative methods of valuation and rating.

Sec. 17. 24-A MRSA §6711, sub-§1, as enacted by PL 1997, c. 435, §1, is amended to read:

1. Reinsurance. A captive insurance company may provide reinsurance on risks ceded by any other insurer; ~~however, the ceding of insurance by a domestic insurer may be done only pursuant to section 731-B to the extent permitted by section 6702.~~

Sec. 18. 24-A MRSA §6711, sub-§2, as enacted by PL 1997, c. 435, §1, is amended to read:

2. Credit for reserves. A captive insurance company may take credit for ~~reserves on risks the reinsurance of risks or portions of risks ceded to a reinsurer, except that a~~ in accordance with this Title. A captive insurance company may not cede risks or take credit for the reinsurance of risks or portions of risk without the approval of the superintendent, except for business written outside the United States by an alien captive insurance company.

Sec. 19. 24-A MRSA §6711, sub-§4, as enacted by PL 1997, c. 435, §1, is amended to read:

4. Reinsurance of workers' compensation risks. A captive insurance company may, with the approval of the superintendent, reinsure workers' compensation risks of ~~a qualified self-insured plan of its parent and affiliated companies to the extent that these risks are insured by under a statutory workers' compensation policy issued by a licensed insurer or under a qualified self-insured plan. The superintendent may require that all or part of any assumed self-insured risk be retroceded to an insurance company that meets the standards for acceptance of reinsurance of workers' compensation self-insurance.~~

Sec. 20. 24-A MRSA §6714, as enacted by PL 1997, c. 435, §1, is amended to read:

§6714. Delinquent captive insurers

The provisions of chapter 47 57 apply to captive insurers.

Sec. 21. 24-A MRSA §6721 is enacted to read:

§6721. Rules for controlled unaffiliated business

The superintendent may adopt rules establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company. In the absence of any rules, the superintendent may approve the coverage of such risks by a pure captive insurance company upon request. Any rules adopted by the superintendent pursuant to this section are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

Sec. 22. 24-A MRSA §6722 is enacted to read:

§6722. Conversion to or merger with reciprocal insurer

1. Authority for conversion or merger. A captive insurance company, association captive insurance company or industrial insured captive insurance company formed as a stock or mutual insurer may convert to or merge with a reciprocal insurer with the approval of the superintendent in accordance with a plan of operation and with the requirements of this section. Any plan for conversion or merger must provide a fair and equitable mechanism for purchasing, retiring or otherwise extinguishing the interests of stockholders and policyholders of a stock insurer and the interests of members and policyholders of a mutual insurer, including a fair and equitable provision for the rights and remedies of dissenting stockholders, members or policyholders.

2. Conversion. The superintendent may not approve a plan of conversion unless the plan:

A. Provides notice of the opportunity to request a hearing to directors, officers, stockholders, members and policyholders of the captive insurance company. If no request for a hearing is received, the superintendent is not required to hold a hearing in the superintendent's discretion;

B. Provides a fair and equitable plan for the conversion of stockholder, member or policyholder interests into subscriber interests in the resulting reciprocal insurer in a substantially proportionate manner to the corresponding interest in the stock or mutual insurer except that the resulting reciprocal insurer is not precluded from applying underwriting criteria that may affect ongoing ownership interests;

C. In the case of a stock insurer, has been approved by a majority of voting shares represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; and

D. In the case of a mutual insurer, has been approved by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present.

The superintendent shall approve a plan of conversion if the superintendent finds that the conversion will promote the general good of the State in conformity with this chapter. If the superintendent approves the plan, the superintendent shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue the amended certificate of authority to the converting insurer's designated attorney. The conversion is effective upon the issuance of the amended certificate of authority by the superintendent. Upon the conversion, the corporate existence of the converting insurer ceases and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.

3. Merger. A plan of merger may not be approved by the superintendent unless the plan of merger satisfies the same requirements in subsection 2, paragraphs A to D. The superintendent may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer into which an existing captive insurance company may be merged for the purpose of facilitation of a transaction under this section except that no more than one authorized insurance company may survive the merger. An alien insurer may be a party to a merger authorized under this section if the requirements of this Title for a merger between a domestic and foreign insurer are met. For the purposes of this section, the alien insurer is treated as a foreign insurer and the jurisdiction of the alien insurer is considered a state.

4. Effect. A conversion or merger pursuant to this section has all of the effects of a conversion or merger approved pursuant to this Title to the extent that such effects are not inconsistent with the provisions of this chapter.

Sec. 23. 24-A MRSA §6724 is enacted to read:

§6724. Sponsored captive insurance companies

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Participant" means an entity as described in subsection 6, and any affiliates thereof, that are insured by a sponsored captive insurance company.

B. "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant.

C. "Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of the participants as set forth in the participant contracts.

D. "Sponsor" means an entity that meets the requirements of subsection 5 and is approved by the superintendent to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

E. "Sponsored captive insurance company" means a captive insurance company:

(1) In which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(2) That is formed or licensed under the provisions of this chapter;

(3) That insures the risks only of its participants through separate participant contracts; and

(4) That funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company's general account.

2. Formation. One or more sponsors may form a sponsored captive insurance company under this chapter. In addition to the general provisions of this chapter, the provisions of this section apply to sponsored captive insurance companies. A sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholder, as a nonprofit corporation with one or more members or as a manager-managed limited liability company.

3. Supplemental application materials. In addition to the information required by section 6702, each applicant sponsored captive insurance company shall file with the superintendent the following:

A. Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the superintendent and how it will report the experience to the superintendent;

B. A statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, will be made available for inspection or examination by the superintendent or the superintendent's designated agent;

C. All contracts or sample contracts between the sponsored captive insurance company and any participants; and

D. Evidence that expenses will be allocated to each protected cell in a fair and equitable manner.

4. Protected cells. A sponsored captive insurance company formed or licensed under the provisions of this chapter may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

A. The shareholders of a sponsored captive insurance company must be limited to its participants and sponsors, except that a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the superintendent;

B. Each participant contract must specify one or more protected cells as the sole source of the participant's coverage and limit the losses of the participant to its pro rata share of the assets of the protected cell identified in the contract. If the sponsored captive insurance company enters into a contract involving more than one protected cell, the rights and obligations relating to each protected cell must be several rather than joint and the contract must make clear provisions for apportionment of the rights and obligations between protected cells;

C. Each protected cell must be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of each protected cell, net income or loss, dividends or other distributions to participants and such other factors as may be provided in the participant contract or required by the superintendent;

D. The assets of a protected cell may not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

E. A sale, exchange or other transfer of assets may not be made by a sponsored captive insurance company between or among any of its protected cells without the consent of the protected cells;

F. A sale, exchange, transfer of assets, dividend or distribution may not be made from a protected cell to a sponsor or participant without the superintendent's approval and in no event may approval

be given if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell;

G. Each sponsored captive insurance company must annually file with the superintendent such financial reports as the superintendent requires, which must include, without limitation, accounting statements detailing the financial experience of each protected cell;

H. Each sponsored captive insurance company must notify the superintendent in writing within 10 business days of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations;

I. A participant contract may not take effect without the superintendent's prior written approval, and the addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell constitutes a change in the business plan requiring the superintendent's prior written approval;

J. The business written by a sponsored captive insurance company, with respect to each protected cell, must be:

(1) Fronted by a properly licensed insurance company;

(2) Reinsured by a reinsurer authorized or approved by the superintendent; or

(3) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the superintendent. The amount of security provided must be no less than the reserves associated with those liabilities that are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The superintendent may require the sponsored captive insurance company to increase the funding of any security arrangement established under this subparagraph. If the form of security is a letter of credit, the letter of credit must be established, issued or confirmed by a bank chartered in this State or a member of the Federal Reserve System and established in a form and upon such terms approved by the superintendent;

K. In any action or proceeding involving the potential for monetary recovery by or against a sponsored captive insurance company or for non-monetary relief relating to a particular protected cell or cells, any process, pleading or order must

name the specific protected cell or cells affected, including if applicable the general account; and

L. A sponsored captive insurance company shall notify the superintendent in writing within 10 business days after the special purpose reinsurance vehicle or any protected cell becomes impaired or insolvent.

5. Qualification of sponsors. A sponsor of a sponsored captive insurance company must be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state, a captive insurance company formed or licensed under this chapter, a broker-dealer licensed pursuant to the Maine Uniform Securities Act, a financial institution or financial institution holding company authorized under Title 9-B, including any affiliate or subsidiary of such financial institution holding company, or any other person approved by the superintendent in the exercise of the superintendent's discretion after finding that the approval of a person as a sponsor is not inconsistent with the purposes of this chapter. A risk retention group authorized pursuant to chapter 72-A may not be either a sponsor or a participant of a sponsored captive insurance company.

6. Participants in sponsored captive insurance companies. The following may be participants in a sponsored captive insurance company:

A. Associations, corporations, limited liability companies, partnerships, trusts and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter;

B. A sponsor may be a participant in a sponsored captive insurance company;

C. A participant need not be a shareholder of the sponsored captive insurance company or any affiliate thereof; and

D. A participant may insure only its own risks through a sponsored captive insurance company.

7. Investments by sponsored captive insurance companies. Notwithstanding the provisions of subsection 5, the assets of 2 or more protected cells may be combined for purposes of investment, and such a combination may not be construed as defeating the segregation of assets for accounting or other purposes. Sponsored captive insurance companies shall comply with the investment requirements contained in this Title, as applicable, except that compliance with such investment requirements must be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to section 6711 or to the extent otherwise considered reasonable and appropriate by the superintendent. Section 6707 applies to sponsored captive insurance companies except to the extent it is inconsis-

tent with approved accounting standards in use by the company. Notwithstanding any other provision of this Title, the superintendent may approve the use of alternative reliable methods of valuation and rating.

8. Delinquency of sponsored captive insurance companies or protected cells. In the case of a sponsored captive insurance company, the provisions of section 6714 apply, except as otherwise provided in this subsection.

A. The insolvency of one protected cell does not constitute the insolvency of any other protected cell or of the sponsored captive insurance company itself. The insolvency of a sponsored captive insurance company does not constitute the insolvency of any of its solvent protected cells and is not a basis for the receivership of any solvent protected cell capable of independent operation.

B. Notwithstanding the insolvency of the sponsored captive insurance company or of any other protected cell, the obligations attributed to any solvent protected cell must continue to be paid as they become due.

C. The assets attributed to a protected cell may not be applied to the liabilities attributed to another protected cell or to the sponsored captive insurance company generally, except that:

(1) If the insolvency of the sponsored captive insurance company renders a protected cell incapable of being managed independently, a receiver may, after consultation with the creditors of a protected cell, contract for the management of the protected cell and charge to the protected cell a reasonable amount for those services;

(2) A general liability of an insolvent sponsored captive insurance company may be apportioned equitably in whole or in part to one or more of its protected cells if the Superior Court determines that the liability arises out of the operations of the protected cell or cells and that the interests of innocent creditors of the protected cell or cells are not unreasonably impaired; and

(3) If assets or liabilities have been commingled, or have been wrongfully transferred between protected cells or between a protected cell and the general account, the Superior Court shall trace the assets and attribute them to the proper accounts, giving due consideration to the terms of any relevant governing instrument or contract.

D. The plan of rehabilitation or liquidation of any sponsored captive insurance company must make reasonable provision for the continued operation of all solvent protected cells, which may involve

the formation of one or more new sponsored captive insurance companies or the transfer of one or more protected cells.

Sec. 24. 24-A MRSA §6725 is enacted to read:

§6725. Branch captive insurance companies

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alien captive insurance company" means an insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of an alien jurisdiction that imposes statutory or regulatory standards in a form acceptable to the superintendent on companies transacting the business of insurance in the alien jurisdiction.

B. "Branch business" means any insurance business transacted by a branch captive insurance company in this State.

C. "Branch captive insurance company" means any alien captive insurance company licensed by the superintendent to transact the business of insurance in this State through a business unit with a principal place of business in this State.

D. "Branch operations" means any business operations of a branch captive insurance company in this State.

2. Establishment of a branch captive insurance company. A branch captive insurance company may be established in this State in accordance with the provisions of this chapter to write in this State only insurance or reinsurance of the employee benefit business of its parent and affiliated companies that is subject to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended. In addition to the general provisions of this chapter, the provisions of this section apply to branch captive insurance companies. A branch captive insurance company may not do any insurance business in this State unless it maintains the principal place of business for its branch operations in this State.

3. Security required. In the case of a branch captive insurance company, as security for the payment of liabilities attributable to the branch operations, the superintendent shall require that either a trust fund funded by assets acceptable to the superintendent or an irrevocable letter of credit be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations. The amount of the security may be no less than the amount set forth in section 6704, subsection 1, paragraph A

and the reserves on the insurance policies or reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through the branch operation, except that the superintendent may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account or the amount payable under the irrevocable letter of credit required by this subsection by the same amount as long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in this State or a member bank of the Federal Reserve System.

4. Certificate of general good. In the case of a captive insurance company licensed as a branch captive insurance company, the alien captive insurance company shall petition the superintendent to issue a certificate setting forth the superintendent's finding that, after considering the character, reputation, financial responsibility, insurance experience and business qualifications of the officers and directors of the alien captive insurance company, the licensing and maintenance of the branch operations will promote the general good of the State. The alien captive insurance company may register to do business in this State after the superintendent's certificate is issued.

5. Reports. Prior to March 1st of each year, or with the approval of the superintendent within 60 days after its fiscal year-end, a branch captive insurance company shall file with the superintendent a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the alien captive insurance company is formed, verified by oath of 2 of its executive officers. If the superintendent is satisfied that the annual report filed by the alien captive insurance company in its domiciliary jurisdiction provides adequate information concerning the financial condition of the alien captive insurance company, the superintendent may waive the requirement for completion of the captive annual statement for business written in the alien jurisdiction.

6. Examination of branch captive insurance companies. The examination of a branch captive insurance company pursuant to section 6708 must be of the branch business and branch operations only, as long as the branch captive insurance company provides annually to the superintendent a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed and demonstrates to the superintendent's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction. As a condition of licensure, the alien captive insurance company must grant authority to the super-

intendent for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

See title page for effective date.

CHAPTER 336 H.P. 894 - L.D. 1275

An Act To Implement the Recommendations of the Criminal Law Advisory Commission

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

Sec. 1. 5 MRSA §3360, sub-§3, ¶G, as amended by PL 2007, c. 684, Pt. E, §1 and affected by Pt. H, §1, is further amended to read:

G. Leaving the scene of a motor vehicle accident involving personal injury or death, in violation of Title 29-A, section 2252; or

Sec. 2. 5 MRSA §3360, sub-§3, ¶H, as amended by PL 2007, c. 684, Pt. E, §2 and affected by Pt. H, §1, is further amended to read:

H. Sexual exploitation of a minor as described in Title 17-A, chapter 12; or

Sec. 3. 5 MRSA §3360, sub-§3, ¶I, as enacted by PL 2007, c. 684, Pt. E, §3 and affected by Pt. H, §1, is repealed.

Sec. 4. 17-A MRSA §2, sub-§8, as amended by PL 2007, c. 173, §1, is further amended to read:

8. "Deadly force" means physical force that a person uses with the intent of causing, or that a person knows to create a substantial risk of causing, death or serious bodily injury. ~~Intentionally~~ Except as provided in section 101, subsection 5, intentionally, knowingly or recklessly discharging a firearm in the direction of another person or at a moving vehicle constitutes deadly force.

Sec. 5. 17-A MRSA §101, sub-§5, as amended by PL 2001, c. 386, §1, is repealed and the following enacted in its place:

5. For purposes of this chapter, use by a law enforcement officer, a corrections officer or a corrections supervisor of the following is use of nondeadly force:

A. Chemical mace or any similar substance composed of a mixture of gas and chemicals that has or is designed to have a disabling effect upon human beings; or

B. A less-than-lethal munition that has or is designed to have a disabling effect upon human beings. For purposes of this paragraph, "less-than-