LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 2016 to August 2, 2017

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

Augusta, Maine
2017

this subsection must be in a form determined by the bureau.

Sec. 4. 28-A MRSA §1367 is enacted to read:

§1367. Tastings at farmers' markets

1. Taste testing. Subject to the conditions set forth in this section and the applicable bylaws of the farmers' market, a brewery, small brewery, winery, small winery, distillery or small distillery licensed under section 1355-A may conduct taste-testing events at a farmers' market. For purposes of this section, "farmers' market" has the meaning as in Title 7, section 415, subsection 1, paragraph A. A farmers' market may allow up to 2 dates per month on which a licensee described in this subsection may conduct a taste-testing event.

2. Conditions on taste-testing activities. The following conditions apply to taste-testing activities allowed under this section.

A. An individual at a taste-testing activity may not be charged a fee.

B. An individual at a taste-testing activity may not be served a taste-testing sample of more that 4 ounces of malt liquor, 1 1/2 ounces of wine or 1/2 ounce of spirits. An individual is limited to 6 samples per day per manufacturer licensed under section 1355-A.

C. Malt liquor, wine or spirits for taste testing may not be poured in advance and made available for individuals participation in the taste testing to serve themselves.

D. An individual at a taste-testing activity who is visibly intoxicated may not be served malt liquor, wine or spirits.

E. Taste-testing activities must be conducted within the hours of retail sales established in this Title.

F. Taste-testing activities are not allowed in any municipality where on-premises and off-premises sales are not allowed pursuant to chapter 5.

G. A licensee under section 1355-A conducting a taste-testing activity at a farmers' market must keep a record of when and where the activity took place.

H. A licensee may provide for taste testing only liquor that is manufactured by the licensee in accordance with section 1355-A.

See title page for effective date.

CHAPTER 169

S.P. 539 - L.D. 1544

An Act To Update the Maine Insurance Code To Maintain Conformance with Uniform National Standards

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

PART A

Sec. A-1. 24 MRSA §2306, as amended by PL 1997, c. 592, §3, is further amended to read:

§2306. Reports

~~Annually, on or before March 1st, every~~ Every corporation organized under this chapter shall file in the office of the superintendent ~~a statement~~ annual and quarterly financial statements substantially similar to those required of health insurers under Title 24-A, sections 423, 423-A and 423-D verified by at least 2 of the principal officers of that corporation ~~showing its condition on the previous December 31st~~. The statement must be on an annual or quarterly statement blank of the National Association of Insurance Commissioners for use by nonprofit hospital or medical service corporations, be prepared in accordance with the association's annual or quarterly statement instructions, follow practices and procedures prescribed by the association's accounting practices and procedures manual and be accompanied by any useful or necessary modification or adaptation and any additional information required by the superintendent. The superintendent may by rule or order require the filing of more frequent reports.

A nonprofit hospital or medical service corporation that controls and operates a health maintenance organization as a division or line of business of the corporation shall file on a continuing basis any additional periodic financial reports required by ~~the superintendent by rule~~ Title 24-A, section 4208.

Sec. A-2. 24 MRSA §2317-B, sub-§§1-A and 1-B are enacted to read:

1-A. Title 24-A, section 423-C. Reports of material transactions, Title 24-A, section 423-C;

1-B. Title 24-A, section 423-G. Corporate governance annual disclosure, Title 24-A, section 423-G;

Sec. A-3. 24 MRSA §2317-B, sub-§16-B is enacted to read:

16-B. Title 24-A, chapter 11. Assets and liabilities, Title 24-A, chapter 11;

Sec. A-4. 24-A MRSA §423-A, as enacted by PL 1985, c. 330, §6, is amended to read:

§423-A. Interim financial reporting requirements

1. Quarterly statement. ~~Within 45 days~~ No later than the 15th day of the 2nd month following the close of any calendar quarter, except the 4th quarter, an authorized insurer~~,~~ that is subject to the requirements of section 423~~,~~ shall ~~upon the superintendent's request, made to the authorized insurer, not later than the end of the quarter to be reported upon~~ file a quarterly ~~report~~ statement of financial condition with the ~~Bureau of Insurance~~ superintendent.

2. Form and content. The quarterly ~~report shall~~ statement must be in the form ~~requested by the superintendent and shall contain such information as the superintendent deems necessary or if the superintendent elects shall be conformed to the reporting format developed~~ prescribed by the National Association of Insurance Commissioners and ~~which is in customary use in the United States for differing types of authorized insurers~~ must be prepared in accordance with the association's quarterly statement instructions.

3. Verification. The report ~~shall~~ must be verified by the oath of the insurer's president or vice-president, and the secretary or actuary as applicable, or in the absence of the foregoing, by 2 other principal officers; or if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation.

4. Supplemental reporting. Upon the superintendent's request, the insurer shall file periodic reports of financial condition on a monthly basis, or at other intervals prescribed by the superintendent, in such form and containing such information as the superintendent prescribes.

Sec. A-5. 24-A MRSA §423-G is enacted to read:

§423-G. Corporate governance annual disclosure

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

A. "Corporate governance annual disclosure" or "CGAD" means a confidential report filed by an insurer or insurance group pursuant to this section.

B. "Domestic insurance carrier" means an insurance company, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization or nonprofit health plan domiciled in this State.

C. "Insurance group" means the insurance carriers and affiliates included within a domestic insurance carrier's insurance holding company system as defined in section 222, subsection 2, paragraph C.

D. "Lead state," with respect to an insurance group, means the state designated as the lead state for the insurance group as determined by the procedures outlined in the most recent financial analysis handbook adopted by the NAIC, except that if the designated lead state does not have a corporate governance disclosure law substantially similar to this section, the superintendent shall designate this State or another state with a substantially similar law as the lead state for purposes of this section.

E. "NAIC" means the National Association of Insurance Commissioners or its successor organization of insurance regulators.

2. Disclosure requirement. This subsection governs corporate governance annual disclosure filings.

A. A domestic insurance carrier shall file a corporate governance annual disclosure in accordance with this subsection no later than June 1st of each calendar year. The carrier's insurance group may file the CGAD on behalf of the carrier.

(1) If the CGAD is completed at the insurance group level, and this State is not the group's lead state, the CGAD must be filed with the chief insurance regulator of the lead state in accordance with the laws of the lead state, and a copy must be filed with the superintendent if requested by the superintendent.

(2) If the CGAD is completed at the legal entity level or if this State is the group's lead state, the CGAD must be filed with the superintendent.

B. The CGAD must contain the information described in subsection 3, paragraph B and must include a signature of the domestic insurance carrier or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that the domestic insurance carrier has implemented the corporate governance practices and that a copy of the CGAD has been provided to the domestic insurance carrier's board of directors or the appropriate committee thereof.

C. A CGAD may provide information regarding corporate governance at the level of the group's ultimate controlling parent or intermediate holding company, at the individual legal entity level or at any combination of these levels depending upon how the domestic insurance carrier or insurance group has structured its system of corporate governance. The domestic insurance carrier or insurance group is encouraged to make the CGAD at the level:

(1) At which the domestic insurance carrier's or insurance group's risk appetite is determined;

(2) At which the earnings, capital, liquidity, operations and reputation of the domestic insurance carrier are overseen collectively and at which the supervision of those factors is coordinated and exercised; or

(3) At which legal liability for failure of general corporate governance duties is placed.

If the domestic insurance carrier or insurance group determines the level of reporting based on the 3 criteria under this paragraph, it shall indicate which of the criteria were used to determine the level or levels of reporting and explain any subsequent changes in the level of reporting.

D. If the CGAD is completed at the insurance group level, the lead state shall conduct the review of the CGAD and any additional requests for information must be made through the lead state.

E. Domestic insurance carriers providing information substantially similar to the information required by this section in other documents provided to the superintendent, including proxy statements filed in conjunction with Form B requirements or other state or federal filings provided to the bureau, may not be required to duplicate that information in the CGAD, but may only be required to cross-reference the document in which the information is included.

3. Contents of corporate governance annual disclosure. This subsection governs the contents of corporate governance annual disclosure filings.

A. The domestic insurance carrier or insurance group shall ensure that the CGAD contains the material information necessary to permit the superintendent to gain an understanding of the domestic insurance carrier's or insurance group's corporate governance structure, policies and practices. The superintendent may require additional information that is determined to be material and necessary to provide a clear understanding of the corporate governance policies, including the reporting or information system or controls implementing those policies.

B. The CGAD must be prepared consistent with rules adopted pursuant to subsection 6. Documentation and supporting information must be maintained and made available upon examination or upon request of the superintendent.

C. The domestic insurance carrier or insurance group has discretion over its responses to the CGAD inquiries, as long as those responses meet the requirements of this section.

4. Confidentiality. This subsection governs confidentiality in corporate governance annual disclosure filings.

A. Documents, materials or other information in the possession or control of the bureau that are obtained by, created by or disclosed to the superintendent or any other person under this section, including the CGAD, are confidential and privileged, are not public records within the meaning of the Freedom of Access Act, are not subject to subpoena, are not subject to discovery or admissible in evidence in any private civil action and may not be made public without the prior written consent of the domestic insurance carrier. Neither the superintendent nor any person who received information from or under the authority of the superintendent under this section may be permitted or required to testify in any private civil action concerning information that is confidential under this subsection.

B. This subsection does not prohibit the superintendent from using information that is confidential under this subsection in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties.

C. The superintendent may share information that is confidential under this subsection only in accordance with the requirements of section 216, subsection 5.

D. The privilege provided by this subsection does not supersede any other applicable privilege or confidentiality protection, nor does disclosure of confidential information to the superintendent pursuant to this section constitute a waiver of any such privilege or protection.

5. NAIC and independent consultants. This subsection governs independent consultants retained to review corporate governance annual disclosure and compliance with this section.

A. The superintendent may retain, at the domestic insurance carrier's expense, independent consultants as provided in section 208, including attorneys, actuaries, accountants and other experts as may be reasonably necessary to assist the superintendent in reviewing the CGAD and related information or the domestic insurance carrier's compliance with this section.

B. Any persons retained under paragraph A must be under the direction and control of the superintendent, are subject to the same confidentiality standards and requirements as the superintendent and must act in a purely advisory capacity.

C. The superintendent may not retain an independent consultant that has not verified to the superintendent, with notice to the domestic insurance carrier, that it is free of a conflict of interest and that it has internal procedures in place to monitor ongoing freedom from conflicts and to

comply with the confidentiality standards and requirements of this section.

D. The superintendent may share confidential information provided or obtained under this section with the NAIC only in accordance with a written agreement that contains the provisions specified in section 216, subsection 5, paragraph C and the following additional provisions:

(1) Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurance carriers. The agreement must provide that the recipient agrees to maintain the confidentiality and privileged status of the CGAD-related documents, materials or other information and must document the NAIC's legal authority to maintain confidentiality;

(2) A provision that prohibits the NAIC from storing the information shared pursuant to this section in a permanent database after the underlying analysis is completed;

(3) A provision requiring the NAIC to provide prompt notice to the superintendent, in addition to the notice to the domestic insurance carrier or insurance group required by section 216, regarding any subpoena, request for disclosure or request for production of the domestic insurance carrier's or insurance group's CGAD-related information; and

(4) A provision expressly requiring the written consent of the domestic insurance carrier before any information shared pursuant to this section may be made public.

E. The superintendent may share confidential information provided or obtained under this section with an independent consultant only in accordance with a written agreement that makes compliance with the confidentiality requirements of this section one of the consultant's duties as a state contractor and includes all protections that the NAIC is required to provide in an agreement entered into under paragraph D.

6. Rules. The superintendent may adopt reasonable rules as necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

7. Severability. If any provision of this section other than subsection 4, or the application thereof to any person or circumstance, is determined to be invalid, that determination does not affect the provisions or applications of this section that can be given effect without the invalid provision or application, and to that end the provisions of this section with the exception of subsection 4 are severable.

8. Relationship to other laws. This section may not be construed to prescribe or impose corporate governance standards and internal procedures beyond those required of business corporations under Title 13-C. This section may not be construed to limit the superintendent's examination authority under sections 221 and 222 or the rights or obligations of 3rd parties in connection with examinations conducted under those sections.

Sec. A-6. 24-A MRSA §1102, sub-§4, as amended by PL 1987, c. 399, §4, is further amended to read:

4. Any investment limitation or diversification requirement based upon the amount of the insurer's assets or particular funds ~~shall~~ must relate to such assets or funds as shown by the insurer's annual or quarterly statement as of the ~~December 31st next~~ statement date immediately preceding the date of acquisition of the investment by the insurer or as shown by a current applicable financial statement, prepared on the same basis as that annual or quarterly statement, resulting from merger with another insurer, bulk reinsurance or change in capitalization.

Sec. A-7. 24-A MRSA §1152, sub-§4, as enacted by PL 1987, c. 399, §14, is amended to read:

4. Basis for limitation or diversification. Any investment limitation or diversification requirement based upon the amount of the insurer's assets or particular funds ~~shall~~ must relate to such assets or funds as shown by the insurer's annual or quarterly statement as of the ~~December 31st next~~ statement date immediately preceding the date of acquisition of the investment by the insurer, or as shown by a current applicable financial statement, prepared on the same basis as that annual or quarterly statement, resulting from merger with another insurer, bulk reinsurance or change in capitalization.

Sec. A-8. 24-A MRSA §4134, sub-§1, as amended by PL 1997, c. 592, §70, is further amended to read:

1. Every society transacting business in this State shall annually, on or before the first day of March, unless for cause shown such time has been extended by the superintendent, file with the superintendent a true statement of its financial condition, transactions and affairs for the preceding calendar year. The statement must be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the superintendent. The society shall also file quarterly statements in accordance with the National Association of Insurance Commissioners quarterly statement instructions for fraternal benefit societies, if ap-

plicable, and shall report material investment and reinsurance transactions consistent with section 423-C. If the society provides health care benefits, it shall file a health insurance supplement consistent with section 423-D. The fee for filing the annual statement is the same as for an insurer as provided in section 601.

Sec. A-9. 24-A MRSA §4134, sub-§7, as amended by PL 1973, c. 585, §12, is further amended to read:

7. A society neglecting to file the annual or quarterly statement in the form and within the time provided by this section shall forfeit $100 for each day during which such neglect continues, and, upon notice by the superintendent to that effect, its authority to do business in this State ~~shall cease~~ ceases while such default continues.

Sec. A-10. 24-A MRSA §4204-A, sub-§2, as amended by PL 2001, c. 88, §§3 to 5, is further amended to read:

2. Surplus maintained. Except as provided in this section, every health maintenance organization must maintain a minimum surplus equal to the greater of:

A. One million dollars;

B. Two percent of the first $150,000,000 of annual premium revenues as reported in the most recent annual financial statement ~~covering~~ filed with the superintendent by the health maintenance ~~organization's immediately preceding fiscal year as filed with the superintendent on the first $150,000,000 of premium and~~ organization, plus 1% of annual premium ~~on the premium~~ in excess of $150,000,000;

C. An amount equal to the sum of 3 ~~months~~ months' uncovered health care expenditures as reported ~~on~~ in the most recent annual financial statement ~~covering~~ filed with the superintendent by the health maintenance ~~organization's immediately preceding fiscal year as filed with the superintendent~~ organization;

D. An amount equal to 8% of the health maintenance organization's annual health care expenditures, except those paid on a capitated basis, as reported ~~on~~ in the most recent annual financial statement ~~covering~~ filed with the superintendent by the health maintenance ~~organization's immediately preceding fiscal year as filed with the superintendent~~ organization; or

E. An amount equal to the company action level risk-based capital as defined in chapter 79.

Sec. A-11. 24-A MRSA §4208, as amended by PL 1993, c. 313, §§33 to 35, is further amended to read:

§4208. Annual and interim reports

1. Every health maintenance organization shall file ~~annually, on or before March 1st or within any reasonable extension of time that the superintendent for good cause shown may have granted on or before March 1st, with the superintendent a full and true statement of its financial condition, transactions and affairs as of December 31st of the preceding year~~ annual and quarterly financial statements substantially similar to those required of health insurers under sections 423, 423-A and 423-D, verified by at least 3 principal officers, and shall provide a copy of ~~that~~ each statement to the Commissioner of Health and Human Services. The superintendent may by rule or order require the filing of ~~quarterly or~~ more frequent reports~~, which may be required to include liability for uncovered expenditures as well as an audit opinion~~.

1-A. The annual and quarterly statements must be prepared in accordance with the National Association of Insurance Commissioners annual and quarterly statement instructions and must follow practices and procedures prescribed by the National Association of Insurance Commissioners accounting practices and procedures manual for health maintenance organizations. If the health maintenance organization is operated as a division or line of business by an insurer or by a nonprofit hospital or medical service corporation, the superintendent shall designate the applicable portions of the financial statement form that must be filed, so as to eliminate information that is inapplicable to health maintenance organizations that are not separately incorporated and to minimize duplication between the statement filed under this section and the overall financial statement of the insurer or nonprofit hospital or medical service corporation.

1-B. Every health maintenance organization shall file an annual audit opinion substantially similar to those required of insurers under section 221-A.

3. ~~The annual statement must be prepared in accordance with the National Association of Insurance Commissioners annual statement instructions and must follow practices and procedures prescribed by the National Association of Insurance Commissioners accounting practices and procedures manual for health maintenance organizations.~~ The annual ~~statement~~ and quarterly statements must include, if required by the Commissioner of Health and Human Services or by the superintendent:

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

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

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

Sec. A-12. 24-A MRSA §4222-B, sub-§5, as amended by PL 2001, c. 88, §6, is further amended to read:

5. The requirements of ~~section 222, subsections 2 to 9, subsections 11-A and 11-B and subsections 13 to 18~~ sections 221 to 228, to the extent not inconsistent with this chapter and the reasonable implications of this chapter, apply to domestic health maintenance organizations.

Sec. A-13. 24-A MRSA §4222-B, sub-§§23 and 24 are enacted to read:

23. Section 423-C, relating to reporting of material investment and reinsurance transactions, applies to health maintenance organizations.

24. Section 423-G, relating to corporate governance annual disclosure filings, applies to health maintenance organizations.

Sec. A-14. Corporate governance annual disclosure filing due date. A domestic insurance carrier's initial corporate governance annual disclosure filing pursuant to the Maine Revised Statutes, Title 24-A, section 423-G, is due on June 1, 2018.

PART B

Sec. B-1. 24-A MRSA §221, sub-§1, as amended by PL 1993, c. 313, §2, is further amended to read:

1. For the purpose of determining its financial condition, fulfillment of its contractual obligations and compliance with the law, the superintendent shall examine the affairs, transactions, accounts, records and assets of each authorized insurer, and of any person as to any matter relevant to the financial affairs of the insurer or to the examination, as often as the superintendent determines advisable. In determining the nature, scope and timing of an examination, the superintendent shall consider criteria, including, but not limited to, the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria adopted by the National Association of Insurance Commissioners and published in its ~~Examiners'~~ Financial Condition Examiners Handbook or Market Regulation Handbook, as applicable, or their successor publications. Except as otherwise expressly provided, domestic insurers must be examined at least once every 3 years, unless the superintendent defers making an examination for a longer period; but in no event may an authorized insurer be examined less frequently than once every 5 years. Examination of an alien insurer is limited to its insurance transactions, assets, trust deposits and affairs in the United States, except as otherwise required by the superintendent.

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

B-3. "Groupwide supervisor" means the regulatory official who is determined or acknowledged by the superintendent under subsection 7-C to have the authority to engage in conducting and coordinating groupwide supervision activities over an internationally active insurance group or other insurance group that has requested groupwide supervision.

Sec. B-3. 24-A MRSA §222, sub-§2, ¶D-2, as enacted by PL 1993, c. 313, §8, is amended to read:

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

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

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

Sec. B-4. 24-A MRSA §222, sub-§2, ¶D-6 is enacted to read:

D-6. "Internationally active insurance group" means an insurance holding company system that meets the following criteria:

(1) The group has premiums written in at least 3 countries;

(2) The percentage of gross premiums written outside the United States is at least 10% of the insurance holding company system's total gross written premiums; and

(3) Based on a 3-year rolling average, the total assets of the insurance holding company system are at least $50,000,000,000 or the total gross written premiums of the insurance holding company system are at least $10,000,000,000.

Sec. B-5. 24-A MRSA §222, sub-§4-C, ¶C, as enacted by PL 2013, c. 238, Pt. A, §11 and affected by §34, is amended to read:

C. An application required by paragraph A must contain the following information as applicable, made under oath or affirmation, except that if the proposed transaction is subject to regulation under the Exchange Act or Title 32, chapter 135, the superintendent may accept the relevant documents filed with the United States Securities and Exchange Commission or the Department of Professional and Financial Regulation, Office of Securi-

ties in lieu of some or all of the documents required by this paragraph:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control is to be effected and:

(a) If the person acquiring control is an individual, the person's principal occupation and all offices and positions held during the past 5 years and any convictions for crimes other than minor traffic violations ~~during the past 10 years~~; and

(b) If the person acquiring control is not an individual, a report of the nature of its business operations during the past 5 years or for a lesser period the person and any predecessors have been in existence; an informative description of the business intended to be done by the person and the person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of the person or who perform or will perform functions appropriate to such positions. The list must include the information required by division (a) for each individual listed;

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction through which funds were or are to be obtained for any such purpose, including any pledge of the insurer's stock or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing consideration. If a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender is confidential if the person filing the application so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring person for the preceding 5 fiscal years, or for a lesser period if the acquiring person and any predecessors have been in existence for less than 5 years, and similar unaudited information as of a date not earlier than 90 days before the filing of the application;

(4) Any plans or proposals that each acquiring person may have to liquidate the insurer, to sell its assets or merge or consolidate it with any person or to make any other material change in its business or corporate structure or management;

(5) The number of shares of any security referred to in paragraph A that each acquiring person proposes to acquire, the terms of the offer, request, invitation, agreement or acquisition referred to in paragraph A and a statement as to the method by which the fairness of the proposal was arrived at;

(6) The amount of each class of any security referred to in paragraph A that is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring person;

(7) A full description of any contracts, arrangements or understandings with respect to any security referred to in paragraph A in which any acquiring person is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. The description must identify the persons with whom the contracts, arrangements or understandings have been entered into;

(8) A description of the purchase by any acquiring person of any security referred to in paragraph A during the 12 calendar months preceding the filing of the application, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid;

(9) A description of any recommendations to purchase any security referred to in paragraph A made during the 12 calendar months preceding the filing of the application by any acquiring person or by anyone based upon interviews with or at the suggestion of the acquiring person;

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in paragraph A and copies of any additional related soliciting material that has been distributed;

(11) The terms of any agreement, contract or understanding made or proposed to be made with any broker-dealer as to solicitation of securities referred to in paragraph A for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard to the solicitation of securities referred to in paragraph A;

(12) An agreement by the person required to file the application to provide the annual enterprise risk report required by subsection 8, paragraph B-1 for as long as control by the person exists;

(13) An acknowledgement by the person required to file the application that the person and all subsidiaries within its control in the insurance holding company system will provide information to the superintendent upon request as necessary to evaluate enterprise risk to the insurer;

(14) A statement as to whether or not the proposed transaction will result in an increase in market share in this State in any line of insurance as specified in the annual statement required to be filed under section 423 for one or more insurers with combined market share greater than 5% and, if so, such further information on the competitive impact of the proposed transaction as the superintendent requires by rule or order; and

(15) Such additional information as the superintendent may prescribe by rule or order.

Sec. B-6. 24-A MRSA §222, sub-§7-C is enacted to read:

7-C. Groupwide supervision. This subsection governs groupwide supervision.

A. The superintendent is authorized to act as the groupwide supervisor in accordance with the provisions of this subsection for any internationally active insurance group, or any other insurance holding company system that has requested the identification of a groupwide supervisor pursuant to this subsection, or to acknowledge another regulatory official as the groupwide supervisor if the insurance group:

(1) Does not have substantial insurance operations in the United States;

(2) Has substantial insurance operations in the United States, but not in this State; or

(3) Has substantial insurance operations in the United States and this State, but the superintendent has determined pursuant to the factors set forth in paragraphs B and G that the other regulatory official is the appropriate groupwide supervisor.

B. In cooperation with other state, federal and international regulatory agencies, and in consultation with the insurance group, the superintendent shall identify a single groupwide supervisor for each internationally active insurance group that includes an insurer registered under subsection 8 and has the discretion to identify a single groupwide supervisor for any other insurance holding company system that has requested that the superintendent identify a groupwide supervisor. The superintendent may determine that the superintendent is the appropriate groupwide supervisor for an insurance group that conducts substantial insurance operations concentrated in this State or may acknowledge that a regulatory official from another jurisdiction is the appropriate groupwide supervisor for the insurance group. The superintendent shall consider the following factors when making a determination or acknowledgment under this paragraph and shall reconsider that determination or acknowledgment if the superintendent finds that there has been a material change in the following factors:

(1) The place of domicile of the insurers within the insurance group that hold the largest share of the group's written premiums, assets or liabilities;

(2) The place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the insurance group;

(3) The location of the executive offices or largest operational offices of the insurance group;

(4) The recommendation made by a regulatory official who is a candidate for designation under the criteria in this paragraph but has notified the superintendent that a different regulatory official would be a more appropriate groupwide supervisor;

(5) Whether another regulatory official is acting or is seeking to act as the groupwide supervisor under a regulatory system that the superintendent determines to be:

(a) Substantially similar to the system of regulation provided under the laws of this State; or

(b) Otherwise sufficient in terms of providing for groupwide supervision, enterprise risk analysis and cooperation with other regulatory officials; and

(6) Whether another regulatory official acting or seeking to act as the groupwide supervisor provides the superintendent with reasonably reciprocal recognition and cooperation.

C. If another regulatory official is acting as the groupwide supervisor of an insurance group subject to groupwide supervision under this subsection, the superintendent shall acknowledge that regulatory official as the groupwide supervisor and may not consider designating the superintendent as the groupwide supervisor under paragraph B unless there is a material change in the insurance group that results in:

(1) The insurance group's insurers domiciled in this State holding the largest share of the group's premiums, assets or liabilities; or

(2) This State being the place of domicile of the top-tiered insurer or insurers in the insurance holding company system of the insurance group.

D. If more than one regulatory official is acting as the groupwide supervisor of an insurance group, the superintendent is authorized to cooperate with any of them under paragraph G.

E. Pursuant to subsection 1-A, the superintendent is authorized to collect from any insurer registered pursuant to subsection 8 all information necessary to determine whether the superintendent should act as the groupwide supervisor of an insurance group or whether the superintendent should acknowledge another regulatory official to act as the groupwide supervisor. Before issuing a determination that an insurance group is subject to groupwide supervision by the superintendent, the superintendent shall notify the insurer registered pursuant to subsection 8 and the ultimate controlling person within the insurance group. The insurance group has no less than 30 days to provide the superintendent with additional information pertinent to the pending determination. The superintendent shall publish on the bureau's publicly accessible website the identity of all insurance groups that the superintendent has determined are subject to groupwide supervision by the superintendent.

F. If the superintendent is the groupwide supervisor for an insurance group, the superintendent is authorized to engage in any of the following groupwide supervision activities:

(1) Assess the enterprise risks within the insurance group to ensure that:

(a) The material financial condition and liquidity risks to the members of the insurance group that are engaged in the business of insurance are identified by management; and

(b) Reasonable and effective mitigation measures are in place;

(2) Request, from any member of the insurance group, information necessary and appropriate to assess enterprise risk, including, but not limited to, information about the members of the insurance group regarding:

(a) Governance, risk assessment and management;

(b) Capital adequacy; and

(c) Material intercompany transactions;

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the insurance group is able to promptly recognize and mitigate enterprise risks to members of the insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal and international agencies that regulate members of the insurance group and share relevant information subject to the confidentiality provisions of subsection 13-A, through supervisory colleges as set forth in subsection 7-B or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under subsection 8, any member of the insurance group and any other state, federal and international regulatory agencies for members of the insurance group, providing the basis for or otherwise clarifying the superintendent's role as groupwide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation may not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this State is doing business in this State or is otherwise subject to jurisdiction in this State; and

(6) Other groupwide supervision activities, consistent with the authorities and purposes set out in subparagraphs (1) to (5), as considered necessary by the superintendent.

G. If the superintendent acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the groupwide supervisor, the superintendent is authorized to cooperate reasonably, through supervisory colleges or otherwise, with groupwide supervision undertaken by the groupwide supervisor, as long as:

(1) The superintendent's cooperation is in compliance with the laws of this State; and

(2) The regulatory official acknowledged as the groupwide supervisor also recognizes and cooperates with the superintendent's activities as a groupwide supervisor for other insurance groups as applicable. When such recognition and cooperation is not reasonably reciprocal, the superintendent is authorized to refuse recognition and cooperation.

H. The superintendent is authorized to enter into agreements with or obtain documentation from any insurer registered under subsection 8, any affiliate of the insurer and other state, federal and international regulatory agencies for members of

the insurance group in order to provide the basis for or otherwise clarify a regulatory official's role as groupwide supervisor.

I. The superintendent may adopt rules necessary for the administration of this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

J. A registered insurer subject to this subsection is liable for and shall pay the reasonable expenses of the superintendent's participation in the administration of this subsection, including the engagement of attorneys, actuaries and any other professionals and all reasonable travel expenses.

Sec. B-7. 24-A MRSA §222, sub-§9, ¶A-1, as enacted by PL 2013, c. 238, Pt. A, §21 and affected by §34, is amended to read:

A-1. Agreements for ~~cost-sharing~~ management services and ~~management~~ cost sharing must include any provisions required by the superintendent by rule.

Sec. B-8. 24-A MRSA §222, sub-§9, ¶E, as amended by PL 2013, c. 238, Pt. A, §21 and affected by §34, is further amended to read:

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

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

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

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

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

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

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

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

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

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

(4) All management agreements, cost-sharing arrangements, tax allocation agreements, service contracts and guaranties, with the exception of guaranties that are quantifiable in amount and do not exceed, in the aggregate, the lesser of 0.5% of admitted assets and 10% of surplus as regards policyholders as of December 31st of the preceding year;

(5) Any transactions that are part of a plan or series of like transactions with persons within the holding company system if the ~~purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise~~ transactions when aggregated over any 12-month period exceed the reporting thresholds of this paragraph. If the superintendent determines that those separate transactions were entered

into ~~over any 12 month period for such a purpose, the superintendent may exercise authority~~ for the purpose of avoiding regulatory review by circumventing statutory reporting requirements, that determination is a sufficient basis for disapproving the transactions under this subsection; and

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

A notice of amendment or modification of a transaction must include the reasons for the change and the financial impact on the domestic insurer. The insurer shall notify the superintendent within 30 days after terminating an agreement previously reported under this paragraph.

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

Sec. B-9. 24-A MRSA §222, sub-§11-C, ¶C, as enacted by PL 2009, c. 511, Pt. A, §5, is amended to read:

C. An extraordinary dividend may not be paid until affirmatively approved by the superintendent or until at least 60 days after the superintendent has received a request to pay an extraordinary dividend.

(1) For purposes of this subsection, "extraordinary dividend" means any dividend or distribution, other than a pro rata distribution of a class of the insurer's own securities, that:

(a) ~~Exceeds~~ When aggregated with all other dividends and distributions paid or proposed to be paid by the insurer less than a full year before the payment date, exceeds the greater of 10% of the insurer's surplus to policyholders as of December 31st of the preceding year ~~or~~ and the net gain from operations for the preceding calendar year~~, whichever is greater~~;

(b) Is declared within 5 years after any acquisition of control of a domestic insurer or of any person controlling that insurer, unless it has been approved by a number of continuing directors equal to a majority of the directors in office immediately preceding that acquisition of control; or

(c) Is not paid entirely from unassigned funds. For purposes of this division, 50% of the net of unrealized capital gains and unrealized capital losses, reduced, but not to less than zero, by that portion of the asset valuation reserve attributable to equity investments, must be excluded from the calculation of unassigned funds.

(2) An insurer may declare an extraordinary dividend on a conditional basis, subject to the superintendent's approval. A declaration pursuant to this subparagraph does not confer any rights upon stockholders until the superintendent has approved the payment or the 60-day review period has elapsed.

Sec. B-10. 24-A MRSA §222, sub-§13-A, ¶A, as enacted by PL 2013, c. 238, Pt. A, §26 and affected by §34, is amended to read:

A. For purposes of this subsection, "holding company information" means any of the following documents, materials and other information if the document, material or other information has not specifically and expressly been designated as a public record by other applicable law:

(1) Information obtained by the superintendent pursuant to an examination or investigation pursuant to subsection 1-A to the same extent as the information would have been confidential if obtained in an examination or investigation conducted under section 220 or 221;

(2) A registration statement or report filed under subsection 8, including all supporting information;

(3) A report filed under subsection 9, including all supporting information;

(4) A notice of proposed divestiture filed under subsection 4-C, paragraph B, until the divestiture transaction has occurred;

(5) A disclosure of the beneficial owner of securities made by a broker-dealer pursuant to subsection 4-C, paragraph E;

(6) The identity of a lender that is to finance a proposed transaction if declared confidential under subsection 4-C, paragraph C, subparagraph (2);

(7) Information filed in support of any required attestation of risk management or internal controls under subsection 4-C, paragraph C, subparagraph (12) or (13);

(8) A competitive impact statement filed under subsection 4-C, paragraph C, subparagraph (14), including all supporting information;

(8-A) Groupwide supervision information reported or provided to the superintendent under subsection 7-C;

(9) Information obtained under an information-sharing agreement entered into pursuant to this section to the extent that it is protected by the confidentiality provisions of the agreement;

(10) Information obtained pursuant to this section from a jurisdiction other than this State to the extent that it is confidential under the laws of the jurisdiction in which it is normally maintained; and

(11) Information obtained under this section to the extent that it is confidential under other applicable law, including, but not limited to, section 216, section 225 and Title 1, section 402, subsection 3.

Sec. B-11. 24-A MRSA §223, sub-§1, as amended by PL 1991, c. 828, §7, is further amended to read:

1. Whenever the superintendent determines to examine the affairs of any person, the superintendent shall designate one or more examiners and instruct them as to the scope of the examination. The superintendent may designate a bureau employee or may designate an examiner outside the bureau ~~if the designee is a competent public accountant or an actuary who is a member of the American Academy of Actuaries and is in active practice~~ who has been retained pursuant to section 208. Examiners may be attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists with skills relevant to the examination. The examiner shall, upon demand, exhibit the examiner's official credentials to the person under examination.

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

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

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

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

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

Sec. B-12. 24-A MRSA §223, sub-§2, as amended by PL 1993, c. 313, §14, is further amended to read:

2. The superintendent shall conduct each examination in an expeditious, fair and impartial manner, consistent with current guidelines and procedures adopted from time to time by the National Association of Insurance Commissioners and published in its ~~Examiners'~~ Financial Condition Examiners Handbook or Market Regulation Handbook, as applicable, or their successor publications.

PART C

Sec. C-1. 24-A MRSA §731-B, sub-§1, ¶D, as amended by PL 2013, c. 238, Pt. B, §6, is further amended to read:

D. Does not meet the requirements of paragraph A, B, B-1, B-2 or C, but only with respect to risks located in a jurisdiction where that reinsurance is required by law. The superintendent may waive the requirements of subsections 2 and 5 to the extent that compliance with those requirements is not feasible for compulsory reinsurance subject to this paragraph. The superintendent for good cause after notice and opportunity for hearing may disallow or reduce the credit otherwise permitted under this paragraph.

Sec. C-2. 24-A MRSA §731-B, sub-§2-B is enacted to read:

2-B. Through rules adopted under subsection 7, the superintendent may establish additional requirements that reinsurance agreements that are subject to this subsection must satisfy to qualify for credit.

A. This subsection applies only to reinsurance of:

(1) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(2) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(3) Variable annuities with guaranteed death or living benefits;

(4) Long-term care insurance policies; or

(5) Other life and health insurance and annuity products for which the National Association of Insurance Commissioners adopts

model regulatory requirements with respect to credit for reinsurance.

B. Requirements established under this subsection may address:

(1) The valuation of assets or reserve credits;

(2) The amount and forms of acceptable security, in accordance with rules that may supplement or modify the requirements of subsection 3; and

(3) The circumstances pursuant to which credit will be reduced or eliminated.

C. Requirements established under this subsection may take into consideration the results of applying the valuation manual adopted under section 959 to ceded policies whose statutory reserves are calculated according to a prior methodology.

D. Requirements established with respect to reinsurance described in paragraph A, subparagraphs (1) and (2) may apply to any treaty for which the risk ceded includes:

(1) Policies issued on or after January 1, 2015; or

(2) Risk on policies issued before January 1, 2015 and ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

E. This subsection does not apply to cessions to an assuming insurer that:

(1) Is certified in this State pursuant to subsection 1, paragraph B-2; or

(2) Maintains at least $250,000,000 in capital and surplus as determined in accordance with section 901-A, excluding the impact of any permitted or prescribed practices; and is:

(a) Licensed in at least 26 states; or

(b) Licensed in at least 10 states and licensed or accredited in a total of at least 35 states.

PART D

Sec. D-1. 24-A MRSA §4379, first ¶, as enacted by PL 1969, c. 132, §1, is amended to read:

The priorities in distribution of assets from the insurer's estate ~~shall be~~ to pay unsecured claims, including the unsecured portion of undersecured claims, are in the order as shown in this section. The first $50 of the amount allowed on each claim in the classes under subsections ~~2 to~~ 3, 4, 4-B, 5 and 6 ~~shall~~ must be deducted from the claim and included in the class under subsection 8. Claims ~~shall~~ may not be cumulated by assignment to avoid application on the $50 deductible provision. Subject to the $50 deductible provision, every claim in each class ~~shall~~ must be paid in full or adequate funds retained for the payment thereof before claims of the next succeeding class receive any payment. No subclasses ~~shall~~ may be established within any class~~:~~.

Sec. D-2. 24-A MRSA §4379, sub-§2, as enacted by PL 1969, c. 132, §1, is repealed.

Sec. D-3. 24-A MRSA §4379, sub-§§4-A and 4-B are enacted to read:

4-A. Federal claims. Claims of the Federal Government not included in the classes under subsections 3 or 4, except to the extent that a similar claim would be subordinated in a proceeding conducted under the United States Bankruptcy Code.

4-B. Wages. Debts due to employees of the insurer, other than officers, for services performed, not to exceed $1,000 to each employee and earned within one year immediately preceding the filing of the petition for liquidation. This priority is in lieu of any other similar priority authorized by law as to wages or compensation of such employees.

Sec. D-4. 24-A MRSA §4379, sub-§5, as enacted by PL 1969, c. 132, §1, is amended to read:

5. Residual classification. All other claims, including claims of ~~the federal or~~ any state or local government, not falling within other classes under this section. Claims, including those of any governmental body, for a penalty or forfeiture ~~shall be allowed~~ are included in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims ~~shall~~ must be postponed to the class of claims under subsection 8.

Sec. D-5. 24-A MRSA §4379, sub-§8, ¶A, as enacted by PL 1969, c. 132, §1, is amended to read:

A. The first $50 of each claim in the classes under subsections ~~2 through~~ 3, 4, 4-B, 5 and 6 subordinated under this section;

Sec. D-6. 24-A MRSA §4386, sub-§2, ¶A, as enacted by PL 1981, c. 347, is amended to read:

A. Reserving amounts for the payment of the expenses of administration and the claims falling within the priorities established in section 4379, subsections 1 and ~~2~~ 4-B;

PART E

Sec. E-1. 24-A MRSA §6401, as enacted by PL 1991, c. 828, §33, is amended to read:

§6401. Short title

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

Sec. E-2. 24-A MRSA §6402, sub-§2, as enacted by PL 1991, c. 828, §33, is repealed.

Sec. E-3. 24-A MRSA §6402, sub-§4, as enacted by PL 1991, c. 828, §33, is amended to read:

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

Sec. E-4. 24-A MRSA §6402, sub-§5, as enacted by PL 1991, c. 828, §33, is amended to read:

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

Sec. E-5. 24-A MRSA §6402, sub-§6, as enacted by PL 1991, c. 828, §33, is amended to read:

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

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

B. ~~All~~ A residual market ~~pools and~~ pool or joint underwriting ~~authorities~~ authority or ~~associations~~ association; ~~and~~ or

C. ~~All captive insurers, which for the purposes of this chapter are insurance companies owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.~~ A special purpose reinsurance vehicle holding a limited certificate of authority under section 782 or a captive insurance company, other than a risk retention group, licensed under section 6702.

Sec. E-6. 24-A MRSA §6402, sub-§7, as amended by PL 1997, c. 457, §53 and affected by §55, is further amended to read:

7. Producer. "Producer" means an insurance producer licensed or required to be licensed pursuant to chapter 16 or a person holding or required to hold a comparable license in another state where a licensed property or casualty insurer does business.

Sec. E-7. 24-A MRSA §6402, sub-§8, as enacted by PL 1991, c. 828, §33, is amended to read:

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

Sec. E-8. 24-A MRSA §6403, as enacted by PL 1991, c. 828, §33, is amended to read:

§6403. Applicability

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

Sec. E-9. 24-A MRSA §6404, as enacted by PL 1991, c. 828, §33, is amended to read:

§6404. Minimum standards

1. Applicability. This section applies as follows.

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

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

(1) The controlling ~~broker~~ producer:

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

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

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

2. Required contract provisions. A controlled insurer may not accept business from a controlling ~~broker~~ producer and a controlling ~~broker~~ producer

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

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

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

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

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

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

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

G. The controlled insurer shall provide the controlling ~~broker~~ producer with its underwriting standards, rules, procedures, rates and conditions, including manuals setting forth the rates to be charged and the conditions for the acceptance or rejection of risks. The controlling producer shall comply with those standards, rules, procedures, rates and conditions, which must be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling ~~broker~~ producer.

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

I. If the contract provides that the controlling ~~broker~~ producer, on insurance business placed with the insurer, must be compensated contingent upon the insurer's profits on that business, then that compensation may not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims are independently verified pursuant to subsection 3.

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

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

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

intendent to review the adequacy of the insurer's loss reserves.

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

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

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

Sec. E-10. 24-A MRSA §6405, as corrected by RR 1991, c. 2, §94, is amended to read:

§6405. Disclosure

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

Sec. E-11. 24-A MRSA §6406, sub-§1, as enacted by PL 1991, c. 828, §33, is repealed and the following enacted in its place:

1. Civil action by superintendent. If the superintendent has good cause to believe that a controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage resulting from a violation of this chapter, the superintendent may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages or other appropriate relief for the benefit of the insurer or policyholder.

Sec. E-12. 24-A MRSA §6406, sub-§2, as enacted by PL 1991, c. 828, §33, is amended to read:

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

Sec. E-13. 24-A MRSA §6406, sub-§3, as enacted by PL 1991, c. 828, §33, is amended to read:

3. Other action. Nothing contained in this section affects the right of the superintendent to impose any ~~other~~ penalties ~~provided for in this Title~~ or other remedies authorized under section 12-A or other applicable law.

Sec. E-14. 24-A MRSA §6407, as enacted by PL 1991, c. 828, §33, is repealed.

Sec. E-15. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 24-A, chapter 77, in the chapter headnote, the words "business transacted with broker-controlled property or casualty insurer" are amended to read "business transacted with producer-controlled property or casualty insurer" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

PART F

Sec. F-1. 24-A MRSA §6456, sub-§2, as amended by PL 1997, c. 81, §8, is repealed and the following enacted in its place:

2. Superintendent duties; mandatory control level event. When a mandatory control level event occurs, the superintendent shall take those actions that are necessary to cause the insurer to be placed under regulatory control under chapter 57 or take alternative action as authorized under paragraphs A and B. If the superintendent takes those actions, the mandatory control level event is deemed sufficient grounds for the superintendent to take action under chapter 57, and the superintendent has the rights, powers and duties with respect to the insurer as are set forth in chapter 57. If the superintendent takes actions pursuant to an adjusted risk-based capital report, the insurer is entitled to those protections that are afforded to insurers under the provisions of chapter 57, subchapter 2 pertaining to summary proceedings.

A. The superintendent may forgo action for up to 90 days after the mandatory control level event if the superintendent finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

B. In the case of a property and casualty insurer that is not authorized to write new business, the superintendent may allow the insurer to continue to run off its existing business under the superintendent's supervision if the superintendent determines that there will be sufficient funds to meet the insurer's obligations as they become due. This paragraph does not apply to health insurers.

Sec. F-2. 24-A MRSA §6458, sub-§1, as enacted by PL 1993, c. 634, Pt. A, §1, is amended to read:

1. Confidentiality. The following constitute information that might be damaging to the insurer if made available to its competitors and must be kept confidential by the superintendent:

A. Risk-based capital reports, with respect to any domestic insurer or foreign insurer, that are filed with the superintendent, to the extent that the information in the reports is not required to be set forth in a publicly available annual statement schedule; and

B. Risk-based capital plans, with respect to any domestic insurer or foreign insurer, that are filed with the superintendent, including the results or report of any examination or analysis of an insurer performed pursuant to this chapter and any corrective order issued by the superintendent pursuant to the examination or analysis.

The information listed in paragraph A or B may be shared on a confidential basis in accordance with section 216, subsection 5 but may not be made public or be subject to subpoena, other than by the superintendent and then only for the purpose of enforcement actions taken by the superintendent pursuant to this chapter or any other provision of the insurance laws of this State.

Sec. F-3. 24-A MRSA §6458, sub-§3 is enacted to read:

3. Prohibition on use in ratemaking. Risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans and revised risk-based capital plans may not be used by the superintendent for purposes of rate review, considered or used as evidence in any rate proceeding or used by the superintendent to calculate or derive any elements of an appropriate premium level or appropriate rate of return. This subsection does not prohibit the consideration of premium rates and projected or realized rates of return for purposes of company action or regulatory action taken under this chapter.

Sec. F-4. 24-A MRSA §6460, sub-§2, as enacted by PL 1993, c. 634, Pt. A, §1, is amended to read:

2. Risk-based capital plan. When a company action level event ~~or~~, regulatory action level event or authorized control level event with respect to a foreign insurer occurs, as determined under laws governing risk-based capital applicable in the state of domicile of the insurer, or, if no such risk-based capital provision is in force in that state, under the provisions of this chapter, if the insurance superintendent of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the laws governing risk-based capital in that state, or, if no such risk-based capital provision is in force in that state, under this chapter, the superintendent may require the foreign insurer to file a risk-based capital plan with the superintendent. In this event, the failure of the foreign insurer to file a risk-based capital plan with the superintendent is grounds to order the insurer to desist from writing new insurance business in this State.

PART G

Sec. G-1. 24-A MRSA §6701, sub-§5, as amended by PL 2009, c. 335, §§3 and 4, is further amended to read:

5. Controlled unaffiliated business. "Controlled unaffiliated business" means a ~~company~~ business entity that has a contractual relationship, such as a subcontractor or franchisee relationship, with the parent of a pure captive insurance company or with one or more of its affiliates, satisfying the following criteria:

A. ~~Is~~ The business entity is not in the corporate system of ~~a parent and affiliated companies~~ the pure captive insurance company's parent;

B. ~~Has an existing~~ The contractual relationship ~~with a parent or affiliated company~~ provides that all or a material part of the business entity's operations are dedicated to business activities undertaken or managed by the pure captive insurance company's parent or by one or more of its affiliates; and

D. ~~Has all its~~ Substantially all of the captive insurance company's coverage of the business entity is for risks arising out of the activities described in paragraph B, and those risks are managed by ~~a pure~~ the captive insurance company in accordance with this chapter.

Sec. G-2. 24-A MRSA §6701, sub-§12, as enacted by PL 1997, c. 435, §1, is amended to read:

12. Pure nonprofit captive insurance company. "Pure nonprofit captive insurance company" means a pure captive insurance company formed without capital stock as a nonprofit corporation, whose voting ~~of~~ or membership interest is held by a parent organization formed under a nonprofit law ~~or by a nonprofit parent, its or controlled unaffiliated business affiliated companies but does not include those insurers otherwise qualifying for a certificate of authority as an insurer~~.

Sec. G-3. 24-A MRSA §6702, sub-§3, ¶C, as enacted by PL 1997, c. 435, §1, is amended to read:

C. ~~The~~ A plan of operation satisfactory to the superintendent, with supporting information demonstrating the overall soundness of its plan of operation;

Sec. G-4. 24-A MRSA §6706, sub-§1, ¶C, as enacted by PL 2009, c. 335, §12, is amended to read:

C. Organized as a ~~manager-managed~~ limited liability company with a limited liability company agreement approved by the superintendent.

Sec. G-5. 24-A MRSA §6706, sub-§2, ¶D, as enacted by PL 2009, c. 335, §12, is amended to read:

D. Organized as a ~~manager-managed~~ limited liability company with a limited liability company agreement approved by the superintendent.

Sec. G-6. 24-A MRSA §6706, sub-§3, as amended by PL 2009, c. 335, §12, is further amended to read:

3. Incorporators. A captive insurance company, other than a limited liability company, may not have fewer than 3 incorporators or 3 organizers of whom at least one must be a resident of this State. If the captive insurance company is a limited liability company, ~~at least one manager~~ its certificate of formation must be executed by a resident of this State.

Sec. G-7. 24-A MRSA §6706, sub-§6, as amended by PL 2013, c. 588, Pt. A, §30, is further amended to read:

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

Sec. G-8. 24-A MRSA §6707, as amended by PL 1997, c. 583, §4, is further amended to read:

§6707. Financial statements and other reports

1. Financial statement. A captive insurance company shall submit an annual statement of financial condition ~~written according to generally accepted accounting principles and~~ audited by an independent certified public accountant to the superintendent on or before the last day of the 6th month following the end of the company's fiscal year.

A. The audited financial statement of an association captive insurance company or industrial insured captive insurance company must be prepared in conformity with statutory accounting principles.

B. The audited financial statement of a captive insurance company other than those set out in paragraph A must be prepared in conformity with either generally accepted accounting principles or statutory accounting principles, at the election of the company.

2. Annual and quarterly statements. An association captive insurance company or industrial insured captive insurance company shall file ~~an annual statement~~ annual and quarterly statements in accordance with statutory accounting ~~practices~~ principles, each of which must be a true statement of its financial condition, transactions and affairs ~~as of the immediately preceding December 31st~~, substantially similar to the statements required under sections 423 and 423-A for insurance companies certified under section 414, in general form and context as approved by the National Association of Insurance Commissioners, or other format prescribed by the superintendent, verified by oaths of at least 2 of the insurer's principal officers.

3. Reserves. The statements required under subsections 1 and 2 must include, but are not limited to, actuarially appropriate reserves for:

A. Known claims and associated expenses;

B. Claims incurred but not reported and associated expenses;

C. Unearned premiums; and

D. Bad debts, reserves for which must be shown as liabilities.

An actuarial opinion regarding reserves for known claims and claims incurred but not reported, and expenses associated with those claims, must be included in the audited statements. The actuarial opinion must be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement instructions adopted by the National Association of Insurance Commissioners.

4. Other reports. The superintendent may prescribe the format and frequency of other reports, which may include, but are not limited to, summary loss reports, material transaction reports and ~~quarterly~~ interim financial statements.

Sec. G-9. 24-A MRSA §6715, as amended by PL 1997, c. 583, §5, is further amended to read:

§6715. Confidential information

All information submitted to the superintendent pursuant to section 6702, subsection 3 and section

6724, subsection 3 is confidential and is not a public record within the meaning of Title 1, chapter 13, subchapter ~~I~~ 1. Each report or statement filed with the superintendent pursuant to section 6707, except those filed by or with respect to industrial insured groups as defined in section 6701, subsection 8, is confidential and is not a public record within the meaning of Title 1, chapter 13, subchapter ~~I~~ 1. The confidential nature of this information does not limit the ability of the superintendent, in the superintendent's discretion, to disclose such information to a public official in another state, as long as the public official agrees in writing to maintain the confidentiality of such information and the laws of the state in which the public official serves designate such information as confidential.

Sec. G-10. 24-A MRSA §6724, sub-§2, as enacted by PL 2009, c. 335, §23, is amended to read:

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 with a limited liability company agreement approved by the superintendent.

Sec. G-11. 24-A MRSA §6724, sub-§4, ¶B, as enacted by PL 2009, c. 335, §23, is amended to read:

B. Each participant contract must specify one or more protected cells as the sole source of the participant's coverage and limit the covered losses of the participant to ~~its pro rata share of~~ an amount not to exceed the amount recoverable from the assets of the protected cell or cells identified in the contract and shall provide for pro rata distribution if the assets of a cell are insufficient to pay all liabilities to participants. 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;

Sec. G-12. 24-A MRSA §6724, sub-§4, ¶B-1 is enacted to read:

B-1. A sponsored captive insurance company may only reinsure risks of its participants, and its liability to a ceding insurer must be limited to amounts recoverable from the assets of the protected cell or cells participating in the risks giving rise to the underlying losses in accordance with paragraph B. Any management fees or other unallocated expenses payable to a ceding insurer or its affiliate or contractor must be charged pro rata to the protected cell or cells assuming the reinsurance and may not be a liability of the general account;

Sec. G-13. 24-A MRSA §6724, sub-§4, ¶C, as enacted by PL 2009, c. 335, §23, is amended to read:

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. All attributions of assets and liabilities between a protected cell and the general account must be in accordance with the plan of operation approved by the superintendent;

Sec. G-14. 24-A MRSA §6724, sub-§4, ¶L, as enacted by PL 2009, c. 335, §23, is amended to read:

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

See title page for effective date.

CHAPTER 170

H.P. 1081 - L.D. 1570

An Act To Make Technical Changes to Maine's Tax Laws

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

PART A

Sec. A-1. 36 MRSA §191, sub-§2, as amended by PL 2015, c. 490, §§2 to 4 and c. 494, Pt. A, §§41 to 43, is further amended to read:

2. Exemptions. This section ~~shall~~ may not be construed to prohibit the following:

A. The delivery to a taxpayer or ~~his~~ the taxpayer's duly authorized representative of a certified copy of any return, report or other information filed by the taxpayer pursuant to this Title;

A-1. The disclosure to an authorized representative of the Maine Potato Board of information obtained by the assessor in the administration of chapter 710;