

**Maine Revised Statute Title 24-A, Chapter 3:
THE INSURANCE SUPERINTENDENT**

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24-A §200. DEPARTMENT CONTINUED

There is continued a department of State Government known as the Insurance Bureau. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §201. SUPERINTENDENT OF INSURANCE; APPOINTMENT; TERM

1. The Superintendent of Insurance is the head of the Bureau of Insurance.

[1973, c. 585, §7 (RPR) .]

2. The superintendent shall be appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over banking and insurance and to confirmation by the Legislature.

[1987, c. 105, §3 (AMD) .]

3. The superintendent shall hold his office for 5 years or until his successor has been appointed and has qualified. Any vacancy occurring shall be filled by appointment for the unexpired portion of the term.

[1981, c. 359, §6 (AMD) .]

4. The superintendent shall be removable for cause by impeachment or by address of the Governor to both branches of the Legislature, and Title 5, section 931, subsection 2, shall not apply.

[1987, c. 402, Pt. A, §151 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §7 (RPR). 1975, c. 771, §259 (AMD). 1981, c. 359, §§5-7 (AMD). 1987, c. 105, §3 (AMD). 1987, c. 402, §A151 (AMD).

24-A §202. SEAL

The superintendent shall have a seal of office of a suitable design, bearing the words "Insurance Superintendent of the State of Maine." The superintendent shall file an impression of the seal, duly certified by him under oath, with the Secretary of State. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §203. COMPENSATION

The State shall pay to the superintendent an annual salary in amount as provided by law as full compensation for all duties required of the superintendent. [1989, c. 702, Pt. E, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1983, c. 553, §25 (AMD). 1989, c. 702, §E12 (AMD).

24-A §204. PRINCIPAL OFFICE*(REPEALED)*

SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §2 (AMD). 1973, c. 585, §12 (AMD). 1979, c. 251, (RP).

24-A §205. BUREAU ORGANIZATION

With the approval of the Commissioner of Professional and Financial Regulation, the superintendent shall organize the bureau in a manner the superintendent determines necessary for the discharge of the superintendent's duties. [1995, c. 502, Pt. H, §15 (RPR).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1995, c. 502, §H15 (RPR).

24-A §206. DEPUTY SUPERINTENDENTS

1. The superintendent, with the approval of the Commissioner of Professional and Financial Regulation, may employ, subject to the Civil Service Law, 2 deputy superintendents. Where authorized by another section of this Title, the superintendent may also appoint such special deputies as regulatory responsibilities may necessitate.

[1995, c. 502, Pt. H, §16 (AMD) .]

2. The deputies shall perform such duties and exercise such powers of the superintendent as the superintendent may from time to time authorize. The superintendent shall designate one of the deputy superintendents to perform the duties of the superintendent whenever the superintendent is absent from the State; the deputy superintendent is directed to do so by the superintendent; there is a vacancy in the office of superintendent; or the superintendent is incapacitated by illness.

[1995, c. 502, Pt. H, §16 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §8 (RPR). 1983, c. 553, §46 (AMD). 1985, c. 785, §B106 (AMD). RR 1993, c. 1, §55 (COR). 1995, c. 502, §H16 (AMD).

24-A §207. STAFF

The superintendent may employ personnel as the business of the bureau may require, subject to the Commissioner of Professional and Financial Regulation's approval and in accordance with the Civil Service Law. The qualifications of those personnel must reflect the needs and responsibilities relating to the bureau's regulatory functions pursuant to this Title. The superintendent may authorize senior personnel of the bureau to carry out the superintendent's duties and authority. [1995, c. 502, Pt. H, §17 (RPR).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1985, c. 785, §B107 (AMD). 1995, c. 502, §H17 (RPR).

24-A §208. INDEPENDENT TECHNICAL, PROFESSIONAL SERVICES

The superintendent may from time to time contract for such additional actuarial, examination, rating and other technical and professional services as he may require for discharge of his duties. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §208-A. COOPERATIVE AGREEMENTS

The superintendent, in the superintendent's discretion, may enter into cooperative agreements with other state, federal or foreign law enforcement or regulatory agencies to facilitate the regulatory functions of the superintendent, including, but not limited to, information sharing, coordination of examinations and investigations and joint examinations and investigations. [1999, c. 184, §18 (NEW).]

SECTION HISTORY

1999, c. 184, §18 (NEW).

24-A §209. PROHIBITED INTERESTS, REWARDS

1. The superintendent, or his deputy, or any examiner or employee of the bureau shall not be connected with the management or be holder of a material number of shares of any insurer, insurance holding company, insurance agency or broker, or be pecuniarily interested in any insurance transaction, except as a policyholder or claimant under a policy; except that as to matters wherein a conflict of interests does not exist on the part of any such individual, the superintendent may employ and retain from time to time insurance actuaries, examiners, accountants, and other technicians who are independently practicing their professions even though from time to time similarly employed or retained by insurers or others.

[1973, c. 585, §12 (AMD) .]

2. Subsection 1 above shall not be deemed to prohibit:

A. Receipt by any such individual of fully vested commissions or fully vested retirement benefits to which he is entitled by reason of services performed prior to becoming superintendent or prior to employment in the bureau; [1973, c. 585, §12 (AMD).]

B. Investment in shares of regulated diversified investment companies; or [1969, c. 132, §1 (NEW) .]

C. Mortgage loans made under customary terms and in ordinary course of business. [1969, c. 132, §1 (NEW); 1973, c. 585, §12 (AMD).]

3. The superintendent, or his deputy, or any employee or technician employed or retained by the bureau shall not be given or receive, directly or indirectly, any fee, compensation, loan, gift or other thing of value in addition to the compensation and expense allowance provided by or pursuant to the law of this State, or by contract with the superintendent, for any service rendered or to be rendered as such superintendent, deputy, assistant, employee or technician, or in connection therewith.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §210. DELEGATION OF POWERS

1. The superintendent may delegate to his deputy, examiner or an employee of the bureau the exercise or discharge in the superintendent's name of any power, duty or function, whether ministerial, discretionary or of whatever character, vested in or imposed upon the superintendent.

[1973, c. 585, §12 (AMD) .]

2. The official act of any such person acting in the superintendent's name and by his authority shall be deemed an official act of the superintendent.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §211. GENERAL POWERS, DUTIES

1. The superintendent shall enforce the provisions of, and execute the duties imposed upon him by, this Title.

[1973, c. 585, §12 (AMD) .]

2. The superintendent shall have the powers and authority expressly vested in him by or reasonably implied from this Title.

[1973, c. 585, §12 (AMD) .]

3. The superintendent shall have such additional rights, powers and duties as may be provided by other laws.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §212. RULES AND REGULATIONS

Subject to the applicable requirements and procedures of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, the superintendent may adopt, amend and rescind reasonable rules to aid the administration or effectuation of any provisions of this Title or of any other state or federal statutes to the extent administered or enforced by the superintendent. [2001, c. 262, Pt. C, §1 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1977, c. 694, §386 (AMD). 1989, c. 269, §4 (AMD). 1991, c. 885, §E23 (AMD). 1991, c. 885, §E47 (AFF). 2001, c. 262, §C1 (AMD).

24-A §212-A. PARITY FOR INSURANCE AGENTS AND BROKERS

Notwithstanding any other provision of law, to the extent authorized by the superintendent by rule, a licensed agent or broker has the power to engage in any insurance activity that financial institutions chartered by or otherwise subject to the jurisdiction of the Federal Government are authorized to engage in pursuant

to federal law or regulation or by a court of competent jurisdiction. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 207, §3 (NEW).]

SECTION HISTORY

1997, c. 207, §3 (NEW).

24-A §213. ORDERS, NOTICES IN GENERAL

1. Orders and notices of the superintendent shall be effective only when in writing signed by him or by his authority.

[1973, c. 585, §12 (AMD) .]

2. Every order of the superintendent shall state its effective date, and shall concisely state:

A. Its intent or purpose; [1969, c. 132, §1 (NEW).]

B. The grounds on which based; and [1969, c. 132, §1 (NEW).]

C. The provisions of this Title pursuant to which action is taken or proposed to be taken; but failure to so designate a particular provision shall not deprive the superintendent of the right to rely thereon. [1973, c. 585, §12 (AMD).]

3. An order or notice may be given by delivery to the person to be ordered or notified, or by mailing it, postage prepaid, addressed to such person at his principal place of business or residence as last of record in the bureau. The order or notice shall be deemed to have been given when deposited in a mail depository of the United States post office, and of which the affidavit of the individual who so mailed the order or notice shall be prima facie evidence. Written notice of the party's rights to review or appeal and of the action required and of the time within which action shall be taken in order to appeal shall be given to each party with the decision.

[1977, c. 694, §387 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1977, c. 694, §387 (AMD).

24-A §214. ENFORCEMENT

1. The superintendent may, through the Attorney General of this State, invoke the aid of the Superior Court through proceedings instituted in any county of this State to enforce any lawful order made or action taken by him. In such proceedings, the Superior Court may make such orders, either preliminary or final, as it deems proper under the facts established before it.

[1973, c. 585, §12 (AMD) .]

2. If the superintendent has reason to believe that any person has violated any provision of this Title, or of other law as applicable to insurance operations, for which criminal prosecution is provided and would be in order, the superintendent shall give the information relative thereto to the Attorney General. The Attorney General shall promptly institute such action or proceedings, including, but not limited to, actions or proceedings to seek restitution, against that person as in the Attorney General's opinion the information may require or justify.

[2003, c. 310, §1 (AMD) .]

3. The Attorney General upon request of the superintendent is authorized to proceed in the courts of any other state or in any federal court or agency to enforce an order or decision of any court proceeding or in any administrative proceeding before the superintendent.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2003, c. 310, §1 (AMD).

24-A §215. VIOLATION OF RULES, REGULATIONS, ORDERS; PENALTY

Any person who knowingly violates any rule, regulation or order of the superintendent shall be subject to such suspension or revocation of certificate of authority or license as may be applicable under this Title for violation of the provision to which such rule, regulation or order relates. [1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §216. RECORDS; INSPECTION; DESTRUCTION

1. The superintendent shall carefully preserve in the bureau and in permanent form a correct account of all his transactions and of all fees and moneys received by him by virtue of his office, together with all financial statements, examination reports, correspondence, filings and documents duly received by the bureau. The superintendent shall hand the same over to his successor in office.

[1973, c. 585, §12 (AMD) .]

2. All records of the bureau are subject to public inspection, except as otherwise expressly provided by law as to particular matters; and except that records, correspondence and reports of investigation in connection with actual or claimed violations of this Title or prosecution or disciplinary action for those violations are confidential. The confidential nature of any such record, correspondence or report may not limit or affect use of the same by the superintendent in any such prosecution or action. This subsection does not preclude participation by the superintendent in the establishment of an interstate complaint handling system that may involve the sharing of information with insurance regulatory officials in other jurisdictions and with the National Association of Insurance Commissioners, as long as the names of the complainant and insured remain confidential. This subsection does not preclude the dissemination of aggregate ratios of consumer complaints to the public by the superintendent. Only complaints received in writing are included in the calculation of the complaint ratio. A complaint received by electronic means is considered a written complaint. For the purposes of this subsection, a "consumer complaint" means any written complaint that results in the need for the bureau to conduct further investigation or to communicate in writing with a regulated entity for a response or resolution to the complaint. The superintendent shall adopt rules necessary to define the method for calculating complaint ratios. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[2001, c. 165, Pt. A, §1 (AMD) .]

3. All records and documents of the bureau are subject to subpoena by a court of competent jurisdiction.

[1973, c. 585, §12 (AMD) .]

4. The superintendent may destroy unneeded or obsolete records and filings in the bureau in accordance with provisions and procedures applicable to administrative agencies of the State in general.

[1973, c. 585, §12 (AMD) .]

5. In order to assist the superintendent in the regulation of insurers in this State, it is the duty of the superintendent to maintain as confidential a document or information received from the National Association of Insurance Commissioners, public officials of other jurisdictions, agencies of the Federal Government or political subdivisions or other agencies of this State, if the document or the information has been provided to the superintendent with notice that it is confidential under the laws of the jurisdiction that is the source of the document or information. Any information furnished pursuant to this subsection by or to the superintendent that has been designated confidential by the official or agency furnishing the information remains the property of the agency furnishing the information and must be held as confidential by the recipient of the information, except as authorized by the official or agency furnishing the information. The superintendent may share information, including otherwise confidential information, with the National Association of Insurance Commissioners, public officials of other jurisdictions, agencies of the Federal Government or political subdivisions or other agencies of this State, if the other jurisdiction, political subdivision or agency agrees to maintain the same level of confidentiality as is available under Maine law and has demonstrated that it has the legal authority to do so. This subsection does not alter prohibitions or restrictions applicable to ex parte contacts in the course of an adjudicatory proceeding in which a state agency is a party. For purposes of this subsection, "other agencies of this State" includes bureau personnel and consultants designated as serving in an advocacy capacity in an adjudicatory proceeding before the superintendent.

[1999, c. 184, §19 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1989, c. 269, §5 (AMD). 1995, c. 375, §B1 (AMD). 1997, c. 314, §1 (AMD). 1999, c. 184, §19 (AMD). 2001, c. 165, §A1 (AMD).

24-A §217. ANNUAL REPORT

1. As soon as practical after the annual financial statements have been received from the authorized insurers, the superintendent may make a written report to the Governor showing with respect to the preceding calendar year:

- A. The receipts and expenses of the bureau for the year; [1973, c. 585, §12 (AMD) .]
- B. A summary of the insurance business transacted in this State; [1969, c. 132, §1 (NEW) .]
- C. A summary of the financial condition of each authorized insurer, as shown by its most recent financial statement on file with the superintendent; [1973, c. 585, §12 (AMD) .]
- D. Such recommendations as he deems advisable relative to amendment or supplementation of the insurance laws; and [1969, c. 132, §1 (NEW) .]
- E. Such other information and matters as he deems to be in the public interest relative to the insurance business in this State. [1969, c. 132, §1 (NEW) .]

[1975, c. 771, §260 (AMD) .]

2. If the report is printed, the superintendent shall furnish a copy upon request thereby to the insurance supervisory official of other states and to authorized insurers; and, if copies are available for the purpose, to other persons who so request and upon payment by such persons of such reasonable charge therefor as may be fixed by the superintendent.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1975, c. 771, §260 (AMD).

24-A §218. PUBLICATIONS; PRICE

The superintendent may have the directory of authorized insurers, of licensed insurance representatives, license examination material, insurance laws and related laws and regulations under his administration published in pamphlet form from time to time, and may fix a price for each copy to cover cost of printing and mailing. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §219. INTERSTATE COOPERATION

The superintendent may communicate on request of the insurance supervisory official of any state, province or country any information which it is his duty by law to ascertain respecting authorized insurers. [1973, c. 585, §12 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §220. INVESTIGATION OF VIOLATIONS

1. Discretionary investigations. In addition to examinations and investigations expressly authorized, the superintendent may conduct investigations of insurance matters as the superintendent considers proper upon reasonable cause to determine whether any person has violated any provision of this Title or to secure information useful in the lawful administration of any such provision. The cost of these investigations must be borne by the State.

[1991, c. 26, (NEW) .]

2. Response to inquiries. All insurers and other persons required to be licensed pursuant to this Title shall respond to all lawful inquiries of the superintendent that relate to resolution of consumer complaints involving the licensee within 14 days of receipt of the inquiry and to all other lawful inquiries of the superintendent within 30 days of receipt. If a substantive response can not in good faith be provided within the time period, the person required to respond shall so advise the superintendent and provide the reason for the inability to respond.

[1991, c. 26, (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 26, (RPR).

24-A §221. EXAMINATION OF INSURERS

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

[1993, c. 313, §2 (AMD) .]

2. The superintendent shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this State.

[1973, c. 585, §12 (AMD) .]

3. In lieu of the superintendent making an examination, the superintendent may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of another state.

[1991, c. 828, §2 (AMD) .]

3-A. On or after January 1, 1994 the superintendent may accept a full examination report by the insurance regulatory authority of the insurance company's state of domicile or port-of-entry state for any foreign or alien insurer licensed in this State in lieu of an examination by the superintendent if, at the time of the examination, that regulatory authority was accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program or if the examination was performed under the supervision of an accredited insurance regulatory authority or with the participation of one or more examiners who are employed by an accredited insurance regulatory authority and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by the regulatory authority.

[1993, c. 313, §3 (NEW) .]

4. As far as practical, the examination of a foreign or alien insurer must be made in cooperation with the insurance supervisory officials of other states in which the insurer transacts business. Duties may be divided among the participating states in any manner consistent with the standards established by the laws of this State that are applicable to foreign and alien insurers.

[1993, c. 313, §4 (AMD) .]

5. Examination of health carriers. The superintendent shall examine the market conduct of each domestic health carrier, as defined in section 4301-A, subsection 3, and each foreign health carrier with at least 1,000 covered lives in this State, offering a health plan as defined in section 4301-A, subsection 7, no less frequently than once every 5 years. An examination under this subsection may be comprehensive or may target specific issues of concern observed in the State's health insurance market or in the company under examination. In lieu of an examination conducted by the superintendent, the superintendent may participate

in a multistate examination, or, in the case of a foreign company, approve an examination by the company's domiciliary regulator upon a finding that the examination and report adequately address relevant aspects of the company's market conduct within this State.

[2009, c. 439, Pt. E, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 828, §§1,2 (AMD). 1993, c. 313, §§2-4 (AMD). 2009, c. 439, Pt. E, §1 (AMD).

24-A §221-A. FINANCIAL AUDIT REQUIREMENTS

1. Purpose. The purpose of this section is to provide the superintendent with a means of improved financial monitoring of insurers doing business in this State. This mechanism of increased financial surveillance of insurers shall not be a substitute for financial examinations required or authorized by this Title generally.

[1985, c. 330, §1 (NEW) .]

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

A. "Accountant" and "independent certified public accountant" mean an independent certified public accountant or firm licensed to practice in the State or in any state recognizing similar reciprocal licensing requirements and who is a member in good standing of the American Institute of Certified Public Accountants. It shall also mean, in the case of Canadian and British domiciled companies, a Canadian or British chartered accountant. [1985, c. 330, §1 (NEW).]

B. "Audited financial report" means a written report which meets the requirements of subsection 4. [1985, c. 330, §1 (NEW).]

C. "Insurer" means any insurance company doing business in the State pursuant to this Title and includes, but is not limited to, all life, accident and health, property and casualty, title, direct writing reinsuring companies and surplus lines companies regulated by the Bureau of Insurance. [1985, c. 330, §1 (NEW).]

[1985, c. 330, §1 (NEW) .]

3. Audits required. All insurers, excepting insurers transacting business in this State pursuant to the terms of chapter 51, shall cause to be conducted an annual audit by an independent certified public accountant. Each domestic insurer shall file an audited financial report with the superintendent on or before June 1st for the year ending December 31st preceding. An extension of the filing deadline may be granted by the superintendent upon a showing by the insurer or its accountant that there exists valid justification for such an extension. A foreign or alien insurer shall file an audited financial report upon the superintendent's request. A firm of independent certified public accountants engaged to perform an audit of an insurer shall substitute the appointed audit partner in charge with another audit partner in charge at least once every 7 years. An accountant substituted for pursuant to this subsection may not serve as a partner in charge of that audit until 2 years after the date of substitution.

[1999, c. 113, §5 (AMD) .]

4. Content of annual audited financial reporting. Annual audited financial reporting must consist of the following.

A. Financial statements furnished under this section must be examined by independent certified public accountants in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants. The opinion of the accountant must cover all years for which a financial presentation is made.

The opinion expressed concerning the financial statements filed under this section must conform with the accounting practices prescribed or permitted by the superintendent or the insurance supervisory official of the insurer's state of domicile. An insurer, with the approval of the superintendent, may file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that uses a pooling agreement and such an insurer cedes all of its direct and assumed business to the pool or if the insurer has executed a 100% reinsurance agreement with one or more of the insurers in the group and the pooling or reinsurance agreement affects the solvency of the insurer or the integrity of the insurer's reserves. In those cases, a columnar consolidating or combining worksheet must be filed with the report.

The opinion must be expressed to the insurer by the accountant on the accountant's letterhead and show the address of the office issuing that opinion, must be manually executed and dated. [1993, c. 313, §6 (AMD).]

B. Financial statements, as a minimum, must consist of:

- (1) Balance sheet;
- (2) Statement of gain or loss from operations;
- (3) Statement of cash flow;
- (4) Statement of change in capital paid-up, gross paid-in and contributed surplus and unassigned funds, surplus funds; and
- (5) Notes to financial statements. [1993, c. 313, §6 (AMD).]

C. The statement must include an independent certified public accountant's report respecting evaluation of internal controls. [1993, c. 313, §6 (AMD).]

D. The statement must include an independent certified public accountant's letter, in conformance with standards established by the National Association of Insurance Commissioners, attesting to that certified public accountant's qualifications, possession of license and subscription to the code of professional ethics and pronouncements issued by the American Institute of Certified Public Accountants. [1999, c. 113, §6 (AMD).]

[1999, c. 113, §6 (AMD).]

5. Rules authorized. The superintendent shall promulgate such rules as shall be necessary to effectuate provisions of this section.

[1985, c. 330, §1 (NEW).]

6. Application and effective date. For those insurers doing business in this State that are subject to this section, the filing of the initial annual audited financial reports required under this section are due June 30, 1986, covering the calendar year December 31, 1985. Similar recurring reports are due each June 1st thereafter.

[1999, c. 113, §7 (AMD).]

7. Exemptions. Upon written application of any insurer subject to this section, the superintendent may grant an exemption of the filing requirements under this section if the superintendent finds upon review of the application that compliance would constitute a financial hardship upon the insurer.

If an insurer's annual statement reflects business in an amount less than \$100,000 in written premium for the preceding year, the insurer is exempt from the filing requirements of this section with respect to that year.

[1999, c. 113, §7 (AMD) .]

8. Required notice concerning adverse financial condition. Each insurer retaining an independent certified public accountant to represent it with respect to the report which the insurer is required to file pursuant to this section shall, as a condition of its written terms of engagement of the accountant, require that:

A. The accountant immediately notify in writing each member of the board of directors of the insurer and the superintendent upon any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported in the annual statement required under section 423 for the year ending December 31st preceding; and [1989, c. 846, Pt. C, §2 (AMD); 1989, c. 846, Pt. E, §4 (AFF).]

B. If the accountant, subsequent to the date of the audited financial report required by this section, becomes aware of material subsequent facts which would have affected his report, the accountant shall provide the pertinent information upon his determination to the parties identified in this subsection. [1985, c. 636, (NEW).]

[1989, c. 846, Pt. C, §2 (AMD); 1989, c. 846, Pt. E, §4 (AFF) .]

SECTION HISTORY

1985, c. 330, §1 (NEW). 1985, c. 636, (AMD). 1989, c. 846, §§C1,2,E4 (AMD). 1993, c. 313, §§5,6 (AMD). 1999, c. 113, §§5-7 (AMD).

24-A §222. REGISTRATION, REGULATION, SUPERVISION AND EXAMINATION OF HOLDING COMPANY SYSTEMS, AGENTS, PROMOTERS AND OTHERS

1. Examination. For purposes of ascertaining compliance with law, or relationships and transactions between any person as defined hereafter and any insurer or proposed insurer, the superintendent may as often as he deems advisable examine the accounts, records, documents and transactions pertaining to or affecting the insurance affairs or proposed insurance affairs, or transactions of the insurer or proposed insurer as may be in the possession of any holding company, its subsidiaries or affiliates as is necessary to ascertain the financial condition or legality of conduct of the insurer or proposed insurer. Such investigatory and examination authority shall also extend to the examination of:

A. Any business entity structured to hold the stock of an insurance company, or person holding the shares of voting stock or policyholder proxies of an insurer as voting trustee or otherwise, for the purpose of controlling the management thereof; [1975, c. 356, §1 (RPR).]

B. Any insurance agent, broker, general agent, surplus lines broker, adjuster, consultant, insurer representatives or any person holding himself out as any of the foregoing; [1975, c. 356, §1 (RPR) .]

C. Any person having a contract under which he enjoys by terms or in fact the exclusive or dominant right to manage or control the insurer; [1975, c. 356, §1 (RPR) .]

D. Any person in this State engaged in, or proposing to be engaged in, this State in, or holding himself out in this State as so engaging or proposing, or in this State assisting in the promotion, formation or financing of an insurer or insurance holding corporation, or corporation or other group to finance an insurer or the production of its business. [1975, c. 356, §1 (RPR) .]

[1975, c. 356, §1 (RPR) .]

2. Definitions. As used in this section, unless the context otherwise requires, the following words shall have the following meanings.

A. Affiliate. "Affiliate" of, or a person "affiliated" with, a specific person means a person who directly or indirectly controls, or is controlled by, or is under common control with the person specified. [1975 , c. 356 , §1 (RPR) .]

A-1. Beneficial owner. "Beneficial owner" of a voting security, voting insurance policy or guaranty capital share means any person or group of persons acting in concert who, directly or indirectly, through any contract, arrangement, proxy appointment, understanding, relationship or otherwise, has or shares:

- (1) Voting power over the security, policy or guaranty capital share, including the power to vote or to direct the voting of the security, policy or share; or
- (2) Investment power over the security, policy or share, including the power to dispose or to direct the disposition of the security, policy or share.

The superintendent may determine that persons are acting in concert, either on the superintendent's own initiative or upon application of an interested person, based upon evidence that actions taken by those persons, if consummated, may permit the exercise of common control, directly or indirectly, over the domestic insurer. The absence of a determination by the superintendent that persons are acting in concert shall not be construed to exempt those persons from compliance with the requirements of this section. [1989 , c. 385 , §1 (NEW) .]

A-2. "Continuing director" means:

- (1) Any member of a domestic insurer's board of directors, while that person is a member of the board of directors, who was a member of that board of directors prior to the time that any person acquires control of the domestic insurer or any person controlling the insurer; and
- (2) Any successor of a continuing director, while the successor is a member of the board of directors, who is recommended or elected to succeed a continuing director by a number of continuing directors equal to a majority of continuing directors in office immediately preceding the acquisition of control. [1991 , c. 37 , §1 (NEW) .]

B. Control

(1) 'Control,' including 'controlling,' 'controlled by' and 'under common control with,' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control is presumed to exist if any person is the beneficial owner of 10% or more of the voting securities, or voting rights in the case of mutual or reciprocal insurers, or guaranty capital shares if a mutual insurer has established a guaranty fund, of any other person. A beneficial owner may rely in determining the amount of voting securities of any person outstanding upon information set forth in that person's most recent quarterly or annual report filed with the Securities and Exchange Commission pursuant to the Exchange Act unless the beneficial owner knows or has reason to believe that the information contained in the quarterly or annual report is inaccurate. Two or more domestic mutual insurance companies that have restricted their licensed territories to the State are not considered subject to this section merely because those insurance companies commonly share facilities, incurred expenses, personnel services, or otherwise utilize cost allocations based on generally accepted accounting principles including pro rata sharing of assumed risks.

(2) Notwithstanding the presumption of control contained in subparagraph (1), the superintendent, upon application of the insurance company, may determine that the insurer is not controlled by the person presumed to control it. In addition, the superintendent, after notice and an opportunity to be heard, may determine, notwithstanding the absence of the presumption in subparagraph (1), that a person does control an insurance company or companies. [1999 , c. 113 , §8 (AMD) .]

B-1. Exchange Act. "Exchange Act" means the United States Securities Exchange Act of 1934, as amended. [1989, c. 385, §3 (NEW).]

C. Insurance holding company system. "Insurance holding company system" shall consist of 2 or more affiliated persons, one or more of whom is an insurer. [1975, c. 356, §1 (RPR).]

D. Insurer. "Insurer" shall have the same meaning given it in section 4. [1975, c. 356, §1 (RPR).]

D-1. [1993, c. 313, §7 (RP).]

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

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

(2) For nonlife insurers, the net income or loss after dividends to policyholders and federal income taxes and net realized capital gains or losses. [1993, c. 313, §8 (NEW).]

E. Person. "Person" shall mean an individual, a corporation, a corporation which, pursuant to Title 24, chapter 19, maintains and operates nonprofit hospital service plans, nonprofit medical service plans or nonprofit health care plans or any combination thereof, a partnership, an association, a joint stock company, a business trust, an unincorporated organization or any similar entity, or any combination of the foregoing acting in concert. [1975, c. 356, §1 (RPR).]

F. "Subsidiary" of a specified person means an affiliate controlled by that person directly or through one or more intermediaries. [2001, c. 72, §4 (AMD).]

G. "Surplus regarding policyholders" means admitted assets less all liabilities. [1993, c. 313, §9 (NEW).]

H. "Unassigned funds" means the undistributed and unappropriated amount of surplus remaining on the balance sheet date as the result of all operations of an insurance company from its commencement of business. [1993, c. 313, §9 (NEW).]

I. "Voting security" means any security with voting rights or any security convertible into or evidencing a right to acquire a security with voting rights. [1999, c. 113, §10 (NEW).]

[2001, c. 72, §4 (AMD) .]

3. Subsidiaries of insurers; investments to acquire interest. This subsection pertains to insurers and their subsidiaries and affiliates.

A. Any domestic insurer may invest in or otherwise acquire one or more subsidiaries as authorized in section 1115 or section 1157. [1987, c. 399, §1 (AMD).]

A-1. A domestic insurer shall notify the superintendent in writing within 30 days after any investment by the insurer or any of its affiliates in any one corporation if the insurer has invested in that corporation and the total investment in that corporation by the insurance holding company system exceeds 10% of the corporation's voting securities. [1991, c. 828, §4 (AMD).]

B. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the superintendent may prescribe, unless at any time after the investment was made, the investment met the requirements for investment under any other section of this Title and the insurer has notified the superintendent thereof. [1991, c. 828, §4 (AMD).]

[1991, c. 828, §4 (AMD) .]

4. Tender offers.

[1989, c. 385, §4 (RP) .]

4-A. Tender offers. No person may make a tender offer for, or a request or invitation for tenders of, or an agreement to exchange securities for, or otherwise acquire any voting security, or any security convertible into a voting security, of a domestic insurer or of any person controlling a domestic insurer if, as a result of the consummation thereof, the person making the tender offer, request or agreement, would, directly or indirectly, acquire actual control of the insurer or controlling person, and no person may enter into an agreement to merge with or may otherwise acquire control of a domestic insurer or its controlling person, unless:

- A. The person has filed with the superintendent and has sent the domestic insurer a statement containing the information required by subsection 4-B; [1989, c. 385, §5 (NEW).]
- B. The offer, request, invitation, agreement or acquisition has been approved by the superintendent in the manner prescribed in subsection 7; and [1989, c. 385, §5 (NEW).]
- C. Ten days have elapsed from the date of approval by the superintendent and no injunction or other court order precludes consummation of the offer, request, invitation, agreement or acquisition. [1989, c. 385, §5 (NEW).]

The superintendent, by rule or by order, may exempt from paragraphs B and C, any offer, request, invitation or agreement which is subject to regulation as a tender offer under the Exchange Act, provided that the acquisition or other transaction contemplated by the offer, request, invitation or agreement may not be consummated unless that acquisition or other transaction is approved by the superintendent in the manner prescribed in subsection 7. The superintendent, by rule or by order, may in addition exempt from paragraphs B and C any offer, request, invitation, agreement, purchase or transaction on the grounds that the interests of the State in regulating that transaction are minimal relative to the interests of other jurisdictions or are minimal relative to the impact of the transaction as a whole, provided that it does not appear likely that exempting the transaction from the application of this section will be detrimental to the interests of Maine policyholders.

[1989, c. 385, §5 (NEW) .]

4-B. Application for approval. Each statement required in subsection 4-A shall contain the following information as applicable:

- A. The background and identity of all persons by whom or on whose behalf the purchases or the exchange, merger or other acquisition of control are to be effected; [1989, c. 385, §5 (NEW) .]
- B. The source and amount of the funds or other consideration which have been used or will be used in making the purchases or in effecting the exchange, merger or other acquisition of control and, if any part of these funds or other consideration has been or will be borrowed or otherwise obtained for the purpose of making the purchases or effecting the exchange, merger or other acquisition of control, a description of the transaction and the names and identities of the parties involved; [1989, c. 385, §5 (NEW) .]
- C. Any plans or proposals which those persons may have to liquidate the insurer, or the controlling person of the insurer, or to sell its assets or merge it with any person or make any other major change in its business or corporate structure or management; [1989, c. 385, §5 (NEW) .]
- D. The amount of each class of voting securities, or securities which may be converted into voting securities, of the insurer or controlling person, which are beneficially owned, and the amount of each class of voting securities, or securities which may be converted into voting securities, of that insurer or controlling person concerning which there is a right to acquire beneficial ownership, by each person and by each affiliate; [1989, c. 385, §5 (NEW) .]
- E. Information as to all contracts, arrangements or understandings with any person with respect to any securities of the insurer or the controlling person, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees

against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom those contracts, arrangements or understandings have been entered into, and giving the details thereof; [1989, c. 385, §5 (NEW).]

F. A copy of all those agreements, and any amendments thereto, to exchange or otherwise acquire securities or to merge with or otherwise acquire control of the insurer or the controlling person; and [1989, c. 385, §5 (NEW).]

G. Any other information as the superintendent may by rule prescribe as necessary or appropriate in the public interest or for the protection of policyholders. [1989, c. 385, §5 (NEW).]

[1989, c. 385, §5 (NEW) .]

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

[1989, c. 385, §6 (AMD) .]

6. Information as to tender offeror. If the person required to file the statement referred to in subsection 4-A is a partnership, limited partnership, syndicate or other group, the superintendent may require that the information called for by subsection 4-A must be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If the person required to file the statement referred to in subsection 4-A is a corporation, the superintendent may require that the information called for thereby must be given with respect to such corporation and each officer and director thereof and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding securities of such corporation.

[2007, c. 466, Pt. D, §1 (AMD) .]

7. Approval, disapproval of proposed acquisition.

A. The superintendent shall hold a hearing in accordance with the procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, within 30 days after the statement required by subsection 4-A has been filed with the superintendent. The superintendent shall make a determination within 30 days after the conclusion of that hearing. The superintendent shall approve any purchase, exchange, merger or other acquisition of control referred to in subsection 4-A unless the superintendent finds that:

- (1) After the change of control, the domestic insurer could not satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance, or last renewal or continuation of its certificate of authority to do the insurance business which it intends to transact in this State;
- (2) The effect of the purchases, exchanges, merger of a controlling person of the insurer, or other acquisitions of control may be substantially to lessen competition in insurance in this State or tend to create a monopoly therein; or would violate the laws of this State or of the United States relating to monopolies or restraints of trade;
- (3) The financial condition of an acquiring person is such as would jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;

- (4) The plans or proposals which the acquiring person has to liquidate the insurer, to sell its assets or to merge it with any person, or to make any other major change in its business or corporate structure or management, are unfair or prejudicial to policyholders;
- (5) The competence, experience and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders or the public to permit them to do so;
- (6) Any merger of a domestic insurer does not comply with section 3474; or
- (7) The acquisition of control would tend to affect adversely the contractual obligations of the domestic insurer or its ability and tendency to render service in the future to its policyholders and the public. [1989, c. 385, §7 (AMD); 1989, c. 611, §§1, 4 (AMD).]

B. Subparagraphs (3) to (7) do not apply to any change of control if and to the extent that the superintendent, by rule or by order, exempts the same from the provisions of those subparagraphs as not comprehended within the purpose of this subsection. [1989, c. 385, §8 (AMD).]

C. Merger, consolidation or bulk reinsurance as to a domestic insurer shall be effectuated only pursuant to the applicable provisions of chapter 47, subchapter IV, sections 3875, 4108 and 4109, as related to organization and powers of insurers. [1975, c. 356, §1 (NEW).]

D. Violation

- (1) Failure to file the statement required under subsection 4-A constitutes a violation of this chapter.
- (2) Effectuation of or any attempt to effectuate an acquisition of, control of or merger with a domestic insurer within 30 days of the filing of the statement required by subsection 4-A, prior to the superintendent's decision if a hearing is held or after disapproval of such acquisition of control or merger by the superintendent constitutes a violation of this chapter. [2007, c. 466, Pt. D, §2 (AMD).]

[2007, c. 466, Pt. D, §2 (AMD) .]

8. Registration of holding company system insurers.

A. Every insurer that is authorized to do business in this State and that is a member of an insurance holding company system shall register with the superintendent, except that these requirements do not apply to a foreign insurer domiciled in a jurisdiction that in the opinion of the superintendent has adopted by statute or regulation disclosure statements and standards substantially similar to those contained in this chapter. An insurer domiciled in a jurisdiction that has not adopted by statute or regulation disclosure requirements and standards substantially similar to those contained in this section may be treated as a domestic insurer for purposes of this section. Each insurer that is subject to registration under this subsection shall register within 15 days after it becomes subject to registration, and annually thereafter by May 1st, unless the superintendent, for good cause shown, extends the time for registration and then an insurer must file within that extended time. Nothing in this section may be construed to prohibit the superintendent from requesting any authorized insurer that is a member of a holding company system and not subject to registration under this section for a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its state of domicile. Upon request of the insurer or of the insurance regulatory authority of another jurisdiction in which the insurer is authorized to transact insurance, the superintendent at the insurer's expense shall furnish a copy of the registration statement or other information filed by a domestic insurer with the superintendent pursuant to this chapter; [1999, c. 113, §11 (AMD).]

B. Every insurer subject to registration shall file a registration statement on a form provided by the superintendent, which must contain current information about:

- (1) The capital structure, general financial condition, ownership and management of the insurer and of any person controlling the insurer;
- (2) The following transactions currently outstanding between the insurer and its affiliates:

- (a) Loans and other investments, and purchases, sales or exchanges of securities of the affiliate by the insurer or of the insurer by its affiliates;
- (b) Purchases, sales or exchanges of assets;
- (c) Transactions not in the ordinary course of business;
- (d) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
- (e) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;
- (f) Reinsurance agreements; and

(3) Other matters concerning transactions between the insurer and any affiliate as may be required by the superintendent; [2001, c. 72, §5 (AMD) .]

C. No information need be disclosed on the registration statement filed pursuant to this subsection if such information is not material to the purposes of this chapter. Unless the superintendent by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit or investments, involving 1/2 of 1% or less of an insurer's admitted assets as of December 31st immediately preceding shall not be deemed material for purposes of this section; [1975, c. 356, §1 (NEW) .]

D. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting on forms provided by the superintendent all material changes or additions on or before the 15th day of the month following that in which it learns of each such change or addition; [1975, c. 356, §1 (NEW) .]

E. The superintendent shall terminate the registration of any insurer which demonstrates that it is no longer a member of an insurance holding company system; [1975, c. 356, §1 (NEW) .]

F. Two or more affiliated insurers subject to registration hereunder may file a consolidated registration statement or consolidated reports amending their respective consolidated statements or their individual registration statements so long as such consolidated filings correctly reflect the condition of and transactions between such persons; [1975, c. 356, §1 (NEW) .]

G. The superintendent may allow or require any insurer, which is authorized to do business in this State and which is part of an insurance holding company system, to register on behalf of any affiliated insurer which is required to register under paragraph A and to file all information and material required to be filed under this section; [1975, c. 356, §1 (NEW) .]

H. This section shall not apply to any insurer, information or transaction if and to the extent that the superintendent by rule, regulation or order shall exempt the same from the provisions of this section as not comprehended within the purposes thereof; [1975, c. 356, §1 (NEW) .]

I. Any person may file with the superintendent a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and the insurer as well as the bases for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the superintendent disallows the disclaimer. The superintendent shall disallow a disclaimer only after a hearing thereon with notice to all parties in interest, and after making specific findings of fact to support such disallowance. [1975, c. 356, §1 (NEW) .]

[2001, c. 72, §5 (AMD) .]

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

- A. The terms, including any charges or fees for services performed, must be fair and reasonable. [1991, c. 828, §5 (AMD).]
- B. The books, accounts and records of each party must be so maintained as to disclose clearly and accurately the nature and details of the transaction, including all accounting information necessary to support the reasonableness of any charges or fees. [1991, c. 828, §5 (AMD).]
- C. The insurer's surplus to policyholders following any dividends or distributions to stockholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. [1991, c. 548, Pt. B, §3 (AMD).]
- D. Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied. [1991, c. 828, §5 (NEW).]
- E. A domestic insurer must notify the superintendent in writing at least 30 days in advance, unless the superintendent authorizes a shorter period, before entering into any of the following kinds of transactions with any member of its holding company system:
- (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments that are equal to or exceed:
 - (a) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets as of December 31st of the preceeding year or 25% of surplus to policyholders;
 - (b) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st of the preceding year; or
 - (c) With respect to nonprofit hospital and medical service organizations and their 100% controlled affiliates that operate as monoline health insurers or health maintenance organizations, the lesser of 5% of the entity's admitted assets as of December 31st of the preceding year or 25% of surplus to policyholders;
 - (2) Loans or extensions of credit to any person who is not an affiliate, if the insurer makes the loan or extension of credit with the agreement or understanding that the proceeds in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of or make investments in any affiliate of the insurer if the loan, extension of credit, purchase or investment is equal to or exceeds:
 - (a) With respect to nonlife insurers, the lesser of 3% of the insurer's admitted assets as of December 31st of the preceding year or 25% of surplus to policyholders;
 - (b) With respect to life insurers, 3% of the insurer's admitted assets as of December 31st of the preceding year; or
 - (c) With respect to nonprofit hospital and medical service organizations and their 100% controlled affiliates that operate as monoline health insurers or health maintenance organizations, the lesser of 5% of the entity's admitted assets as of December 31st of the preceding year or 25% of surplus to policyholders;
 - (3) Reinsurance agreements or modifications to the agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus to policyholders, as of December 31st of the preceding year, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;
 - (4) Management agreements, cost-sharing arrangements and service contracts that:
 - (a) Delegate authority to effectuate reinsurance;
 - (b) Provide for delegated corporate governance;
 - (c) Provide for servicing of claims liabilities; or

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

(5) Any transactions that are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the superintendent determines that those separate transactions were entered into over any 12-month period for such a purpose, the superintendent may exercise authority under this subsection; and

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

The superintendent shall disapprove any such transaction if it violates the standards of this section or other applicable law or adversely affects the interests of policyholders. The superintendent's failure to make a determination on a proposed transaction within 30 days after it has been submitted for review has the effect of an approval, unless the superintendent has issued a notice of adjudicatory hearing on the proposal in accordance with section 230. [1991, c. 828, §5 (NEW).]

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

[1991, c. 828, §5 (AMD) .]

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

- A. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria; [1975, c. 356, §1 (NEW).]
- B. The extent to which the insurer's business is diversified among the several lines of insurance; [1975, c. 356, §1 (NEW).]
- C. The number and size of the risks insured in each line of business; [1975, c. 356, §1 (NEW).]
- D. The extent of the geographical dispersion of the insurer's insured risks; [1975, c. 356, §1 (NEW).]
- E. The nature and extent of the insurer's reinsurance program; [1975, c. 356, §1 (NEW).]
- F. The quality, diversification and liquidity of the insurer's investment portfolio; [1975, c. 356, §1 (NEW).]
- G. The recent past and projected future trend in the size of the insurer's surplus as regards policyholders; [1993, c. 313, §10 (AMD).]
- H. The quality and liquidity of investments in subsidiaries or affiliates. The department may discount any such investment or treat any investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders whenever the investment so warrants; [1993, c. 313, §10 (AMD).]
- I. The adequacy of the insurer's reserves; [1993, c. 313, §10 (AMD).]
- J. The surplus as regards policyholders maintained by other comparable insurers in respect of the factors set out in this subsection; and [1993, c. 313, §10 (AMD).]

K. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items. [1993, c. 313, §10 (NEW).]

[1993, c. 313, §10 (AMD) .]

11. Dividends and distributions.

[1993, c. 313, §11 (RP) .]

11-A. Extraordinary dividends. For purposes of this subsection, an extraordinary dividend or distribution is any dividend or distribution that exceeds the greater of:

A. Ten percent of the insurer's surplus to policyholders as of December 31st of the preceding year; or [1993, c. 313, §12 (NEW).]

B. The net gain from operations for the 12-month period ending December 31st of the preceding year. [1993, c. 313, §12 (NEW).]

In addition to the provisions of paragraphs A and B, any dividend or distribution declared at any time within 5 years following any acquisition of control of a domestic insurer or by any person controlling that insurer is an extraordinary dividend if it has not been approved by a number of continuing directors equal to a majority of the continuing directors in office immediately preceding that acquisition of control.

A pro rata distribution of any class of the insurer's own securities is not considered an extraordinary dividend or distribution for purposes of this section. An insurer subject to registration under this section may pay an extraordinary dividend or make any other extraordinary distribution to its stockholders upon the expiration of 60 days from the time the superintendent is notified of the declaration if within that period the superintendent has not disapproved the payment or upon the superintendent's approval of that payment within the 60-day period. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the superintendent's approval and such a declaration does not confer any rights to stockholders until the superintendent has approved the payment of the dividend or distribution or the superintendent has not disapproved that payment within the 60-day period. The insurer's surplus following any dividends or distributions to shareholders under this subsection must be reasonable in relation to the insurer's outstanding liabilities and adequate to meet the insurer's financial needs. An extraordinary dividend or distribution that is permissible under statutory terms and conditions in the insurer's state of domicile is deemed to meet the requirements of this section if the value of that dividend or distribution does not materially exceed the value that would be permissible under this section.

[1999, c. 113, §12 (AMD) .]

11-B. All other dividends and distributions. For purposes of this subsection, unassigned funds exclude an amount equal to 50% of the net of unrealized capital gains and unrealized capital losses reduced by that portion of the asset valuation reserve attributable to equity investments, except that such an amount can not serve to increase unassigned funds. An insurer subject to registration under this section may pay from its unassigned funds, dividends and distributions, other than those defined in subsection 11-A, if the insurer has notified the superintendent within 5 days following the declaration of any dividend under this subsection and at least 10 days prior to the payment of any dividend under this subsection. A dividend or distribution otherwise limited under this subsection may be paid by a foreign insurer to its stockholders if the insurer's domiciliary insurance regulatory authority has given approval prior to that payment. A domestic insurer may pay a dividend or distribution to its stockholders from other than unassigned funds, upon the expiration of 60 days from the time the superintendent is notified of the declaration, if the superintendent has not within that period disapproved the payment or upon the superintendent's approval of that payment within the 60-day period. An insurer's surplus following any dividends or distributions paid to shareholders under this subsection must be reasonable in relation to the insurer's outstanding liabilities and adequate to meet the insurer's financial needs. The superintendent shall review at least annually dividends and distributions declared or paid by an insurer under this subsection. The superintendent shall issue an order restricting or disallowing the payment of dividends and distributions by an insurer upon a determination by

the superintendent that the insurer's surplus is not of a maintained value reasonable in relation to the insurance company's outstanding liabilities and is inadequate to that company's financial needs or a determination that the insurer's financial condition constitutes a condition hazardous to policyholders, claimants or the public.

[1993, c. 313, §12 (NEW) .]

12. Verification of information.

A. Subject to the limitations contained in this subsection and in addition to the powers which the superintendent has under chapter 3 relating to the examination of insurers, the superintendent shall also have the power to order any insurer registered under this chapter to produce such records, books or papers in the possession of the insurer or affiliates as shall be necessary to verify the information required to be contained in the insurer's registration statement and any additional information pertinent to transactions between the insurer and affiliates. Such books, records, papers and information shall be examined in the manner prescribed in chapter 3 relating to the time, place and expense of examination, except that expenses incurred by the superintendent in examining affiliated companies not defined as "insurer", shall be borne by the person examined subject to the limitations of section 228, subsection 1. No credit shall be taken for any equity value of an affiliated company which inures to a parent insurer and comprises a portion of that insurer's admitted assets; [1975, c. 356, §1 (NEW) .]

B. The purposes of the examination shall be to verify the registration statement and any addition or amendment thereto made or required pursuant to this chapter. [1975, c. 356, §1 (NEW) .]

C. A member of an insurer's holding company system shall comply fully and accurately with a request by the insurer to provide it with information necessary to respond to an examination request by the superintendent pursuant to this section. [1999, c. 113, §13 (NEW) .]

[1999, c. 113, §13 (AMD) .]

13. Confidential communications. Any registration statement, tender offer, or request or invitation for tenders, advertisement making a tender offer or requesting or inviting tenders of voting securities, option to purchase, agreement to merge or consolidate, or contract to manage filed pursuant to this section including any duly authenticated copy thereof in the possession of any person subject to this section shall be a confidential communication, shall not be subject to a subpoena and shall not be made public by the superintendent without prior written consent of the insurer, unless the superintendent determines that the interests of policyholders or the public will be served by the publication thereof, in which event the superintendent may make a public record or publish all or any part thereof in such manner as the superintendent may deem appropriate. The distribution of reports on examination referred to in section 227 shall not be regarded as confidential communications and shall be excepted from the confidential requirements of this subsection.

[1989, c. 385, §9 (AMD) .]

14. Penalties.

A. Any person who willfully violates any of the provisions of this section, or the rules and regulations promulgated by the superintendent under authority thereof, or any person who willfully, in a filing pursuant to subsection 4-A or a registration pursuant to subsection 8, paragraph B, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, must upon conviction be fined not more than \$1,000 or imprisoned not more than 3 years, or both; [2007, c. 466, Pt. D, §3 (AMD) .]

B. Any person who is found, after notice and opportunity to be heard, to have willfully violated any of the provisions of this section or any rule or regulations promulgated by the superintendent under the authority thereof, shall, in addition to any other penalty provided by law, forfeit to this State the sum of \$50 for a first violation and an additional sum of \$25 for each day such violation shall continue; [1975, c. 356, §1 (NEW) .]

C. In addition to other remedies and penalties provided in this section or otherwise available under the laws of this State, any violation of this section is hereby declared to be an unfair method of competition or an unfair or deceptive act and practice in the business of insurance subject to the provisions of chapter 23 and in addition, the superintendent may, after notice and hearing:

- (1) Refuse to issue, refuse to renew or reissue, revoke or suspend for a period not exceeding one year any license or certificate of authority issued or to be issued to any person found to have violated any of the provisions of this section;
- (2) After notice and hearing impose by order and administrative forfeiture upon such person, enforceable by such revocation, suspension or refusal to issue, renew or reissue of any such license or licenses or otherwise pursuant to the law of this State, in an amount not to exceed \$100 for each such violation and for each day's continuance thereof;
- (3) Proceed in a court of competent jurisdiction within or without this State against such person, if an insurer, upon the applicable grounds provided for the rehabilitation, conservatorship or liquidation of an insurer or for an injunction to prevent a violation of this section or to reverse or hold invalid any transaction made in violation of this section;
- (4) Issue such administrative orders to require compliance with this section, including the filing of evidence of compliance and periodic reporting as to such compliance, enforceable by such revocation, suspension or refusal to issue, renew or reissue of any such license or licenses or otherwise pursuant to the laws of this State; or
- (5) Any or all of the foregoing. [1975, c. 356, §1 (NEW).]

[2007, c. 466, Pt. D, §3 (AMD) .]

14-A. Recovery.

A. If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under that order has the right to recover on behalf of the insurer:

- (1) From any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of any distributions other than distributions of shares of the same class of stock paid by the insurer on its capital stock; or
- (2) Any payment in the form of a bonus, termination settlement or extraordinary lump-sum salary adjustment made by the insurer or by any subsidiary of that insurer to a director, officer or employee when the distribution or payment pursuant to this subparagraph or subparagraph (1) is made at any time during the one year preceding the petition for liquidation, conservation or rehabilitation, subject to the limitations of paragraphs B, C and D. [1993, c. 313, §13 (NEW) .]

B. Such a distribution is not recoverable if the parent corporation or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution could adversely affect the ability of the insurer to fulfill its contractual obligations. [1993, c. 313, §13 (NEW) .]

C. Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time distributions were paid is liable up to the amount of distributions or payments under paragraph A that the person received. Any person who otherwise controlled the insurer at the time the distributions were declared is liable up to the amount of the distributions the person would have received if that person had been paid immediately. If 2 or more persons are liable for the same distributions, those persons are jointly and severally liable. [1993, c. 313, §13 (NEW) .]

D. The maximum amount recoverable under this subsection is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds. [1993, c. 313, §13 (NEW) .]

E. To the extent that any person liable under paragraph C is insolvent or fails to pay claims due pursuant to paragraph C, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid, is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.
[1993, c. 313, §13 (NEW).]

[1993, c. 313, §13 (NEW) .]

15. Additional powers. The powers, remedies, procedures and penalties provided in this section shall be in addition to, and not in limitation of, any other powers, remedies, procedures and penalties otherwise provided by law.

[1975, c. 356, §1 (NEW) .]

16. Separability of provisions. If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and for this purpose the provisions of this section are separable.

[1975, c. 356, §1 (NEW) .]

17. Jurisdiction of courts; service of process. Any person obtaining or attempting to obtain control of a domestic insurer is subject to the jurisdiction of the courts of this State and to service of process in the manner provided in this Title. Unless a valid appointment of an agent for service of process is on file with the superintendent pursuant to another provision of this Title, the person is deemed to have appointed the superintendent as agent for service of process, and service may be made in the same manner as provided in section 2105.

[1999, c. 113, §14 (AMD) .]

18. Rules. The superintendent may, upon notice and opportunity for all interested persons to be heard, adopt reasonable rules as necessary to carry out and effectuate provisions of this section.

[1999, c. 113, §14 (AMD) .]

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

[1975, c. 356, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1975, c. 356, §1 (RPR). 1977, c. 694, §388 (AMD). 1983, c. 394, §§1,2 (AMD). 1987, c. 399, §1 (AMD). 1989, c. 385, §§1-9 (AMD). 1989, c. 611, §§1,4 (AMD). 1991, c. 37, §§1,2 (AMD). 1991, c. 548, §B3 (AMD). 1991, c. 828, §§3-6 (AMD). 1993, c. 313, §§7-13 (AMD). 1999, c. 113, §§8-14 (AMD). 2001, c. 72, §§4,5 (AMD). 2007, c. 466, Pt. D, §§1-3 (AMD).

24-A §223. CONDUCT OF EXAMINATION; ACCESS TO RECORDS; CORRECTION

1. Whenever the superintendent determines to examine the affairs of any person, the superintendent shall designate one or more examiners and instruct them as to the scope of the examination. The superintendent may designate an examiner outside the bureau if the designee is a competent public accountant or an actuary who is a member of the American Academy of Actuaries and is in active practice. The examiner shall, upon demand, exhibit the examiner's official credentials to the person under examination.

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

- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed. [1991, c. 828, §7 (NEW).]

[1991, c. 828, §7 (AMD) .]

2. The superintendent shall conduct each examination in an expeditious, fair and impartial manner, consistent with current guidelines and procedures adopted from time to time by the National Association of Insurance Commissioners and published in its Examiners' Handbook.

[1993, c. 313, §14 (AMD) .]

3. Upon any such examination, the superintendent, or the examiner if specifically so authorized in writing by the superintendent, shall have power to administer oaths, and to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.

[1973, c. 585, §12 (AMD) .]

4. Every person being examined, its officers, attorneys, employees, agents and representatives shall make freely available to the superintendent or designated examiners the accounts, records, documents, files, information, assets and matters of that person in that person's possession or control relating to the subject of the examination and shall facilitate the examination. The refusal of any insurer to submit to examination is grounds for revocation or refusal of a license or renewal license.

[1991, c. 828, §8 (AMD) .]

5. If the superintendent or examiner finds any accounts or records to be inadequate, or inadequately kept or posted, the superintendent may employ experts to reconstruct, rewrite, post or balance them at the expense of the person being examined, if such person has failed to maintain, complete or correct such records or accounting after the superintendent or examiner has given him written notice and a reasonable opportunity to do so.

[1973, c. 585, §12 (AMD) .]

6. Neither the superintendent nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices or place of such person, except with the written consent of such person in advance of such removal or pursuant to an order of court duly obtained. This provision shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document, or file.

[1973, c. 585, §12 (AMD) .]

7. Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section shall, upon conviction thereof, be subject to a fine of not more than \$2,500 or imprisonment for less than a year, or by both.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 828, §§7,8 (AMD). 1993, c. 313, §14 (AMD).

24-A §224. APPRAISAL OF ASSET

1. If the superintendent considers it necessary to value any asset involved in such an examination, the superintendent may appoint one or more competent disinterested persons as appraisers with authority to appraise the real property of an insurer or any real property on which it holds security.

[1991, c. 828, §9 (AMD) .]

2. Any such appraisal shall be expeditiously made, and a copy thereof furnished to the superintendent and to the person being examined.

[1973, c. 585, §12 (AMD) .]

3. The reasonable expense of the appraisal shall be borne by the person being examined.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 828, §9 (AMD).

24-A §225. EXAMINATION REPORT; CONTENTS; PRIMA FACIE EVIDENCE IN CERTAIN PROCEEDINGS

1. Upon completion of an examination, the examiner in charge shall make a true report thereof which shall comprise only facts appearing upon the books, records or other documents of the person examined, or from an appraisal of assets, or as ascertained from the sworn testimony of its officers or agents or other individuals examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts. The report of examination shall be verified by the oath of the examiner in charge thereof.

[1969, c. 132, §1 (NEW) .]

2. Such a report of examination of an insurer so verified shall be prima facie evidence in any delinquency proceeding against the insurer, its officers, employees or agents upon the facts stated therein, and whether or not the report has then been filed in the bureau as provided in section 226.

[1973, c. 585, §12 (AMD) .]

3. All working papers, recorded information, documents and copies of any of these media produced by, obtained by or disclosed to the superintendent or any other person in the course of an examination made under this chapter must be given confidential treatment, are not subject to subpoena and may not be made public by the superintendent or any other person, except to the extent provided in sections 226 and 227. Access may be granted to the National Association of Insurance Commissioners. Any parties granted access must agree in writing prior to receiving the information to provide the information with the same confidential treatment as required by this section unless prior written consent of the insurer to which the information pertains has been obtained.

[1991, c. 828, §10 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 828, §10 (AMD).

24-A §226. EXAMINATION REPORTS; DISTRIBUTION, HEARING; AS EVIDENCE

1. Within 60 days after completion of the examination, the superintendent shall deliver a copy of the verified examination report to the person examined, together with a notice affording that person 20 days or an additional reasonable period as the superintendent for good cause may allow, within which to review the report and recommend changes to the report.

[1999, c. 113, §15 (AMD) .]

2. If requested by the person examined, within the period allowed under subsection 1, or if determined advisable by the superintendent without such request, the superintendent shall hold a hearing relative to the report and may not file the report in the bureau until after the hearing and the superintendent's order on the report; except that the superintendent may furnish a copy of the report to the Governor, Attorney General or Treasurer of State pending final decision and, if the copies are so furnished, they are deemed confidential information until the other requirements of this section with regard to examination reports have been satisfied. In lieu of convening a hearing, the superintendent may reopen the examination or, if supported by the information obtained, may adopt some or all of the modifications proposed by the person examined.

[1999, c. 113, §15 (AMD) .]

3. If no such hearing has been requested or held, the examination report, with such modifications, if any, thereof as the superintendent deems proper, shall be accepted by the superintendent and filed in the bureau upon expiration of the review period provided for in subsection 1. The report shall in any event be so accepted and filed within 6 months after final hearing thereon.

[1973, c. 585, §12 (AMD) .]

4. The superintendent shall forward to the person examined a copy of the examination report as filed, together with any recommendations or statements relating thereto which he deems proper.

[1973, c. 585, §12 (AMD) .]

5. If the report is as to examination of a domestic insurer, a copy of the report, or a summary thereof approved by the superintendent, when filed in the bureau, together with the recommendations or statements of the superintendent or his examiner, shall be presented by the insurer's chief executive officer to the insurer's board of directors or similar governing body at a meeting thereof which shall be held within 30 days next following receipt of the report in final form by the insurer. A copy of the report shall also be furnished by the secretary of the insurer, if incorporated, or by the attorney-in-fact, if a reciprocal insurer, to each member of the insurer's board of directors or board of governors, if a reciprocal insurer, and the certificate of the secretary or attorney-in-fact that a copy of the examination report has been so furnished shall be deemed to constitute knowledge of the contents of the report by each such member.

[1973, c. 585, §12 (AMD) .]

6. The report when so filed in the bureau shall be admissible in evidence in any action or proceeding brought by the superintendent against the person examined, or against its officers, employees or agents. In any such action or proceeding, the superintendent or his examiners may at any time testify and offer proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished or filed in the bureau.

[1973, c. 585, §12 (AMD) .]

7. The Maine Insurance Code does not prevent and may not be construed to prohibit the superintendent from disclosing the content of an examination report, preliminary examination report or the results, or any matter related to a report or results, to the Bureau of Insurance of this State or the insurance department of any other state or country, or to law enforcement officials of this State, any other state agency or the federal government at any time. Any such disclosure must be subject to a protective order of confidentiality issued by the superintendent.

[1991, c. 828, §11 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 425, §1 (AMD). 1973, c. 585, §12 (AMD). 1991, c. 828, §11 (AMD). 1999, c. 113, §15 (AMD).

24-A §227. EXAMINATION REPORT

The report of examination of those persons, partnerships, corporations or other business associations that are subject to examination by the superintendent as provided for in sections 221 and 222 shall, upon satisfaction of the requirements of section 226 and so long as no court of competent jurisdiction has stayed its publication, be filed in the bureau as a public record, except for any information relating to an individual insured or individual applicant for insurance, which is deemed confidential. [1991, c. 828, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1973, c. 425, §2 (RPR). 1991, c. 828, §12 (AMD).

24-A §228. EXAMINATION EXPENSE

1. The expense of examination of an insurer or of any person regulated under section 222, shall be borne by the person examined. Such expense shall include only the reasonable and proper hotel and travel expenses of the superintendent and his examiners and assistants, including expert assistance, and examiners furnished for the purpose by other states in which the insurer is authorized to transact insurance, reasonable compensation as to such examiners and assistants and incidental expenses as necessarily incurred in the

examination. As to expense and compensation, involved in any such examination the superintendent may give due consideration to scales and limitations recommended by the National Association of Insurance Commissioners and outlined in the examination manual sponsored by that association.

[1975, c. 356, §2 (AMD) .]

2. Such person examined shall promptly pay to the superintendent the expenses of the examination upon presentation by the superintendent of a reasonably detailed written statement thereof. Any insurer with total admitted assets as of the end of the preceding calendar year of \$50,000,000 or greater must comply with this section in satisfaction of the examination assessment.

[1997, c. 660, Pt. B, §1 (AMD) .]

3. Except that in lieu of payment of examination expense as above required, a domestic insurer with total admitted assets of less than \$50,000,000 has the right, at its option, of making an annual payment to the superintendent of an examination expense allotment in an amount equal to .001 of its total admitted assets as of the end of the preceding calendar year, which must be made on March 1st with the filing of the insurer's annual statement with the superintendent; or, if the insurer's admitted assets exceed \$10,000,000, but do not exceed \$50,000,000, the insurer has the right, at its further option, to pay to the superintendent with respect to any examination the lesser of:

A. The expense of the examination as determined pursuant to subsections 1 and 2 above; or [1969, c. 132, §1 (NEW) .]

B. An annual amount equal to .001 of the first \$10,000,000 of the insurer's admitted assets plus .0002 of the remainder of such assets, limited, however, to insurers whose admitted assets do not exceed \$25,000,000 as such assets are shown by the insurer's financial statement filed with the superintendent for the year-end next preceding the commencement of the examination, such payment to be made on March 1st with the filing of the insurer's annual statement with the superintendent; or [1997, c. 660, Pt. B, §2 (AMD) .]

C. If the admitted assets of the insurer exceed \$25,000,000, but do not exceed \$50,000,000, an annual payment of an examination expense allotment of an amount equal to .001 of the first \$10,000,000 of the insurer's admitted assets, plus .0002 of the next \$15,000,000 of such assets, plus .000175 of the remainder of such assets as are shown by the insurer's financial statement filed with the superintendent for the preceding calendar year. The payment must be made on March 1st with the filing of the insurer's annual statement with the superintendent. [1997, c. 660, Pt. B, §2 (AMD) .]

[1997, c. 660, Pt. B, §2 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §3 (AMD). 1973, c. 394, (AMD).
1973, c. 585, §12 (AMD). 1975, c. 356, §2 (AMD). 1975, c. 467, (AMD).
1997, c. 660, §§B1,2 (AMD).

24-A §229. ADMINISTRATIVE PROCEDURES; HEARINGS IN GENERAL

1. The superintendent may hold a hearing without request of others for any purpose within the scope of this Title.

[1973, c. 585, §12 (AMD) .]

2. The superintendent shall hold a hearing:

A. If required by any provision of this Title, or [1969, c. 132, §1 (NEW) .]

B. Upon written application for a hearing by a person aggrieved by any act or impending act, or by any report or order of the superintendent, other than an order for the holding of a hearing, or order on a hearing, or pursuant to such order, of which hearing such person had notice. [1987, c. 220, §1 (AMD).]

3. Any such application must be filed with the superintendent within 30 days after such person knew or reasonably should have known of such act, impending act, failure, report or order, unless a different period is provided for by other applicable law, and in which case such other law shall govern. The application shall briefly state the respects in which the applicant is so aggrieved, together with the ground to be relied upon for the relief to be demanded at the hearing. The superintendent may require that the application be signed and sworn to.

[1987, c. 220, §2 (AMD) .]

4. If the superintendent finds that the application is timely and made in good faith, that the applicant would be so aggrieved if his grounds are established and that such grounds otherwise justify the hearing, he shall hold the hearing within 30 days after filing of the application, or within 30 days after the application has been sworn to, whichever is the later date, unless in either case the hearing is postponed by mutual consent. The hearing shall be held in conformity with the provisions contained in the Maine Administrative Procedure Act, Title 5, chapter 375.

[1977, c. 694, §389 (AMD) .]

5. Failure to hold the hearing upon application therefor of a person entitled thereto as provided shall constitute a denial of the relief sought, and shall be the equivalent of a final order of the superintendent on hearing for the purpose of an appeal under section 236.

[1973, c. 585, §12 (AMD) .]

6. Pending the hearing and decision thereon, the superintendent may suspend or postpone the effective date of his previous action.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1977, c. 694, §389 (AMD). 1987, c. 220, §§1,2 (AMD).

24-A §230. NOTICE OF HEARING

1. Notice of hearing shall be given in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375.

[1981, c. 501, §38 (RPR) .]

2. Except when a different period is expressly provided by the Maine Administrative Procedure Act, Title 5, chapter 375, or by this Title, the superintendent shall give written notice of hearing not less than 14 days in advance. Notice of hearing may be waived and the hearing held at a time mutually fixed by the superintendent and the parties.

[1981, c. 501, §38 (RPR) .]

3.

[1981, c. 501, §38 (RP) .]

4.

[1981, c. 501, §38 (RP) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1977, c. 694, §§390-392 (AMD). 1981, c. 501, §38 (RPR).

24-A §231. CONDUCT OF HEARING

1. The superintendent may hold a hearing in Augusta or any other place of convenience to parties and witnesses, as the superintendent determines. The superintendent or the superintendent's designee shall preside at the hearing and shall expedite the hearing and all procedures involved therein. Adjudicatory hearings shall be governed by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

[1989, c. 269, §6 (AMD) .]

2.

[1989, c. 269, §6 (RP) .]

3.

[1989, c. 269, §6 (RP) .]

4.

[1989, c. 269, §6 (RP) .]

5. The hearing shall be public, unless the superintendent or hearing officer determines that a private hearing would be in the public interest, in which case the hearing shall be private, subject to Title 1, section 405, subsection 6.

[1989, c. 269, §6 (AMD) .]

6.

[1989, c. 269, §6 (RP) .]

7. The validity of any hearing held in accordance with the notice thereof, or waiver of notice, shall not be affected by the failure of any person to attend or remain in attendance.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1977, c. 694, §§393-395 (AMD). 1989, c. 269, §6 (AMD).

24-A §232. WITNESSES AND DOCUMENTARY EVIDENCE

1. As to the subject of any examination, investigation or hearing being conducted by the superintendent, the superintendent may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, or take depositions; and by subpoena duces tecum may require the production of documentary and other evidence. Any delegation by the superintendent of power of subpoena shall be in writing. The procedures of Title 5, section 9060, subsection 1, shall also apply to the issuance of subpoenas.

[1989, c. 269, §7 (AMD) .]

2. Every person subpoenaed to appear at any such hearing, examination or investigation shall obey the subpoena, testify truthfully, conduct himself with decorum and in no way obstruct the proceeding or purpose thereof.

[1969, c. 132, §1 (NEW) .]

3. Witnesses shall be entitled to the same fees and allowances as witnesses in Superior Court; except that no insurer, agent, broker or other person subject to this Title who is a subject of such proceeding, and no officer, director or employee of any of the foregoing, shall be entitled to witness or mileage fees. No person shall be excused from attending and testifying in obedience to a subpoena on the ground that the proper witness fee was not tendered or paid, unless the witness shall have demanded such payment as a condition precedent to attending the hearing, examination or investigation and unless such demand shall not have been complied with.

[1969, c. 132, §1 (NEW) .]

4. Any individual knowingly testifying falsely under oath or making a false affirmation, as to any matter material to any such examination, investigation or hearing, shall upon conviction thereof be guilty of perjury.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1989, c. 269, §7 (AMD).

24-A §233. WITNESSES; DISCIPLINARY PROCEEDINGS

1. If any individual without reasonable cause fails to appear when summoned as a witness, or refuses to answer a lawful and pertinent question, or refuses to produce documentary evidence when directed to do so by the superintendent, or departs himself in a disrespectful or disorderly manner at the inquiry, or obstructs the proceedings by any means, whether or not in the presence of the superintendent or his designee, he is guilty of contempt and may be dealt with as provided in subsection 2.

[1973, c. 585, §12 (AMD) .]

2. The superintendent or his designee, as the case may be, may file a complaint in the Superior Court, setting forth under oath the facts constituting the contempt and requesting an order returnable in not less than 2 nor more than 5 days, directing the alleged contemner to show cause before the court why he should not be punished for contempt. Upon the return of such order, the court shall examine the alleged contemner

under oath and the alleged contemner shall have an opportunity to be heard. If the court determines that the respondent has committed any alleged contempt, the court shall punish the offender as if the contempt had occurred in an action arising in or pending in such court.

[1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD).

24-A §234. WITNESSES; IMMUNITY FROM PROSECUTION

If any individual asks to be excused from testifying or from producing evidence of any kind in connection with any examination, hearing or investigation being conducted by the superintendent on the ground that the testimony or evidence required of that individual may tend to incriminate the individual or subject the individual to a penalty or forfeiture, and the Attorney General directs that individual to give testimony or produce evidence, the individual must comply with the directive. No testimony or other evidence so compelled, or any information directly or indirectly derived from that testimony or other evidence, may be used against the offering individual in any criminal, juvenile or civil violation proceeding, except that the testimony or other evidence may be used in a prosecution for perjury, false swearing, contempt or otherwise failing to comply with the directive to testify or produce evidence, or in a proceeding in which the individual has waived the immunity or privilege. [1989, c. 269, §8 (NEW).]

1.

[1989, c. 269, §8 (RP) .]

2.

[1989, c. 269, §8 (RP) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1989, c. 269, §8 (RPR).

24-A §235. ORDER ON HEARING

1. In the conduct of hearings under this Title and making his order thereon, the superintendent shall act in a quasi-judicial capacity.

[1973, c. 585, §12 (AMD) .]

2. Within 30 days after termination of a hearing, or of any rehearing thereof or reargument thereon, or within such other period as may be specified in this Title as to particular proceedings, or within such further reasonable period as the superintendent for good cause may require, the superintendent shall make his order on hearing covering matters involved in such hearing, and give a copy of the order to each party to the hearing in the same manner as notice of the hearing was given to such party; except that as to hearings held with respect to merger, consolidation, bulk reinsurance, conversion, affiliation or change of control of a domestic insurer as provided in chapter 47 (organization and corporate procedures of domestic stock and mutual insurers), where notice of the hearing was given to all stockholders and/or policyholders of an insurer involved, the superintendent is required to give a copy of the order on hearing to the corporation and insurer parties, to intervening parties, to a reasonable number of such stockholders or policyholders as representative of the class, and to other parties only upon written request of such parties.

[1973, c. 585, §12 (AMD) .]

3. The order shall contain:

- A. A concise statement of facts found by the superintendent upon the evidence adduced at the hearing; [1973, c. 585, §12 (AMD).]
- B. A concise statement of the superintendent conclusions from the facts so found; [1973, c. 585, §12 (AMD).]
- C. His order, and the effective date thereof; and [1969, c. 132, §1 (NEW).]
- D. Citation of the provisions of this Title upon which the order is based; but failure to so designate a particular provision shall not deprive the superintendent of the right thereafter to rely thereon. [1973, c. 585, §12 (AMD).]
- E. Notice of the party's right to appeal or review of the order, of the action required for appeal and of the time within which the action shall be taken in order to exercise the right. [1977, c. 694, §396 (NEW).]

[1977, c. 694, §396 (AMD) .]

4. The order may affirm, modify or rescind action theretofore taken or may constitute taking of new action within the scope of the notice of the hearing.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1977, c. 694, §396 (AMD).

24-A §236. APPEAL FROM THE SUPERINTENDENT

1. In general, judicial review of actions taken by the superintendent or his representatives shall occur in conformity with the provisions set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII.

[1977, c. 694, §397 (RPR) .]

2. An appeal from the superintendent shall be taken only from an order on hearing, or as to a matter on which the superintendent has failed to hold a hearing after application thereof under section 229, or regarding a matter as to which the superintendent has failed to issue an order after hearing as required by section 235.

[1977, c. 694, §397 (RPR) .]

3. Any person who was a party to the hearing may appeal from an order of the superintendent within 30 days after receipt of notice. Any person not a party to the hearing whose interests are substantially and directly affected and who is aggrieved by an order of the superintendent may appeal within 40 days from the date the decision was rendered. If the appeal is taken from the superintendent's failure or refusal to act, the petition for review shall be filed within 6 months of the expiration of the time within which the action should reasonably have occurred.

[1977, c. 694, §397 (RPR) .]

4.

[1989, c. 269, §9 (RP) .]

5.

[1989, c. 269, §9 (RP) .]

6.

[1989, c. 269, §9 (RP) .]

7.

[1989, c. 269, §9 (RP) .]

8.

[1989, c. 269, §9 (RP) .]

9.

[1989, c. 269, §9 (RP) .]

10.

[1989, c. 269, §9 (RP) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §4 (AMD). 1973, c. 585, §12 (AMD). 1977, c. 694, §397 (RPR). 1989, c. 269, §§9,10 (AMD).

24-A §237. ASSESSMENT FOR EXPENSE OF MAINTAINING THE BUREAU OF INSURANCE

The expense of maintaining the Bureau of Insurance must be assessed annually by the Superintendent of Insurance against all insurers and health maintenance organizations licensed to do business in this State in proportion to their respective direct gross premium written on business in this State during the year ending December 31st immediately preceding the fiscal year for which assessment is made. The annual assessment upon all insurers must be applied to the budget of the bureau for the fiscal year commencing July 1st. For any biennial period, total assessment must be in an amount not exceeding .002 of total direct premiums written. When the superintendent calculates the amount of the annual assessment, the superintendent must consider, among other factors, the staffing level required to administer the responsibilities of the bureau. [1997, c. 79, §2 (AMD) .]

1. Expense of examination. The expense of examination of an insurer or of any person regulated by section 222 continues to be borne by the person examined. The expense of examination consistent with section 228 may not be considered when determining the assessment for maintaining the Bureau of Insurance.

[1997, c. 79, §2 (AMD) .]

2. Direct gross premium. Based on the annual statement filed by each insurer pursuant to section 423 or health maintenance organization pursuant to section 4208, the superintendent shall ascertain the amount of direct gross premium it received in that year. For the purpose of this section only, "direct gross premiums" means and includes policy, membership, annuity considerations and other fees, policy dividends applied in payment for insurance and other considerations for insurance received by insurers or health maintenance

organizations, on account of policies or contracts covering subjects of insurance, or risks located, resident or to be performed in this State, after deducting return premiums or dividends actually returned or credited to policyholders.

[1997, c. 79, §2 (AMD) .]

3. Minimum assessment. In any year in which an insurer or health maintenance organization has no direct gross premium writings in this State, or in which direct gross premium written is not sufficient to produce at the rate prescribed an amount equal to or in excess of \$100, the minimum assessment payable by any insurer or health maintenance organization is \$100.

[1997, c. 79, §2 (AMD) .]

4. Notification of assessment. On or before July 1st of each year, the superintendent shall forward to each insurer or health maintenance organization an itemized bill of the amount due for the annual assessment, the amount due for filing of the annual statement pursuant to sections 423 and 601 and the amount due for the certificate of authority annual continuation fee pursuant to section 601. When an extension of the time of filing an annual statement is granted for good cause by the superintendent pursuant to section 423, subsection 1, or section 4208, the insurer or health maintenance organization must be assessed a provisional amount of \$100. Upon receipt of the insurer's or health maintenance organization's annual statement, the provisional assessment must be adjusted to effect a final assessment for the fiscal year at the same rate utilized by the superintendent and levied upon all insurers by the general assessment of July 1st.

[1997, c. 79, §2 (AMD) .]

5. Time of payment. Time of payment for the annual assessment, the annual statement filing fee and the annual continuation fee must be made on or before August 10th.

[1995, c. 544, §1 (AMD) .]

6. Revocation or suspension. If the annual assessment, annual statement filing fee or annual continuation fee is not paid to the superintendent on or before the prescribed date, the license or certificate of authority of an insurer or health maintenance organization to transact business in this State may be revoked or suspended by the superintendent after a hearing or upon waiver of hearing by the insurer or health maintenance organization until the annual assessment, annual statement filing fee and annual continuation fee is paid. A reinstatement of certificate of authority may not be made prior to payment of the balance of the annual assessment, annual statement filing fee or continuation fee.

[1997, c. 79, §2 (AMD) .]

7. Recalculation of assessment. Immediately following the close of the fiscal year ending June 30, 1987, and at the close of each 2nd succeeding fiscal year, the superintendent shall recalculate the assessment made against each party assessed after giving recognition to actual expenditures of the bureau during the preceding biennial period. On or before October 1st, the superintendent shall render to each party assessed a statement showing the difference between their respective recalculated assessment and the amount they had paid with respect to the preceding biennium. Any overpayment of annual assessment resulting from complying with the requirements of this section must be refunded or, at the option of the assessed party, applied as a credit against the assessment for the succeeding fiscal year. Any overpayment of \$100 or less must be applied as a credit against the assessment for the succeeding fiscal year.

[1997, c. 79, §2 (AMD) .]

8. Deposit with Treasurer of State. The superintendent shall deposit all payments made pursuant to this section with the Treasurer of State. The money must be used for the sole purpose of paying the expenses of the Bureau of Insurance.

[1997, c. 79, §2 (AMD) .]

9. Exclusions. This section does not apply to fraternal benefit societies, as defined in section 4101; assessment mutual insurance companies, as defined in section 3603; and joint underwriting associations, subject to section 2322.

[1997, c. 79, §2 (AMD) .]

10. Applicability. This section applies with respect to insurers for fiscal years commencing on or after July 1, 1986 and to health maintenance organizations for fiscal years commencing on or after July 1, 1997.

[1997, c. 79, §2 (AMD) .]

SECTION HISTORY

1985, c. 446, §2 (NEW). 1991, c. 334, §§3,4 (AMD). 1993, c. 313, §15 (AMD). 1995, c. 544, §§1,2 (AMD). 1997, c. 79, §2 (AMD).

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