

CHAPTER 49**CONTINUITY OF MANAGEMENT****§3551. Purpose**

Enemy attack could seriously disrupt the management functions of an insurance organization. Prompt resumption of insurance operations following attack is in the public interest and requires provisions for the continuity of management. It is essential that advance corporate action be taken to provide for the reconstitution of the board of directors or substitute governing body, for the succession of key personnel and for the designation of alternate headquarters. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

§3552. Definitions; interpretation of chapter

When used in this chapter, the following terms mean and include the following. [RR 2009, c. 2, §69 (COR).]

1. Acting director. Acting director means an acting director elected or appointed in accordance with this chapter.

[PL 1969, c. 132, §1 (NEW).]

2. Acting officer. Acting officer means an acting officer appointed in accordance with this chapter.

[PL 1969, c. 132, §1 (NEW).]

3. Acute emergency. Acute emergency means a period, as formally declared and proclaimed by the Governor of this State, in which, by reason of loss of life, epidemic disease, destruction or damage of property, contamination of property by radiological, chemical or bacteriological means, or disruption of the means of transportation or communication, resulting from an attack, it is impossible or impractical for the business of insurance in this State to be conducted in strict accord with the provision of law or charters applicable thereto.

[PL 1969, c. 132, §1 (NEW).]

4. Attack. Attack means any attack, actual or imminent, or series of attacks by an enemy of a foreign nation upon the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, shell fire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.

[PL 1969, c. 132, §1 (NEW).]

5. Board. Board means the board of directors, board of trustees, committee or similar body having control of the affairs of an insurance organization.

[PL 1969, c. 132, §1 (NEW).]

6. Charter. Charter means the certificate of organization or incorporation or special law incorporating a corporation together with its bylaws, or the agreement establishing a fund or association together with its constitution and bylaws.

[PL 1969, c. 132, §1 (NEW).]

7. Superintendent. Superintendent means the State Insurance Superintendent or person duly designated to exercise the powers of that office during an attack or acute emergency.

[PL 1973, c. 585, §12 (AMD).]

8. Director. Director means the director, trustee or member of the board.

[PL 1969, c. 132, §1 (NEW).]

9. Domestic organization. Domestic organization means any insurance organization which is domiciled in this State.

[PL 1969, c. 132, §1 (NEW).]

10. Insurance organization. Insurance organization means any insurer, rating organization, service or advisory organization, joint underwriting association, welfare or pension fund, which is subject, in whole or in part, to the insurance laws of this State.

[PL 1969, c. 132, §1 (NEW).]

11. Officer. Officer means an officer of a domestic insurance organization.

[PL 1969, c. 132, §1 (NEW).]

12. Quorum. Quorum means the minimum number of directors required by charter and bylaw, exclusive of the provisions of this chapter, to be present for valid action to be taken at a meeting of a board with respect to each particular item of business which may come before such meeting.

[PL 1969, c. 132, §1 (NEW).]

This chapter does not and shall not be construed to limit the powers of, or permit or require, any insurance organization which is not domiciled in this State or of any branch office, or agents of such insurance organization, or the directors, officers, members, policyholders or stockholders of any such organization to act, or fail to act, in such fashion as would violate the laws of the jurisdiction wherein such organization has its domicile. [PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2009, c. 2, §69 (COR).

§3553. Emergency bylaws

1. With the approval of the superintendent, any domestic organization may, at any time, adopt, in the same manner as in the case of ordinary bylaws, emergency bylaws to become operative during a period of acute emergency. Emergency bylaws may contain provisions with respect to the number of directors capable of acting which shall constitute its board, the number of such directors which shall constitute a quorum at a meeting of the board, the number of votes necessary for action by such board, the manner in which vacancies on the board shall be filled, the line of succession of its officers, and the interim management of the affairs of the insurance organization; such provisions, if approved by the superintendent, need not comply with the requirement of the charter of such domestic organization or of the insurance or incorporation laws of this State.

[PL 1973, c. 585, §12 (AMD).]

2. Section 3554 and section 3555, subsections 2 to 6 shall not be applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the superintendent.

[PL 1973, c. 585, §12 (AMD).]

SECTION HISTORY

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

§3554. Change of location; emergency boards of directors

Notwithstanding any provision of its charter, any domestic insurance organization, without complying with any provision of law requiring approval, or application for approval, of a change of location of its principal office may, from time to time, change the location thereof during an acute emergency to a suitable location within the United States, and may carry on its business at such new location during such acute emergency, and for a reasonable time thereafter. Any insurance organization which changes the location of its principal office during an acute emergency shall notify the

superintendent thereof in writing as soon as practical, stating the address of the new location, the address of the former location, and the dates when business is ceasing at the former location and commencing at the latter location. [PL 1973, c. 585, §12 (AMD).]

Notwithstanding any contrary provision of law or with its charter, if at any time during an acute emergency affecting any domestic insurance organization, no person otherwise empowered to call meetings of the board is capable of acting, a meeting thereof may be called by any director or acting director or if no director or acting director is capable of acting, by any officer or acting officer. If it shall be impracticable or impossible to give notice of a meeting of the board in the manner prescribed by charter and law, other than this chapter, the person calling such a meeting may give notice thereof by making such reasonable efforts as circumstances may permit to notify each director and acting director of the time and place of the meeting, but need not specify the purposes thereof. Failure of any director or acting director to receive actual notice of a meeting of directors and acting directors shall not affect the power of the directors and acting directors present at such meeting to exercise the powers of an emergency board of directors as prescribed in this section. Nothing in this chapter shall be construed as requiring a meeting of the board of such an organization to be convened in any manner different from that prescribed by its charter and by the provisions of law other than this chapter. [PL 1969, c. 132, §1 (NEW).]

If 3 or more directors and acting directors of any domestic insurance organization are present at any meeting of its board duly convened during an acute emergency affecting such domestic insurance organization, they shall constitute its emergency board of directors which, notwithstanding any contrary provision of law or of its charter, shall have the power, subject to the limitations prescribed by this chapter, by a majority of those present, to take any and every action which may be necessary to enable such domestic insurance organization to meet the exigencies of the acute emergency and conduct its business during such period, but no other powers. The powers of an emergency board of directors shall include, but shall not be limited to, the following powers: [PL 1969, c. 132, §1 (NEW).]

1. Fill vacancies and absentees. At any meeting, to elect such acting directors as it may deem necessary, without regard to the number of directors which would otherwise be required, to serve in any positions on such board which are vacant or in place of any directors or acting directors who are absent from such meeting, but not to elect any director on a permanent basis; [PL 1969, c. 132, §1 (NEW).]

2. Acting officers and duties. To elect such acting officers as it may deem necessary, without regard to the number of officers which would otherwise be required, to serve in any offices which are vacant or in place of any officers or acting officers who fail to appear and assume their duties, to fix the compensation and determine the powers and duties of acting officers and to remove acting officers but not to remove any officer or to fill any vacancy on a permanent basis or to cause the insurance organization to enter into any contract of employment for a term in excess of one year; [PL 1969, c. 132, §1 (NEW).]

3. Change of location. To cause the insurance organization to change the location of its principal office, pursuant to this section, or any of its places of business, and to authorize such action as it may deem appropriate to acquire space and facilities at new locations, but not to acquire for use as its principal office property in fee or for a term in excess of one year; [PL 1969, c. 132, §1 (NEW).]

4. Postpone meetings. To postpone any meeting of the stockholders, policyholders or members or directors of such organization if, in the judgment of majority of the members of such emergency board of directors, it would be impracticable to hold such meeting at the time it would otherwise have been held or conducted; [PL 1969, c. 132, §1 (NEW).]

5. Call meetings. If it shall appear to an emergency board of directors that a quorum of the board cannot be assembled within a reasonable time, to call a meeting of the stockholders, policyholders or members of the insurance organization to be held as soon as the circumstances may reasonably permit, at a place to be designated by the emergency board of directors within this State or a contiguous state, for the purpose of electing directors to fill vacancies on the board, but for no other purpose, and to propose nominees for such election. Any such meetings of stockholders, policyholders or members shall be held upon notice given in accordance with the charter of the organization and applicable law other than this section.

[PL 1969, c. 132, §1 (NEW).]

As soon as practicable after each meeting of an emergency board of directors, the person who presided thereat shall notify the superintendent in writing of the time and place of such meeting, of the manner in which notice thereof was given, of the persons present and of all actions taken at such meeting. [PL 1973, c. 585, §12 (AMD).]

A person prohibited by law or by the charter of a domestic insurance organization from serving as a member of its board is not eligible to serve as an acting director, except that a person is not disqualified to serve as an acting director by reason of the person's not being a stockholder, policyholder or member of such insurance organization, by reason of the person's not being a resident of this State or of a contiguous state, or by reason of the number of directors or acting directors who are officers, acting officers or employees of the insurance organization. Any person may serve as an acting director of a fund who is a director, acting director, officer or acting officer of an organization that is a party to the agreement creating the fund. An oath of acting directors is not required. [RR 2021, c. 1, Pt. B, §302 (COR).]

Acting directors elected under this section or appointed under section 3555 are entitled to vote at all meetings of emergency board of directors equally with directors. Acting directors are not entitled to take part in the deliberations or to vote at any meeting of the board that is duly convened in accordance with the applicable provisions of its charter and of law other than this chapter and at which a quorum is present. Each acting director shall serve until the director or acting director in whose place the acting director was elected or appointed attends the meeting of the board or until the director is duly elected to fill the vacancy in which such acting director has been serving, whichever event occurs earlier. An acting director is entitled to the compensation, if any, payable to a director. [RR 2021, c. 1, Pt. B, §303 (COR).]

Acting officers elected pursuant to this section have powers and duties and receive such compensation as may from time to time be determined by the emergency board of directors. Each acting officer shall serve until the officer in whose place the acting officer was elected appears and assumes the officer's duties or until the officer's successor officer or acting officer is elected, whichever event occurs earlier. [RR 2021, c. 1, Pt. B, §304 (COR).]

This section shall not be deemed applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the superintendent. [PL 1973, c. 585, §12 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §§302-304 (COR).

§3555. Powers of the superintendent

1. Designate additional acting directors. If at any time during an acute emergency, the number of directors or acting directors of a domestic insurance organization who are capable of acting shall be less than 3, as determined by the superintendent after a reasonable investigation, the superintendent

shall have the power to designate additional acting directors in such number as will bring to 3 the number of directors and acting directors who are capable of acting.

[PL 1973, c. 585, §12 (AMD).]

2. Resolve controversies. To resolve controversy as to the power of any group of persons purporting to act as an emergency board of directors so to act, the superintendent shall, upon a determination that such action will tend to promote the safe and sound and orderly conduct of the business of any domestic insurance organization, have power to issue orders declaring that any such group shall or shall not have the powers of an emergency board of directors, or confirming, modifying or vacating in whole or in part any action taken or purportedly taken by any such group or by removing any acting director.

[PL 1973, c. 585, §12 (AMD).]

3. Declare provisions of law operative or inoperative. At any time after an attack, upon the superintendent's determination that such action will tend to promote certainty as to the powers of insurance organizations or individuals pursuant to this chapter or that such action is desirable to enable insurance organizations to take preparatory precautions prior to the occurrence of an acute emergency, the superintendent has power to declare that any provision of this chapter that the superintendent specifies is operative with respect to any domestic insurance organization or to the Maine business of any other insurance organization that the superintendent may designate. Upon such declaration such organization and its directors, officers, acting directors and acting officers have all powers conferred by this chapter. The failure of the superintendent so to declare may not be construed to limit the powers of any organization or its directors, officers, acting directors or acting officers when an acute emergency exists in fact.

At any time after the commencement of an acute emergency or after the superintendent declares any provision of this chapter operative under this subsection upon the superintendent's determination that an insurance organization is able, in whole or in part, to carry on its business in compliance with its charter and the laws, other than this chapter, the superintendent has power to declare that any provision of this chapter that the superintendent specifies is inoperative with respect to any domestic insurance organization or in the Maine business of any other insurance organization that the superintendent may designate. Upon such declaration, such organization is governed by its charter and the provisions of law other than this chapter, except insofar as they remain inoperative.

[RR 2021, c. 1, Pt. B, §305 (COR).]

4. Possession of business and property. Upon the determination that, as a result of an acute emergency, the business and affairs of an insurance organization cannot otherwise be conducted in a safe and sound manner, the superintendent may forthwith take possession of the business and property of the insurance organization within this State or, if a domestic insurance organization, its business and property wherever situated. This chapter is applicable in any case in which the superintendent takes possession of an insurance organization under this subsection as though the insurance organization were an insurer of which the superintendent had taken possession under this chapter, except that any such provision is not applicable that the superintendent has declared inapplicable under this subsection. The superintendent has power to declare inapplicable any such provision upon the superintendent's determination that the same is inappropriate or unnecessary to protect the interest of the public or the stockholders or creditors of the insurance organization, in view of the acute emergency and the nature of the organization.

[RR 2021, c. 1, Pt. B, §306 (COR).]

5. When powers exercised. The powers given the superintendent by subsections 2 and 4 may be exercised by the superintendent only in the event that there is not a court of competent jurisdiction available to which an application can be made for an order permitting the superintendent to exercise such powers with respect to a particular insurance organization. The powers conferred by subsection 4 may not be exercised in a case of an insurance organization that is not insolvent within the meaning of

this chapter, unless the superintendent finds that such insurance organization lacks personnel able to manage its business in the interest of the public stockholders and policyholders.

[RR 2021, c. 1, Pt. B, §307 (COR).]

6. Regulations. The superintendent shall have power to issue general and specific regulations, directives and orders consistent with and in furtherance of the purposes of this chapter.

[PL 1973, c. 585, §12 (AMD).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §§305-307 (COR).

§3556. General provisions

1. Presumption. In any action or proceeding it shall be presumed that an acute emergency existing within any city or county within this State constitutes an acute emergency affecting every insurance organization doing business within such city or county.

[PL 1969, c. 132, §1 (NEW).]

2. Powers of board. During an acute emergency the board of a domestic insurance organization which has adopted emergency bylaws approved by the superintendent shall have all of the powers conferred by such bylaws, and no other or different powers with respect to the subject matter of this chapter, and the board of a domestic insurance organization which has not adopted emergency bylaws approved by the superintendent shall have all of the powers of an emergency board of directors as the same are provided for under this chapter.

[PL 1973, c. 585, §12 (AMD).]

SECTION HISTORY

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

§3557. Governor's authority; effect of other laws

The Governor of this State, or the Governor's successor in office, alone has the power to proclaim and declare the fact that a period of "acute emergency" exists at any time or times or has terminated, as such term is defined in this chapter. This chapter may not be construed to affect sections 471 to 479, to the extent that the latter sections may be inconsistent herewith. [RR 2021, c. 1, Pt. B, §308 (COR).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). RR 2021, c. 1, Pt. B, §308 (COR).

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