



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1519

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S.P. 574

In Senate, May 8, 2013

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

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator WOODBURY of Cumberland.  
Cosponsored by Senator GRATWICK of Penobscot and  
Representative: WALLACE of Dexter.

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

2 **PART A**

3 **Sec. A-1. 24-A MRSA §216, sub-§5**, as amended by PL 1999, c. 184, §19, is  
4 repealed and the following enacted in its place:

5 5. In order to assist the superintendent in the regulation of insurers in this State, it is  
6 the duty of the superintendent to maintain as confidential a document or information  
7 received from the National Association of Insurance Commissioners or International  
8 Association of Insurance Supervisors, public officials of other jurisdictions and members  
9 of supervisory colleges in which the superintendent participates pursuant to section 222,  
10 subsection 7-B, agencies of the Federal Government or political subdivisions or other  
11 agencies of this State, if the document or the information has been provided to the  
12 superintendent with notice that it is confidential under the laws of the jurisdiction that is  
13 the source of the document or information.

14 A. Any information furnished pursuant to this subsection by or to the superintendent  
15 that has been designated confidential by the official or agency furnishing the  
16 information remains the property of the agency furnishing the information and must  
17 be held as confidential by the recipient of the information, except as authorized by the  
18 official or agency furnishing the information.

19 B. The superintendent may share information, including otherwise confidential  
20 information, with the National Association of Insurance Commissioners or  
21 International Association of Insurance Supervisors, public officials of other  
22 jurisdictions and members of supervisory colleges in which the superintendent  
23 participates pursuant to section 222, subsection 7-B, agencies of the Federal  
24 Government or political subdivisions or other agencies of this State, if the other  
25 jurisdiction, political subdivision or agency agrees to maintain the same level of  
26 confidentiality as is available under Maine law and has demonstrated that it has the  
27 legal authority to do so.

28 C. The superintendent may enter into one or more written agreements with the  
29 National Association of Insurance Commissioners governing sharing and using  
30 information under this subsection that:

31 (1) Specify procedures and protocols regarding the confidentiality and security  
32 of information shared with the National Association of Insurance Commissioners  
33 and its affiliates and subsidiaries pursuant to this paragraph, including procedures  
34 and protocols for sharing by the National Association of Insurance  
35 Commissioners with other state, federal or international insurance regulators;

36 (2) Specify that ownership of information shared with the National Association  
37 of Insurance Commissioners and its affiliates and subsidiaries pursuant to this  
38 paragraph remains with the superintendent and that the use of information by the  
39 National Association of Insurance Commissioners is subject to the direction of  
40 the superintendent;

41 (3) Require prompt notice to be given by the National Association of Insurance  
42 Commissioners to any insurer whose confidential information is in the possession

1 of the National Association of Insurance Commissioners pursuant to this  
2 paragraph when that information is the subject of a request or subpoena for  
3 disclosure or production; and

4 (4) Require the National Association of Insurance Commissioners and its  
5 affiliates and subsidiaries to consent to intervention by an insurer in any judicial  
6 or administrative action in which the National Association of Insurance  
7 Commissioners and its affiliates and subsidiaries may be required to disclose  
8 confidential information about the insurer shared with the National Association  
9 of Insurance Commissioners and its affiliates and subsidiaries pursuant to this  
10 paragraph.

11 D. This subsection does not alter prohibitions or restrictions applicable to ex parte  
12 contacts in the course of an adjudicatory proceeding in which a state agency is a  
13 party.

14 E. For purposes of this subsection, "other agencies of this State" includes bureau  
15 personnel and consultants designated as serving in an advocacy capacity in an  
16 adjudicatory proceeding before the superintendent.

17 **Sec. A-2. 24-A MRSA §222, sub-§1**, as repealed and replaced by PL 1975, c.  
18 356, §1, is repealed.

19 **Sec. A-3. 24-A MRSA §222, sub-§1-A** is enacted to read:

20 **1-A. Examination.** For purposes of ascertaining compliance with law, or  
21 relationships and transactions between any person as defined hereafter and any insurer or  
22 proposed insurer subject to this section, the superintendent may as often as the  
23 superintendent determines to be advisable examine the accounts, records, documents and  
24 transactions pertaining to or affecting the insurance affairs or proposed insurance affairs,  
25 or transactions of the insurer or proposed insurer as may be in the possession of any  
26 holding company, its subsidiaries or affiliates as is necessary to ascertain the financial  
27 condition, including the enterprise risk to the insurer by the ultimate controlling party, or  
28 legality of conduct of the insurer or proposed insurer or the holding company as a whole  
29 or any combination of entities within the insurance holding company system and to verify  
30 any information provided or required to be provided to the superintendent pursuant to this  
31 section.

32 A. The superintendent's investigatory and examination authority under this  
33 subsection extends to the examination of:

34 (1) Any business entity structured to hold the stock of an insurance company, or  
35 person holding the shares of voting stock or policyholder proxies of an insurer as  
36 voting trustee or otherwise, for the purpose of controlling the management  
37 thereof;

38 (2) Any insurance producer, adjuster or consultant or other insurance or  
39 reinsurance representative or intermediary or any person acting as or purporting  
40 to be any of the foregoing;

41 (3) Any person having a contract giving that person by terms or in fact the  
42 exclusive or dominant right to manage or control the insurer; and

1           (4) Any person in this State engaged in or proposing to be engaged in or acting  
2           as or purporting to be so engaged or proposing to be engaged in the business of  
3           insurance or in this State assisting in the promotion, formation or financing of an  
4           insurer or insurance holding corporation or corporation or other group financing  
5           an insurer or the production of its business.

6           B. Subject to the limitations contained in this subsection and in addition to the  
7           powers that the superintendent has under section 221 and sections 223 to 228 relating  
8           to the examination of insurers, the superintendent may order an insurer registered  
9           under subsection 8 to produce records, books or papers in the possession of the  
10           insurer or affiliates as may be necessary to verify the information required to be  
11           provided to the superintendent under this section and any additional information  
12           pertinent to transactions between the insurer and affiliates. The books, records,  
13           papers and information are subject to examination in the same manner as prescribed  
14           in this chapter for an examination conducted under section 221, except that expenses  
15           incurred by the superintendent in examining an affiliate that is not an insurer must be  
16           borne by the registered insurer subject to the limitations of section 228, subsection 1.  
17           The superintendent may issue subpoenas, administer oaths and examine any person  
18           under oath for purposes of determining compliance with this subsection.

19           C. A member of an insurer's insurance holding company system shall comply fully  
20           and accurately with a request by the insurer to provide it with information necessary  
21           to respond to an examination request by the superintendent pursuant to this section.

22           D. The superintendent may order an insurer registered under subsection 8 to produce  
23           information not in the possession of the insurer if the insurer can obtain access to the  
24           information pursuant to contractual relationships, statutory obligations or any other  
25           method. If the insurer cannot obtain the information requested by the superintendent,  
26           the insurer shall provide the superintendent a written objection with a detailed  
27           explanation of the reason that the insurer cannot obtain the information and the  
28           identity of the holder of the information. It is a violation of this section to submit an  
29           objection to production of information without a reasonable basis or to fail to produce  
30           information on the basis of an objection that the superintendent has denied after  
31           notice and opportunity for hearing.

32           **Sec. A-4. 24-A MRSA §222, sub-§2, ¶B,** as amended by PL 1999, c. 113, §8, is  
33 further amended to read:

34           B. Control,

35           (1) ~~'Control,' including 'controlling,' 'controlled by' and 'under common control~~  
36           ~~with,'~~ "Control," including "controlling," "controlled by" and "under common  
37           control with," means the possession, direct or indirect, of the power to direct or  
38           cause the direction of the management and policies of a person, whether through  
39           the ownership of voting securities, by contract other than a commercial contract  
40           for goods or nonmanagement services, or otherwise, unless the power is solely  
41           the result of an official position with or a corporate office held by the person.  
42           Control is presumed to exist if any person is the beneficial owner of 10% or more  
43           of the voting securities or guaranty capital shares, if applicable, ~~or voting rights~~  
44           ~~in the case of mutual or reciprocal insurers, or guaranty capital shares if a mutual~~

1 insurer has established a guaranty fund, has the right to cast 10% or more of the  
2 votes in the election of directors or other governing body of any other person. A  
3 beneficial owner may rely in determining the amount of voting securities of any  
4 person outstanding upon information set forth in that person's most recent  
5 quarterly or annual report filed with the Securities and Exchange Commission  
6 pursuant to the Exchange Act unless the beneficial owner knows or has reason to  
7 believe that the information contained in the quarterly or annual report is  
8 inaccurate. Two or more domestic mutual insurance companies that have  
9 restricted their licensed territories to the State are not considered subject to this  
10 section merely because those insurance companies commonly share facilities,  
11 incurred expenses, or personnel services, or otherwise utilize cost allocations  
12 based on generally accepted accounting principles including pro rata sharing of  
13 assumed risks. A person may have more than one controlling person, even if  
14 those controlling persons are not acting in concert.

15 (2) Notwithstanding the presumption of control contained in subparagraph (1),  
16 the superintendent, upon application of the insurance company, may determine  
17 that the insurer is not controlled by the person presumed to control it. In  
18 addition, the superintendent, after notice and an opportunity to be heard, may  
19 determine, notwithstanding the absence of the presumption in subparagraph (1),  
20 that a person does control an insurance company or companies.

21 (3) The presumption of control contained in subparagraph (1) does not apply to a  
22 securities broker-dealer holding, in the usual and customary broker's function,  
23 less than 20% of the voting securities of another person. However, such a  
24 broker-dealer shall disclose to the superintendent the identity of any person, or  
25 group of persons the broker-dealer knows or reasonably believes to be acting in  
26 concert, on whose behalf the broker-dealer holds 5% or more of the voting  
27 securities of a domestic insurer or any entity the broker-dealer knows or  
28 reasonably believes to be a controlling person of a domestic insurer and shall  
29 disclose to the superintendent on request the beneficial owners of any securities  
30 held by the broker-dealer of any entity that is, or that the superintendent believes  
31 might be or might become, a member of the insurance holding company system  
32 of an insurer subject to registration under subsection 8.

33 **Sec. A-5. 24-A MRSA §222, sub-§2, ¶B-1**, as enacted by PL 1989, c. 385, §3,  
34 is repealed and the following enacted in its place:

35 B-1. Exchange Act. "Exchange Act" means the federal Securities Act of 1933, 15  
36 United States Code, Chapter 2-A, Subchapter 1 and the federal Securities Exchange  
37 Act of 1934, 15 United States Code, Chapter 2-B.

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

39 B-2. Enterprise risk. "Enterprise risk" means an activity, circumstance, event or  
40 series of events involving one or more affiliates of an insurer that, if not remedied  
41 promptly, is likely to have a material adverse effect upon the financial condition or  
42 liquidity of the insurer, or of its insurance holding company system as a whole,  
43 including, but not limited to, anything that would cause or exacerbate a risk-based

1 capital event as described in sections 6453 to 6456 or would cause the insurer to be in  
2 unsound or hazardous financial condition as determined by the superintendent.

3 **Sec. A-7. 24-A MRSA §222, sub-§2, ¶D**, as repealed and replaced by PL 1975,  
4 c. 356, §1, is amended to read:

5 D. Insurer. "Insurer" ~~shall have~~ has the same meaning ~~given it as~~ as in section 4 and  
6 includes a fraternal benefit society required to be licensed under section 4124 or  
7 4125.

8 **Sec. A-8. 24-A MRSA §222, sub-§2, ¶¶D-3 to D-5** are enacted to read:

9 D-3. Own risk and solvency assessment or ORSA. "Own risk and solvency  
10 assessment" or "ORSA" means a confidential internal assessment that is conducted  
11 by an insurer or insurance holding company system of the material and relevant risks  
12 associated with its current business plan and the sufficiency of its capital resources to  
13 support those risks and that is appropriate to the nature, scale and complexity of the  
14 operations of the insurer or insurance holding company system.

15 D-4. ORSA guidance manual. "ORSA guidance manual" means the NAIC Own  
16 Risk and Solvency Assessment (ORSA) Guidance Manual, as amended from time to  
17 time. A change in the ORSA guidance manual is effective with regard to this State  
18 on January 1st following the calendar year in which the change has been adopted by  
19 the National Association of Insurance Commissioners.

20 D-5. ORSA summary report. "ORSA summary report" means a confidential high-  
21 level summary of an insurer's or insurance holding company system's own risk and  
22 solvency assessment and includes a combination of separate reports that collectively  
23 meet the requirements of the ORSA guidance manual.

24 **Sec. A-9. 24-A MRSA §222, sub-§4-A**, as enacted by PL 1989, c. 385, §5, is  
25 repealed.

26 **Sec. A-10. 24-A MRSA §222, sub-§4-B**, as enacted by PL 1989, c. 385, §5, is  
27 repealed.

28 **Sec. A-11. 24-A MRSA §222, sub-§4-C** is enacted to read:

29 **4-C. Acquisitions; tender offers; divestitures.** The following provisions apply to a  
30 transaction or proposed transaction that results or might result in the change of direct or  
31 indirect control of a domestic insurer.

32 A. Except as provided in paragraph B, a person other than the issuer may not make a  
33 tender offer for, or a request or invitation for tenders of, or an agreement to exchange  
34 securities for, or otherwise acquire any voting security, or any security convertible  
35 into a voting security, of a domestic insurer or of any person controlling a domestic  
36 insurer if, as a result of the consummation thereof, the person making the tender  
37 offer, request or agreement would, directly or indirectly, acquire actual or  
38 presumptive control of the insurer or controlling person, and a person may not enter  
39 into an agreement to merge with or otherwise acquire actual or presumptive control  
40 of a domestic insurer or its controlling person, unless:

1                   (1) The person has filed with the superintendent and has sent the domestic  
2                   insurer an application containing the information required by paragraph C;

3                   (2) The offer, request, invitation, agreement or acquisition has been approved by  
4                   the superintendent in the manner prescribed in subsection 7; and

5                   (3) Ten days has elapsed from the date of approval by the superintendent and no  
6                   injunction or other court order precludes consummation of the offer, request,  
7                   invitation, agreement or acquisition.

8                   B. A controlling person of a domestic insurer seeking to divest its controlling interest  
9                   in the domestic insurer in any manner, including any partial divestiture that would  
10                  cause that person to cease to be a controlling person, shall file with the  
11                  superintendent, with a copy to the insurer, confidential notice of its proposed  
12                  divestiture at least 30 days before the cessation of control, unless the divestiture  
13                  transaction consists of the transfer of the divesting person's interest to one or more  
14                  acquiring persons, all of whom have reported their respective acquisitions pursuant to  
15                  paragraph A. Unless the superintendent grants an exemption under paragraph D, the  
16                  divesting person shall file an application substantially similar to the application  
17                  required under paragraph C, with such modifications as the superintendent  
18                  determines to be appropriate based on the nature of the transaction. The  
19                  superintendent shall decide whether to approve the application using the criteria in  
20                  subsection 7, paragraph A and may hold a public hearing if the superintendent  
21                  determines that a hearing is in the interests of policyholders or the public. If 20 days  
22                  has elapsed after the superintendent's receipt of a notice filed under this paragraph  
23                  and the superintendent has not disapproved the proposed divestiture or postponed its  
24                  effective date pending further review, the superintendent is deemed to have granted  
25                  an exemption under paragraph D, subparagraph (2).

26                  C. An application required by paragraph A must contain the following information  
27                  as applicable, made under oath or affirmation, except that if the proposed transaction  
28                  is subject to regulation under the Exchange Act or Title 32, chapter 135, the  
29                  superintendent may accept the relevant documents filed with the United States  
30                  Securities and Exchange Commission or the Department of Professional and  
31                  Financial Regulation, Office of Securities in lieu of some or all of the documents  
32                  required by this paragraph:

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

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

39                         (b) If the person acquiring control is not an individual, a report of the nature  
40                         of its business operations during the past 5 years or for a lesser period the  
41                         person and any predecessors have been in existence; an informative  
42                         description of the business intended to be done by the person and the person's  
43                         subsidiaries; and a list of all individuals who are or who have been selected  
44                         to become directors or executive officers of the person or who perform or

- 1                    will perform functions appropriate to such positions. The list must include  
2                    the information required by division (a) for each individual listed;
- 3                    (2) The source, nature and amount of the consideration used or to be used in  
4                    effecting the merger or other acquisition of control, a description of any  
5                    transaction through which funds were or are to be obtained for any such purpose,  
6                    including any pledge of the insurer's stock or the stock of any of its subsidiaries  
7                    or controlling affiliates, and the identity of persons furnishing consideration. If a  
8                    source of consideration is a loan made in the lender's ordinary course of business,  
9                    the identity of the lender is confidential if the person filing the application so  
10                   requests;
- 11                   (3) Fully audited financial information as to the earnings and financial condition  
12                   of each acquiring person for the preceding 5 fiscal years, or for a lesser period if  
13                   the acquiring person and any predecessors have been in existence for less than 5  
14                   years, and similar unaudited information as of a date not earlier than 90 days  
15                   before the filing of the application;
- 16                   (4) Any plans or proposals that each acquiring person may have to liquidate the  
17                   insurer, to sell its assets or merge or consolidate it with any person or to make  
18                   any other material change in its business or corporate structure or management;
- 19                   (5) The number of shares of any security referred to in paragraph A that each  
20                   acquiring person proposes to acquire, the terms of the offer, request, invitation,  
21                   agreement or acquisition referred to in paragraph A and a statement as to the  
22                   method by which the fairness of the proposal was arrived at;
- 23                   (6) The amount of each class of any security referred to in paragraph A that is  
24                   beneficially owned or concerning which there is a right to acquire beneficial  
25                   ownership by each acquiring person;
- 26                   (7) A full description of any contracts, arrangements or understandings with  
27                   respect to any security referred to in paragraph A in which any acquiring person  
28                   is involved, including but not limited to transfer of any of the securities, joint  
29                   ventures, loan or option arrangements, puts or calls, guarantees of loans,  
30                   guarantees against loss or guarantees of profits, division of losses or profits or the  
31                   giving or withholding of proxies. The description must identify the persons with  
32                   whom the contracts, arrangements or understandings have been entered into;
- 33                   (8) A description of the purchase by any acquiring person of any security  
34                   referred to in paragraph A during the 12 calendar months preceding the filing of  
35                   the application, including the dates of purchase, names of the purchasers and  
36                   consideration paid or agreed to be paid;
- 37                   (9) A description of any recommendations to purchase any security referred to in  
38                   paragraph A made during the 12 calendar months preceding the filing of the  
39                   application by any acquiring person or by anyone based upon interviews with or  
40                   at the suggestion of the acquiring person;
- 41                   (10) Copies of all tender offers for, requests or invitations for tenders of,  
42                   exchange offers for and agreements to acquire or exchange any securities referred



1 to in paragraph A and copies of any additional related soliciting material that has  
2 been distributed;

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

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

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

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

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

23 D. The superintendent may exempt a person otherwise subject to the requirements of  
24 this subsection and subsection 7 from some or all of those requirements if the person  
25 demonstrates to the satisfaction of the superintendent that an exemption will not be  
26 detrimental to the interests of policyholders in the State or the public and that the  
27 transaction satisfies at least one of the following criteria:

28 (1) The interests of the State in regulating the transaction are minimal relative to  
29 the interests of other jurisdictions or are minimal relative to the impact of the  
30 transaction as a whole;

31 (2) The person proposes a divestiture of control under paragraph B and the  
32 superintendent determines that the prior approval process is not necessary in the  
33 circumstances of the transaction;

34 (3) A party proposing to acquire presumed control submits a disclaimer fully  
35 disclosing all material relationships and bases for affiliation with the insurer and  
36 demonstrating to the satisfaction of the superintendent that the person will not be  
37 acquiring actual control. As a condition of granting an exemption under this  
38 subparagraph, the superintendent may require the person to agree to reasonable  
39 restrictions on the exercise of rights or powers that might otherwise tend to result  
40 in control;

41 (4) The superintendent elects to participate in a consolidated approval  
42 proceeding conducted under the laws of one or more other states pursuant to  
43 subsection 7-A, paragraph E; and

1                   (5) The transaction involves the control of a person that is not primarily engaged  
2                   in the business of insurance, directly or through its affiliates, and there will be no  
3                   material impact on the management or operations of a domestic insurer.

4                   A person requesting an exemption under this paragraph must agree to provide  
5                   additional information if needed by the superintendent and to postpone the effective  
6                   date of the transaction if ordered by the superintendent while the request for  
7                   exemption is pending.

8                   **Sec. A-12. 24-A MRSA §222, sub-§5**, as amended by PL 1989, c. 385, §6, is  
9 further amended to read:

10                   **5. Tender offer material.** All requests or invitations for tenders or advertisements  
11 making a tender offer or requesting or inviting tenders of such voting securities for  
12 control of a domestic insurer or its controlling person made by or on behalf of any such  
13 person ~~shall~~ must contain any information specified in subsection ~~4-B~~ 4-C as the  
14 superintendent may prescribe; and ~~shall~~ must be filed with the superintendent at the time  
15 that material is first published or sent or given to security holders. Copies of any  
16 additional material soliciting or requesting such tender offers subsequent to the initial  
17 solicitation or request ~~shall~~ must contain the information that the superintendent may  
18 prescribe as necessary or appropriate in the public interest or for the protection of  
19 policyholders; and ~~shall~~ must be filed with the superintendent at the time copies of that  
20 material are first published or sent or given to security holders.

21                   **Sec. A-13. 24-A MRSA §222, sub-§6**, as amended by PL 2007, c. 466, Pt. D, §1,  
22 is further amended to read:

23                   **6. Information as to applicant.** If ~~the~~ a person required to file ~~the statement~~  
24 ~~referred to in subsection 4-A~~ an application under subsection 4-C is a partnership, limited  
25 partnership, syndicate or other group, the superintendent may require that the information  
26 called for by subsection ~~4-A~~ 4-C must be given with respect to each partner of ~~such~~ the  
27 partnership or limited partnership, each member of ~~such~~ the syndicate or group and each  
28 person who controls any such partner or member. If ~~the~~ a person required to file ~~the~~  
29 ~~statement referred to in subsection 4-A~~ an application under subsection 4-C is a  
30 corporation, the superintendent may require that the information called for ~~thereby~~ by  
31 subsection 4-C must be given with respect to ~~such~~ the corporation and each officer and  
32 director thereof and each person who is directly or indirectly the beneficial owner of more  
33 than 10% of the outstanding securities of ~~such~~ the corporation.

34                   **Sec. A-14. 24-A MRSA §222, sub-§7**, as amended by PL 2007, c. 466, Pt. D, §2,  
35 is further amended to read:

36                   **7. Approval, disapproval of proposed change of control.**

37                   A. The superintendent shall hold a hearing in accordance with the procedures set  
38 forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter ~~IV~~  
39 4, within 30 days after the ~~statement~~ application required by subsection ~~4-A~~ 4-C has  
40 been filed with the superintendent. The superintendent shall make a determination  
41 within 30 days after the conclusion of that hearing. The superintendent shall approve

1 any purchase, exchange, merger or other ~~acquisition~~ change of control referred to in  
2 subsection ~~4-A~~ 4-C unless the superintendent finds that:

3 (1) After the change of control, the domestic insurer could not satisfy the  
4 requirements for the issuance of a certificate of authority according to  
5 requirements in force at the time of the issuance; or last renewal or continuation  
6 of its certificate of authority to do the insurance business ~~which~~ that it intends to  
7 transact in this State;

8 (2) The effect of the purchases, exchanges, merger of a controlling person of the  
9 insurer; or other ~~acquisitions~~ changes of control may be substantially to lessen  
10 competition in insurance in this State or tend to create a monopoly ~~therein; in this~~  
11 State or would violate the laws of this State or of the United States relating to  
12 monopolies or restraints of trade;

13 (3) The financial condition of an acquiring person ~~is such as~~ would jeopardize  
14 the financial stability of the insurer or prejudice the interest of its policyholders;

15 (4) The plans or proposals ~~which that~~ the acquiring or divesting person has to  
16 liquidate the insurer, to sell its assets or to merge it with any person, or to make  
17 any other major change in its business or corporate structure or management, are  
18 unfair or prejudicial to policyholders;

19 (5) The competence, experience and integrity of those persons who would  
20 control the operation of the insurer indicate that it would not be in the interest of  
21 policyholders or the public to permit them to do so;

22 (6) Any merger of a domestic insurer does not comply with section 3474; or

23 (7) The ~~acquisition~~ change of control would tend to affect adversely the  
24 contractual obligations of the domestic insurer or its ability and tendency to  
25 render service in the future to its policyholders and the public.

26 B. ~~Subparagraphs~~ Paragraph A, subparagraphs (3) to (7) do not apply to any change  
27 of control if and to the extent that the superintendent, by rule or by order, exempts the  
28 ~~same~~ change of control from the provisions of those subparagraphs as not  
29 ~~comprehended~~ included within the purpose of this subsection.

30 C. Merger, consolidation or bulk reinsurance as to a domestic insurer ~~shall~~ may be  
31 effectuated only pursuant to the applicable provisions of chapter 47, subchapter ~~IV~~, 4  
32 and sections 3875, 4108 and 4109, as related to organization and powers of insurers.

33 D. Violation,

34 (1) Failure to file the ~~statement~~ application required under subsection ~~4-A~~ 4-C  
35 constitutes a violation of this ~~chapter~~ section.

36 (2) Effectuation of or any attempt to effectuate an acquisition of, control of,  
37 divestiture of control of or merger with a domestic insurer ~~within~~ earlier than 30  
38 days ~~of~~ after the filing of the ~~statement~~ application required by subsection ~~4-A,~~  
39 ~~prior to~~ 4-C, ~~before~~ the superintendent's decision if a hearing is held or after  
40 disapproval ~~of such acquisition of control or merger~~ by the superintendent ~~of the~~  
41 acquisition, divestiture or merger, constitutes a violation of this ~~chapter~~ section.

1           **Sec. A-15. 24-A MRSA §222, sub-§§7-A and 7-B** are enacted to read:

2           **7-A. Consolidated proceedings.** If a proposed change of control requires, or is part  
3 of a series of related transactions that require, the approval of the insurance regulators of  
4 more than one state, a person filing an application under subsection 4-C with respect to  
5 the change of control may file a request for a consolidated approval proceeding with the  
6 National Association of Insurance Commissioners.

7           A. The applicant shall file a copy of the application made under subsection 4-C with  
8 the National Association of Insurance Commissioners within 5 days after making the  
9 request for a consolidated approval proceeding.

10          B. Within 10 days after receiving notice from the National Association of Insurance  
11 Commissioners of a request for a consolidated approval proceeding, the  
12 superintendent shall issue an order, with notice to the applicant and to the National  
13 Association of Insurance Commissioners, specifying whether the superintendent  
14 elects to participate in the consolidated proceeding or to opt out of the consolidated  
15 proceeding.

16          C. If the superintendent opts out of the consolidated approval proceeding pursuant to  
17 paragraph B, the superintendent shall hold a public hearing under subsection 7 unless  
18 the superintendent grants an exemption under subsection 4-C, paragraph D. Opting  
19 out of the consolidated proceeding does not preclude or limit the superintendent's  
20 authority to coordinate a proceeding conducted under subsection 7 with the  
21 consolidated proceeding or with other parallel proceedings in other states.

22          D. With the agreement of the other participating insurance regulators, the  
23 superintendent may initiate a consolidated approval proceeding under this paragraph  
24 to render decisions on all applications within the scope of the order of consolidation  
25 issued by the superintendent. A consolidated approval proceeding convened under  
26 this paragraph is a public adjudicatory proceeding. Except as provided in this  
27 paragraph, the proceeding must be conducted in the same manner as a proceeding  
28 under subsection 7.

29           (1) A person who would have the right to participate in a proceeding on any of  
30 the consolidated applications held under subsection 7 or substantially similar  
31 laws of other states has the right to participate in the proceeding.

32           (2) The chief insurance regulator of a participating state has the right to  
33 participate in making the decision or in designating a decision-making panel.

34           (3) The proceeding is public, except that deliberations of a decision-making  
35 panel are not public proceedings and communications in the course of those  
36 deliberations among panel members and their advisers, other than the decision  
37 itself, are not public records.

38           (4) The proceeding may be held in any state with a significant connection to the  
39 subject transactions or in a nearby location in an adjacent state. Sessions may be  
40 held in different states. Provision must be made for parties, witnesses, insurance  
41 regulators and members of the public to attend and participate in the proceeding  
42 by telecommunication.

1                   (5) The superintendent, decision-making panel or presiding officer may vary the  
2                   applicable procedural requirements under this Title and Title 5 to the extent the  
3                   superintendent, panel or presiding officer determines to be reasonably necessary  
4                   for the fair and effective administration of a consolidated multistate proceeding.

5                   (6) The decision is subject to judicial review in the same manner as a final  
6                   agency action of the superintendent.

7                   E. The superintendent may participate, including serving as a decision maker or  
8                   member of a decision-making panel, in a consolidated approval proceeding  
9                   conducted under the laws of one or more other states if the consolidated proceeding  
10                  provides for a public hearing with substantially similar rights of participation and  
11                  judicial review as a proceeding conducted pursuant to paragraph D. If the  
12                  superintendent elects under this paragraph to participate in a consolidated proceeding  
13                  that is conducted under the laws of one or more other states, the application is exempt  
14                  from further review under this section pursuant to subsection 4-C, paragraph D,  
15                  subparagraph (4) and the consolidated proceeding, notwithstanding the  
16                  superintendent's participation, is not subject to any provisions of the law of this State  
17                  governing adjudicatory proceedings, judicial review, public records or public  
18                  meetings.

19                  **7-B. Supervisory colleges.** In order to assess the business strategy, financial  
20                  position, legal and regulatory position, risk exposure including enterprise risk, risk  
21                  management and governance processes of a domestic insurer that is part of an insurance  
22                  holding company system with international operations, the superintendent may participate  
23                  in a supervisory college with other regulators charged with supervision of the insurer or  
24                  its affiliates, including other state, federal and international regulatory agencies. A  
25                  supervisory college may be convened as either a temporary or permanent forum for  
26                  communication and cooperation among the regulators charged with the supervision of the  
27                  insurer or its affiliates.

28                  A. The superintendent's powers with respect to supervisory colleges include, but are  
29                  not limited to:

30                  (1) Initiating the establishment of a supervisory college or participating in a  
31                  supervisory college initiated by one or more other regulators;

32                  (2) Entering into agreements providing the basis for cooperation between the  
33                  superintendent and the other participating regulators and for the activities of the  
34                  supervisory college, including but not limited to agreements for sharing  
35                  confidential information under section 216, subsection 5;

36                  (3) Obtaining and providing assistance in examinations conducted under  
37                  subsection 1-A or under the examination authority of other participating  
38                  jurisdictions;

39                  (4) Clarifying the membership and participation of other regulators in the  
40                  supervisory college;

41                  (5) Clarifying the functions of the supervisory college and the role of other  
42                  regulators, including the designation of the superintendent or another member of  
43                  the supervisory college as a group-wide supervisor;

1                   (6) Coordinating the ongoing activities of the supervisory college, including  
2                   planning meetings, supervisory activities and processes for information sharing;  
3                   and

4                   (7) Establishing a crisis management plan.

5                   B. A domestic insurer whose activities are subject to this subsection is liable for and  
6                   shall pay the reasonable expenses of the superintendent's participation in a  
7                   supervisory college, including reasonable travel expenses. The superintendent may  
8                   establish a regular assessment to the insurer for the payment of these expenses.

9                   C. This section may not be construed to delegate to a supervisory college the  
10                  authority of the superintendent to regulate or supervise an insurer or its affiliates  
11                  within this State.

12                  **Sec. A-16. 24-A MRSA §222, sub-§8, ¶A**, as amended by PL 1999, c. 113, §11,  
13 is further amended to read:

14                  A. ~~Every~~ An insurer that is authorized to do business in this State and that is a  
15                  member of an insurance holding company system shall register with the  
16                  superintendent, except that these requirements do not apply to a foreign insurer  
17                  domiciled in a jurisdiction that in the opinion of the superintendent has adopted by  
18                  statute or regulation disclosure statements and standards substantially similar to those  
19                  contained in this ~~chapter~~ section. An insurer domiciled in a jurisdiction that has not  
20                  adopted by statute or regulation disclosure requirements and standards substantially  
21                  similar to those contained in this section may be treated as a domestic insurer for  
22                  purposes of this section. Each insurer that is subject to registration under this  
23                  subsection shall register within 15 days after it becomes subject to registration, and  
24                  annually thereafter by May 1st, unless the superintendent, for good cause shown,  
25                  extends the time for registration and then an insurer ~~must file~~ shall register within that  
26                  extended time. ~~Nothing in this~~ This section ~~may be construed to~~ does not prohibit the  
27                  superintendent from requesting any authorized insurer that is a member of a an  
28                  insurance holding company system and not subject to registration under this section  
29                  ~~for to provide~~ a copy of the registration statement or other information filed by such  
30                  insurer with the insurance regulatory authority of its state of domicile. Upon request  
31                  of the insurer or of the insurance regulatory authority of another jurisdiction in which  
32                  the insurer is authorized to transact insurance, the superintendent at the insurer's  
33                  expense shall furnish a copy of the registration statement or other information filed  
34                  by a domestic insurer with the superintendent pursuant to this ~~chapter~~ section;

35                  **Sec. A-17. 24-A MRSA §222, sub-§8, ¶B**, as amended by PL 2001, c. 72, §5, is  
36 further amended to read:

37                  B. ~~Every~~ An insurer subject to registration shall file a registration statement ~~on a~~  
38                  ~~form provided by~~ with the superintendent, ~~which on a form and in a format~~  
39                  prescribed by the National Association of Insurance Commissioners. The registration  
40                  statement must contain current information about:

41                         (1) The capital structure, general financial condition, ownership and  
42                         management of the insurer and of any person controlling the insurer;

1 (1-A) The identity and relationship of every member of the insurance holding  
2 company system;

3 (2) The following transactions currently outstanding between the insurer and its  
4 affiliates:

5 (a) Loans and other investments, and purchases, sales or exchanges of  
6 securities of the affiliate by the insurer or of the insurer by its affiliates;

7 (b) Purchases, sales or exchanges of assets;

8 (c) Transactions not in the ordinary course of business;

9 (d) Guarantees or undertakings for the benefit of an affiliate that result in an  
10 actual contingent exposure of the insurer's assets to liability, other than  
11 insurance contracts entered into in the ordinary course of the insurer's  
12 business;

13 (e) All management and service contracts and all cost-sharing arrangements;  
14 ~~other than cost allocation arrangements based upon generally accepted~~  
15 ~~accounting principles;~~

16 (f) Reinsurance agreements; ~~and~~

17 (g) Dividends and other distributions to shareholders; and

18 (h) Consolidated tax allocation agreements;

19 (2-A) Any pledge of the insurer's stock, including stock of any subsidiary or  
20 controlling affiliate, for a loan made to any member of the insurance holding  
21 company system;

22 (2-B) If requested by the superintendent, financial statements of or within the  
23 insurance holding company system, including all affiliates. The required  
24 financial statements may include but are not limited to annual audited financial  
25 statements filed with the United States Securities and Exchange Commission  
26 pursuant to the Exchange Act. An insurer required to file financial statements  
27 pursuant to this subparagraph may satisfy the request by providing the  
28 superintendent with the most recently filed parent corporation financial  
29 statements that have been filed with the United States Securities and Exchange  
30 Commission;

31 (3) Other matters concerning transactions between the insurer and any affiliate as  
32 may be required by the superintendent; and

33 (4) Any other information required by the superintendent by rule;

34 **Sec. A-18. 24-A MRSA §222, sub-§8, ¶¶B-1 to B-3** are enacted to read:

35 B-1. The controlling person with ultimate control of an insurer subject to registration  
36 shall also file an annual enterprise risk report. The report must be appropriate to the  
37 nature, scale and complexity of the operations of the insurance holding company  
38 system and must, to the best of the controlling person's knowledge and belief, identify  
39 the material risks within the insurance holding company system, if any, that could  
40 pose enterprise risk to the insurer. The report must be filed with the lead state

1 regulator of the insurance holding company system as determined by the procedures  
2 within the financial analysis handbook adopted by the National Association of  
3 Insurance Commissioners;

4 B-2. An insurer subject to registration shall file statements confirming that the  
5 insurer's board of directors oversees corporate governance and internal controls and  
6 that the insurer's officers or senior management have approved and implemented and  
7 continue to maintain and monitor corporate governance and internal control  
8 procedures;

9 B-3. A domestic insurer that is subject to registration, and has annual premium of  
10 \$500,000,000 or more or is a member of an insurance holding company system with  
11 annual premium of \$1,000,000,000 or more, shall conduct an own risk and solvency  
12 assessment in accordance with the requirements of this paragraph at least annually,  
13 and also at any time when there are significant changes to the risk profile of the  
14 insurer or its insurance holding company system, except as otherwise provided in  
15 subparagraph (1). For purposes of this paragraph, "premium" means direct written  
16 and unaffiliated assumed premium, including international direct and assumed  
17 premium but excluding premiums reinsured with the Federal Crop Insurance  
18 Corporation within the United States Department of Agriculture, Risk Management  
19 Agency and with the National Flood Insurance Program within the United States  
20 Department of Homeland Security, Federal Emergency Management Agency.

21 (1) This paragraph does not apply if:

22 (a) The insurer is an agency, authority or instrumentality of the United States,  
23 its possessions and territories, the Commonwealth of Puerto Rico, the District  
24 of Columbia or a state or political subdivision of a state;

25 (b) The insurer and its insurance holding company system did not meet  
26 either of the minimum premium criteria of this paragraph in the financial  
27 statements immediately preceding their most recent financial statements and  
28 the superintendent has not required compliance with this paragraph under  
29 subparagraph (2); or

30 (c) The superintendent has granted a waiver from the requirements of this  
31 paragraph based upon unique circumstances. In deciding whether to grant a  
32 waiver, the superintendent may consider the type and volume of business  
33 written by the insurer, the ownership and organizational structure of the  
34 insurer and its insurance holding company system and any other factor the  
35 superintendent considers relevant to the insurer or the insurer's insurance  
36 holding company system. If the insurer's insurance holding company system  
37 includes insurers domiciled in more than one state, the superintendent shall  
38 coordinate with the lead regulator and with other domiciliary regulators in  
39 considering whether to grant the insurer's request for a waiver.

40 (2) The superintendent may require an insurer that does not meet either of the  
41 minimum premium criteria of this paragraph to comply with the requirements of  
42 this paragraph if:

43 (a) The superintendent determines that the insurer should be subject to this  
44 paragraph due to unique circumstances, including, but not limited to, the type



- 1                   and volume of business written by the insurer, the ownership and  
2                   organizational structure of the insurer and its insurance holding company  
3                   system, federal agency requests and international supervisor requests;
- 4                   (b) The insurer is subject to a corrective order or required to adopt a risk-  
5                   based capital plan under sections 6453 to 6456;
- 6                   (c) The superintendent has determined in accordance with rules adopted by  
7                   the superintendent that the insurer is in hazardous financial condition; or
- 8                   (d) The superintendent has determined that the insurer otherwise exhibits  
9                   qualities of a troubled insurer.
- 10                  (3) If an insurer's insurance holding company system has annual premium of  
11                  \$1,000,000,000 or more, the assessment and reporting required by this paragraph  
12                  must be conducted for each insurer within the insurance holding company  
13                  system, either on a systemwide basis or separately for insurers or combinations of  
14                  insurers within the insurance holding company system.
- 15                  (4) An insurer subject to this paragraph shall maintain a risk management  
16                  framework to assist the insurer with identifying, assessing, monitoring, managing  
17                  and reporting on its material and relevant risks. An insurer may satisfy this  
18                  requirement by participating in an applicable risk management framework  
19                  maintained by the insurance holding company system of which the insurer is a  
20                  member.
- 21                  (5) An insurer subject to this paragraph shall prepare and submit regular ORSA  
22                  summary reports that satisfy the requirements of this subparagraph and shall  
23                  provide additional information to the superintendent upon request.
- 24                         (a) Beginning no later than 2015, the ORSA summary report must be  
25                         prepared at least annually, on a timetable consistent with the insurer's internal  
26                         strategic planning processes, and submitted to the lead regulator of the  
27                         insurer's insurance holding company system, as determined by the procedures  
28                         within a financial analysis handbook adopted by the National Association of  
29                         Insurance Commissioners. If the superintendent is not the lead regulator, the  
30                         insurer shall submit the insurer's or insurance holding company system's most  
31                         recent ORSA summary report to the superintendent on request.
- 32                         (b) The ORSA summary report must be prepared consistent with the ORSA  
33                         guidance manual. Documentation and supporting information must be  
34                         maintained and made available upon examination by or upon request of the  
35                         superintendent.
- 36                         (c) The insurer's or insurance holding company system's chief risk officer, or  
37                         other executive having responsibility for the oversight of the insurer's  
38                         enterprise risk management process, shall sign the ORSA summary report  
39                         attesting to the best of the signer's belief and knowledge that the insurer  
40                         applies the enterprise risk management process described in the ORSA  
41                         summary report and that a copy of the report has been provided to the  
42                         insurer's board of directors or the appropriate committee of the board.

1                    (d) An insurer may comply with this paragraph by providing the most recent  
2                    ORSA summary report and a report or reports that are substantially similar to  
3                    the ORSA summary report that are provided by the insurer or another  
4                    member of its insurance holding company system to the insurance  
5                    commissioner of another state or to an insurance supervisor or regulator of a  
6                    foreign jurisdiction if that report provides information that is comparable to  
7                    the information described in the ORSA guidance manual. Any report in a  
8                    language other than English must be accompanied by an English translation.

9                    (6) The superintendent's review of the ORSA summary report, and any  
10                    additional requests for information, must be consistent with accepted regulatory  
11                    procedures for the analysis and examination of multistate or global insurers and  
12                    insurance groups.

13                    **Sec. A-19. 24-A MRSA §222, sub-§8, ¶C**, as enacted by PL 1975, c. 356, §1, is  
14 amended to read:

15                    ~~C. No information need be disclosed~~ An insurer does not need to disclose on the  
16 registration statement filed pursuant to this subsection ~~if such information that~~ is not  
17 material to the purposes of this ~~chapter section~~. Unless the superintendent by rule,  
18 ~~regulation~~ or order provides otherwise, sales, purchases, exchanges, loans or  
19 extensions of credit or investments; involving 1/2 of 1% or less of an insurer's  
20 admitted assets as of December 31st immediately preceding ~~shall are not be deemed~~  
21 material for purposes of this section;

22                    **Sec. A-20. 24-A MRSA §222, sub-§8, ¶I**, as enacted by PL 1975, c. 356, §1, is  
23 amended to read:

24                    I. Any person may file with the superintendent a disclaimer of affiliation with any  
25 authorized insurer ~~or such a~~. A disclaimer of affiliation may be filed by the insurer or  
26 any member of an insurance holding company system. The disclaimer ~~shall~~ must  
27 fully disclose all material relationships and bases for affiliation between ~~such~~ the  
28 disclaiming person and the insurer as well as the bases for disclaiming ~~such~~  
29 affiliation. ~~After a disclaimer has been filed, the insurer shall be relieved of any duty~~  
30 ~~to register or report under this section which may arise out of the insurer's~~  
31 ~~relationship with such person unless and until the superintendent disallows the~~  
32 ~~disclaimer. The superintendent shall disallow a disclaimer only after a hearing~~  
33 ~~thereon with notice to all parties in interest, and after making specific findings of fact~~  
34 ~~to support such disallowance.~~

35                    (1) An approved disclaimer relieves the disclaiming person of the duty to  
36 register under this section.

37                    (2) A disclaimer is deemed approved unless the superintendent, within 30 days  
38 after receipt of a complete disclaimer, including any additional information  
39 required by the superintendent, either disallows the disclaimer or notifies the  
40 disclaiming person that a hearing will be held on the disclaimer.

41                    (3) The superintendent may condition the approval of a disclaimer on terms and  
42 conditions reasonably designed to ensure that the disclaiming person will not

1 exercise actual control or acquire the right to actual control over the insurer  
2 without triggering the prior approval process under subsections 4-C and 7.

3 (4) If the superintendent takes action on a disclaimer without hearing, including  
4 the imposition of conditions not agreed to by the disclaiming person, an  
5 aggrieved person has the right to a hearing.

6 (5) The superintendent may rescind the approval of a disclaimer, after notice and  
7 opportunity for hearing, on the basis of new information or changed  
8 circumstances demonstrating the existence of control over the insurer.

9 **Sec. A-21. 24-A MRSA §222, sub-§9**, as amended by PL 1991, c. 828, §5, is  
10 further amended to read:

11 **9. Transactions with affiliates; standards.** Transactions by insurers subject to  
12 registration with their affiliates ~~that occur after the effective date of this chapter~~ are  
13 subject to the following standards.

14 A. The terms, including any charges or fees for services performed, must be fair and  
15 reasonable.

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

18 B. The books, accounts and records of each party must be so maintained as to  
19 disclose clearly and accurately the nature and details of the transaction, including all  
20 accounting information necessary to support the reasonableness of any charges or  
21 fees.

22 C. The insurer's surplus to policyholders following any dividends or distributions to  
23 stockholder affiliates must be reasonable in relation to the insurer's outstanding  
24 liabilities and adequate to its financial needs.

25 D. Expenses incurred and payment received must be allocated to the insurer in  
26 conformity with customary insurance accounting practices consistently applied.

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

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

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

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

38 (c) With respect to nonprofit hospital and medical service organizations and  
39 their 100% controlled affiliates that operate as monoline health insurers or  
40 health maintenance organizations, the lesser of 5% of the entity's admitted

1 assets as of December 31st of the preceding year ~~or~~ and 25% of surplus to  
2 policyholders;

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

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

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

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

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

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

33 (a) ~~Delegate authority to effectuate reinsurance;~~

34 (b) ~~Provide for delegated corporate governance;~~

35 (c) ~~Provide for servicing of claims liabilities; or~~

36 (d) ~~In any other way contribute an element of expense that is material when~~  
37 ~~related to operations of the insurer;~~

38 (5) Any transactions that are part of a plan or series of like transactions with  
39 persons within the holding company system if the purpose of those separate  
40 transactions is to avoid the statutory threshold amount and thus avoid the review  
41 that would occur otherwise. If the superintendent determines that those separate

1 transactions were entered into over any 12-month period for such a purpose, the  
2 superintendent may exercise authority under this subsection; and

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

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

9 The superintendent shall disapprove ~~any such~~ a transaction that is subject to this  
10 paragraph if ~~it~~ the transaction violates the standards of this section or other applicable  
11 law or adversely affects the interests of policyholders. The superintendent's failure to  
12 make a determination on a proposed transaction within 30 days after it has been  
13 submitted for review has the effect of an approval, unless the superintendent has  
14 issued a notice of adjudicatory hearing on the proposal in accordance with section  
15 230.

16 Any violation of this subsection, in addition to the penalties contained in subsection 14,  
17 renders the transactions voidable at the initiative of the superintendent or otherwise under  
18 applicable law. The superintendent's approval of a transaction in accordance with this  
19 section, whether actual or by acquiescence, may not override any applicable law and does  
20 not operate to authorize any transaction that would be contrary to law if it involved an  
21 insurer not a member of the same holding company system.

22 **Sec. A-22. 24-A MRSA §222, sub-§10**, as amended by PL 1993, c. 313, §10, is  
23 further amended to read:

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

- 28 A. The size of the insurer as measured by its assets, capital and surplus, reserves,  
29 premium writings, insurance in force and other appropriate criteria;
- 30 B. The extent to which the insurer's business is diversified among the several lines of  
31 insurance;
- 32 C. The number and size of the risks insured in each line of business;
- 33 D. The extent of the geographical dispersion of the insurer's insured risks;
- 34 E. The nature and extent of the insurer's reinsurance program;
- 35 F. The quality, diversification and liquidity of the insurer's investment portfolio;
- 36 G. The recent past and projected future trend in the size of the insurer's surplus as  
37 regards policyholders;
- 38 H. The quality and liquidity of investments in subsidiaries or affiliates. The  
39 department may discount any such investment or treat any investment as a

1 nonadmitted asset for purposes of determining the adequacy of surplus as regards  
2 policyholders whenever the investment so warrants;

3 I. The adequacy of the insurer's reserves;

4 J. The surplus as regards policyholders maintained by other comparable insurers in  
5 respect of the factors set out in this subsection; and

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

8 **Sec. A-23. 24-A MRSA §222, sub-§11-C, ¶B**, as enacted by PL 2009, c. 511,  
9 Pt. A, §5, is amended to read:

10 B. The superintendent shall issue an order restricting or disallowing the payment of  
11 dividends and distributions if the superintendent determines that the insurer's surplus  
12 would not be reasonable in relation to the insurance company's outstanding liabilities,  
13 that the insurer's surplus would be inadequate to that company's financial needs ~~or~~  
14 that the insurer's financial condition would constitute a condition hazardous to  
15 policyholders, claimants or the public or that a violation of subsection 4-C prevents  
16 the superintendent from sufficiently understanding the enterprise risk to the insurer  
17 posed by its affiliates or by its insurance holding company system.

18 **Sec. A-24. 24-A MRSA §222, sub-§12**, as amended by PL 1999, c. 113, §13, is  
19 repealed.

20 **Sec. A-25. 24-A MRSA §222, sub-§13**, as amended by PL 1989, c. 385, §9, is  
21 repealed.

22 **Sec. A-26. 24-A MRSA §222, sub-§13-A** is enacted to read:

23 **13-A. Confidential information.** This section applies to holding company  
24 information that is in the possession or control of the superintendent or that is in the  
25 possession or control of the National Association of Insurance Commissioners as a result  
26 of a filing under this section or as a result of information sharing by the superintendent as  
27 authorized by this section.

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

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

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

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

- 1                   (4) A notice of proposed divestiture filed under subsection 4-C, paragraph B,  
2                   until the divestiture transaction has occurred;
- 3                   (5) A disclosure of the beneficial owner of securities made by a broker-dealer  
4                   pursuant to subsection 2, paragraph B, subparagraph (3);
- 5                   (6) The identity of a lender that is to finance a proposed transaction if declared  
6                   confidential under subsection 4-C, paragraph C, subparagraph (2);
- 7                   (7) Information filed in support of any required attestation of risk management  
8                   or internal controls under subsection 4-C, paragraph C, subparagraph (12) or  
9                   (13);
- 10                  (8) A competitive impact statement filed under subsection 4-C, paragraph C,  
11                  subparagraph (14), including all supporting information;
- 12                  (9) Information obtained under an information-sharing agreement entered into  
13                  pursuant to this section to the extent that it is protected by the confidentiality  
14                  provisions of the agreement;
- 15                  (10) Information obtained pursuant to this section from a jurisdiction other than  
16                  this State to the extent that it is confidential under the laws of the jurisdiction in  
17                  which it is normally maintained, if the superintendent had no way to obtain the  
18                  information without the confidentiality protection; and
- 19                  (11) Information obtained under this section to the extent that it is confidential  
20                  under other applicable law, including, but not limited to, section 216, section 225  
21                  and Title 1, section 402, subsection 3.

22                  B. Except as otherwise provided by paragraphs D and E and other applicable law,  
23                  holding company information is confidential, is not a public record, is not subject to a  
24                  subpoena, is not subject to discovery or admissible as evidence in any private civil  
25                  action and may not be made public by the superintendent without prior written  
26                  consent of the relevant insurer. Neither the superintendent nor any person who  
27                  received holding company information from or under the authority of the  
28                  superintendent under this section may be permitted or required to testify in any  
29                  private civil action concerning holding company information that is confidential  
30                  under this subsection.

31                  C. The superintendent may share holding company information that is confidential  
32                  under this subsection only in accordance with the requirements of section 216,  
33                  subsection 5 and the following additional requirements.

34                   (1) The recipient of the information must agree in writing to maintain the same  
35                   level of confidentiality as is available under Maine law. This requirement may be  
36                   satisfied through a multilateral confidentiality agreement to which both the  
37                   superintendent and the recipient are parties.

38                   (2) If the recipient of the information is in the United States, the recipient's state  
39                   must have statutes or rules that expressly protect holding company information at  
40                   a level at least equivalent to the protections provided by this subsection and  
41                   section 216, subsection 5.

1 (3) ORSA-related information subject to subsection 8, paragraph B-3 may, with  
2 the written consent of the insurer, be shared with a 3rd-party consultant under an  
3 agreement containing the conditions specified in section 216, subsection 5,  
4 paragraph C. In addition, any agreement for sharing ORSA-related information  
5 with the National Association of Insurance Commissioners or a 3rd-party  
6 consultant must further provide that:

7 (a) The recipient of the information agrees in writing to maintain the  
8 confidentiality and privileged status of the ORSA-related information and has  
9 verified in writing the legal authority to maintain confidentiality;

10 (b) Any preauthorization granted under the agreement for further sharing of  
11 information provided by the superintendent must be limited to only the  
12 domiciliary regulators of other insurers in the same insurance holding  
13 company system; and

14 (c) The National Association of Insurance Commissioners or a 3rd-party  
15 consultant may not store ORSA-related information shared pursuant to this  
16 subparagraph in a permanent database after the underlying analysis is  
17 completed.

18 D. This subsection does not prohibit the superintendent from using holding company  
19 information in the furtherance of any regulatory or legal action brought as a part of  
20 the superintendent's official duties.

21 E. Unless otherwise provided by applicable law, the superintendent may, after giving  
22 notice and opportunity for hearing to the insurer and any affiliates, controlling person  
23 or other persons that would be affected, order one or more items of holding company  
24 information to be made a public record in its entirety or in redacted form if the  
25 superintendent determines that public disclosure will be in the interest of  
26 policyholders, shareholders or the public.

27 **Sec. A-27. 24-A MRSA §222, sub-§14, ¶A,** as amended by PL 2007, c. 466, Pt.  
28 D, §3, is further amended to read:

29 A. Any person who willfully violates any of the provisions of this section, or the  
30 rules and regulations promulgated by the superintendent under authority thereof, or  
31 any person who willfully, in a filing pursuant to subsection 4-A 4-C or a registration  
32 pursuant to subsection 8, paragraph B, makes any untrue statement of a material fact  
33 or omits to state any material fact required to be stated therein or necessary to make  
34 the statements therein not misleading, must upon conviction be fined not more than  
35 \$1,000 or imprisoned not more than 3 years, or both;

36 **Sec. A-28. 24-A MRSA §222, sub-§18,** as amended by PL 1999, c. 113, §14, is  
37 further amended to read:

38 **18. Rules.** The superintendent may, ~~upon notice and opportunity for all interested~~  
39 ~~persons to be heard,~~ adopt reasonable rules as ~~necessary~~ to carry out and effectuate  
40 provisions of this section. Rules adopted pursuant to this subsection are routine technical  
41 rules as defined in Title 5, chapter 375, subchapter 2-A.



1           **Sec. A-29. 24-A MRSA §222, sub-§19**, as enacted by PL 1975, c. 356, §1, is  
2 amended to read:

3           **19. Supplemental to existing provisions.** This section, as to insurance holding  
4 company systems, supplements in particular those provisions contained in sections 407,  
5 subsection 2; 410, subsection 1, paragraph B; 413; 423-C; 425; 1115; 1136; 3414; 3474;  
6 3475; 3476; 3483; 3875 and 4407; and the provisions of this section ~~shall be~~ are deemed  
7 to supersede or modify any such provisions or any other provisions of ~~the Maine~~  
8 ~~Insurance Code, as it may be amended, only this Title~~ to the extent inconsistent therewith.

9           **Sec. A-30. 24-A MRSA §423-F** is enacted to read:

10           **§423-F. Own risk and solvency assessment**

11           **1. General requirement.** A domestic insurer that is not subject to registration under  
12 section 222, subsection 8 shall comply with the requirements of section 222, subsection 8,  
13 paragraph B-3 if the requirements of that paragraph would apply if the insurer were  
14 subject to registration. The superintendent is considered the insurer's lead regulator for  
15 purposes of this section.

16           **2. Confidentiality.** All documents prepared or filed pursuant to this section are  
17 confidential to the same extent and subject to the same terms and procedures as if they  
18 were prepared or filed pursuant to section 222, subsection 8, paragraph B-3.

19           **Sec. A-31. 24-A MRSA §1157, sub-§5, ¶D**, as amended by PL 2001, c. 72, §15,  
20 is further amended to read:

21           D. Investments made or acquired by subsidiaries referred to in paragraph B,  
22 subparagraph (1); are considered to be made or acquired directly by the insurer, pro  
23 rata, in the case of a subsidiary not wholly owned; and, to such extent, are subject to  
24 all the provisions and limitations on the making of investments specified in this  
25 chapter with respect to investments by the insurer; must be valued in accordance with  
26 the provisions of section 901-A and any other applicable provisions of this Title and  
27 any applicable rules adopted by the superintendent; and must be located pursuant to  
28 section 3408. Those subsidiaries are subject to examination by the superintendent  
29 under section 221, subsection 1; and section 222, subsection 4 1-A.

30           **Sec. A-32. 24-A MRSA §4356, sub-§§12 and 13**, as enacted by PL 1969, c.  
31 132, §1, are amended to read:

32           **12.** If the insurer has requested or consented to rehabilitation by vote or written  
33 authorization of a majority of its directors or stockholders, or members, as to mutual  
34 insurers; ~~or~~

35           **13.** If the insurer has failed to pay any valid judgment against it within 30 days after  
36 the same became final; or

37           **Sec. A-33. 24-A MRSA §4356, sub-§14** is enacted to read:



1           **Sec. B-4. 24-A MRSA §731-B, sub-§1, ¶B-2** is enacted to read:

2           B-2. Is certified as a reinsurer in this State and secures its obligations in accordance  
3           with this paragraph.

4           (1) To be eligible for certification, the assuming insurer must meet the following  
5           requirements:

6                   (a) The assuming insurer must be domiciled and licensed to transact  
7                   insurance or reinsurance in a jurisdiction determined by the superintendent to  
8                   be a qualified jurisdiction pursuant to subparagraph (3);

9                   (b) The assuming insurer must maintain minimum capital and surplus, or its  
10                   equivalent, in an amount to be determined by the superintendent pursuant to  
11                   rules adopted under subsection 7;

12                   (c) The assuming insurer must maintain financial strength ratings from 2 or  
13                   more rating agencies determined by the superintendent to be acceptable  
14                   pursuant to rules adopted under subsection 7;

15                   (d) The assuming insurer must agree to submit to the jurisdiction of this  
16                   State and to appoint an agent for service of process in the same manner as  
17                   provided for authorized insurers under section 421 and agree to provide  
18                   security for 100% of the assuming insurer's liabilities attributable to  
19                   reinsurance ceded by United States ceding insurers if the assuming insurer  
20                   resists enforcement of a final United States judgment;

21                   (e) The assuming insurer must agree to meet applicable information filing  
22                   requirements as determined by the superintendent, both with respect to an  
23                   initial application for certification and on an ongoing basis;

24                   (f) The assuming insurer must pay the application fee prescribed in section  
25                   601, subsection 26-A and, to the extent provided in rules adopted under  
26                   subsection 7, must agree to pay reasonable costs of review; and

27                   (g) The assuming insurer must satisfy any other requirements for  
28                   certification established by the superintendent.

29           (2) An association including incorporated and individual unincorporated  
30           underwriters may be a certified reinsurer. In order to be eligible for certification,  
31           in addition to satisfying the requirements of subparagraph (1):

32                   (a) The association may satisfy its minimum capital and surplus  
33                   requirements through the capital and surplus equivalents, net of liabilities, of  
34                   the association and its members, which must include a joint central fund that  
35                   may be applied to any unsatisfied obligation of the association or any of its  
36                   members, in an amount determined by the superintendent to provide adequate  
37                   protection;

38                   (b) The incorporated members of the association may not be engaged in any  
39                   business other than underwriting as a member of the association and must be  
40                   subject to the same level of regulation and solvency control by the  
41                   association's domiciliary regulator as are the unincorporated members; and

1                   (c) Within 90 days after its financial statements are due to be filed with the  
2                   association's domiciliary regulator, the association shall provide to the  
3                   superintendent an annual certification by the association's domiciliary  
4                   regulator of the solvency of each underwriter member of the association or, if  
5                   a certification is unavailable, financial statements, prepared by independent  
6                   public accountants, of each underwriter member of the association.

7                   (3) The superintendent shall create and publish a list of qualified jurisdictions  
8                   that are eligible to serve as the domiciliary regulators of certified reinsurers.

9                   (a) In order to determine whether the domiciliary jurisdiction of an alien  
10                  assuming insurer is eligible to be recognized as a qualified jurisdiction, the  
11                  superintendent shall evaluate the appropriateness and effectiveness of the  
12                  reinsurance supervisory system of the jurisdiction, both initially and on an  
13                  ongoing basis, and consider the rights, benefits and the extent of reciprocal  
14                  recognition afforded by the jurisdiction to reinsurers licensed and domiciled  
15                  in the United States. To be recognized as qualified, a jurisdiction must agree  
16                  to share information and cooperate with the superintendent with respect to all  
17                  certified reinsurers domiciled within that jurisdiction. A jurisdiction may not  
18                  be recognized as a qualified jurisdiction if the superintendent has determined  
19                  that the jurisdiction does not adequately and promptly enforce final United  
20                  States judgments and arbitration awards. The superintendent may consider  
21                  additional factors.

22                  (b) If the National Association of Insurance Commissioners has published a  
23                  list of recommended qualified jurisdictions, the superintendent shall consider  
24                  that list in determining qualified jurisdictions. If the superintendent  
25                  recognizes a jurisdiction as qualified that does not appear on the list  
26                  published by the National Association of Insurance Commissioners, the  
27                  superintendent shall make detailed findings of fact supporting the recognition  
28                  in accordance with criteria to be developed in rules adopted under subsection  
29                  7.

30                  (c) United States jurisdictions that are accredited by the National Association  
31                  of Insurance Commissioners must be recognized as qualified jurisdictions.

32                  (d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified  
33                  jurisdiction, the superintendent may suspend the reinsurer's certification  
34                  indefinitely, in lieu of revocation.

35                  (4) The superintendent shall assign a rating to each certified reinsurer, giving due  
36                  consideration to the financial strength ratings that have been assigned by rating  
37                  agencies determined to be acceptable pursuant to rules adopted under subsection  
38                  7. The superintendent shall publish a list of all certified reinsurers and their  
39                  ratings.

40                  (5) A certified reinsurer shall secure all obligations assumed from United States  
41                  ceding insurers under this subsection, and under comparable laws of other states,  
42                  at a level consistent with its rating and in a form acceptable to the superintendent,  
43                  in compliance with rules adopted under subsection 7.

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(a) If the security is insufficient, the superintendent shall reduce the allowable credit by an amount proportionate to the deficiency and may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(b) The reinsurer may secure its obligations as a certified reinsurer through a multibeneficiary trust that meets the requirements of paragraph C and subsection 2-A, with the following modifications.

(i) The maximum credit allowable may exceed the value of the qualifying security to the extent provided in this subparagraph.

(ii) The minimum trusteed surplus is \$10,000,000, rather than the amount specified in paragraph C.

(iii) If the certified reinsurer also maintains a multibeneficiary trust for obligations required to be fully secured under paragraph C or comparable laws of other states, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security and for its obligations that are required to be fully secured. The trust accounts may not be approved as qualifying security unless the reinsurer has bound itself, by the language of the trust and by agreement with the insurance regulator with principal oversight of each such trust account, to apply, upon termination of any such trust account, the remaining surplus of that trust to the extent necessary to fund any deficiency of any other such trust account.

(c) If a certified reinsurer does not secure its obligations through a qualifying multibeneficiary trust, it must secure its obligations to the ceding insurer consistent with the requirements of subsection 3, except that the maximum credit allowable may exceed the value of the qualifying security to the extent provided in this subparagraph.

(d) For purposes of this subparagraph, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations, unless the superintendent has continued to assign a higher rating, as permitted by other provisions of this section, to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(6) If an applicant for certification has been certified as a reinsurer in a jurisdiction accredited by the National Association of Insurance Commissioners, the superintendent may defer to that jurisdiction's certification to grant certification in this State and may defer to the rating assigned by that jurisdiction.

(7) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this

1 subsection, and the superintendent shall assign a rating that takes into account, if  
2 relevant, the reasons why the reinsurer is not assuming new business.

3 **Sec. B-5. 24-A MRSA §731-B, sub-§1, ¶C**, as amended by PL 2001, c. 47, §3,  
4 is further amended to read:

5 C. Maintains a trust fund in a qualified United States financial institution for the  
6 payment of the valid claims of its United States ceding insurers, their assigns and  
7 successors in interest.

8 (1) The assuming insurer shall report annually to the superintendent information  
9 substantially the same as that required to be reported on the National Association  
10 of Insurance Commissioners Annual Statement form by licensed insurers to  
11 enable the superintendent to determine the sufficiency of the trust fund.

12 (2) In the case of a single assuming insurer, the trust must consist of a trustee  
13 account representing the assuming insurer's liabilities attributable to reinsurance  
14 ceded by United States ceding insurers and, in addition, unless the assuming  
15 insurer has permanently discontinued underwriting new business secured by the  
16 trust for at least 3 full years, must include a trustee surplus of at least  
17 \$20,000,000. The trust must provide that after the assuming insurer has  
18 permanently discontinued underwriting new business secured by the trust for at  
19 least 3 full years, the insurance regulator with principal oversight of the trust may  
20 authorize a reduction in the required trustee surplus, but only after a finding,  
21 based on an assessment of the risk, that the new required surplus level is adequate  
22 for the protection of United States ceding insurers, policyholders and claimants in  
23 light of reasonably foreseeable adverse loss development. The risk assessment  
24 may involve an actuarial review, including an independent analysis of reserves  
25 and cash flows, and must consider all material risk factors, including when  
26 applicable the lines of business involved, the stability of the incurred loss  
27 estimates and the effect of the surplus requirements on the assuming insurer's  
28 liquidity or solvency. The minimum required trustee surplus may not be  
29 reduced to an amount less than 30% of the assuming insurer's liabilities  
30 attributable to reinsurance ceded by United States ceding insurers covered by the  
31 trust.

32 (3-A) A group including incorporated and individual unincorporated  
33 underwriters may secure its obligations with funds held in trust in compliance  
34 with the following standards.

35 (a) For reinsurance ceded under reinsurance agreements with an inception,  
36 amendment or renewal date on or after ~~August 1, 1995~~ January 1, 1993, the  
37 trust must consist of a trustee account in an amount at least equal to the  
38 ~~group's~~ group's ~~respective underwriters'~~ several liabilities attributable to reinsurance  
39 ceded by United States domiciled ceding insurers to any ~~member~~ member ~~underwriter~~  
40 of the group.

41 (b) Notwithstanding the other provisions of this section, for reinsurance  
42 ceded under reinsurance agreements with an inception date on or before ~~July~~  
43 ~~31, 1995~~ December 31, 1992 and not amended or renewed after that date, the  
44 trust must consist of a trustee account in an amount not less than the ~~group's~~

1                    respective underwriters' several insurance and reinsurance liabilities  
2                    attributable to business written in the United States.

3                    (c) In addition, the group shall maintain a trusteed surplus of at least  
4                    \$100,000,000 held jointly for the benefit of the United States domiciled  
5                    ceding insurers of any member of the group for all years of account.

6                    An incorporated member of the group may not be engaged in any business other  
7                    than underwriting as a member of the group and is subject to the same level of  
8                    solvency regulation and control by the group's domiciliary regulator as are the  
9                    unincorporated members. Within 90 days after its financial statements are due to  
10                    be filed with the group's domiciliary regulator, the group shall provide to the  
11                    superintendent an annual certification by the group's domiciliary regulator of the  
12                    solvency of each underwriter member of the group or, if a certification is  
13                    unavailable, financial statements prepared by independent public accountants.

14                    (4-A) The superintendent in rules adopted pursuant to subsection 7 may establish  
15                    alternative criteria for approval of a reinsurance trust if the superintendent  
16                    determines that the criteria provide adequate protection to policyholders of  
17                    United States ceding insurers and are in substantial conformance with standards  
18                    approved by the National Association of Insurance Commissioners.

19                    (5) The trust must be established in a form approved by the superintendent and  
20                    consistent with any rules adopted by the superintendent pursuant to this section.  
21                    The form of the trust and any amendments to the trust must also have been  
22                    approved by the insurance regulatory official of the state where the trust is  
23                    domiciled or of another state that, pursuant to the terms of the trust instrument,  
24                    has accepted principal regulatory oversight of the trust. The trust instrument  
25                    must provide that contested claims are valid and enforceable upon the final order  
26                    of any court of competent jurisdiction in the United States. The trust must vest  
27                    legal title to its assets in the trustees of the trust for the benefit of the assuming  
28                    insurer's United States ceding insurers, their assigns and successors in interest.  
29                    The trust and the assuming insurer are subject to examination, as determined by  
30                    the superintendent, at the assuming insurer's expense. The trust must remain in  
31                    effect for as long as the assuming insurer has outstanding obligations due under  
32                    the reinsurance agreements subject to the trust.

33                    (6) The trustees of the trust shall report to the superintendent in writing by  
34                    February 28th of each year, setting forth the balance of the trust and listing the  
35                    trust's investments at the end of the preceding year and certifying the date of  
36                    termination of the trust, if so planned, or certifying that the trust does not expire  
37                    before December 31st of the current year.

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

39                    **Sec. B-6. 24-A MRSA §731-B, sub-§1, ¶D**, as amended by PL 2001, c. 47, §4,  
40                    is further amended to read:

41                    D. Does not meet the requirements of paragraph A, B, B-1, B-2 or C, but only with  
42                    respect to risks located in a jurisdiction where that reinsurance is required by law.

1 The superintendent for good cause after notice and opportunity for hearing may  
2 disallow or reduce the credit otherwise permitted under this paragraph.

3 **Sec. B-7. 24-A MRSA §731-B, sub-§1-A** is enacted to read:

4 1-A. The superintendent may suspend or revoke a reinsurer's accreditation or  
5 certification under subsection 1, after notice and opportunity for hearing, for failure to  
6 meet the applicable requirements of subsection 1 or on any ground that would warrant  
7 similar action against the certificate of authority of an authorized insurer.

8 A. A suspension or revocation under this subsection may not take effect until after  
9 the superintendent's order following a hearing, unless:

10 (1) The reinsurer waives its right to a hearing;

11 (2) The superintendent's order is based on regulatory action by the reinsurer's  
12 domiciliary jurisdiction or the voluntary surrender or termination of the  
13 reinsurer's eligibility to transact insurance or reinsurance business in its  
14 domiciliary jurisdiction or in the primary certifying state of the reinsurer under  
15 subsection 1, paragraph B-2, subparagraph (6); or

16 (3) The superintendent finds that an emergency requires immediate action and a  
17 court of competent jurisdiction has not stayed the superintendent's action.

18 B. While a reinsurer's accreditation or certification is suspended pursuant to this  
19 subsection, no reinsurance contract issued or renewed after the effective date of the  
20 suspension qualifies for credit under subsection 1 except to the extent that the  
21 reinsurer's obligations under the contract are secured in accordance with subsection 3.  
22 If a reinsurer's accreditation or certification is revoked pursuant to this subsection, no  
23 credit for reinsurance may be granted after the effective date of the revocation except  
24 to the extent that the reinsurer's obligations under the contract are secured in  
25 accordance with subsection 1, paragraph B-2, subparagraph (5) or subsection 3.

26 C. The superintendent may deny an application for accreditation or certification  
27 under subsection 1, or may impose conditions or restrictions on a reinsurer's  
28 accreditation or certification, on any ground for which accreditation or certification  
29 may be suspended or revoked.

30 **Sec. B-8. 24-A MRSA §731-B, sub-§3, ¶B**, as enacted by PL 1989, c. 846, Pt.  
31 E, §2 and affected by §4, is amended to read:

32 B. Securities listed by the Securities Valuation Office of the National Association of  
33 Insurance Commissioners, including those designated as exempt from filing in the  
34 purposes and procedures manual of the Securities Valuation Office, and qualifying as  
35 admitted assets; or

36 **Sec. B-9. 24-A MRSA §731-D**, as enacted by PL 1989, c. 846, Pt. E, §2 and  
37 affected by §4, is amended to read:





1           **2. NAIC.** "NAIC" means the National Association of Insurance Commissioners or  
2 its successor organization.

3           **3. Operative date.** "Operative date," with respect to the initial adoption of the  
4 valuation manual, means January 1st of the first calendar year beginning at least 6 months  
5 after all of the following events have occurred:

6           A. The valuation manual has been adopted by the NAIC by an affirmative vote of at  
7 least 42 members or 3/4 of the members voting, whichever is greater;

8           B. The NAIC's model standard valuation law, as amended by the NAIC in 2009, or  
9 legislation including substantially similar terms and provisions has been enacted by  
10 states representing greater than 75% of the direct premiums written as reported in the  
11 following annual statements submitted for 2008: life, accident and health annual  
12 statements; health annual statements; or fraternal annual statements; and

13           C. The NAIC's model standard valuation law, as amended by the NAIC in 2009, or  
14 legislation including substantially similar terms and provisions has been enacted by at  
15 least 42 of the following 55 jurisdictions: the 50 states of the United States, American  
16 Samoa, the District of Columbia, Guam, the Commonwealth of Puerto Rico and the  
17 United States Virgin Islands.

18           **4. Policyholder behavior.** "Policyholder behavior" means any action a  
19 policyholder, contract holder or any other person with the right to elect options, such as a  
20 certificate holder, may take under a policy or contract subject to this subchapter,  
21 including, but not limited to, lapse, withdrawal, transfer, deposit, premium payment, loan,  
22 annuitization or benefit elections prescribed by the policy or contract, but excluding  
23 events of mortality or morbidity that result in benefits prescribed in their essential aspects  
24 by the terms of the policy or contract.

25           **5. Principle-based valuation.** "Principle-based valuation" means a reserve  
26 valuation that uses one or more methods or one or more assumptions determined by the  
27 insurer and is subject to section 960.

28           **6. Qualified actuary.** "Qualified actuary" means an individual who is qualified to  
29 sign the applicable statement of actuarial opinion in accordance with the American  
30 Academy of Actuaries qualification standards for actuaries signing such statements and  
31 who meets all applicable requirements specified in the valuation manual or by rule  
32 adopted by the superintendent.

33           **7. Subject lines of insurance.** "Subject lines of insurance" means life insurance,  
34 accident and health insurance and deposit-type contracts, as those terms are defined in the  
35 valuation manual.

36           **8. Tail risk.** "Tail risk" means a risk for which the frequency of low-probability  
37 events is higher than expected under a normal probability distribution or the risk of events  
38 of very significant magnitude.

39           **9. Valuation manual.** "Valuation manual" means the manual of valuation  
40 instructions adopted by the NAIC as specified in section 959.

1           **Sec. C-3. 24-A MRSA §952, sub-§1**, as amended by PL 1973, c. 585, §12, is  
2 further amended to read:

3           **1.** The superintendent shall annually value, or cause to be valued, the reserve  
4 liabilities, hereinafter called reserves, for all outstanding life insurance policies and  
5 annuity and pure endowment contracts of every life insurer transacting business in this  
6 State in accordance with this subchapter, except that in the case of an alien insurer, such  
7 valuation ~~shall~~ must be limited to its United States business; and may certify the amount  
8 of any such reserves, ~~specifying~~ consistent when applicable with the valuation manual.  
9 For policies and contracts issued before the operative date of the valuation manual, the  
10 superintendent shall specify the mortality table or tables, rate or rates of interest and  
11 methods, net level premium method or other, used in the calculation of such reserves. In  
12 calculating such reserves, ~~he~~ the superintendent may use group methods and approximate  
13 averages for fractions of a year or otherwise. In lieu of the valuation of the reserves  
14 required of any foreign or alien insurer, ~~he~~ the superintendent may accept any valuation  
15 made, or caused to be made, by the insurance supervisory official of any state or other  
16 jurisdiction when such valuation complies with the minimum standard herein provided  
17 ~~and if the official of such state or jurisdiction accepts as sufficient and valid for all legal~~  
18 ~~purposes the certificate of valuation of the superintendent when such certificate states the~~  
19 ~~valuation to have been made in a specified manner according to which the aggregate~~  
20 ~~reserves would be at least as large as if they had been computed in the manner prescribed~~  
21 ~~by law of that state or jurisdiction.~~

22           **Sec. C-4. 24-A MRSA §952, sub-§3** is enacted to read:

23           **3.** Beginning on the operative date of the valuation manual, a life or health insurer  
24 and a casualty or multiple lines insurer transacting health insurance shall comply with the  
25 applicable requirements of this subchapter if the insurer is required to hold a certificate of  
26 authority to write one or more subject lines of insurance in this State or if the insurer has  
27 written, issued or reinsured contracts of one or more subject lines of insurance in this  
28 State and has at least one such policy in force or on claim.

29           **Sec. C-5. 24-A MRSA §952-A**, as amended by PL 2011, c. 320, Pt. A, §6, is  
30 further amended to read:

31           **§952-A. Actuarial opinion of reserves**

32           **1. General.** ~~A life~~ An insurer doing business in this State subject to this subchapter  
33 shall annually appoint a qualified actuary, in accordance with any applicable  
34 requirements of the valuation manual or rules adopted by the superintendent, and submit  
35 the opinion of a ~~qualified~~ the appointed actuary as to whether the reserves and related  
36 actuarial items of that ~~life~~ insurer held in support of the policies and contracts specified  
37 by the superintendent by rule are computed appropriately, are based on assumptions that  
38 satisfy contractual provisions, are consistent with prior reported amounts and comply  
39 with applicable laws of this State. ~~The~~ On and after the operative date of the valuation  
40 manual, if the valuation manual has prescribed specific requirements applicable to the  
41 opinion, the opinion must comply with those requirements. In all other cases, the  
42 superintendent by rule shall define the specifics of ~~this~~ the opinion and. The

1 superintendent by rule may add any other items considered necessary to its the scope of  
2 the opinion.

3 **2. Actuarial analysis of reserves and assets supporting those reserves.** ~~A life~~  
4 ~~Except as otherwise authorized or required in accordance with rules adopted by the~~  
5 ~~superintendent or applicable provisions of the valuation manual, an insurer, except as~~  
6 ~~exempted by or pursuant to rule, subject to this subchapter shall include in the opinion~~  
7 ~~required by subsection 1 an opinion of the same qualified appointed actuary as to whether~~  
8 ~~the reserves and related actuarial items held in support of the policies and contracts~~  
9 ~~specified by the superintendent by rule, when considered in light of the assets held by the~~  
10 ~~insurer with respect to the reserves and related actuarial items, including, but not limited~~  
11 ~~to, the investment earnings on the assets and the considerations anticipated to be received~~  
12 ~~and retained under the policies and contracts, adequately provide for the insurer's~~  
13 ~~obligations under the policies and contracts, including, but not limited to, the benefits~~  
14 ~~under and expenses associated with the policies and contracts.~~

15 ~~The superintendent may provide by rule for a transition period for establishing any higher~~  
16 ~~reserves that the qualified actuary may consider necessary in the opinion required by this~~  
17 ~~subsection.~~

18 **3. Requirement for opinion under subsection 2.** An opinion required by  
19 subsection 2 is governed by the following provisions.

20 A. A memorandum, in form and substance acceptable to the superintendent as  
21 specified in the valuation manual or by rule, must be prepared to support the actuarial  
22 opinion.

23 B. If the insurer fails to provide a supporting memorandum at the request of the  
24 superintendent within a period specified in the valuation manual or by rule or the  
25 superintendent determines that the supporting memorandum provided by the insurer  
26 fails to meet the prescribed standards ~~prescribed by the rules~~ or is otherwise  
27 unacceptable to the superintendent, the superintendent may engage a qualified  
28 actuary at the expense of the insurer to review the opinion and the basis for the  
29 opinion and prepare a supporting memorandum as required by the superintendent.

30 **4. Requirement for all opinions.** An opinion required pursuant to subsection 1 or 2  
31 is governed by the following provisions.

32 A. The opinion must be submitted with the annual statement reflecting the valuation  
33 of reserve liabilities for each year ending on or after December 31, 1995.

34 B. The opinion must apply to all business in force, including individual and group  
35 health insurance plans, in a form and substance acceptable to the superintendent ~~as~~  
36 ~~specified by rule.~~

37 B-1. The opinion must comply with the requirements of any applicable rules and, on  
38 and after the operative date of the valuation manual, must comply with all applicable  
39 requirements of the valuation manual.

40 C. The opinion must be based on standards adopted by the ~~actuarial standards board~~  
41 Actuarial Standards Board or its successor and, to the extent applicable, on those any

1 additional standards as prescribed by the valuation manual or prescribed by the  
2 superintendent by rule ~~prescribes~~.

3 D. In the case of an opinion required to be submitted by a foreign or alien insurer,  
4 the superintendent may accept the opinion filed by that insurer with the insurance  
5 supervisory official of another state if the superintendent determines that the opinion  
6 reasonably meets the requirements applicable to an insurer domiciled in this State.

7 ~~E. For the purposes of this section, "qualified actuary" means a member in good~~  
8 ~~standing of the American Academy of Actuaries who meets the requirements set~~  
9 ~~forth in the rules of the American Academy of Actuaries.~~

10 F. Except in cases of fraud or willful misconduct, ~~a qualified~~ the appointed actuary is  
11 not liable for damages to any person, other than the insurer and the superintendent,  
12 for any act, error, omission, decision or conduct with respect to the ~~qualified~~  
13 appointed actuary's opinion.

14 G. ~~Disciplinary action by the~~ The superintendent may take disciplinary action against  
15 the insurer or the ~~qualified~~ appointed actuary ~~must be defined in rules established by~~  
16 ~~the superintendent pursuant to section 12-A for knowing violations of this section and~~  
17 may establish additional grounds for disciplinary action by rule.

18 ~~H. Except as provided in paragraphs K, L and M, any memorandum in support of the~~  
19 ~~opinion and any other documents, materials or other information provided by the~~  
20 ~~insurer to the superintendent in connection with the memorandum are confidential,~~  
21 ~~must be kept confidential by the superintendent and are not subject to subpoena or~~  
22 ~~discovery, nor admissible in evidence in any private civil action. The superintendent~~  
23 ~~is authorized to use the documents, materials or other information in the furtherance~~  
24 ~~of any regulatory or legal action brought as a part of the superintendent's official~~  
25 ~~duties.~~

26 ~~I. Neither the superintendent nor any person who received documents, materials or~~  
27 ~~other information while acting under the authority of the superintendent is permitted~~  
28 ~~or required to testify in any private civil action concerning any confidential~~  
29 ~~documents, materials or information pursuant to paragraph H.~~

30 ~~J. Disclosure to the superintendent under this section or as a result of sharing of~~  
31 ~~documents, materials or other information pursuant to section 216 does not constitute~~  
32 ~~a waiver of any applicable privileges or claim of confidentiality in the documents,~~  
33 ~~materials or other information.~~

34 ~~K. A memorandum in support of the opinion, and any other documents, materials or~~  
35 ~~other information provided by the life insurer to the superintendent in connection~~  
36 ~~with the memorandum, may be subject to subpoena for the purpose of defending an~~  
37 ~~action seeking damages from the actuary submitting the memorandum by reason of~~  
38 ~~an action pursuant to this section or by rule adopted pursuant to this section.~~

39 ~~L. The memorandum or other documents, materials or other information may~~  
40 ~~otherwise be released by the superintendent with the written consent of the life~~  
41 ~~insurer or upon a written request by the American Academy of Actuaries stating that~~  
42 ~~the memorandum or other documents, materials or other information is required for~~  
43 ~~the purpose of professional disciplinary proceedings and setting forth procedures~~

1           satisfactory to the superintendent for preserving the confidentiality of the  
2           memorandum or other documents, materials or other information.

3           ~~M. Once any portion of a memorandum is cited by the life insurer in its marketing or~~  
4           ~~is cited by the life insurer before a governmental agency other than a state insurance~~  
5           ~~agency or is released by the life insurer to the news media, all portions of the~~  
6           ~~memorandum become public records.~~

7           **5. Applicability to health carriers.** A health carrier not otherwise subject to this  
8           section or section 993 shall file an actuarial opinion in accordance with the applicable  
9           National Association of Insurance Commissioners annual statement instructions. For  
10          purposes of this section, "health carrier" means an insurer, health maintenance  
11          organization, nonprofit corporation subject to Title 24 or fraternal benefit society that  
12          provides health insurance or comparable health benefits. This section and rules adopted  
13          pursuant to this section apply to health carriers to the extent provided in the valuation  
14          manual. Before the operative date of the valuation manual, this section and rules adopted  
15          pursuant to this section apply to health carriers to the extent that they specifically refer to  
16          health carriers or impose requirements that are consistent with and no more stringent than  
17          the annual statement instructions.

18           **Sec. C-6. 24-A MRSA §952-B** is enacted to read:

19           **§952-B. Applicability of reserving methodologies**

20           Sections 953 to 958-A do not apply to a policy or contract that is issued on or after  
21           the operative date of the valuation manual and is subject to section 959, unless those  
22           sections are made applicable by reference in whole or part in the valuation manual.

23           **Sec. C-7. 24-A MRSA §955, sub-§2,** as enacted by PL 1993, c. 634, Pt. B, §2, is  
24           amended to read:

25           **2. Minimum aggregate reserves for all policies.** The aggregate reserves for all  
26           policies, contracts and benefits may not be less than the aggregate reserves determined  
27           necessary by the ~~qualified~~ appointed actuary in the opinion required by section 952-A.

28           **Sec. C-8. 24-A MRSA §956, sub-§2,** as enacted by PL 1993, c. 634, Pt. B, §3, is  
29           amended to read:

30           **2. Lower standard of valuation.** Any insurer that adopts any standard of valuation  
31           producing greater aggregate reserves than those calculated according to the minimum  
32           standard provided in section 955 may adopt, with the approval of the superintendent, any  
33           lower standards of valuation, but not lower than the minimum required, ~~provided,~~  
34           ~~however, except~~ that for the purposes of this section the holding of additional reserves  
35           previously determined necessary by a ~~qualified~~ the appointed actuary in the opinion  
36           required by section 952-A may not be determined to be the adoption of a higher standard  
37           of valuation.

38           **Sec. C-9. 24-A MRSA §§959 to 962** are enacted to read:

1           **§959. Reserves subject to valuation manual**

2           **1. General requirement.** On and after the operative date of a valuation manual that  
3 the superintendent has determined meets the requirements of this section, reserves on  
4 policies and contracts of subject lines of insurance must be valued as follows, except as  
5 otherwise specifically provided in this section or in rules adopted by the superintendent:

6           A. For policies and contracts issued on and after the operative date of the valuation  
7 manual, in accordance with the valuation manual;

8           B. For policies and contracts described in sections 953 to 958-A and issued before  
9 the operative date of the valuation manual, in accordance with those sections; and

10          C. For health insurance policies and contracts issued before the operative date of the  
11 valuation manual, and any other policies and contracts outside the scope of  
12 paragraphs A and B, in accordance with rules adopted by the superintendent.

13          **2. Necessary provisions.** The valuation manual must specify all of the following:

14          A. Definitions of the policies and contracts subject to this section;

15          B. The following minimum valuation standards for all policies and contracts subject  
16 to this section:

17               (1) The commissioners reserve valuation method for life insurance contracts,  
18 other than annuity contracts;

19               (2) The commissioners annuity reserve valuation method for annuity contracts;  
20 and

21               (3) Minimum reserves for all other policies or contracts;

22          C. Provisions specifying which policies and contracts or types of policies and  
23 contracts are subject to section 960 and specifying the minimum valuation standards  
24 consistent with those provisions;

25          D. For policies and contracts subject to section 960:

26               (1) Requirements for the format of reports to the superintendent under section  
27 960, subsection 3, paragraph C, which must include information necessary to  
28 determine whether the valuation is appropriate and in compliance with this  
29 subchapter;

30               (2) Assumptions to be prescribed for risks over which the insurer does not have  
31 significant control or influence; and

32               (3) Procedures for corporate governance and oversight of the actuarial function  
33 and a process for appropriate waiver or modification of such procedures;

34          E. For policies and contracts not subject to section 960, a minimum valuation  
35 standard that either:

36               (1) Is consistent with the minimum standard of valuation for policies and  
37 contracts issued before the operative date of the valuation manual; or

1                   (2) Develops reserves that quantify the benefits and guarantees, and the funding,  
2                   associated with the policies and contracts and their risks at a level of  
3                   conservatism that reflects conditions that include unfavorable events that have a  
4                   reasonable probability of occurring;

5                   F. Other requirements, including, but not limited to, those relating to reserve  
6                   methods, models for measuring risk, generation of economic scenarios, assumptions,  
7                   margins, use of insurer experience, risk measurement, disclosure, certifications,  
8                   reports, actuarial opinions and memoranda, transition rules and internal controls; and

9                   G. The data and form of the data required under section 961. The requirements must  
10                  specify to whom the data must be submitted and may specify other requirements,  
11                  including requirements with respect to data analyses and reporting of analyses.

12                  **3. Supplementation and resolution of conflicts.** In the absence of a specific  
13                  valuation requirement or if the superintendent determines that a specific valuation  
14                  requirement in the valuation manual is not consistent with the requirements or purposes  
15                  of this subchapter, an insurer shall comply with minimum valuation standards prescribed  
16                  by the superintendent by rule or order.

17                  **4. Examination.** For an insurer subject to this section, the superintendent may hire,  
18                  contract with or otherwise engage a qualified actuary, at the insurer's expense, to perform  
19                  an actuarial examination of the insurer and provide an opinion on the appropriateness of  
20                  any reserve assumption or method used by the insurer or to review and provide an  
21                  opinion on the insurer's compliance with any requirement of this subchapter. The  
22                  superintendent may rely on any actuarial opinion issued on behalf of another insurance  
23                  regulator in the United States that is relevant to an insurer's compliance with this  
24                  subchapter.

25                  **5. Corrections.** The superintendent may require an insurer to change any  
26                  assumption or method as determined necessary by the superintendent to comply with the  
27                  requirements of the valuation manual or this subchapter, and the insurer shall adjust the  
28                  reserves as required by the superintendent.

29                  **6. Violations.** Violations of this subchapter are subject to all remedies specified in  
30                  section 12-A or otherwise available by law.

31                  **7. Changes to valuation manual.** Unless a later effective date is specified or the  
32                  superintendent has disapproved the change, a change to the valuation manual is effective  
33                  on January 1st following the adoption of the change by an affirmative vote of the NAIC  
34                  representing:

35                  A. At least 3/4 of the NAIC members voting;

36                  B. At least a majority of the total NAIC membership; and

37                  C. Jurisdictions totaling greater than 75% of the aggregate written direct premiums  
38                  reported in the most recently available life, accident and health annual statements;  
39                  health annual statements; and fraternal annual statements.



1           **§960. Requirements for principle-based reserves**

2           **1. Scope.** This section applies to all policies and contracts for which principle-based  
3           reserving is required by the valuation manual, unless exempted by the superintendent in  
4           accordance with the following standards:

5           A. An exemption under this subsection may not be granted unless the insurer is  
6           licensed and doing business exclusively in this State;

7           B. The exemption must be in writing;

8           C. The superintendent may rescind or modify the exemption in writing at any time,  
9           with reasonable notice to the insurer;

10          D. The exemption may apply to all business written by the insurer or to specific  
11          policy or contract forms or product lines; and

12          E. An insurer granted an exemption under this subsection shall value its reserves  
13          using the assumptions and methods used before the operative date of the valuation  
14          manual, in addition to any requirements established by the superintendent by rule or  
15          by the terms of the order granting the exemption.

16          **2. Standards.** An insurer shall establish reserves for policies and contracts subject  
17          to this section using a valuation methodology that meets all applicable requirements of  
18          the valuation manual and that:

19          A. Quantifies the benefits and guarantees, and the funding, associated with the  
20          policies and contracts and their risks at a level of conservatism that reflects conditions  
21          that include unfavorable events that have a reasonable probability of occurring during  
22          the lifetime of the policies and contracts. For policies and contracts with significant  
23          tail risk, the methodology must reflect conditions appropriately adverse to quantify  
24          the tail risk;

25          B. Incorporates assumptions, risk analysis methods and financial models and  
26          management techniques that are consistent with, but not necessarily identical to,  
27          those used within the insurer's overall risk assessment process, while recognizing  
28          potential differences in financial reporting structures and any prescribed assumptions  
29          or methods;

30          C. Incorporates assumptions that are derived in one of the following manners:

31                  (1) The assumption is prescribed in the valuation manual; or

32                  (2) For assumptions that are not prescribed in the valuation manual, the  
33                  assumptions are:

34                          (a) Established using the insurer's available experience, to the extent that it is  
35                          relevant and statistically credible; or

36                          (b) To the extent that insurer-specific data is not available, relevant or  
37                          statistically credible, established using other relevant, statistically credible  
38                          experience; and

39          D. Provides margins for uncertainty including adverse deviation and estimation  
40          error, such that the greater the uncertainty the larger the margin and resulting reserve.

1           **3. Oversight and controls.** An insurer using a principle-based valuation for one or  
2 more policies or contracts subject to this section as specified in the valuation manual  
3 shall:

4           A. Establish procedures for corporate governance and oversight of the actuarial  
5 valuation function consistent with those described in the valuation manual;

6           B. Provide to the superintendent and the insurer's board of directors an annual  
7 certification of the effectiveness of the internal controls with respect to the principle-  
8 based valuation. Such controls must be designed to ensure that all material risks  
9 inherent in the liabilities and associated assets subject to principle-based valuation are  
10 included in the valuation and that valuations are made in accordance with the  
11 valuation manual. The certification must be based on the controls in place as of the  
12 end of the preceding calendar year; and

13           C. Develop, and file with the superintendent upon request, a principle-based  
14 valuation report that complies with standards prescribed in the valuation manual.

15           **4. Formulaic components.** A principle-based valuation may include a formulaic  
16 reserve component and must do so when prescribed by the valuation manual or required  
17 by the superintendent.

18           **§961. Experience reporting**

19           For all policies and contracts in force on or after the operative date of the valuation  
20 manual, an insurer shall submit mortality, morbidity, policyholder behavior and expense  
21 experience data, as applicable, and other data as prescribed in the valuation manual.

22           **§962. Confidentiality**

23           **1. Information subject to this section.** For purposes of this section, "protected  
24 valuation information" means:

25           A. A memorandum in support of an opinion submitted under section 952-A and any  
26 other documents, materials and other information, including, but not limited to, all  
27 working papers, and copies thereof, created, produced or obtained by or disclosed to  
28 the superintendent or any other person in connection with the memorandum;

29           B. All documents, materials and other information, including, but not limited to, all  
30 working papers, and copies thereof, created, produced or obtained by or disclosed to  
31 the superintendent or any other person in the course of an examination made under  
32 section 959, subsection 4 that would be confidential under section 225, subsection 3  
33 if they had been prepared or obtained under section 221;

34           C. Any reports, documents, materials and other information developed by an insurer  
35 in support of, or in connection with, an annual certification of internal controls under  
36 section 960, subsection 3, paragraph B and any other documents, materials and other  
37 information, including, but not limited to, all working papers, and copies thereof,  
38 created, produced or obtained by or disclosed to the superintendent or any other  
39 person in connection with such reports, documents, materials and other information;

1 D. Any principle-based valuation report developed under section 960, subsection 3,  
2 paragraph C and any other documents, materials and other information, including, but  
3 not limited to, all working papers, and copies thereof, created, produced or obtained  
4 by or disclosed to the superintendent or any other person in connection with such a  
5 report;

6 E. Any documents, materials, data and other information submitted by an insurer  
7 under section 961, referred to in this paragraph as "experience data," and any other  
8 documents, materials, data and other information, including, but not limited to, all  
9 working papers, and copies thereof, created or produced in connection with such  
10 experience data that include any potentially insurer-identifying or personally  
11 identifiable information and that are provided to or obtained by the superintendent or  
12 any other person and any other documents, materials, data and other information,  
13 including, but not limited to, all working papers, and copies thereof, created,  
14 produced or obtained by or disclosed to the superintendent or any other person in  
15 connection with such experience data and materials; and

16 F. Any information received by the superintendent from the Actuarial Board for  
17 Counseling and Discipline or its successor related to a memorandum or report  
18 described in paragraph A or D, if the information has been provided with notice or  
19 the understanding that it is confidential or privileged under applicable law.

20 **2. Confidentiality of information subject to this section.** Except as provided in  
21 this subsection, all protected valuation information is confidential, must be kept  
22 confidential by the superintendent and is not subject to subpoena or discovery or  
23 admissible in evidence in any private civil action. The superintendent may use the  
24 documents, materials or other information in the furtherance of any regulatory or legal  
25 action brought as a part of the superintendent's official duties.

26 A. Neither the superintendent nor any person who receives documents, materials or  
27 other information while acting under the authority of the superintendent is permitted  
28 or required to testify in any private civil action concerning any protected valuation  
29 information.

30 B. Disclosure to the superintendent under this section or as a result of sharing of  
31 documents, materials or other information pursuant to section 216 does not constitute  
32 a waiver of any applicable privilege or claim of confidentiality with regard to the  
33 documents, materials or other information.

34 C. The superintendent may share protected valuation information described in  
35 subsection 1, paragraphs A and D with the Actuarial Board for Counseling and  
36 Discipline or its successor upon a request stating that the information is required for  
37 the purpose of professional disciplinary proceedings and that the disciplinary entity  
38 agrees, and has the legal authority to agree, to maintain the confidentiality and  
39 privileged status of the information in the same manner and to the same extent as  
40 required for the superintendent. The superintendent may request and receive  
41 confidential information described in subsection 1, paragraph F from the Actuarial  
42 Board for Counseling and Discipline or its successor. The superintendent may enter  
43 into information-sharing agreements to facilitate the exchange of information under  
44 this paragraph.

1 D. For protected valuation information described in subsection 1, paragraphs A and  
2 D, the confidentiality provided by this subsection may be limited or terminated as  
3 follows:

4 (1) The information may be subject to subpoena for the purpose of defending an  
5 action seeking damages from the appointed actuary submitting the actuarial  
6 memorandum or principle-based valuation report;

7 (2) The information may be released with the written consent of the insurer; and

8 (3) If any portion of an actuarial memorandum or principle-based valuation  
9 report is cited by the insurer in its marketing or is publicly volunteered by the  
10 insurer before a governmental agency other than a state insurance agency or is  
11 released by the insurer to the news media, all portions of the memorandum or  
12 report become public records.

13 **Sec. C-10. 24-A MRSA §992, sub-§1**, as enacted by PL 2007, c. 281, §2 and  
14 affected by §3, is repealed and the following enacted in its place:

15 **1. Covered kinds of insurance.** "Covered kinds of insurance" means property  
16 insurance as defined in section 705 and casualty insurance as defined in section 707 and  
17 does not include health insurance as defined in section 704, unless required by the  
18 applicable NAIC annual statement instructions to be included in the property and casualty  
19 actuarial opinion of a casualty insurer or multiple lines insurer, or property insurance  
20 written by domestic mutual assessment insurers pursuant to chapter 51.

21 **Sec. C-11. 24-A MRSA §2532-A, sub-§8, ¶¶F and G**, as enacted by PL 1983,  
22 c. 346, §13, are amended to read:

23 F. Any approved commissioners standard ordinary mortality tables, adopted after  
24 1980 by the National Association of Insurance Commissioners, that are approved by  
25 regulation promulgated by the superintendent for use in determining the minimum  
26 nonforfeiture standard in accordance with paragraph H, may be substituted for the  
27 Commissioners 1980 Standard Ordinary Mortality Table with or without 10-year  
28 select mortality factors or for the Commissioners 1980 Extended Term Insurance  
29 Table; and

30 G. Any approved commissioners standard industrial mortality tables, adopted after  
31 1980 by the National Association of Insurance Commissioners, that are approved by  
32 regulation promulgated by the superintendent for use in determining the minimum  
33 nonforfeiture standard in accordance with paragraph H, may be substituted for the  
34 Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961  
35 Industrial Extended Term Insurance Table; and

36 **Sec. C-12. 24-A MRSA §2532-A, sub-§8, ¶H** is enacted to read:

37 H. For policies issued before the operative date of the valuation manual, as defined  
38 in section 951-A, subsection 3, the superintendent may adopt rules approving  
39 commissioners standard mortality tables for use in determining the minimum  
40 nonforfeiture standard. Rules adopted pursuant to this paragraph are routine  
41 technical rules as defined in Title 5, chapter 375, subchapter 2-A. For policies issued



1           7. Any person or entity required by Title 24 or this Title to appoint an agent for  
2 service of process who does not have a valid appointment on file with the superintendent  
3 or required by applicable law to appoint the superintendent as agent for service of process  
4 is deemed to have appointed the superintendent as agent for service of process, and  
5 process may be served within this State in the same manner as provided in section 2105.  
6 This subsection does not relieve that person or entity from ~~the~~ any requirement to appoint  
7 an agent for service of process or from the applicable penalties for failure to comply with  
8 that requirement.

9           **Sec. E-2. 24-A MRSA §4435, sub-§6**, as amended by PL 1989, c. 67, §2, is  
10 further amended to read:

11           **6. Member insurer.** "Member insurer" means any authorized insurer ~~which~~ that  
12 writes any kind of insurance to which this subchapter applies and that is not a risk  
13 retention group as defined in section 6093, subsection 13. If an insurer is authorized at  
14 the time of an insolvency and subsequently is approved to withdraw its license authority  
15 for the kinds of insurance covered by any account to which claims relating to the  
16 insolvency are allocated, the withdrawn insurer shall continue to be a member of each  
17 account solely for purposes of assessments relating to claims resulting from the  
18 insolvency until these claims are paid or otherwise extinguished.

19           **Sec. E-3. 24-A MRSA §6095, sub-§1, ¶C**, as amended by PL 1997, c. 592, §73,  
20 is further amended to read:

21           C. A designation of an agent for the purpose of receiving service of legal documents  
22 or process. That designation is subject to the provisions of section 421, except that  
23 the appointment of a private agent is optional. A risk retention group that does not  
24 elect to designate an agent in accordance with section 421, subsection 1 shall appoint  
25 the superintendent as its agent.

26           **Sec. E-4. 24-A MRSA §6098, sub-§2**, as amended by PL 1997, c. 592, §74, is  
27 further amended to read:

28           **2. Registration.** The purchasing group shall register with the superintendent and  
29 designate ~~as~~ the superintendent as its agent solely for the purpose of receiving service of  
30 legal documents or process, except that the requirements do not apply in the case of a  
31 purchasing group:

32           A. That in any state of the United States:

33                   (1) Was domiciled before April 2, 1986; and

34                   (2) Is domiciled on and after October 27, 1986;

35           B. That:

36                   (1) Before October 27, 1986, purchased insurance from an insurance carrier  
37 licensed in any state; and

38                   (2) Since October 27, 1986, purchased its insurance from an insurance carrier  
39 licensed in any state;

1 C. That was a purchasing group under the requirements of the Product Liability  
2 Retention Act of 1981 before October 27, 1986; and

3 D. That does not purchase insurance that was not authorized for purposes of an  
4 exemption under that Act, as in effect before October 27, 1986. That designation  
5 shall be subject to section 421.

6 **Sec. E-5. 24-A MRSA §6718**, as amended by PL 2011, c. 90, Pt. I, §7, is repealed  
7 and the following enacted in its place:

8 **§6718. Rules**

9 **1. Authority.** The superintendent may adopt rules to implement this chapter. Rules  
10 adopted pursuant to this subsection are major substantive rules as defined in Title 5,  
11 chapter 375, subchapter 2-A.

12 **2. Risk retention groups.** Notwithstanding section 6719, the superintendent shall  
13 adopt rules establishing financial standards and corporate governance standards for  
14 captive insurance companies that are risk retention groups as defined in section 6093,  
15 subsection 13. Such rules may include, but are not limited to, rules making specified  
16 provisions of this Title applicable to captive insurance companies that are risk retention  
17 groups, subject to any modifications that the superintendent determines to be appropriate  
18 to the nature of a risk retention group's business. Rules adopted pursuant to this  
19 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

20 **SUMMARY**

21 This bill amends several provisions of the Maine Insurance Code to incorporate  
22 recent amendments to model laws adopted by the National Association of Insurance  
23 Commissioners, or NAIC, and to make related technical changes. These amendments  
24 maintain the State's compliance with uniform financial solvency standards and with the  
25 NAIC's accreditation requirements for state insurance regulators.

26 Part A amends the insurance holding company laws to conform them to the current  
27 version of the relevant NAIC Model Act. It reorganizes provisions governing  
28 examinations, confidentiality and proposed change-of-control transactions, incorporating  
29 additional disclosure requirements and specific provisions on divestitures of controlling  
30 interests. It establishes new reporting requirements, including an enterprise risk report  
31 requirement and an own risk and solvency assessment requirement, and amends the  
32 review process with respect to disclaimers of affiliation and makes the process applicable  
33 to proposed acquisitions of presumptive control. It allows the Superintendent of  
34 Insurance to participate in consolidated approval proceedings for multistate transactions  
35 and in supervisory colleges, which are temporary or permanent forums for  
36 communication and cooperation among the regulators supervising an international  
37 insurance holding company system.

38 Part B amends the reinsurance laws to conform them to the current version of the  
39 NAIC's Credit for Reinsurance Model Act. It makes financially strong reinsurers  
40 domiciled in qualifying jurisdictions outside the United States eligible to apply for

1 approval as certified reinsurers, with lower collateral requirements commensurate with  
2 their financial strength and domiciliary oversight.

3 Part C amends Maine's Standard Valuation Law to conform it to the current version  
4 of the relevant NAIC Model Act, incorporating the new principle-based reserving  
5 requirements that will become effective when adopted by a supermajority of states.

6 Part D amends the risk-based capital laws to strengthen the NAIC trend test and to  
7 make it applicable to companies transacting all types of insurance.

8 Part E gives the superintendent rule-making authority to establish financial standards  
9 and corporate governance standards for captive insurance companies that are risk  
10 retention groups, to maintain compliance with NAIC accreditation requirements. It also  
11 makes various technical corrections to the laws governing risk retention groups for  
12 internal consistency and consistency with federal law.