

Title 24-A: MAINE INSURANCE CODE

Chapter 9: KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE

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Title 24-A: MAINE INSURANCE CODE
Chapter 9: KINDS OF INSURANCE; LIMITS OF RISK; REINSURANCE

Subchapter 1: KINDS OF INSURANCE

§701. DEFINITIONS NOT MUTUALLY EXCLUSIVE

It is intended that certain insurance coverages may come within the definitions of 2 or more kinds of insurance as defined in this chapter, and the inclusion of such coverage within one definition shall not exclude it as to any other kind of insurance within the definition of which such coverage is likewise reasonably includable. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§702. "LIFE INSURANCE" DEFINED

Life insurance is insurance on human lives. The transaction of life insurance includes also the granting endowment benefits, additional benefits in event of death or dismemberment by accident or accidental means, additional benefits in event of the insured's disability, and optional modes of settlement of proceeds of life insurance. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§703. "ANNUITY" DEFINED

For the purposes of this Title, an "annuity" is a contract under which obligations are assumed with respect to periodic payments for a specific term or terms or where the making or continuance of all or of some of the payments, or the amount of a payment, is dependent upon the continuance of human life, except payments made pursuant to optional modes of settlement under the authority of section 702. A contract that includes extra benefits of the kinds defined in sections 702 and 704 is deemed to be an annuity, if the extra benefits constitute a subsidiary or incidental part of the entire contract. A charitable gift annuity agreement, as defined in section 703-A, is not insurance. [1995, c. 375, Pt. C, §2 (AMD).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1995, c. 375, §C2 (AMD).

§703-A. CHARITABLE GIFT ANNUITY AGREEMENT

1. Charitable gift annuity agreement defined. For the purposes of this Title, a "charitable gift annuity agreement" is a written contract in which a qualified organization receives money or other property conditioned upon the organization's agreement to pay an annuity to one or more individuals; as long as, with respect to the organization, the annuity meets the requirements for exclusion from the definition of "acquisition indebtedness" under the Internal Revenue Code, Section 514(c)(5) or a successor provision.

[1995, c. 375, Pt. C, §3 (NEW) .]

2. Qualified organization defined. For the purposes of this Title, a "qualified organization" is an organization that is privately and specially established as an instrumentality of the State for a nonprofit purpose or an organization that meets the following requirements.

A. The organization is a nonprofit organization that is either:

- (1) An organization to which the Maine Nonprofit Corporation Act applies; or
- (2) Organized under the laws of a jurisdiction within the United States and qualified as a foreign corporation pursuant to Title 13-B, chapter 12. [1995, c. 375, Pt. C, §3 (NEW).]

B. The organization qualifies as a tax-exempt organization under the Internal Revenue Code, Section 501(c)(3) or a successor provision. [1995, c. 375, Pt. C, §3 (NEW).]

C. The organization:

- (1) Has been operating continuously for 5 or more years;
- (2) Is a parent or subsidiary of a qualified organization; or
- (3) Is the successor to an organization that meets the requirements of paragraphs A and B and both organizations together have operated continuously for 5 or more years. [1995, c. 375, Pt. C, §3 (NEW).]

[1995, c. 375, Pt. C, §3 (NEW) .]

SECTION HISTORY

1995, c. 375, §C3 (NEW).

§704. "HEALTH INSURANCE" DEFINED

1. Health insurance. For purposes of this Title, except as provided in subsection 2 and subsection 3, "health insurance" means insurance of human beings against bodily injury, disablement or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto, including provision for the mental and emotional welfare of human beings by defraying the costs of legal services only to the extent provided for in chapter 38.

[2011, c. 192, §1 (AMD) .]

2. Exceptions. As used in this Title and Title 24 in any law enacted after the effective date of this subsection that mandates medical benefits or coverage in individual or group health insurance policies under chapter 33 or chapter 35 for certain specific health services or diseases or certain providers of health care services or that mandates rights and obligations under chapter 56-A, unless the context otherwise indicates, the use of "health insurance" and related terms such as "accident and health insurance," "accident and sickness insurance," "carrier," "health," "health benefit plan," "health care," "health insurer" or "insurer" does not include, unless specifically provided otherwise in the law, the following types of insurance or any combination of those types of insurance: accidental injury, specified disease, hospital indemnity, dental, vision, disability income, long-term care, Medicare supplement or other limited benefit health insurance.

[2001, c. 79, §1 (NEW) .]

3. Health care sharing ministry. As used in this Title and Title 24, the use of "health insurance" and related terms such as "accident and health insurance," "accident and sickness insurance," "carrier," "health," "health benefit plan," "health care," "health insurer" or "insurer" does not include, unless specifically provided otherwise in the law, a health care sharing ministry, and a health care sharing ministry may not be considered to be engaged in the business of insurance for the purposes of this Title. For the purposes of this section, "health care sharing ministry" means a faith-based, nonprofit organization that is exempt from taxation under the federal Internal Revenue Code and that:

- A. Has been in existence continuously since December 31, 1999 and has facilitated the sharing of medical expenses of participants without interruption since December 31, 1999; [2011, c. 192, §2 (NEW) .]

B. Limits participation in the health care sharing ministry to individuals who have a particular religious affiliation; [2011, c. 192, §2 (NEW).]

C. Acts as a facilitator among participants who have financial and medical needs and matches those participants with other participants with the present ability to assist those with financial and medical needs in accordance with criteria established by the health care sharing ministry; [2011, c. 192, §2 (NEW).]

D. Provides for the financial and medical needs of a participant through monetary contributions from one participant to another; [2011, c. 192, §2 (NEW).]

E. Provides amounts that participants may contribute without any assumption of risk or promise to pay among the participants and requires no assumption of risk or promise to pay by the health care sharing ministry to the participants; [2011, c. 192, §2 (NEW).]

F. Provides a written monthly statement to all participants that lists the total dollar amount of qualified needs submitted to the health care sharing ministry, as well as the amount actually published or assigned to participants for their contribution; [2011, c. 192, §2 (NEW).]

G. Conducts an annual audit that is performed by an independent certified public accountant in accordance with generally accepted accounting principles and that is made available to the public upon request; and [2011, c. 192, §2 (NEW).]

H. Provides a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the organization that reads in substance: "Notice: The organization facilitating the sharing of medical expenses is not an insurance company and neither its guidelines nor plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant will be compelled by law to contribute toward your medical bills. Participation in the organization or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive payment for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills." [2011, c. 192, §2 (NEW).]

[2011, c. 192, §2 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1983, c. 801, §1 (AMD). 2001, c. 79, §1 (RPR). 2011, c. 192, §§1, 2 (AMD).

§704-A. HEALTH MAINTENANCE ORGANIZATION

For purposes of this Title, "health maintenance organization" is defined in section 4202-A, subsection 10. [1993, c. 702, Pt. A, §9 (NEW).]

SECTION HISTORY

1993, c. 702, §A9 (NEW).

§705. "PROPERTY INSURANCE" DEFINED

Property insurance is insurance on real or personal property of every kind and of every interest therein against loss or damage from any and all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual legal liability for any such loss or damage. Property insurance does not include title insurance, as defined in section 709. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§706. "BONDS" DEFINED

The definition of "bonds" includes: [1995, c. 329, §4 (AMD).]

1. Fidelity insurance, which is insurance guaranteeing the honesty of persons holding positions of public or private trust;

[1995, c. 329, §4 (AMD) .]

2. Surety insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings and contracts of suretyship; and

[1995, c. 329, §4 (AMD) .]

3. Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, gems, precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1995, c. 329, §4 (AMD).

§707. "CASUALTY INSURANCE" DEFINED

1. Casualty insurance includes:

A. Vehicle insurance. Insurance against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability or expense resulting from or incidental to ownership, maintenance or use of any such vehicle, aircraft or animal; together with insurance against accidental injury to individuals, irrespective of legal liability of the insured, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking or caused by being struck by a vehicle, aircraft or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft or draft or riding animal; [1969, c. 132, §1 (NEW).]

B. Liability insurance. Insurance against legal liability for the death, injury or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance; [1969, c. 132, §1 (NEW).]

C. Workers' compensation and employer's liability. Insurance, written on a primary basis, of the obligations accepted by, imposed upon or assumed by employers under law for death, disablement or injury of employees; [1991, c. 872, §1 (AMD).]

C-1. Employee benefit excess insurance. Insurance, protecting an employer against higher than expected obligations under an employee benefit plan, at retention levels that do not have the effect of making the plan an insured plan. Reinsurance provided to employers that self-insure their workers' compensation exposures pursuant to Title 39-A, section 403 does not constitute employee benefit excess insurance. The transaction of employee benefit excess insurance does not constitute the conduct of the business of reinsurance; [2007, c. 466, Pt. D, §4 (AMD).]

D. Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances or any other valuable papers and documents, resulting from any cause; [1969, c. 132, §1 (NEW).]

E. Personal property floater. Insurance upon personal effects against loss or damage from any cause; [1969, c. 132, §1 (NEW).]

F. Glass. Insurance against loss or damage to glass, including its lettering, ornamentation and fittings; [1969, c. 132, §1 (NEW).]

G. Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery or apparatus, and to make inspection of and issue certificates of inspection upon boilers, machinery and apparatus of any kind, whether or not insured; [1969, c. 132, §1 (NEW).]

H. Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to such sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus; [1969, c. 132, §1 (NEW).]

I. Credit. Insurance against loss or damage resulting from failure of debtors to pay their obligations to the insured; [1969, c. 132, §1 (NEW).]

J. Malpractice. Insurance against legal liability of the insured, and against loss, damage or expense incidental to a claim of such liability, and including medical hospital, surgical and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary or professional service; [1969, c. 132, §1 (NEW).]

K. Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance or use of elevators, except loss or damage by fire, and to make inspection of and issue certificates of inspection upon elevators; [1969, c. 132, §1 (NEW).]

L. Congenital defects. Insurance against congenital defects in human beings; [1969, c. 132, §1 (NEW).]

M. Livestock. Insurance against loss or damage to livestock, and services of a veterinary for such animals; [1969, c. 132, §1 (NEW).]

N. Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment or similar production, event or exhibition against loss from interruption, postponement or cancellation thereof due to death, accidental injury or sickness of performers, participants, directors or other principals; [1969, c. 132, §1 (NEW).]

N-1. Involuntary unemployment. Insurance against the loss of income due to a permanent or temporary job loss or job change. Involuntary unemployment insurance may include labor dispute coverage. Governmental benefit programs are not considered involuntary unemployment insurance for purposes of this Title; and [2001, c. 138, §2 (NEW).]

O. Miscellaneous. Insurance against any other kind of loss, damage or liability properly a subject of insurance and not within any other kind of insurance as defined in this subchapter, if such insurance is not disapproved by the superintendent as being contrary to law or public policy. [1973, c. 585, §12 (AMD).]

[2007, c. 466, Pt. D, §4 (AMD) .]

2. Provision of medical, hospital, surgical and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under subsection 1, paragraphs A (vehicle), B (liability), D (burglary), G (boiler and machinery), J (malpractice) and K (elevator) shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this Title applicable to life and health insurances.

[1969, c. 132, §1 (NEW) .]

3. An insurer other than a casualty insurer may transact employee benefit excess insurance only if that insurer is authorized to insure the class of risk assumed by the underlying benefit plan. Employee benefit excess insurance, even if written by a life or health insurer, is not subject to chapters 29 and 31 to 37, except to the extent that particular provisions are made expressly applicable by rule or law. No later than July 1, 1997, the superintendent shall by rule set standards distinguishing excess insurance from basic insurance. In developing these standards, the superintendent may consider the analysis supporting the recommendations of the National Association of Insurance Commissioners.

[1995, c. 673, Pt. B, §2 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1991, c. 385, §§5-7 (AMD). 1991, c. 872, §§1,2 (AMD). 1995, c. 375, §C4 (AMD). 1995, c. 673, §B2 (AMD). 2001, c. 138, §2 (AMD). 2007, c. 466, Pt. D, §4 (AMD).

§708. MARINE AND TRANSPORTATION, "WET MARINE" INSURANCE DEFINED

1. "Marine and transportation insurance" includes:

A. Insurance against any kinds of loss or damage to:

- (1) Vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to, or in connection with any and all risks or perils of navigation, transit or transportation, including war risks, on or under any seas or other waters, on land or in the air, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting the same or during any delays, storage, transshipment, or reshipment incident thereto, including marine builder's risks and all personal property floater risks, and
- (2) Person or to property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage to either, arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance, but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to the person arising out of the ownership, maintenance or use of automobiles, and
- (3) Precious stones, jewels, jewelry, gold, silver and other precious metals, whether used in business or trade or otherwise and whether the same be in course of transportation or otherwise; and
- (4) Bridges, tunnels and other instrumentalities of transportation and communication, excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage, unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion are the only hazards to be covered; piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot or civil commotion; other aids to navigation and transportation, including dry docks and marine railways, against all risks; [1969, c. 132, §1 (NEW) .]

B. "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for, loss, damage or expense arising out of, or incident to, the ownership, operation, chartering, maintenance, use, repair or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person. [1969, c. 132, §1 (NEW).]

[1969, c. 132, §1 (NEW) .]

2. For the purposes of this Title, "wet marine and transportation" insurance is that part of "marine and transportation" insurance which includes only:

A. Insurance upon vessels, crafts, hulls and of interests therein or with relation thereto; [1969, c. 132, §1 (NEW).]

B. Insurance of marine builders' risks, marine war risks and contracts of marine protection and indemnity insurance; [1969, c. 132, §1 (NEW).]

C. Insurance of freights and disbursements pertaining to a subject of insurance coming within this definition; and [1969, c. 132, §1 (NEW).]

D. Insurance of personal property and interests therein, in course of exportation from or importation into any country, or in course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in respect to, appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto. [1969, c. 132, §1 (NEW).]

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§709. "TITLE INSURANCE" DEFINED

Title insurance is insurance of owners of property or others having an interest therein, or liens or encumbrances thereon, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

§709-A. FINANCIAL GUARANTY INSURANCE DEFINED

The term "financial guaranty insurance" includes any insurance under which loss is payable upon proof of occurrence of any of the following events to the damage of an insured claimant or obligee: [1987, c. 707, §2 (NEW).]

1. Failure of any obligor or obligors on any debt instrument or other monetary obligation, including common or preferred stock, to pay when due the principal, interest, dividend or purchase price of the instrument or obligation, whether the failure is the result of a financial default or insolvency and whether or not the obligation is incurred directly or as guarantor by, or on behalf of, another obligor which has also defaulted;

[1987, c. 707, §2 (NEW) .]

2. Changes in the level of interest rates, whether short term or long term, or in the difference between interest rates existing in various markets;

[1987, c. 707, §2 (NEW) .]

3. Changes in the rate of exchange of currency, or from the inconvertibility of one currency into another for any reason; or

[1987, c. 707, §2 (NEW) .]

4. Changes in the value of specific assets, including the residual value of property at the termination of a lease.

[1987, c. 707, §2 (NEW) .]

SECTION HISTORY

1987, c. 707, §2 (NEW).

§710. "MULTIPLE LINE" INSURERS

(REPEALED)

SECTION HISTORY

1969, c. 132, §1 (NEW). 1991, c. 385, §8 (RP).

Subchapter 2: LIMITS OF RISK

§721. LIMITS OF RISK

1. No insurer shall retain any risk on any one subject of insurance, whether located or to be performed in this State or elsewhere, in an amount exceeding 10% of its surplus to policyholders.

[1969, c. 132, §1 (NEW) .]

2. A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake and other catastrophic hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of any other hazard insured against.

[1969, c. 132, §1 (NEW) .]

3. Reinsurance ceded as authorized by section 731 shall be deducted in determining risk retained. As to surety risks, deduction shall be made of the amount assumed by any authorized cosurety and the value of any security deposited, pledged or held subject to the surety's consent and for the surety's protection.

[1969, c. 132, §1 (NEW) .]

4. As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

[1969, c. 132, §1 (NEW) .]

5. "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the superintendent, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

[1973, c. 585, §12 (AMD) .]

6. This section shall not apply to life or health insurance, annuities, title insurance, insurance of wet marine and transportation risks, workers' compensation insurance, employers' liability coverages, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.

[1987, c. 769, Pt. A, §89 (AMD) .]

7. Limits of risk as to newly formed domestic mutual insurers shall be as provided in section 3352.

[1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1987, c. 769, §A89 (AMD).

Subchapter 3: REINSURANCE

§731. REINSURANCE

(REPEALED)

SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §15 (AMD). 1973, c. 585, §12 (AMD). 1985, c. 330, §§7-9 (AMD). 1989, c. 846, §§E1,4 (RP).

§731-A. ACCEPTANCE OF REINSURANCE

An insurer may accept reinsurance only of such kinds of risks, and retain risk thereon within such limits, as the insurer is otherwise authorized to insure. [1989, c. 846, Pt. E, §2 (NEW); 1989, c. 846, Pt. E, §4 (AFF).]

SECTION HISTORY

1989, c. 846, §§E2,4 (NEW).

§731-B. CREDIT FOR REINSURANCE

1. Credit for reinsurance is allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurance is ceded to a solvent assuming insurer that:

A. Is licensed to transact insurance or reinsurance in this State, provided the assuming insurer maintains surplus as regards policyholders in an amount not less than the sum of paid-in capital stock, if any, and surplus as otherwise required for a certificate of authority for the kinds and amount of insurance and assumed reinsurance the insurer has in force net of any applicable ceded reinsurance. If the assuming insurer is licensed as a special purpose reinsurance vehicle pursuant to section 782 and maintains capital and surplus in accordance with the requirements of section 787, credit for reinsurance under a special purpose reinsurance vehicle contract, as defined in section 781, subsection 15, is allowed only to the extent that:

- (1) The fair value of the assets held by or for the benefit of the ceding insurer equals or exceeds the obligations due and payable to the ceding insurer by the special purpose reinsurance vehicle under the special purpose reinsurance vehicle contract;
- (2) The assets are held in accordance with the requirements in subchapter 6;
- (3) The assets are administered in the manner and pursuant to arrangements under subchapter 6;
- (4) The assets are held or invested in one or more of the forms allowed in section 795; and
- (5) The contract complies with all other relevant requirements of subchapter 6; [2007 , c . 386 , §1 (AMD) .]

B. Is domiciled and licensed in a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this section, if the insurer:

- (1) Submits to the authority of this State to examine its books and records; and
- (2) Except where reinsurance is ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system, maintains a surplus regarding policyholders in an amount not less than \$20,000,000; [1991 , c . 828 , §16 (AMD) .]

B-1. Is accredited as a reinsurer in this State, in accordance with the following standards.

- (1) To apply for accreditation, a reinsurer shall file with the superintendent a written application on a form prescribed by the superintendent, accompanied by the fee prescribed in section 601, subsection 26 and an agreement to submit to the jurisdiction of the courts of this State and to the authority of the superintendent to examine the reinsurer's books and records.
- (2) An accredited reinsurer must be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien reinsurer, that reinsurer must be entered through and licensed to transact insurance or reinsurance in at least one state.
- (3) An accredited reinsurer shall file with the superintendent, as part of its application and annually thereafter, a copy of its annual statement filed with the insurance department of its state of domicile or United States port of entry and a copy of its most recent audited financial statement.
- (4) A reinsurer applying for accreditation that maintains a surplus as regards to policyholders in an amount not less than \$20,000,000 is deemed to be accredited if the reinsurer's application is not denied by the superintendent within 90 days after submission of the application. The superintendent has the discretion to grant accreditation to an applicant with a surplus less than \$20,000,000 subject to such terms and conditions as the superintendent determines to be necessary and appropriate for the protection of domestic ceding insurers and their policyholders.

[2013 , c . 238 , Pt . B , §3 (AMD) .]

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

- (1) To be eligible for certification, the assuming insurer must meet the following requirements:
 - (a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a jurisdiction determined by the superintendent to be a qualified jurisdiction pursuant to subparagraph (3);
 - (b) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the superintendent pursuant to rules adopted under subsection 7;
 - (c) The assuming insurer must maintain financial strength ratings from 2 or more rating agencies determined by the superintendent to be acceptable pursuant to rules adopted under subsection 7;

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

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

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

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

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

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

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

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

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

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

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

- (c) United States jurisdictions that are accredited by the National Association of Insurance Commissioners must be recognized as qualified jurisdictions.
- (d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the superintendent may suspend the reinsurer's certification indefinitely, in lieu of revocation.
- (4) The superintendent shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies determined to be acceptable pursuant to rules adopted under subsection 7. The superintendent shall publish a list of all certified reinsurers and their ratings.
- (5) A certified reinsurer shall secure all obligations assumed from United States ceding insurers under this subsection, and under comparable laws of other states, at a level consistent with its rating and in a form acceptable to the superintendent, in compliance with rules adopted under subsection 7.
- (a) If the security is insufficient, the superintendent shall reduce the allowable credit by an amount proportionate to the deficiency and may impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.
- (b) The reinsurer may secure its obligations as a certified reinsurer through a multibeneficiary trust that meets the requirements of paragraph C and subsection 2-A, with the following modifications.
- (i) The maximum credit allowable may exceed the value of the qualifying security to the extent provided in this subparagraph.
- (ii) The minimum trusteed surplus is \$10,000,000, rather than the amount specified in paragraph C.
- (iii) If the certified reinsurer also maintains a multibeneficiary trust for obligations required to be fully secured under paragraph C or comparable laws of other states, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions and for its obligations that are required to be fully secured. The trust accounts may not be approved as qualifying security unless the reinsurer has bound itself, by the language of the trust and by agreement with the insurance regulator with principal oversight of each such trust account, to apply, upon termination of any such trust account, the remaining surplus of that trust to the extent necessary to fund any deficiency of any other such trust account.
- (c) If a certified reinsurer does not secure its obligations through a qualifying multibeneficiary trust, it must secure its obligations to the ceding insurer consistent with the requirements of subsection 3, except that the maximum credit allowable may exceed the value of the qualifying security to the extent provided in this subparagraph.
- (d) For purposes of this subparagraph, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure 100% of its obligations, unless the superintendent has continued to assign a higher rating, as permitted by other provisions of this section, to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.
- (6) If an applicant for certification has been certified as a reinsurer in a jurisdiction accredited by the National Association of Insurance Commissioners, the superintendent may defer to that jurisdiction's certification to grant certification in this State and may defer to the rating assigned by that jurisdiction.
- (7) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable

requirements of this subsection, and the superintendent shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business. [2013, c. 238, Pt. B, §4 (NEW).]

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

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

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

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

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

(b) Notwithstanding the other provisions of this section, for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992 and not amended or renewed after that date, the trust must consist of a trustee account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

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

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

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

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

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

(7) The corpus of the trust is to be valued as any other admitted asset or assets; [2013, c. 238, Pt. B, §5 (AMD).]

D. Does not meet the requirements of paragraph A, B, B-1, B-2 or C, but only with respect to risks located in a jurisdiction where that reinsurance is required by law. The superintendent may waive the requirements of subsections 2 and 5 to the extent that compliance with those requirements is not feasible for compulsory reinsurance subject to this paragraph. The superintendent for good cause after notice and opportunity for hearing may disallow or reduce the credit otherwise permitted under this paragraph. [2017, c. 169, Pt. C, §1 (AMD).]

[2013, c. 238, Pt. B, §§3-6 (AMD); 2017, c. 169, Pt. C, §1 (AMD).]

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

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

- (1) The reinsurer waives its right to a hearing;
- (2) The superintendent's order is based on regulatory action by the reinsurer's domiciliary jurisdiction or the voluntary surrender or termination of the reinsurer's eligibility to transact insurance or reinsurance business in its domiciliary jurisdiction or in the primary certifying state of the reinsurer under subsection 1, paragraph B-2, subparagraph (6); or
- (3) The superintendent finds that an emergency requires immediate action and a court of competent jurisdiction has not stayed the superintendent's action. [2013, c. 238, Pt. B, §7 (NEW).]

B. While a reinsurer's accreditation or certification is suspended pursuant to this subsection, no reinsurance contract issued or renewed after the effective date of the suspension qualifies for credit under subsection 1 except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection 3. If a reinsurer's accreditation or certification is revoked pursuant to this

subsection, no credit for reinsurance may be granted after the effective date of the revocation except to the extent that the reinsurer's obligations under the contract are secured in accordance with subsection 1, paragraph B-2, subparagraph (5) or subsection 3. [2013, c. 238, Pt. B, §7 (NEW).]

C. The superintendent may deny an application for accreditation or certification under subsection 1, or may impose conditions or restrictions on a reinsurer's accreditation or certification, on any ground for which accreditation or certification may be suspended or revoked. [2013, c. 238, Pt. B, §7 (NEW).]

[2013, c. 238, Pt. B, §7 (NEW).]

2. The credit permitted by subsection 1 is not to be allowed unless the assuming insurer agrees in the reinsurance agreements:

A. That, if the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer:

- (1) Will submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;
- (2) Will comply with all requirements necessary to give the court jurisdiction; and
- (3) Will abide by the final decision of the court or of any Appellate Court in the event of an appeal; and [1989, c. 846, Pt. E, §2 (NEW); 1989, c. 846, Pt. E, §4 (AFF).]

B. To designate the superintendent or an attorney as its attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company, as required in section 421. [1989, c. 846, Pt. E, §2 (NEW); 1989, c. 846, Pt. E, §4 (AFF).]

This provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the agreement.

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

2-A. Credit for reinsurance may not be allowed on the basis of a trust maintained pursuant to subsection 1, paragraph C unless the assuming insurer agrees in the trust agreements to the following conditions.

A. Notwithstanding any other provisions in the trust instrument, if the trust fund contains an amount less than the amount required by this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund. [2001, c. 47, §5 (NEW).]

B. The assets must be distributed by and claims must be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies. [2001, c. 47, §5 (NEW).]

C. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part of the assets of the trust fund are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part of the assets of the trust fund must be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement. [2001, c. 47, §5 (NEW).]

D. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection. [2001, c. 47, §5 (NEW).]

[2001, c. 47, §5 (NEW) .]

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

A. This subsection applies only to reinsurance of:

- (1) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;
- (2) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;
- (3) Variable annuities with guaranteed death or living benefits;
- (4) Long-term care insurance policies; or
- (5) Other life and health insurance and annuity products for which the National Association of Insurance Commissioners adopts model regulatory requirements with respect to credit for reinsurance. [2017, c. 169, Pt. C, §2 (NEW).]

B. Requirements established under this subsection may address:

- (1) The valuation of assets or reserve credits;
- (2) The amount and forms of acceptable security, in accordance with rules that may supplement or modify the requirements of subsection 3; and
- (3) The circumstances pursuant to which credit will be reduced or eliminated. [2017, c. 169, Pt. C, §2 (NEW).]

C. Requirements established under this subsection may take into consideration the results of applying the valuation manual adopted under section 959 to ceded policies whose statutory reserves are calculated according to a prior methodology. [2017, c. 169, Pt. C, §2 (NEW).]

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

- (1) Policies issued on or after January 1, 2015; or
- (2) Risk on policies issued before January 1, 2015 and ceded in connection with the treaty, in whole or in part, on or after January 1, 2015. [2017, c. 169, Pt. C, §2 (NEW).]

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

- (1) Is certified in this State pursuant to subsection 1, paragraph B-2; or
- (2) Maintains at least \$250,000,000 in capital and surplus as determined in accordance with section 901-A, excluding the impact of any permitted or prescribed practices; and is:
 - (a) Licensed in at least 26 states; or
 - (b) Licensed in at least 10 states and licensed or accredited in a total of at least 35 states. [2017, c. 169, Pt. C, §2 (NEW).]

[2017, c. 169, Pt. C, §2 (NEW) .]

3. An asset or a reduction from liability for the reinsurance ceded to an assuming insurer not meeting the requirements of subsection 1 is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must equal the value of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security

for the payment of obligations under the contract, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

A. Cash; [1989, c. 846, Pt. E, §2 (NEW); 1989, c. 846, Pt. E, §4 (AFF) .]

B. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those designated as exempt from filing in the purposes and procedures manual of the Securities Valuation Office, and qualifying as admitted assets; or [2013, c. 238, Pt. B, §8 (AMD) .]

C. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution no later than December 31st of the year for which filing is being made and in the possession of the ceding company on or before the filing date of its annual statement.

(1) A letter of credit from an issuer determined to be acceptable as of the date of issuance or the date of confirmation of the letter, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continues to be acceptable as security until its expiration, extension, renewal, modification or amendment, whichever first occurs. The ceding insurer shall replace a nonqualifying letter of credit at its earliest opportunity.

(2) The letter of credit must indicate that it is not subject to any condition or qualification outside the letter of credit, and that the beneficiary need only draw a sight draft under the letter and present the letter to obtain funds and that no other document need be presented. [1993, c. 313, §18 (AMD) .]

[2013, c. 238, Pt. B, §8 (AMD) .]

4. For purposes of this section, a "qualified United States financial institution" means an institution that:

A. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or any state of the United States; [1991, c. 828, §17 (AMD) .]

B. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and [1991, c. 828, §17 (AMD) .]

C. Has been determined by the superintendent or the Securities Valuation Office of the National Association of Insurance Commissioners to meet standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the superintendent. [1991, c. 828, §17 (NEW) .]

[1991, c. 828, §17 (AMD) .]

4-A. "Qualified United States financial institution" means for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust an institution that:

A. Is organized or in the case of a United States branch or agency office of a foreign banking organization licensed under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and [1991, c. 828, §18 (NEW) .]

B. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies. [1993, c. 1, §56 (COR) .]

[1993, c. 1, §56 (COR) .]

5. Credit is allowed as an asset or deduction from liability to any ceding insurer only for reinsurance ceded to an assuming insurer qualified under this section, except that no credit is allowed, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance is payable under a contract or contracts reinsured by the assuming insurer on the basis of reported claims allowed by the court, without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary receiver unless the contract or other written agreement specifically provides another payee in the event of the insolvency of the ceding insurer or unless the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the reinsured policies and in substitution for the obligations of the ceding insurer to those payees.

The reinsurance agreement may condition the payments upon written notice by the ceding insurer's domiciliary receiver to the assuming insurer of the pendency of a claim on the contract reinsured within a reasonable time after the claim is filed in the proceeding where the claim is to be adjudicated. During the pendency of such a claim, any assuming insurer may investigate the claim and interpose, at the assuming insurer's own expense, any defenses in the proceeding that the assuming insurer determines available to the ceding insurer or to the ceding insurer's receiver. The expenses may be filed as a claim against the insolvent ceding insurer to the extent of its proportionate share of the benefit that may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. When 2 or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense must be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

[2001, c. 47, §7 (AMD) .]

6.

[1999, c. 113, §21 (RP) .]

7. The superintendent may adopt rules, subject to Title 5, chapter 375, to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[2001, c. 47, §8 (AMD) .]

SECTION HISTORY

1989, c. 846, Pt. E, §§2, 4 (NEW). 1991, c. 38, (AMD). 1991, c. 828, §§16-18 (AMD). RR 1993, c. 1, §56 (COR). 1993, c. 313, §§17, 18 (AMD). 1993, c. 666, Pt. C, §1 (AMD). 1999, c. 113, §§19-21 (AMD). 2001, c. 47, §§2-8 (AMD). 2003, c. 249, §1 (AMD). 2007, c. 386, §1 (AMD). 2013, c. 238, Pt. B, §§3-8 (AMD). 2017, c. 169, Pt. C, §§1, 2 (AMD).

§731-C. BULK REINSURANCE

The cession of bulk reinsurance by a domestic insurer is subject to section 3483. [1989, c. 846, Pt. E, §2 (NEW); 1989, c. 846, Pt. E, §4 (AFF).]

SECTION HISTORY

1989, c. 846, §§E2,4 (NEW).

§731-D. NOTIFICATION OF REINSURANCE CHANGES

The superintendent may by rule or order require an insurer to promptly inform the superintendent in writing of the cancellation or any other material change of any of the insurer's reinsurance treaties or arrangements. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 238, Pt. B, §9 (AMD).]

SECTION HISTORY

1989, c. 846, Pt. E, §2 (NEW). 1989, c. 846, Pt. E, §4 (AFF). 2013, c. 238, Pt. B, §9 (AMD).

§731-E. REINSURANCE CONCENTRATION RISK

1. Reinsurance claim exposure. An insurer shall manage its reinsurance recoverables proportionate to its own book of business. A domestic insurer shall notify the superintendent within 30 days after reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, exceed 50% of the insurer's last reported surplus to policyholders or after it is determined that reinsurance recoverables from any single assuming insurer, or group of affiliated assuming insurers, are likely to exceed this limit.

[2013, c. 238, Pt. B, §10 (NEW) .]

2. Diversification. An insurer shall diversify its reinsurance program to the extent reasonably necessary to avoid imprudent concentrations of risk. A domestic insurer shall notify the superintendent within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20% of the insurer's gross written premium in the prior calendar year or after the insurer has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit.

[2013, c. 238, Pt. B, §10 (NEW) .]

3. Risk management. A notice provided by an insurer under subsection 1 or 2 must include a demonstration that the insurer is safely managing the exposure.

[2013, c. 238, Pt. B, §10 (NEW) .]

SECTION HISTORY

2013, c. 238, Pt. B, §10 (NEW).

§732. DEPOSITS AND FUNDS WITHHELD UNDER REINSURANCE TREATIES

Any ceding insurer must report in its annual statement all funds withheld and deposit funds established pursuant to contracts of ceded reinsurance. Ceding insurers must report this and related information as required by reporting rules established by the National Association of Insurance Commissioners. [1991, c. 828, §19 (NEW).]

SECTION HISTORY

1991, c. 828, §19 (NEW).

§733. EXAMINATION OF REINSURANCE AGREEMENTS

The superintendent may examine the reinsurance agreements or deposit arrangements of a ceding insurer at any time. [1991, c. 828, §19 (NEW).]

SECTION HISTORY

1991, c. 828, §19 (NEW).

§734. MINIMUM SURPLUS REGARDING POLICYHOLDERS TO ASSUME PROPERTY AND CASUALTY REINSURANCE

1. Prohibition. Notwithstanding section 731-B, subsection 1, paragraph B, a domestic property or domestic casualty insurer, other than mutual assessment insurers operating pursuant to chapter 51, possessing less than \$10,000,000 in surplus regarding policyholders may not, without the prior written approval of the superintendent, assume reinsurance on any risk that it is otherwise permitted to assume except when the reinsurance is:

A. Required by applicable law or rule; or [1991, c. 828, §19 (NEW).]

B. Assumed pursuant to pooling arrangements among members of the same holding company system. [1991, c. 828, §19 (NEW).]

[1991, c. 828, §19 (NEW) .]

2. Application. This section applies to contracts of reinsurance entered into or renewed after the effective date of this section.

[1991, c. 828, §19 (NEW) .]

3. Effect. The performance of an activity prohibited by this section does not invalidate any reinsurance contract between the parties to the contract.

[1991, c. 828, §19 (NEW) .]

SECTION HISTORY

1991, c. 828, §19 (NEW).

Subchapter 4: REINSURANCE INTERMEDIARIES

§741. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 828, §20 (NEW).]

1. Actuary. "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

[1991, c. 828, §20 (NEW) .]

2. Cession. "Cession" means a transfer by a policy originating insurer to a reinsurer of the whole or a portion of a single risk, defined policy or defined division of business as set out in a reinsurance contract.

[1991, c. 828, §20 (NEW) .]

3. Controlling person. "Controlling person" means any person who directly or indirectly has the power to direct or cause to be directed the management, control or activities of the reinsurance intermediary.

[1991, c. 828, §20 (NEW) .]

4. Insurer. "Insurer" means every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance who holds an existing certificate of authority to transact insurance in this State pursuant to section 404.

[1991, c. 828, §20 (NEW) .]

5. Reinsurance intermediary. "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subsections 6 and 7.

[1991, c. 828, §20 (NEW) .]

6. Reinsurance intermediary-broker. "Reinsurance intermediary-broker" means any person, other than an officer or employee of the ceding insurer who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

[1991, c. 828, §20 (NEW) .]

7. Reinsurance intermediary-manager. "Reinsurance intermediary-manager" means any person who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such a reinsurer whether known as a reinsurance intermediary-manager, manager or other similar term. The term does not include:

A. An employee of the reinsurer; [1991, c. 828, §20 (NEW) .]

B. A manager of a branch of an alien reinsurer that is located in the United States; [1991, c. 828, §20 (NEW) .]

C. An underwriting manager that, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer subject to section 222 and whose compensation is not based on the volume of premiums written; and [1991, c. 828, §20 (NEW) .]

D. The manager of a group, association, pool or organization of insurers that engages in joint underwriting or joint reinsurance and who is subject to examination by the public insurance regulatory official of the state or country in which the manager's principal business office is located. [1991, c. 828, §20 (NEW) .]

[1991, c. 828, §20 (NEW) .]

8. Reinsurer. "Reinsurer" means any person who operates as an insurer in any manner under applicable provisions of this Title in the assumption of reinsurance risks.

[1991, c. 828, §20 (NEW) .]

9. Retrocession. "Retrocession" means a transfer by a reinsurer to another reinsurer of those risks defined in subsection 2.

[1991, c. 828, §20 (NEW) .]

10. Retrocessionaire. "Retrocessionaire" means an insurer or reinsurer assuming reinsurance risks under a retrocession.

[1991, c. 828, §20 (NEW) .]

11. Qualified United States financial institution. For purposes of this section, a "qualified United States financial institution" means an institution that:

A. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; [1991, c. 828, §20 (NEW) .]

B. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and [1991, c. 828, §20 (NEW) .]

C. Has been determined by the superintendent or the Securities Valuation Office of the National Association of Insurance Commissioners to meet standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the superintendent. [1991, c. 828, §20 (NEW).]

[1991, c. 828, §20 (NEW) .]

12. Qualified United States financial institution. "Qualified United States financial institution" means for the purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust an institution that:

A. Is organized or in the case of a United States branch or agency office of a foreign banking organization licensed under laws of the United States or any state of the United States and has been granted authority to operate with fiduciary powers; and [1991, c. 828, §20 (NEW).]

B. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies. [1991, c. 828, §20 (NEW).]

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW).

§742. REINSURANCE INTERMEDIARIES; LICENSING

1. Qualifications for license. For the protection of the people of this State, the superintendent may not issue, continue or permit to exist any reinsurance intermediary license except in compliance with this subchapter.

[1995, c. 544, §7 (AMD) .]

2. License requirement.

[1995, c. 544, §7 (RP) .]

2-A. License requirement. A person or organization may be authorized by the superintendent to act as a reinsurance intermediary under the following circumstances.

A. A person or organization acting in this State as a reinsurance intermediary broker who has an office in this State must be licensed as a resident agent, broker or reinsurance intermediary broker in order to do business in this State. [1995, c. 544, §7 (NEW).]

B. A person or organization acting in this State as a reinsurance intermediary broker who does not maintain an office in this State must either:

(1) Be licensed in this State as a nonresident agent, broker or reinsurance intermediary broker; or

(2) Be licensed in another state with substantially similar laws. [1995, c. 544, §7 (NEW).]

C. A person or organization acting in this State as a reinsurance intermediary manager, by representing a domestic insurer or by maintaining an office in this State, must be licensed as a resident agent, broker or reinsurance intermediary broker in order to do business in this State. [1995, c. 544, §7 (NEW).]

D. A person or organization acting in this State as a reinsurance intermediary manager who does not maintain an office in this State and who does not represent a domestic insurer must either:

(1) Be licensed as a nonresident agent, broker or reinsurance intermediary manager in this State; or

(2) Be licensed as an agent, broker or reinsurance intermediary manager in another state with substantially similar laws. [1995, c. 544, §7 (NEW).]

[1995, c. 544, §7 (NEW) .]

3. License forms. The superintendent shall prescribe, consistent with the applicable requirements of this subchapter, and furnish all printed forms required under this subchapter in connection with application for and issuance of licenses.

[1991, c. 828, §20 (NEW) .]

4. Application for licensure. Application for licensure is governed by this subsection.

A. Written application for a reinsurance intermediary license must be made to the superintendent by the applicant and be accompanied by the applicable license application and issuance fee shown in section 601. The application must be signed and duly sworn to by the applicant. [1991, c. 828, §20 (NEW) .]

A-1. Prior to filing an application with the superintendent, the superintendent may require each applicant to take a written examination to test the applicant's competence to act as a reinsurance intermediary. [1995, c. 544, §7 (NEW).]

B. If the applicant is an individual, the application must include full answers to questions reasonably necessary to determine the applicant's identity, age, residence, present occupation, financial responsibility and insurance experience. The application must contain any other facts as the superintendent may require relative to the applicant's qualifications for the license as those qualifications are stated in this subchapter. [1995, c. 544, §7 (AMD) .]

C. If the applicant is a firm, association, partnership or corporation, the application must include, in addition, the names and residence addresses of all members, officers and directors and designate the name and residence address of each individual who is to exercise the license powers. Each individual shall furnish information concerning that individual for an individual license. Every individual named in the application is authorized to act in the name of the organization licensed as a reinsurance intermediary in this State. [1995, c. 544, §7 (AMD) .]

D. The application must indicate whether any insurance license was ever refused, suspended, revoked or continuance refused and whether any insurer, general agent, individual or organization claims that the applicant is indebted to it and, if so, the details of the indebtedness and the applicant's defense to that indebtedness. [1995, c. 544, §7 (AMD) .]

[1995, c. 544, §7 (AMD) .]

5. Additional requirements. The superintendent may require a reinsurance intermediary manager to:

A. File a surety bond issued by a licensed insurer, in an amount and format acceptable to the superintendent, for the protection of the reinsurer; or [1991, c. 828, §20 (NEW) .]

B. Maintain an errors and omissions policy issued by an insurer licensed in this State in an amount acceptable to the superintendent. [1991, c. 828, §20 (NEW) .]

[1995, c. 544, §7 (AMD) .]

6. Nonresident applicant. If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, must designate the superintendent as agent for service of process in the manner and with the same legal effect provided for by this Title for designation of service of process upon unauthorized insurers. The applicant shall furnish the superintendent with the name and address of a resident of this State upon whom notices or orders of the superintendent or

process affecting the nonresident reinsurance intermediary may be served. If a nonresident applicant becomes licensed, the licensee shall promptly notify the superintendent in writing of every change in its designated agent for service of process. Such a change is not effective until acknowledged by the superintendent.

[1991, c. 828, §20 (NEW) .]

7. Attorneys exempted. Licensed attorneys-at-law of this State when acting in their professional capacity are exempt from this section.

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW). 1995, c. 329, §5 (AMD). 1995, c. 544, §7 (AMD).

§743. GENERAL PROVISIONS

The superintendent may issue a reinsurance intermediary license to any person or organization that complies with the requirements of this subchapter. [1995, c. 544, §8 (AMD).]

1. Licensing; persons that are not individuals. Licensing of a firm, association, partnership or corporation is subject to this subsection.

A. A license issued to a firm, association, partnership or corporation authorizes all the members of the firm, association, partnership or corporation and employees of those entities to act as reinsurance intermediaries if each individual is named in the application and registered with the superintendent. Those individuals exercise the license power only for and in the name of the organization. This paragraph does not prevent an individual from being separately licensed and acting in that individual's own behalf and name. [1995, c. 544, §8 (AMD).]

B. The superintendent may not license a firm, association, partnership or corporation unless the license is within purposes stated in the partnership agreement or articles of incorporation. All licensees are subject to the applicable standards of section 407, subsection 2. [2013, c. 299, §1 (AMD).]

C. All licensees under this subsection are subject to the same restrictions with regard to business names as applied to insurers under section 408. [1995, c. 544, §8 (AMD).]

[2013, c. 299, §1 (AMD) .]

2. Advertising. Licensees may advertise only in the name under which they are licensed.

[1991, c. 828, §20 (NEW) .]

3. Notice of change. Licensees shall promptly notify the superintendent of every change in address and notify the superintendent of every change among its members, directors and officers and of other individuals designated in or registered to the license.

[1995, c. 544, §8 (AMD) .]

4. Refusal. The superintendent may refuse to issue a license to a reinsurance intermediary if, in the superintendent's judgment, the applicant, any person named on the application, or a member, principal, officer or director of the applicant, is not trustworthy, has given cause for revocation or suspension of such license or has failed to comply with any prerequisite for the issuance of such license, or that any controlling person of an applicant is not trustworthy to act as a reinsurance intermediary.

[1995, c. 544, §8 (AMD) .]

5. Superintendent review. If the superintendent finds that the application is complete and that the applicant is otherwise qualified for the license applied for, the superintendent shall promptly issue the license. Otherwise, the superintendent shall refuse to issue the license, promptly notify the applicant of the refusal and state the grounds for refusal.

[1991, c. 828, §20 (NEW) .]

6. Refund. If the license is refused, the superintendent shall promptly refund to the applicant all fees received for application for a reinsurance intermediary license.

[1991, c. 828, §20 (NEW) .]

7. Duration. Unless revoked or suspended, a reinsurance intermediary license remains in effect as long as the licensee pays the annual fee required by section 601 before the anniversary date of the license.

[1995, c. 544, §8 (AMD) .]

SECTION HISTORY

1991, c. 828, §20 (NEW). 1995, c. 544, §8 (AMD). 2013, c. 299, §1 (AMD) .

§744. REQUIRED CONTRACT PROVISIONS; REINSURANCE INTERMEDIARY-BROKER

Transactions between a reinsurance intermediary-broker and the insurer it represents in such a capacity may be entered into only pursuant to a written authorization specifying the responsibilities of each party. The authorization must, at a minimum, provide that: [1991, c. 828, §20 (NEW) .]

1. Termination. The insurer may terminate the reinsurance intermediary-broker's authority at any time upon 5 days' written notice to the reinsurance intermediary-broker;

[1991, c. 828, §20 (NEW) .]

2. Accounting. The reinsurance intermediary-broker shall render timely accounts to the insurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owed, to the reinsurance intermediary-broker and remit all funds due to the insurer within 30 days of receipt;

[1991, c. 828, §20 (NEW) .]

3. Bank as fiduciary. All funds collected for the insurer's account must be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank that is a qualified United States financial institution;

[1991, c. 828, §20 (NEW) .]

4. Compliance with law. The reinsurance intermediary-broker shall comply with section 745;

[1991, c. 828, §20 (NEW) .]

5. Compliance with standards. The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks; and

[1991, c. 828, §20 (NEW) .]

6. Disclosure. The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer or insurer to which business will be ceded or retroceded.

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW) .

§745. BOOKS AND RECORDS; REINSURANCE INTERMEDIARY-BROKERS

1. Records required. For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction showing:

- A. The type of contract, limits, underwriting restrictions, classes of risks and territory; [1991, c. 828, §20 (NEW) .]
- B. Period of coverage, including effective and expiration dates, cancellation provisions and notice required of cancellation; [1991, c. 828, §20 (NEW) .]
- C. Reporting and settlement requirements of balances; [1991, c. 828, §20 (NEW) .]
- D. Rate used to compute the reinsurance premium; [1991, c. 828, §20 (NEW) .]
- E. Names and addresses of assuming reinsurers; [1991, c. 828, §20 (NEW) .]
- F. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker; [1991, c. 828, §20 (NEW) .]
- G. Related correspondence and memoranda; [1991, c. 828, §20 (NEW) .]
- H. Proof of placement; [1991, c. 828, §20 (NEW) .]
- I. Details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of retrocessionaires and percentage of each contract assumed or ceded; [1991, c. 828, §20 (NEW) .]
- J. Financial records, including, but not limited to, premium and loss accounts; and [1991, c. 828, §20 (NEW) .]
- K. When the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:
 - (1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or
 - (2) Placed through a representative of the assuming reinsurer that is not an employee, written evidence that the reinsurer has delegated binding authority to the representative. [1991, c. 828, §20 (NEW) .]

[1991, c. 828, §20 (NEW) .]

2. Access. The insurer must have access and may copy and audit all accounts and records maintained by the reinsurance intermediary-broker related to its business in a form usable by the insurer.

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW) .

§746. DUTIES OF INSURERS UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY-BROKER

1. License requirements. An insurer may not engage the services of any person to act as a reinsurance intermediary-broker on the insurer's behalf unless that person is licensed as required by this subchapter.

[1991, c. 828, §20 (NEW) .]

2. Status of intermediary-broker. An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which the insurer transacts business, unless such reinsurance intermediary-broker is under common control with the insurer and subject to section 222.

[1991, c. 828, §20 (NEW) .]

3. Financial statements. The insurer shall annually obtain a copy of statements of current origin of the financial condition of each reinsurance intermediary-broker with which the insurer transacts business. These statements must be certified reports or reviews performed by a certified public accountant.

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW).

§747. REQUIRED CONTRACT PROVISIONS; REINSURANCE INTERMEDIARY-MANAGERS

Transactions between a reinsurance intermediary-manager and the reinsurer it represents in such capacity may be entered into only pursuant to a written contract, specifying the responsibilities of each party, that must be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through the reinsurance intermediary-manager, a true copy of the approved contract must be filed with the superintendent for approval. The contract must, at a minimum, contain the following terms and conditions. [1991, c. 828, §20 (NEW) .]

1. Termination. The reinsurer may terminate the contract for cause upon 5 days' written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

[1991, c. 828, §20 (NEW) .]

2. Accounting. The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges and other fees received by or owed, to the reinsurance intermediary-manager and remit all funds due under the contract to the reinsurer on not less than a monthly basis.

[1991, c. 828, §20 (NEW) .]

3. Bank as fiduciary. All funds collected for the reinsurer's account must be held in trust by the reinsurance intermediary-manager in a fiduciary capacity in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may retain no more than 3 months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

[1991, c. 828, §20 (NEW) .]

4. Compliance with law. The reinsurance intermediary-manager shall comply with section 748.

[1991, c. 828, §20 (NEW) .]

5. Access. The reinsurer must have access to and may copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

[1991, c. 828, §20 (NEW) .]

6. Nonassignable. The contract may not be assigned in whole or in part by the reinsurance intermediary-manager.

[1991, c. 828, §20 (NEW) .]

7. Compliance with standards. The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection or cession of all risks.

[1991, c. 828, §20 (NEW) .]

8. Commissions; fees. The contract must set forth the rates, terms and purposes of commissions, charges and other fees that the reinsurance intermediary-manager may levy against the reinsurer.

[1991, c. 828, §20 (NEW) .]

9. Settlement. If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

A. All claims must be reported to the reinsurer in a timely manner; [1991, c. 828, §20 (NEW) .]

B. A copy of each claim file must be sent to the reinsurer at its request or as soon as it becomes known that the claim:

- (1) Has the potential to exceed the lesser of an amount determined by the superintendent or the limit set by the reinsurer;
- (2) Involves a coverage dispute;
- (3) May exceed the reinsurance intermediary-manager's claims settlement authority;
- (4) Is open for more than 6 months; or
- (5) Is closed by payment of the lesser of an amount set by a court of competent jurisdiction or an amount agreed by the reinsurer; [1991, c. 828, §20 (NEW) .]

C. All claim files must be the joint property of the reinsurer and the reinsurance intermediary-manager; except that, upon an order of liquidation of the reinsurer, the files become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager must have reasonable access to and may copy the files on a timely basis; and [1991, c. 828, §20 (NEW) .]

D. Any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination. [1991, c. 828, §20 (NEW) .]

[1991, c. 828, §20 (NEW) .]

10. Interim profits. If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, interim profits may not be paid until one year after the end of each underwriting period for property business and 5 years after the end of each underwriting period for casualty business or other period set by the superintendent for other specified kinds of insurance and not until the adequacy of reserves on remaining claims has been verified pursuant to section 750, subsection 3.

[1991, c. 828, §20 (NEW) .]

11. Financial statements. The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of current origin of its financial condition prepared by an independent certified accountant. These statements must be certified reports or review statements prepared by a certified public accountant.

[1991, c. 828, §20 (NEW) .]

12. On-site review. The reinsurer shall periodically and no less than semiannually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

[1991, c. 828, §20 (NEW) .]

13. Disclosure. The reinsurance intermediary-manager shall disclose to the reinsurer any relationship the reinsurer has with any insurer prior to ceding or assuming any business with the insurer pursuant to this contract.

[1991, c. 828, §20 (NEW) .]

14. Scope of authority. Within the scope of its actual or apparent authority the acts of the reinsurance intermediary-manager are deemed to be the acts of the reinsurer on whose behalf it is acting.

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW).

§748. BOOKS, RECORDS AND POWERS; REINSURANCE INTERMEDIARY-MANAGERS

1. Records required. For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

A. The type of contract, limits, underwriting restrictions, classes of risks and territory; [1991, c. 828, §20 (NEW).]

B. Period of coverage, including effective and expiration dates, cancellation provisions and notice required for cancellation, and status of disposition of outstanding reserves on covered risks; [1991, c. 828, §20 (NEW).]

C. Reporting and settlement requirements of balances; [1991, c. 828, §20 (NEW).]

D. Rate used to compute the reinsurance premium; [1991, c. 828, §20 (NEW).]

E. Names and addresses of reinsurers; [1991, c. 828, §20 (NEW).]

F. Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager; [1991, c. 828, §20 (NEW).]

G. Related correspondence and memoranda; [1991, c. 828, §20 (NEW).]

H. Proof of placement; [1991, c. 828, §20 (NEW).]

I. Details regarding retrocessions handled by the reinsurance intermediary-manager including the identity of retrocessionaires and the percentage of each contract assumed or ceded; [1991, c. 828, §20 (NEW).]

J. Financial records, including but not limited to, premium and loss accounts; and [1991, c. 828, §20 (NEW).]

K. When the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(1) Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(2) If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative. [1991, c. 828, §20 (NEW).]

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW).

§749. PROHIBITED ACTS

The reinsurance intermediary-manager may not: [1991, c. 828, §20 (NEW).]

1. Retrocession. Retrocede business on behalf of the reinsurer; except that, the reinsurance intermediary-manager may facultatively retrocede business pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for any such retrocession. The guidelines must include a list of reinsurers with which automatic agreements are in effect, commission schedules and for each reinsurer, the coverages and amounts or percentages that may be reinsured;

[1991, c. 828, §20 (NEW) .]

2. Use of syndicates. Commit the reinsurer to participate in reinsurance syndicates;

[1991, c. 828, §20 (NEW) .]

3. Use of other licensees. Make use of any agent or broker without ensuring that the agent or broker is lawfully licensed to transact the kind of reinsurance for which the agent or broker is being used;

[1991, c. 828, §20 (NEW) .]

4. Claim payment. Without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one percent of the reinsurer's policyholder surplus as of December 31st of the next preceding calendar year;

[1991, c. 828, §20 (NEW) .]

5. Claim recovery. Collect any payment from a retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer;

[1991, c. 828, §20 (NEW) .]

6. Joint employment. Jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to section 222; or

[1991, c. 828, §20 (NEW) .]

7. Subcontract. Assign duties under a contract to a subcontracting manager.

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW).

§750. DUTIES OF REINSURERS UTILIZING THE SERVICES OF A REINSURANCE INTERMEDIARY-MANAGER

1. License required. A reinsurer may not engage the services of any person to act as a reinsurance intermediary-manager on its behalf unless that person is licensed as required by this subchapter.

[1991, c. 828, §20 (NEW) .]

2. Financial statements. The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager that the reinsurer has engaged prepared by an independent certified public accountant in a form acceptable to the superintendent.

[1991, c. 828, §20 (NEW) .]

3. Actuarial review. If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary who specializes in the type of insurance under consideration attesting to the adequacy of loss reserves including losses incurred and outstanding on business produced by the reinsurance intermediary-manager. This opinion is in addition to any other required loss reserve certification.

[1991, c. 828, §20 (NEW) .]

4. Binding authority. Binding authority for all retrocessional contracts or participation in reinsurance syndicates rests with an officer of the reinsurer who may not be affiliated with the reinsurance intermediary-manager.

[1991, c. 828, §20 (NEW) .]

5. Notice of termination. Within 30 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of termination to the superintendent.

[1991, c. 828, §20 (NEW) .]

6. Board member qualifications. A reinsurer may not appoint to its board of directors, any officer, director, employee, controlling shareholder or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by section 222 or chapter 77.

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW).

§751. EXAMINATION AUTHORITY

1. Authority. A reinsurance intermediary is subject to examination by the superintendent. The superintendent must have access to all books, bank accounts and records of the reinsurance intermediary in a usable form.

[1991, c. 828, §20 (NEW) .]

2. Status. A reinsurance intermediary-manager may be examined as if it were the reinsurer.

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW) .

§752. PENALTIES AND LIABILITIES

1. Violation. A reinsurance intermediary, insurer or reinsurer found by the superintendent, after a hearing conducted in accordance with the Maine Administrative Procedure Act, to be in violation of any provision of this Title, is subject to the following.

A. For each separate violation, a violator must pay a penalty of not less than \$5,000 and not more than \$100,000 for each separate violation. [1991, c. 828, §20 (NEW) .]

B. A violator is subject to revocation or suspension of its license. [1991, c. 828, §20 (NEW) .]

C. If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such violation. [1991, c. 828, §20 (NEW) .]

[1991, c. 828, §20 (NEW) .]

2. Final agency action. The decision, determination or order of the superintendent pursuant to this section is a final agency action and may be appealed pursuant to section 236.

[1991, c. 828, §20 (NEW) .]

3. Nonexclusivity of penalties. Nothing contained in this section affects the right of the superintendent to impose any other penalties provided in this Title.

[1991, c. 828, §20 (NEW) .]

4. Rights of others. Nothing contained in this subchapter limits or restricts the rights of policyholders, claimants, creditors or other 3rd parties or confers any rights to those persons.

[1991, c. 828, §20 (NEW) .]

SECTION HISTORY

1991, c. 828, §20 (NEW) .

§753. RULES

The superintendent may adopt reasonable rules for the implementation and administration of the provisions of this subchapter. [1991, c. 828, §20 (NEW).]

SECTION HISTORY

1991, c. 828, §20 (NEW).

§754. EFFECTIVE DATE

This subchapter takes effect January 1, 1993. An insurer or reinsurer may not continue to utilize the services of a reinsurance intermediary on and after February 1, 1993 unless utilization is in compliance with this subchapter. [1991, c. 828, §20 (NEW).]

SECTION HISTORY

1991, c. 828, §20 (NEW).

Subchapter 5: ASSUMPTION REINSURANCE**§761. DEFINITIONS**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 603, (NEW).]

1. Assuming insurer. "Assuming insurer" means the insurer that acquires an insurance obligation or risk from the transferring insurer pursuant to an assumption reinsurance agreement.

[1993, c. 603, (NEW) .]

2. Assumption reinsurance agreement. "Assumption reinsurance agreement" means a contract that both:

A. Transfers insurance obligations or risks of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer; and [1993, c. 603, (NEW).]

B. Is intended to effect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer's insurance obligations or risks under the contracts are extinguished. [1993, c. 603, (NEW).]

[1993, c. 603, (NEW) .]

3. Contract of insurance. "Contract of insurance" means a written agreement between an insurer and policyholder pursuant to which the insurer, in exchange for premium or other consideration, agrees to assume an obligation or risk of the policyholder or to make payments on behalf of, or to, the policyholder or its beneficiaries. Contract of insurance may include property, casualty, life, health, accident, surety, title and annuity business authorized to be written pursuant to the insurance laws of this State.

[1993, c. 603, (NEW) .]

4. Home service business. "Home service business" means insurance business on which premiums are collected on a weekly or monthly basis by an agent of the insurer.

[1993, c. 603, (NEW) .]

5. Notice of transfer. "Notice of transfer" means the written notice to policyholders required by section 764, subsection 1.

[1993, c. 603, (NEW) .]

6. Policyholder. "Policyholder" means an individual or entity that has the right to terminate or otherwise alter the terms of a contract of insurance. It includes a certificateholder whose certificate is in force on the proposed effective date of the assumption, if the certificateholder has the right to keep the certificate in force without change in benefit following termination of the group policy.

The right to keep the certificate in force referred to in this section does not include the right to elect individual coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, COBRA, of the Employee Retirement Income Security Act of 1974, as amended, 29 United States Code, Section 1161 to 1168.

[1993, c. 603, (NEW) .]

7. Transferring insurer. "Transferring insurer" means the insurer that transfers an insurance obligation risk to an assuming insurer pursuant to an assumption reinsurance agreement.

[1993, c. 603, (NEW) .]

SECTION HISTORY

1993, c. 603, (NEW) .

§762. SCOPE

1. Application. This subchapter applies to an insurer authorized in this State that either assumes or transfers the obligations or risks on contracts of insurance pursuant to an assumption reinsurance agreement.

[1993, c. 603, (NEW) .]

2. Exceptions. This subchapter does not apply to the following:

A. A reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks under the contracts of insurance subject to the reinsurance agreement; [1993, c. 603, (NEW) .]

B. The substitution of one insurer for another upon the expiration of insurance coverage pursuant to statutory or contractual requirements and the issuance of a new contract of insurance by another insurer; [1993, c. 603, (NEW) .]

C. The transfer of contracts of insurance pursuant to mergers or consolidations of 2 or more insurers to the extent that those transactions are regulated by law; [1993, c. 603, (NEW) .]

D. An insurer subject to a judicial order of liquidation or rehabilitation; [1993, c. 603, (NEW) .]

E. A reinsurance agreement or transaction to which a state insurance guaranty association is a party, except that policyholders do not lose any rights or claims afforded under their original policies pursuant to chapter 57, subchapter III and chapter 62; or [1993, c. 603, (NEW) .]

F. The transfer of liabilities from one insurer to another under a single group policy upon the request of the group policyholder, unless the certificateholder pays all or substantially all of the premium. [1993, c. 603, (NEW) .]

[1993, c. 603, (NEW) .]

SECTION HISTORY

1993, c. 603, (NEW).

§763. NOTICE REQUIREMENTS OF INTENT TO TRANSFER INSURANCE CONTRACT

1. Notice to policyholders, agents and brokers. Notice to policyholders, agents and brokers is required as follows.

A. The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with acknowledged receipt. A notice of transfer must also be sent to the transferring insurer's agents or brokers of record on the affected policies. [1993, c. 603, (NEW).]

B. The notice of transfer must state or provide:

- (1) The date the transfer and novation of the policyholder's contract of insurance is proposed to take place;
- (2) The names and addresses and telephone numbers of the assuming and transferring insurers;
- (3) That the policyholder has the right to either consent to or reject the transfer and novation;
- (4) The procedures and time limit for consenting to or rejecting the transfer and novation;
- (5) A summary of an effect that consenting to or rejecting the transfer and novation has on the policyholder's rights;
- (6) A statement that the assuming insurer is licensed to write the type of business being assumed in the state where the policyholder resides or is otherwise authorized, as provided in this subchapter, to assume the business;
- (7) The name and address of the person at the transferring insurer to whom the policyholder should send a written statement of acceptance or rejection of the transfer and novation;
- (8) The address and phone number of the Bureau of Insurance so that the policyholder may write or call for further information regarding the financial condition of the assuming insurer; and
- (9) The following financial data for both companies:
 - (a) Ratings for the last 5 years if available or for a lesser period as are available from 2 nationally recognized insurance rating services acceptable to the superintendent including the rating service's explanation of the meaning of the ratings. If ratings are unavailable for a year of the 5-year period, this must also be disclosed;
 - (b) A balance sheet as of December 31st for the previous 3 years if available or for a lesser period as is available and as of the date of the most recent quarterly statement;
 - (c) A copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement; and
 - (d) An explanation of the reason for the transfer. [1993, c. 603, (NEW).]

C. Notice must be given in a manner that conforms to the following form:

*NOTICE OF TRANSFER
IMPORTANT: THIS NOTICE AFFECTS
YOUR CONTRACT RIGHTS.
PLEASE READ IT CAREFULLY.*

Transfer of Policy

The [name of assuming insurer] has agreed to replace us as your insurer under [policy or certificate name and number] effective [date]. The [name of assuming insurer] principal place of business is [address]. Certain financial information concerning both companies is attached, including (1) ratings for the time period required by the Bureau of Insurance from 2 nationally recognized insurance rating services; (2) balance sheets for the time period required by the Bureau of Insurance and as of the date of the most recent quarterly statement; (3) a copy of the Management's Discussion and Analysis that was filed as a supplement to the previous year's annual statement; and (4) an explanation of the reason for the transfer. You may obtain additional information concerning [name of assuming insurer] from reference materials in your local library or by contacting the Superintendent of Insurance at [address and phone number].

The [name of assuming insurer] is licensed to write this coverage in your state. The Superintendent of Insurance in your state has reviewed the potential effect of the proposed transaction and has approved the transaction.

Your Rights

You may choose to consent to or reject the transfer of your policy to [name of assuming insurer]. If you want your policy transferred, you may notify us in writing by signing and returning the enclosed preaddressed, postage-paid card or by writing to us at:

[name, address and facsimile number of contact person]

Payment of your premium to the assuming company constitutes acceptance of the transaction. A method is provided to allow you to pay the premium while reserving the right to reject the transfer.

If you reject the transfer, you may keep your policy with us or exercise an option under your policy. If we do not receive a written rejection you have, as a matter of law, consented to the transfer. Before this consent is final you will be provided a second notice of the transfer 24 months from now. After the second notice is provided, you have one month to reply. If you have paid your premium to the [name of assuming insurer], without reserving your right to reject the transfer, you will not receive a second notice.

() This is your first notice. Please respond within 24 months.

() This is your second notice. You must respond within one month to reject the transfer of your policy. If we do not hear from you by [date], your policy will be transferred to [name of assuming insurer].

Effect of Transfer

If you accept this transfer, [name of assuming insurer] will be your insurer. The insurer has direct responsibility to you for the payment of all claims, benefits and for all other policy obligations. We no longer have an obligation to you.

If you accept this transfer, you must make all premium payments and claims submissions to [name of assuming insurer] and direct all questions to [name of assuming insurer].

For your convenience, we have enclosed a preaddressed postage-paid response card. Please take time now to read the enclosed notice and complete and return the response card to us.

If you have further questions about this agreement, you may contact [name of transferring insurer] or [name of assuming insurer].

Sincerely,

.....
[name of assuming insurer
address
phone]

[name of transferring insurer
address
phone]
[Notice Date]

RESPONSE
CARD

_____ Yes,
I
accept
the
transfer
of
my
policy
from
[name
of
transferring
insurer]
to
[name
of
assuming
insurer].

_____ No,
I
reject
the
proposed
transfer
of
my
policy
from
[name
of
transferring
insurer]
to
[name
of
assuming
insurer]
and
wish
to
retain
my
policy
with
[name
of
transferring
insurer].

Date:
Name:
Address:

Signature:

[1993, c. 603, (NEW).]

D. The notice of transfer must include a preaddressed, postage-paid response card that a policyholder may return as the written statement of acceptance or rejection of the transfer and novation. [1993, c. 603, (NEW).]

E. The notice of transfer must be filed as part of the prior approval requirement set forth in subsection 2, paragraph A. [1993, c. 603, (NEW).]

[1993, c. 603, (NEW) .]

2. Notification and prior approval. The requirements for notification and prior approval are as follows:

A. Prior approval by the superintendent is required for a transaction when an insurer domiciled in this State assumes or transfers obligations or risks on contracts of insurance under an assumption reinsurance agreement. An insurer licensed in this State may not transfer obligations or risks on contracts of insurance issued to or owned by residents of this State to an insurer that is not licensed in this State. An insurer domiciled in this State may not assume obligations or risks on contracts of insurance issued to or owned by policyholders residing in another state unless it is licensed in the other state or the insurance regulatory official of that state has approved the assumption. [1993, c. 603, (NEW).]

B. A licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on contracts of insurance issued to or owned by residents of this State shall file or cause to be filed the assumption certificate with the superintendent a copy of the notice of transfer and an affidavit that the transaction is subject to substantially similar requirements in the state of domicile of both the transferring and assuming insurer. [1993, c. 603, (NEW).]

C. A licensed foreign insurer that enters into an assumption reinsurance agreement that transfers the obligations or risks on contracts of insurance issued to or owned by residents of this State shall obtain prior approval of the superintendent and be subject to all other requirements of this subchapter unless the transferring and assuming insurers are subject to assumption reinsurance requirements adopted by law or rule in the jurisdiction of their domicile, which are substantially similar to those contained in this subchapter. [1993, c. 603, (NEW).]

D. The following factors, along with such factors as the superintendent determines appropriate under the circumstances, must be considered by the superintendent in reviewing a request for approval:

- (1) The financial condition of the transferring and assuming insurers and the effect the transaction has on the financial condition of each company;
 - (2) The competence, experience and integrity of those persons who control the operation of the assuming insurer;
 - (3) The plans or proposals the assuming party has with respect to the administration of the policies subject to the proposed transfer;
 - (4) Whether the transfer is fair and reasonable to the policyholders of both companies; and
 - (5) Whether the notice of transfer to be provided by the insurer is fair, adequate and not misleading.
- [1993, c. 603, (NEW).]

[1993, c. 603, (NEW) .]

SECTION HISTORY

1993, c. 603, (NEW). 1993, c. 603, (NEW).

§764. RIGHTS OF POLICYHOLDER

1. Right to reject. Every policyholder has the right to reject the transfer and novation of the contracts of insurance. A policyholder electing to reject the assumption transaction shall return to the transferring insurer the preaddressed, postage-paid response card or other written notice and indicate on the response card that the assumption is rejected.

[1993, c. 603, (NEW) .]

2. Payment of premium. Payment of the next premium to the assuming company after notice is received is determined to indicate the policyholder's acceptance of the transfer to the assuming insurer and a novation is determined to have been effected if the premium notice clearly states that payment of the premium to the assuming insurer constitutes acceptance of the transfer. The premium notice must also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer. With respect to a home service business or any other business not using premium notices, the disclosures and procedural requirements of this subsection are to be set forth in the notice of transfer required by section 763, subsection 1, paragraph A and in the assumption certificate.

[1995, c. 329, §6 (AMD) .]

3. Additional notice. No fewer than 24 months after the mailing of the initial notice of transfer required under section 763, if positive consent to the transfer and assumption has not been received or consent has not been determined to have occurred under subsection 1, the transferring company shall send to the policyholder a 2nd and final notice of transfer as specified in section 763, subsection 1. If the policyholder does not reject the transfer during the one-month period immediately following the date on which the transferring insurer mailed the 2nd and final notice of transfer, the policyholder's consent is determined to have occurred and novation of the contract is effected. With respect to the home service business, the 24 and one-month periods must be measured from the date of delivery of the notice of transfer pursuant to section 763, subsection 1, paragraph A.

[1993, c. 603, (NEW) .]

4. Response cards. The transferring insurer is deemed to have received the response card on the date it is postmarked. A policyholder may also send a response card by facsimile or other electronic transmission or by registered mail, express delivery or courier service, in which case the response card is determined to have been received by the assuming insurer on the date of actual receipt by the transferring insurer.

[1993, c. 603, (NEW) .]

SECTION HISTORY

1993, c. 603, (NEW). 1995, c. 329, §6 (AMD).

§765. EFFECT OF CONSENT BY THE POLICYHOLDER

If a policyholder consents to the transfer pursuant to section 764 or if the transfer is effected under section 766, there is a novation of the contract of insurance subject to the assumption reinsurance agreement with the result that the transferring insurer is relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks. [1993, c. 603, (NEW) .]

SECTION HISTORY

1993, c. 603, (NEW).

§766. AUTHORITY OF THE INSURANCE REGULATORY OFFICIAL

1. Transfer in the best interest of the policyholders. If an insurer domiciled in this State or in a jurisdiction having a substantially similar law is determined by the domiciliary insurance regulatory official to be in hazardous financial condition or an administrative proceeding has been instituted against it for the purpose of reorganizing or conserving the insurer, and the transfer of the contracts of insurance is in the best interest of the policyholders, as determined by the domiciliary insurance regulatory official, a transfer and novation may be effected notwithstanding the provisions of this subchapter. This may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer as approved by the insurance regulatory official.

[1993, c. 603, (NEW) .]

2. Protection. Notwithstanding any other provision of law, in the event that a transfer and novation is effected by a decision of a domiciliary insurance regulatory official under this section, the residents of this State whose policies are transferred to an unlicensed insurer are entitled to full protection under chapter 57, subchapter III and chapter 62.

[1993, c. 603, (NEW) .]

SECTION HISTORY
1993, c. 603, (NEW) .

Subchapter 6: SPECIAL PURPOSE REINSURANCE VEHICLE

§781. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 249, §2 (NEW) .]

1. Aggregate limit. "Aggregate limit" means the maximum sum payable to the ceding insurer under a special purpose reinsurance vehicle contract.

[2003, c. 249, §2 (NEW) .]

2. Catastrophe excess of loss property reinsurance. "Catastrophe excess of loss property reinsurance" means excess of loss reinsurance for a catastrophe layer of a reinsurance program, written on either a per occurrence or aggregate basis.

[2003, c. 249, §2 (NEW) .]

3. Catastrophe life or health reinsurance. "Catastrophe life or health reinsurance" means reinsurance of life, health or annuity products that transfers mortality, morbidity, survival or other related risks in excess of existing proportional or nonproportional automatic and facultative treaties newly placed or in force on the same risks.

[2003, c. 249, §2 (NEW) .]

4. Ceding insurer. "Ceding insurer" means an insurer that enters into a special purpose reinsurance vehicle contract with a special purpose reinsurance vehicle and includes a reinsurer retroceding assumed reinsurance to a special purpose reinsurance vehicle. A group of affiliated insurers under common control entering into a special purpose reinsurance vehicle contract on a coordinated basis is considered a single ceding insurer.

[2003, c. 249, §2 (NEW) .]

5. Control. "Control," including the terms "controlling," "controlled by" and "under common control," 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 the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing 10% or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist. Notwithstanding this subsection, for the purposes of this subchapter, the fact that a special purpose reinsurance vehicle exclusively provides reinsurance to a ceding insurer under a special purpose reinsurance vehicle contract is not by itself sufficient grounds for a finding that the reinsurance vehicle or the special purpose reinsurance vehicle organizer or owner is controlled by or under common control with the ceding insurer.

[2003, c. 249, §2 (NEW) .]

6. Fair value. "Fair value" means:

A. As to cash, the amount of cash; and [2003, c. 249, §2 (NEW) .]

B. As to an asset other than cash:

(1) The amount at which that asset could be bought or sold in a current transaction between arms-length, willing parties;

(2) The quoted market price for the asset in active markets must be used if available; and

(3) If quoted market prices are not available, a value determined using the best information available considering values of like assets and other valuation methods, such as present value of future cash flows, historical value of the same or similar assets or comparison to values of other asset classes the value of which have been historically related to the subject asset. [2003, c. 249, §2 (NEW) .]

[2003, c. 249, §2 (NEW) .]

7. Fully funded. "Fully funded" means, with respect to a special purpose reinsurance vehicle contract, that the fair value of the assets under the control of the ceding insurer or held in trust for the benefit of the ceding insurer under the special purpose reinsurance vehicle contract on the date on which the special purpose reinsurance vehicle contract is effected, equals or exceeds the aggregate limit as defined in subsection 1.

[2007, c. 386, §2 (AMD) .]

7-A. Impairment. "Impairment" or "impaired" means, with respect to a special purpose reinsurance vehicle or any of its protected cells, that either:

A. The available capital of the special purpose reinsurance vehicle or protected cell has fallen below the applicable initial capital requirement without the approval of the superintendent; or [2007, c. 386, §3 (NEW) .]

B. The fair value of the assets under the control of the ceding insurer or held in trust for the benefit of the ceding insurer under a special purpose reinsurance vehicle contract is less than the aggregate limit remaining under the contract as of the time the determination is made. [2007, c. 386, §3 (NEW) .]

[2007, c. 386, §3 (NEW) .]

8. Indemnity trigger. "Indemnity trigger" means a transaction term by which the special purpose reinsurance vehicle's obligation to pay the ceding insurer for losses covered by a special purpose reinsurance vehicle contract is triggered by the ceding insurer incurring a specified level of losses.

[2003, c. 249, §2 (NEW) .]

9. Insolvency. "Insolvency" or "insolvent" means that the special purpose reinsurance vehicle or one or more of its protected cells is unable to pay its obligations when they are due unless the obligations are the subject of a bona fide dispute.

[2007, c. 386, §4 (AMD) .]

10. Nonindemnity trigger. "Nonindemnity trigger" means a transaction term by which the special purpose reinsurance vehicle's obligation to pay the ceding insurer under a special purpose reinsurance vehicle contract arises from the occurrence or existence of some event or condition other than the ceding insurer incurring a specified level of losses under its insurance or reinsurance contracts.

[2003, c. 249, §2 (NEW) .]

11. Permitted investments. "Permitted investments" means those investments that meet the qualifications under section 795.

[2003, c. 249, §2 (NEW) .]

11-A. Protected cell. "Protected cell" means a separate account established and maintained by a special purpose reinsurance vehicle for one special purpose reinsurance vehicle contract and the accompanying insurance securitization with a ceding insurer as further provided for in section 784-A.

[2007, c. 386, §5 (NEW) .]

12. Qualified United States financial institution. "Qualified United States financial institution" means for purposes of meeting the requirements of a trustee as specified in section 784 a financial institution that is eligible to act as a fiduciary of a trust and:

A. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or any state; and [2003, c. 249, §2 (NEW) .]

B. Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies. [2003, c. 249, §2 (NEW) .]

[2003, c. 249, §2 (NEW) .]

13. Reinsurance vehicle. "Reinsurance vehicle" means a special purpose reinsurance vehicle.

[2003, c. 249, §2 (NEW) .]

14. Special purpose reinsurance vehicle. "Special purpose reinsurance vehicle" means an entity domiciled in and organized under the laws of this State that has received a limited certificate of authority from the superintendent under this subchapter exclusively for the limited purpose of entering into and effectuating special purpose reinsurance vehicle insurance securitizations, special purpose reinsurance vehicle contracts and other related transactions permitted by this subchapter.

[2003, c. 249, §2 (NEW) .]

15. Special purpose reinsurance vehicle contract; contract. "Special purpose reinsurance vehicle contract" or "contract" means a contract between the special purpose reinsurance vehicle and the ceding insurer pursuant to which the special purpose reinsurance vehicle agrees to pay the ceding insurer an agreed amount upon the occurrence of a triggering event.

[2003, c. 249, §2 (NEW) .]

16. Special purpose reinsurance vehicle insurance securitization; insurance securitization. "Special purpose reinsurance vehicle insurance securitization" or "insurance securitization" means a package of related risk transfer instruments, capital market offerings and facilitating administrative agreements by which proceeds are obtained by a special purpose reinsurance vehicle directly or indirectly through the issuance of securities and are held in trust or under the control of the ceding insurer pursuant to the requirements of this subchapter to secure the obligations of the special purpose reinsurance vehicle under one or more special purpose reinsurance vehicle contracts with one or more ceding insurers, when investment risk to the holders of these securities is contingent upon the obligations of the special purpose reinsurance vehicle to the ceding insurer or ceding insurers under the special purpose reinsurance vehicle contract in accordance with the transaction terms.

[2007, c. 386, §6 (AMD) .]

17. Special purpose reinsurance vehicle organizer; organizer. "Special purpose reinsurance vehicle organizer" or "organizer" means one or more persons that have organized or intend to organize a special purpose reinsurance vehicle under authority obtained as specified in this subchapter.

[2003, c. 249, §2 (NEW) .]

18. Special purpose reinsurance vehicle securities; securities. "Special purpose reinsurance vehicle securities" or "securities" means the securities issued by a special purpose reinsurance vehicle.

[2003, c. 249, §2 (NEW) .]

19. Triggering event. "Triggering event" means an event or condition that if and when it occurs or exists obligates the special purpose reinsurance vehicle to make a payment to the ceding insurer under the provisions of a special purpose reinsurance vehicle contract.

[2003, c. 249, §2 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §§2-6 (AMD).

§782. LIMITED CERTIFICATE OF AUTHORITY REQUIRED

1. Limited certificate of authority. In order to securitize one or more ceding insurers' risks, a special purpose reinsurance vehicle shall obtain a limited certificate of authority from the superintendent according to the provisions of this section.

[2003, c. 249, §2 (NEW) .]

2. Application. A special purpose reinsurance vehicle organizer seeking to obtain a limited certificate of authority for a special purpose reinsurance vehicle shall file an application for a limited certificate of authority with the superintendent and pay the application fee specified in section 601, subsection 1. A complete application must include the following:

A. An affidavit verifying that each prospective organizer meets the requirements of this subchapter;

[2003, c. 249, §2 (NEW) .]

- B. A representation that the prospective organizer intends to form a special purpose reinsurance vehicle that operates in accordance with the requirements under this subchapter; [2003 , c . 249 , §2 (NEW) .]
- C. The proposed name of the special purpose reinsurance vehicle; [2003 , c . 249 , §2 (NEW) .]
- D. Biographical affidavits of all organizers setting forth their legal names, any names under which they have conducted or are conducting their affairs and any names of any person affiliated, as defined in section 222, with any organizer, together with such other biographical information as the superintendent may request; [2003 , c . 249 , §2 (NEW) .]
- E. The source and form of the minimum capital to be contributed to the special purpose reinsurance vehicle; [2003 , c . 249 , §2 (NEW) .]
- F. Any persons with which the special purpose reinsurance vehicle is or upon formation will be affiliated as defined in section 222; [2003 , c . 249 , §2 (NEW) .]
- G. The names and biographical affidavits of the proposed members of the board of directors and principal officers of the special purpose reinsurance vehicle pursuant to section 790, setting forth their legal names, any names under which they have conducted or are conducting their affairs and any names of any person affiliated, as defined in section 222, with any proposed director or officer, together with such other biographical information as the superintendent may request; [2003 , c . 249 , §2 (NEW) .]
- H. A plan of operation, consisting of a description of the contemplated insurance securitization or securitizations, the special purpose reinsurance vehicle contract and related transactions, which must include:

- (1) Draft documentation or at the discretion of the superintendent a written summary of all material agreements that are planned in order to effectuate the insurance securitization or securitizations and the related contract, including the names of the ceding insurers, the nature of the risks being assumed and the maximum amounts, purpose and nature and the interrelationships of the various transactions required to effectuate the insurance securitization or securitizations;
- (2) The investment strategy of the special purpose reinsurance vehicle and a representation that the investment strategy complies with the investment requirements set forth in this subchapter and that the strategy includes investment practices or other provisions to preserve asset values that facilitate attainment of full funding during the term of the insurance securitization or securitizations with assets that can be monetized in response to a triggering event without a substantial loss in value;
- (3) A description of the method by which losses covered by the contract that may develop after the termination of the contract period are to be addressed under the provisions of the contract;
- (4) If applicable, a representation that the special purpose reinsurance vehicle contract with the ceding insurer, the security agreement or trust agreement under section 784, subsection 4, paragraph D-1 or E and any trusts holding assets that secure the obligations of the special purpose reinsurance vehicle under the contract are structured in accordance with the requirements under this subchapter ; and
- (5) If protected cells are to be used, a description of the procedures for maintaining and safeguarding separate accounts as required by section 784-A, subsection 1 and an application for approval of each initial protected cell as required by section 784-A, subsection 2. [2007 , c . 386 , §7 (AMD) .]

[2007 , c . 386 , §7 (AMD) .]

3. Additional information. The superintendent shall notify the special purpose reinsurance vehicle organizer if any additional information is needed in order to review the application and shall approve or deny the application within 60 days after determining that the application is complete.

A. The superintendent shall approve the application and issue a limited certificate of authority under this section if the superintendent finds that:

- (1) The proposed plan of operation provides a reasonable expectation of a successful operation;
- (2) The terms of the contract and related transactions comply with this subchapter and any applicable rules adopted by the superintendent;
- (3) The proposed plan of operation is not hazardous to any ceding insurer or to policyholders; and
- (4) The insurance regulator of the state of domicile of each ceding insurer has notified the superintendent in writing that it has not disapproved the transaction. The superintendent may waive this requirement for a ceding insurer whose domiciliary state does not have a substantially similar law if the superintendent finds that the domiciliary regulator has had notice and adequate opportunity to review the proposal and has not objected. [2003, c. 249, §2 (NEW).]

B. In evaluating the expectation of a successful operation, the superintendent shall consider, among other factors, whether the proposed organizer, directors and officers of the proposed special purpose reinsurance vehicle are of good character and not reasonably believed to be affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions or other insurance or business relations, with any person known to have been involved in the improper manipulation of assets, accounts or reinsurance. [2003, c. 249, §2 (NEW).]

C. If the superintendent denies the application or if the superintendent withholds consent to a proposed transaction involving a domestic ceding insurer under a similar law of another jurisdiction the proposed organizer or ceding insurer has the right to a hearing upon a timely request filed pursuant to section 229. [2003, c. 249, §2 (NEW).]

[2003, c. 249, §2 (NEW) .]

4. Approval. Upon approval of the application by the superintendent and the issuance of a limited certificate of authority, the special purpose reinsurance vehicle may be acquired or formed and, in accordance with the approved plan of operation, the special purpose reinsurance vehicle may enter into contracts and conduct other activities within the scope of the filed plan of operation.

[2003, c. 249, §2 (NEW) .]

5. Reinsurance activities. The limited certificate of authority must state that the special purpose reinsurance vehicle's authorization to be involved in the business of insurance is limited only to the reinsurance activities that the special purpose reinsurance vehicle is allowed to conduct pursuant to this subchapter.

[2003, c. 249, §2 (NEW) .]

6. Documentation of insurance securitization. The special purpose reinsurance vehicle organizer shall provide a complete set of the documentation of the insurance securitization to the superintendent upon closing of any transactions, including an opinion of legal counsel with respect to compliance with this subchapter and any other applicable laws as of the effective date of any transaction.

[2007, c. 386, §8 (AMD) .]

7. Changes in plan of operation. Any material change to the special purpose reinsurance vehicle's plan of operation filed pursuant to subsection 2, including, but not limited to, the initiation of a new insurance securitization to continue the activities of the special purpose reinsurance vehicle pursuant to this subchapter after expiration and full satisfaction of the initial securitization transactions, requires prior approval of the

superintendent. A change in the counterparty to swap transactions for an existing insurance securitization as allowed under this subchapter is not considered a material change unless the special purpose reinsurance vehicle's managers know or should know that the new counterparty presents a substantial risk of default.

[2007, c. 386, §9 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §§7-9 (AMD).

§783. LIMITED PURPOSE OF SPECIAL PURPOSE REINSURANCE VEHICLE

Special purpose reinsurance vehicles authorized under this subchapter are created for the limited purpose of entering into insurance securitization transactions with investors and related agreements to pay one or more ceding insurers agreed-upon amounts under a special purpose reinsurance vehicle contract upon the occurrence of triggering events related to the insurance business of the ceding insurer. A special purpose reinsurance vehicle may not issue a contract for assumption of risk or indemnification of loss other than a special purpose reinsurance vehicle contract. [2003, c. 249, §2 (NEW).]

SECTION HISTORY

2003, c. 249, §2 (NEW).

§784. APPROVED TRANSACTIONS AND OPERATION OF SPECIAL PURPOSE REINSURANCE VEHICLES

1. Contracts. Special purpose reinsurance vehicles authorized under this subchapter may enter into and effectuate special purpose reinsurance vehicle contracts with one or more ceding insurers as long as the contracts:

- A. Obligate the reinsurance vehicle to indemnify the ceding insurer for losses; [2003, c. 249, §2 (NEW) .]
- B. Are securitized in full through a single special purpose reinsurance vehicle insurance securitization or, if protected cells are used, through a single special purpose reinsurance vehicle insurance securitization for each protected cell; and [2007, c. 386, §10 (AMD) .]
- C. Are fully funded and secured with assets held in trust in accordance with the requirements of this section pursuant to agreements proposed under this subchapter, and invested in a manner that meets the criteria set forth in section 795. [2003, c. 249, §2 (NEW) .]

[2007, c. 386, §10 (AMD) .]

2. Eligible lines of business. A special purpose reinsurance vehicle contract may only provide catastrophe excess of loss property reinsurance coverage or catastrophe life or health reinsurance coverage, unless the superintendent adopts rules pursuant to section 797 specifying additional lines of business that may be reinsured by a special purpose reinsurance vehicle or approves a waiver of the requirement of this subsection for good cause shown with respect to a particular application.

[2007, c. 386, §11 (AMD) .]

3. Multiple ceding insurers. A special purpose reinsurance vehicle may enter into contracts with multiple ceding insurers only if each contract is attributable to a different protected cell or if:

- A. The special purpose reinsurance vehicle reinsures no more than 10 ceding insurers; and [2003, c. 249, §2 (NEW) .]

B. Each ceding insurer has no more than \$50,000,000 in surplus as reported in its most recent financial statement filed with its domiciliary regulator, as of the date the special purpose reinsurance vehicle is licensed. A group of ceding insurers under common control may elect to be treated as separate insurers for purposes of this subsection, but only if each insurer in the group that is reinsured by the same special purpose reinsurance vehicle is counted separately for purposes of the 10-cedent limit. [2003 , c . 249 , §2 (NEW) .]

[2007 , c . 386 , §12 (AMD) .]

4. Terms of operation. A special purpose reinsurance vehicle may enter into agreements with 3rd parties and conduct business necessary to fulfill its obligations and administrative duties incident to the insurance securitization and the special purpose reinsurance vehicle contract. The agreements may include entering into swap agreements or other transactions that have the objective of leveling timing differences in funding upfront or ongoing transaction expenses or managing credit or interest rate risk of the investments in trust to ensure that the assets held in trust are sufficient to satisfy payment or repayment of the securities issued pursuant to an insurance securitization transaction and any other obligations of the special purpose reinsurance vehicle. In fulfilling its function, the special purpose reinsurance vehicle shall adhere to the following requirements and shall, to the extent of its powers, ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with the following requirements and guidelines.

A. A special purpose reinsurance vehicle must have a distinct name, which must include the designation "SPRV" or "Special Purpose Reinsurance Vehicle." The name of the reinsurance vehicle may not be deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this State. [2003 , c . 249 , §2 (NEW) .]

B. Unless otherwise provided in the plan of operation, the principal place of business and office of any reinsurance vehicle organized under this subchapter must be located in this State. [2003 , c . 249 , §2 (NEW) .]

C. The assets of a reinsurance vehicle must be preserved and administered by or on behalf of the reinsurance vehicle to satisfy the liabilities and obligations of the reinsurance vehicle incident to the insurance securitization and other related agreements including the contract. [2003 , c . 249 , §2 (NEW) .]

D. Except as provided in paragraph D-1, assets of the reinsurance vehicle that are pledged to secure obligations of the reinsurance vehicle to a ceding insurer under a contract must be held in trust and administered by a qualified United States financial institution serving as trustee. The qualified United States financial institution may not control, be controlled by or be under common control with the reinsurance vehicle or any ceding insurer. [2007 , c . 386 , §13 (AMD) .]

D-1. If approved by the superintendent, the reinsurance vehicle and the ceding insurer may enter into a written agreement, in compliance with the ceding insurer's applicable domiciliary credit for reinsurance laws, under which the assets pledged as security, in lieu of being held in trust, are held in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control. The security agreement may not be approved unless the superintendent determines that the agreement is consistent with the purposes of this subsection, that the ceding insurer has unconditional access to the funds necessary to fulfill the reinsurance vehicle's obligations to the ceding insurer and that the assets withheld under the control of the ceding insurer are never less than the amount that would otherwise be required to be held in trust. [2007 , c . 386 , §13 (NEW) .]

E. The trust described in paragraph D must be governed by a written agreement between the reinsurance vehicle and the ceding insurer that creates one or more trust accounts into which all pledged assets must be deposited and held until distributed in accordance with the trust agreement. The pledged assets must be held by the trustee at the trustee's office in the United States and may be held in certificated or electronic form. [2007 , c . 386 , §13 (AMD) .]

F. The provisions for withdrawal by the ceding insurer of funds from the trust must comply with the ceding insurer's applicable domiciliary credit for reinsurance laws and be clean and unconditional, subject only to the following requirements:

- (1) The ceding insurer has the right to withdraw assets from the trust account at any time without notice to the reinsurance vehicle subject only to written notice to the trustee from the ceding insurer that funds in the amount requested are due and payable by the reinsurance vehicle;
- (2) No other statement or document need be presented in order to withdraw assets, except that the ceding insurer may be required to acknowledge receipt of withdrawn assets;
- (3) The trust agreement described in paragraph E must indicate that it is not subject to any conditions or qualifications outside of the trust agreement;
- (4) The trust agreement described in paragraph E may not contain references to any other agreements or documents; and
- (5) Reference may not be made to the fact that these funds may represent reinsurance premiums or that the funds have been deposited for any specific purpose. [2007, c. 386, §13 (AMD).]

G. The trust agreement described in paragraph E must be established for the sole use and benefit of the ceding insurer at least to the full extent of the reinsurance vehicle's obligations to the ceding insurer under the contract. In the case of more than one ceding insurer or more than one reinsurance contract with the same ceding insurer, a separate trust agreement must be entered into with each ceding insurer and a separate trust account must be maintained for each ceding insurer. [2007, c. 386, §13 (AMD).]

H. The trust agreement described in paragraph E must provide for the trustee to:

- (1) Receive assets and hold all assets in a safe place;
- (2) Determine that all assets are in a form that the ceding insurer or the trustee, upon direction by the ceding insurer, may whenever necessary negotiate the assets, without consent or signature from the reinsurance vehicle or any other person or entity;
- (3) Furnish to the reinsurance vehicle, the superintendent and the ceding insurer a statement of all assets in the trust account referred to in paragraph E reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;
- (4) Notify the reinsurance vehicle and the ceding insurer within 10 days of any deposits to or withdrawals from the trust account referred to in paragraph E;
- (5) Upon written demand of the ceding insurer, immediately take steps necessary to transfer absolutely all right, title and interest in the assets held in the trust account referred to in paragraph E to the ceding insurer and deliver physical custody of the assets to the ceding insurer; and
- (6) Allow no substitutions or withdrawals of assets from the trust account referred to in paragraph E except on written instructions from the ceding insurer. [2003, c. 249, §2 (NEW).]

I. The trust agreement described in paragraph E must provide that at least 30 days but not more than 45 days before termination of the trust account written notification of termination must be delivered by the trustee to the ceding insurer. [2007, c. 386, §13 (AMD).]

J. The trust agreement described in paragraph E may be made subject to and governed by the laws of any state in addition to the requirements for the trust as provided in this subchapter as long as the state is disclosed in the plan of operation filed with and approved by the superintendent. [2003, c. 249, §2 (NEW).]

K. The trust agreement described in paragraph E must prohibit invasion of the trust account referred to in paragraph E for the purpose of paying compensation to or reimbursing the expenses of the trustee. [2003, c. 249, §2 (NEW).]

L. The trust agreement described in paragraph E must provide that the trustee be liable for the trustee's own negligence, willful misconduct or lack of good faith.

(1) Notwithstanding the provisions of paragraph F, subparagraphs (3) to (5) and paragraph M, subparagraph (5), when a trust agreement described in paragraph E is established in conjunction with a contract, then the trust agreement may provide that the ceding insurer shall undertake to use and apply any amounts drawn upon the trust account without diminution because of the insolvency of the ceding insurer or the reinsurance vehicle for the following purposes:

(a) To pay or reimburse the ceding insurer amounts due to the ceding insurer under the contract, including, but not limited to, unearned premiums due to the ceding insurer if not otherwise paid by the reinsurance vehicle in accordance with the terms of that trust agreement; or

(b) When the ceding insurer has received notification of termination of the trust account referred to in paragraph E and when some or all of the reinsurance vehicle's obligations under the specific contract remain unliquidated and undischarged 10 days before the termination date, to withdraw amounts equal to the undischarged obligations and deposit the amounts in a separate account in the name of the ceding insurer in any qualified United States financial institution apart from its general assets in trust for the sole purpose of discharging any contractual obligations of the reinsurance vehicle that may remain executory after the withdrawal and for any period after the termination date. Assets so held must revert to the reinsurance vehicle when they are no longer necessary to secure the obligations of the reinsurance vehicle and may not exceed the sum of the following amounts as determined in good faith by the ceding insurer:

(i) Losses and loss expenses paid by the ceding insurer but not recovered from the reinsurance vehicle;

(ii) Reserves for losses reported and outstanding;

(iii) Reserves for losses incurred but not reported;

(iv) Reserves for loss expenses;

(v) Reserves for unearned premiums; and

(vi) Any additional amount necessary to maintain full funding of the aggregate limit remaining under the contract if the period of coverage or the agreed-upon period of loss development has yet to expire.

(2) The provisions to be included in the trust agreement described in paragraph E pursuant to this paragraph may instead be included in the underlying contract. [2003, c. 249, §2 (NEW) .]

M. A special purpose reinsurance vehicle contract must contain provisions that:

(1) Require the reinsurance vehicle to :

(a) Enter into a trust agreement described in paragraph E and establish a trust account referred to in paragraph E for the benefit of the ceding insurer; or

(b) Enter into a security agreement described in paragraph D-1.

The trust agreement or security agreement must specify what recoverables or reserves or both the agreement is to cover;

(2) Stipulate that assets pledged as security be valued according to their current fair value for purposes of the contract and may consist only of permitted investments;

(3) If applicable, require the reinsurance vehicle, before depositing assets with the trustee, to execute assignments or endorsements in blank or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments in order that the ceding insurer or the trustee upon the direction of the ceding insurer may whenever necessary negotiate any such assets without consent or signature from the reinsurance vehicle or any other entity;

(4) Require that all settlements of account between the ceding insurer and the reinsurance vehicle be made in cash or its equivalent; and

(5) Stipulate that the reinsurance vehicle and the ceding insurer agree that the assets in any trust account referred to in paragraph E and established pursuant to the provisions of the contract may be withdrawn by the ceding insurer at any time notwithstanding any other provisions in the contract and must be used and applied by the ceding insurer or any successor by operation of law of the ceding insurer, including, but not limited to, and subject to the provisions of section 793, any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the reinsurance vehicle, only for the following purposes:

(a) To transfer all such assets into one or more trust accounts pursuant to paragraph L for the benefit of the ceding insurer pursuant to the terms of the contract and in compliance with this subchapter; and

(b) To pay any other amounts that the ceding insurer claims are due under the contract. [2007, c. 386, §13 (AMD).]

N. The contract entered into by the reinsurance vehicle may contain provisions that give the reinsurance vehicle the right to seek approval from the ceding insurer to withdraw from the trust account referred to in paragraph E all or part of the assets contained in the trust account and to transfer the assets to the reinsurance vehicle as long as:

(1) The reinsurance vehicle shall at the time of the withdrawal replace the withdrawn assets with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the requirements of section 795; and

(2) After the withdrawals and transfer, the fair value of the assets in the trust account referred to in paragraph E securing the obligations of the reinsurance vehicle under the contract is no less than an amount needed to satisfy the full funding requirement of the contract. The ceding insurer has the sole discretion to determine whether these provisions have been satisfied but may not unreasonably nor arbitrarily withhold its approval. [2003, c. 249, §2 (NEW).]

O. The contract must provide that investors in the reinsurance vehicle agree that any obligation to repay principal, interest or dividends on the securities issued by the reinsurance vehicle must be reduced upon the occurrence of a triggering event, to the extent that the assets of the reinsurance vehicle held in trust for the benefit of the ceding insurer are remitted to the ceding insurer in fulfillment of the obligations of the reinsurance vehicle under the contract. [2003, c. 249, §2 (NEW).]

P. Assets held by a reinsurance vehicle in trust must be valued at their fair value. [2003, c. 249, §2 (NEW).]

Q. The proceeds from the sale of securities by the reinsurance vehicle to investors must be deposited with the trustee or under the control of the ceding insurer as described in this subchapter and must be held or invested in accordance with the requirements of section 795. [2007, c. 386, §13 (AMD).]

R. A reinsurance vehicle organized under this subchapter may engage only in fully funded contracts to support in full the ceding insurer's exposures assumed by the reinsurance vehicle. A contract must be indemnity-triggered unless the superintendent adopts rules pursuant to section 797 authorizing nonindemnity-triggered contracts and addressing the treatment of the portion of the risk that is nonindemnity-based, including accounting, disclosure, risk-based capital treatment and the manner in which risks associated with a nonindemnity-based contract may be evaluated and managed. Assets of the reinsurance vehicle may be used to pay interest or other consideration on any outstanding debt or other obligation of the reinsurance vehicle and nothing in this paragraph may be construed or interpreted to prevent a reinsurance vehicle from entering into a swap agreement or other transaction that has the effect of guaranteeing interest or other consideration. [2003, c. 249, §2 (NEW).]

S. In the special purpose reinsurance vehicle insurance securitization, the contracts or other relating documentation must contain provisions identifying the reinsurance vehicle that enters into the reinsurance securitization and the contracts or other documentation must clearly disclose that the assets of the reinsurance vehicle and only those assets are available to pay the obligations of that reinsurance vehicle. Notwithstanding this paragraph, and subject to the provisions of this subchapter and any other applicable law, the failure to include such language in the contracts or other documentation may not be used as the sole basis by creditors, reinsurers or other claimants to circumvent the provisions of this subchapter. [2003, c. 249, §2 (NEW).]

T. A reinsurance vehicle is not authorized to:

- (1) Issue or otherwise administer primary insurance policies;
- (2) Have any obligation to the policyholders or reinsureds of the ceding insurer;
- (3) Enter into a contract with a person that is not licensed or otherwise authorized to conduct the business of insurance or reinsurance in at least its state or country of domicile; or
- (4) Assume or retain exposure to insurance or reinsurance losses for its own account that is not initially fully funded by proceeds from an insurance securitization that meets the requirements of this subchapter. [2003, c. 249, §2 (NEW).]

U. At the cessation of business of a reinsurance vehicle, the limited certificate of authority granted by the superintendent under section 782 expires and the reinsurance vehicle may no longer be authorized to conduct activities pursuant to this subchapter until a new certificate of authority is issued pursuant to a new filing in accordance with section 782. The completion of a reinsurance vehicle's securitization activities does not constitute the cessation of business for purposes of this paragraph if the reinsurance vehicle's approved business plan contemplates additional securitizations. [2007, c. 386, §13 (AMD).]

V. It is unlawful for a reinsurance vehicle to lend or otherwise invest or place in custody, trust or under management any of its assets with or to borrow money or receive a loan or advance from, other than by issuance of the securities pursuant to an insurance securitization, from anyone convicted of a felony, anyone who is untrustworthy or of known bad character or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation or corruption. [2003, c. 249, §2 (NEW).]

W. A special purpose reinsurance vehicle may purchase reinsurance with the approval of the superintendent to retrocede risks assumed through a special purpose reinsurance vehicle contract. Reinsurance purchased by the reinsurance vehicle does not reduce the aggregate limit of the reinsurance vehicle or the covered protected cell and may only be credited toward the funding requirements of the reinsurance vehicle or the covered protected cell to the extent that the ceding insurer has a direct right of recovery against the retrocessionaire that is secured by assets deposited with the trustee or under the control of the ceding insurer in accordance with this section and held or invested in accordance with the requirements of section 795. [2007, c. 386, §13 (NEW).]

[2007, c. 386, §13 (AMD).]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §§10-13 (AMD).

§784-A. PROTECTED CELLS

1. Establishment of protected cells. A special purpose reinsurance vehicle may establish and maintain one or more protected cells with the prior written approval of the superintendent, subject to compliance with the provisions of this section.

A. A protected cell may be established only for the purpose of insuring or reinsuring risks of one or more special purpose reinsurance vehicle contracts with the intent of facilitating an insurance securitization. The establishment of a protected cell in compliance with this section in connection with a lawful insurance securitization does not constitute a fraudulent conveyance, a scheme to defraud creditors or a transaction of business for a fraudulent purpose. [2007, c. 386, §14 (NEW).]

B. Each protected cell must be accounted for separately on the books and records of the special purpose reinsurance vehicle to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions for the special purpose reinsurance vehicle contract with each cell and other factors as may be provided in the special purpose reinsurance vehicle contract, insurance securitization transaction documents, plan of operation or business plan, or as required by the superintendent. The special purpose reinsurance vehicle must establish administrative and accounting procedures necessary for the proper attribution of protected cell assets and protected cell liabilities to each protected cell. The directors of a special purpose reinsurance vehicle shall keep the protected cell assets and liabilities attributable to each protected cell separate and separately identifiable from the assets and liabilities of the special purpose reinsurance vehicle's general account and from the protected cell assets and liabilities attributable to any other protected cell. [2007, c. 386, §14 (NEW).]

C. Amounts attributed to a protected cell under this section, including assets transferred to a protected cell account, are owned by the special purpose reinsurance vehicle, and the special purpose reinsurance vehicle is not and may not hold itself out to be a trustee with respect to those protected cell assets of that protected cell account. [2007, c. 386, §14 (NEW).]

D. All attributions of assets and liabilities between a protected cell and the general account must be in accordance with the plan of operation approved by the superintendent. No other attribution of assets or liabilities may be made by a special purpose reinsurance vehicle between the special purpose reinsurance vehicle's general account and its protected cell or cells. The special purpose reinsurance vehicle must attribute all insurance obligations, assets and liabilities relating to a special purpose reinsurance vehicle contract and the related insurance securitization transaction, including any securities issued by the special purpose reinsurance vehicle as part of the insurance securitization and any taxes or other obligations arising by operation of law, to the associated protected cell. [2007, c. 386, §14 (NEW).]

E. The assets of a protected cell are not chargeable with liabilities arising out of a special purpose reinsurance vehicle contract related to or associated with another protected cell. More than one special purpose reinsurance vehicle contract may not be attributed to the same protected cell unless those special purpose reinsurance vehicle contracts are intended to be, and ultimately are, part of a single securitization transaction. [2007, c. 386, §14 (NEW).]

F. A sale, exchange or other transfer of assets may not be made by the special purpose reinsurance vehicle between or among any of its protected cells without the consent of the superintendent, the ceding insurer or insurers and the holders of the securities issued by each protected cell. [2007, c. 386, §14 (NEW).]

G. A sale, exchange, transfer of assets, dividend or distribution may not be made from a protected cell without the superintendent's approval except as authorized in advance under the special purpose reinsurance vehicle contract or related insurance securitization transaction documents and may not be approved if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell. [2007, c. 386, §14 (NEW).]

H. A special purpose reinsurance vehicle may pay interest or repay principal, or both, and make distributions or repayments in respect of any securities attributed to a particular protected cell from assets or cash flows relating to or emerging from the special purpose reinsurance vehicle contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with the provisions of this subchapter or as otherwise approved by the superintendent. [2007, c. 386, §14 (NEW).]

[2007, c. 386, §14 (NEW) .]

2. Approval of protected cells. A special purpose reinsurance vehicle contract with or attributable to a protected cell does not take effect without the superintendent's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the superintendent's prior written approval and the amendment of the special purpose reinsurance vehicle's limited certificate of authority. The superintendent may retain legal, financial and examination services from outside the bureau to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the superintendent may use internal resources to examine and investigate the application, the reasonable cost of which may be charged against the applicant up to a maximum of \$12,000, or both. The application for approval of a protected cell must include a plan of operation for the protected cell consistent with the requirements of section 782, subsection 2, paragraph H.

[2007, c. 386, §14 (NEW) .]

3. Minimum capital requirements. A special purpose reinsurance vehicle with protected cells shall possess and maintain capitalization in each protected cell in the amount and manner required for a special purpose reinsurance vehicle in section 787 and, in addition, shall possess and maintain minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount determined by the superintendent after giving due consideration of the special purpose reinsurance vehicle's business plan, feasibility study and proforma financial statements, including the nature of the risks to be insured or reinsured.

[2007, c. 386, §14 (NEW) .]

4. Status of protected cells. A protected cell is not a legal person separate from the special purpose reinsurance vehicle. However, a protected cell must have its own distinct name or designation that includes the words "protected cell" and all protected cells must be identified by name in the special purpose reinsurance vehicle's limited certificate of authority. The special purpose reinsurance vehicle shall hold all assets attributable to the protected cell in one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

A. The assets of a protected cell are available only to the ceding insurer and other creditors of that protected cell and may not be used to pay expenses or claims other than those attributable to the protected cell. Creditors with respect to a protected cell are not entitled to any recourse against the protected cell assets of other protected cells or the assets of the special purpose reinsurance vehicle's general account. If an obligation of a special purpose reinsurance vehicle relates only to the general account, the creditor is entitled to have recourse with respect to that obligation only to the assets of the general account. [2007, c. 386, §14 (NEW).]

B. Protected cell assets may not be pledged or otherwise encumbered except for the benefit of creditors of that protected cell in furtherance of the securitization in accordance with the approved plan of operation. [2007, c. 386, §14 (NEW).]

C. All contracts or other documentation reflecting protected cell liabilities must clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all special purpose reinsurance vehicle insurance securitizations involving a protected cell, the contracts or other documentation effecting the transaction must contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation must clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. However, failure to include express language attributing obligations under a contract to a protected cell does not give a party the right to void or reform the contract if the party had notice that the contract related to a protected cell. [2007, c. 386, §14 (NEW).]

D. If the special purpose reinsurance vehicle enters into a contract involving more than one protected cell, the rights and obligations relating to each protected cell must be several rather than joint and the contract must make clear provisions for their apportionment between protected cells. [2007, c. 386, §14 (NEW) .]

E. In any action or proceeding involving the potential for monetary recovery by or against a special purpose reinsurance vehicle with protected cells, or for nonmonetary relief relating to a particular protected cell or cells, any process, pleading or order must name the specific cell or cells affected, including if applicable the general account. [2007, c. 386, §14 (NEW) .]

[2007, c. 386, §14 (NEW) .]

5. Separate administrative services. A special purpose reinsurance vehicle may contract with or arrange for an investment advisor, commodity trading advisor or other 3rd party to manage the assets or administer the obligations of a protected cell, if all remuneration, expenses and other compensation arising out of services performed with respect to that protected cell are payable only from the assets of that protected cell or, with the approval of the superintendent, from the assets of the special purpose reinsurance vehicle's general account.

[2007, c. 386, §14 (NEW) .]

6. Notice of impairment or insolvency. A special purpose reinsurance vehicle with protected cells shall notify the superintendent in writing within 10 business days after the special purpose reinsurance vehicle or any protected cell becomes impaired or insolvent.

[2007, c. 386, §14 (NEW) .]

7. Conversion to protected cell framework. A special purpose reinsurance vehicle without protected cells may apply to the superintendent in accordance with subsection 2 to revise its plan of operation to establish one or more protected cells. If there is an existing insurance securitization in force at the time of the application, the revised plan of operation must provide for the establishment of a protected cell for that securitization and the transfer to the protected cell of all assets and liabilities relating to the securitization.

[2007, c. 386, §14 (NEW) .]

8. Termination of protected cell. At the cessation of business of a protected cell in accordance with the plan approved by the superintendent, the special purpose reinsurance vehicle shall close out the protected cell account and the superintendent shall modify the limited certificate of authority to reflect the termination.

[2007, c. 386, §14 (NEW) .]

SECTION HISTORY

2007, c. 386, §14 (NEW) .

§785. POWERS

1. Powers. A special purpose reinsurance vehicle authorized under this subchapter has the powers to enter into contracts and to conduct other commercial activities necessary to fulfill the purposes of this subchapter. These activities may include, but are not limited to, entering into contracts, issuing securities of the special purpose reinsurance vehicle and complying with the terms of the contracts, entering into trust agreements, swap agreements and any other agreements necessary to effectuate an insurance securitization in compliance with the limitations and pursuant to the authorities granted to the reinsurance vehicle under this subchapter or the plan of operation approved by the superintendent.

[2003, c. 249, §2 (NEW) .]

2. Bylaws. A special purpose reinsurance vehicle organized or doing business under this subchapter is capable of suing or being sued and may make or enforce contracts in relation to the business of the reinsurance vehicle; may have and use a common seal and in the name of the reinsurance vehicle or by a

trustee chosen by the board of directors is capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of its organization; and may by its board of directors, trustees, officers or managers make bylaws and amendments to the bylaws not inconsistent with the laws or the constitution of this State or of the United States. The bylaws must define the manner of electing directors, trustees or managers and officers of the reinsurance vehicle, together with their qualifications, duties and term of office.

[2003, c. 249, §2 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW).

§786. AFFILIATION

Notwithstanding the provisions of section 222, the special purpose reinsurance vehicle, the special purpose reinsurance vehicle organizer or subsequent debt or equity investors in special purpose reinsurance vehicle securities are not deemed affiliates of the ceding insurer by virtue of the special purpose reinsurance vehicle contract between the ceding insurer and the reinsurance vehicle, the securities of the reinsurance vehicle or related agreements necessary to implement the special purpose reinsurance vehicle insurance securitization. [2007, c. 386, §15 (AMD).]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §15 (AMD).

§787. CAPITALIZATION

A special purpose reinsurance vehicle must have minimum initial capital of not less than \$5,000. All of the initial capital must be received by the reinsurance vehicle in cash. The minimum initial capital required and all other funds of the reinsurance vehicle in excess of its minimum initial capital, including funds held in trust to secure the obligations of the reinsurance vehicle pursuant to its special purpose reinsurance vehicle contracts, must be invested as provided in section 795. [2003, c. 249, §2 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW).

§788. DIVIDENDS

The special purpose reinsurance vehicle may not declare or pay dividends in any form to its owners unless the dividends do not cause the reinsurance vehicle or any of its protected cells to become impaired and, after giving effect to the dividends, the assets of the reinsurance vehicle, including assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to meet its obligations. Except for dividends specifically provided for in the approved plan of operation under section 782, subsection 2, paragraph H, the prior approval of the superintendent is required for any dividend paid during the term of coverage or while the reinsurance vehicle has undischarged obligations to the ceding insurer. The dividends may be declared by the board of directors of the reinsurance vehicle if the dividends would not violate the provisions of this subchapter or the approved plan of operation and would not jeopardize the fulfillment of the obligations of the reinsurance vehicle or the trustee pursuant to the special purpose reinsurance vehicle insurance securitization, the special purpose reinsurance vehicle contract or any related transaction. The provisions of section 222, subsection 11-C do not apply to such dividends. [2009, c. 511, Pt. A, §6 (AMD) .]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §16 (AMD). 2009, c. 511, Pt. A, §6 (AMD).

§789. RECORDS AND FINANCIAL REPORTS

1. Records. The records of the special purpose reinsurance vehicle must be maintained in this State and must be available for examination by the superintendent at any time. No later than 5 months after the end of the fiscal year of the reinsurance vehicle, the reinsurance vehicle shall file with the superintendent an audit by a certified public accounting firm of the financial statements of the reinsurance vehicle and the trust accounts referred to in section 784, subsection 2, paragraph E.

[2003, c. 249, §2 (NEW) .]

2. Statement of operation. Each special purpose reinsurance vehicle organized under this subchapter shall file with the superintendent no later than March 1st of each year a statement of operations, including a statement of income, a balance sheet and a detailed listing of invested assets, including identification of assets held in trust to secure the reinsurance vehicle's obligations under the special purpose reinsurance vehicle contract, for the year ending the prior December 31st. The statements must be prepared in accordance with statutory accounting principles consistent with section 901-A on forms required by the superintendent. If one or more protected cells have been established, the statement must detail the financial experience of the general account and each protected cell separately, in addition to providing the combined financial experience of the special purpose reinsurance vehicle and all protected cells.

[2007, c. 386, §17 (AMD) .]

3. Financial statement. The special purpose reinsurance vehicle shall keep its books and records in such manner that its financial condition, affairs and operations can be ascertained and so that its financial statements filed with the superintendent can be readily verified and its compliance with the provisions of this subchapter determined. The books and records may be photographed, reproduced on film or stored and reproduced electronically.

[2003, c. 249, §2 (NEW) .]

4. Preservation. All books, records, documents, accounts and vouchers must be preserved and kept available in this State for the purpose of examination and until authority to destroy or otherwise dispose of the records is secured from the superintendent. The original records may, however, be kept and maintained outside this State if, according to a plan adopted by the special purpose reinsurance vehicle's board of directors and approved by the superintendent, it maintains suitable records in lieu of the original records.

[2003, c. 249, §2 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §17 (AMD).

§790. OFFICERS AND DIRECTORS

The directors of a special purpose reinsurance vehicle shall elect officers that they consider necessary to carry out the purposes of the reinsurance vehicle pursuant to this subchapter. The provisions of Title 13-C, section 857 apply to the indemnification of officers and directors of reinsurance vehicles organized under this subchapter. [2003, c. 249, §2 (NEW).]

1. Appointment; election of officers; directors. Each special purpose reinsurance vehicle authorized to do business in this State shall notify the superintendent within 30 days after the appointment or election of any new officers or directors.

[2003, c. 249, §2 (NEW) .]

2. Removal of officer; director. When the superintendent determines that an officer or director does not meet the standards set forth in this section, the superintendent shall, after notice and opportunity for hearing afforded to the officer or director, and after a finding that the officer or director is incompetent or untrustworthy or of known bad character, order the removal of the person. If the reinsurance vehicle does not comply with a removal order within 30 days, the superintendent may suspend that reinsurance vehicle's limited certificate of authority until such time as the order is complied with.

[2003, c. 249, §2 (NEW) .]

3. Loans with affiliate. The reinsurance vehicle may make no loans to any special purpose reinsurance vehicle organizer, owner, director, officer, manager or affiliate of the reinsurance vehicle.

[2003, c. 249, §2 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW).

§791. FEES AND TAXES

A special purpose reinsurance vehicle application under section 782, subsection 2 is subject to the application fee specified in section 601, subsection 1. A reinsurance vehicle is also responsible for expenses and costs incurred by the bureau in accordance with section 228. The reinsurance vehicle is not subject to state premium or other taxes incidental to the operation of its business as long as the business remains within the limitations of this subchapter. [2003, c. 249, §2 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW).

§792. DISSOLUTION

A special purpose reinsurance vehicle operating under this subchapter may be dissolved at any time by a vote of its directors under section 790 and after the action has been approved by the superintendent. Voluntary dissolution may not be effected or allowed until and unless all of the obligations of the reinsurance vehicle pursuant to the insurance securitization or securitizations have been fully and finally satisfied pursuant to their terms. In the case of voluntary dissolution, the disposition of the affairs of the reinsurance vehicle, including the settlement of all outstanding obligations, must be made by the officers or directors of the reinsurance vehicle and when the liquidation has been completed and a final statement in acceptable form has been filed with and approved by the superintendent the provisions for voluntary dissolution under section 3484 must be followed to dissolve the reinsurance vehicle. [2007, c. 386, §18 (AMD) .]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §18 (AMD).

§793. CONSERVATION, REHABILITATION OR LIQUIDATION

1. Authorized insurer. A special purpose reinsurance vehicle is considered an authorized insurer for purposes of section 4351, subsection 1, and the provisions of chapter 57 apply to a reinsurance vehicle or to any of a reinsurance vehicle's protected cells, except to the extent modified by this section.

[2007, c. 386, §19 (AMD) .]

2. Grounds for action. Notwithstanding the provisions of sections 4356 and 4357, the Superior Court may issue an order authorizing the superintendent to conserve, rehabilitate or liquidate a special purpose reinsurance vehicle domiciled in this State, or one or more of its protected cells, only if the superintendent proves by clear and convincing evidence or the reinsurance vehicle stipulates after notice and opportunity for hearing that:

A. There has been embezzlement, wrongful sequestration, dissipation or diversion of the assets of the reinsurance vehicle or protected cell intended to be used to pay amounts owed to the ceding insurer or the holders of special purpose reinsurance vehicle securities; or [2007, c. 386, §19 (AMD).]

B. The reinsurance vehicle or protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose reinsurance vehicle securities request or consent to conservation, rehabilitation or liquidation under this subchapter. [2007, c. 386, §19 (AMD).]

[2007, c. 386, §19 (AMD).]

3. Receiver. Notwithstanding any contrary provision of this Title, rules adopted under this Title or any other applicable law, upon any order of conservation, rehabilitation or liquidation of the special purpose reinsurance vehicle or one or more of its protected cells, a receiver is bound to deal with the reinsurance vehicle's assets and liabilities in accordance with the requirements under this subchapter.

[2007, c. 386, §19 (AMD).]

3-A. Protected cells. The following provisions apply to the insolvency of a special purpose reinsurance vehicle with protected cells or to the insolvency of a protected cell.

A. The insolvency of one protected cell does not constitute the insolvency of any other protected cell or of the special purpose reinsurance vehicle itself. The insolvency of a special purpose reinsurance vehicle does not constitute the insolvency of any of its solvent protected cells and is not a basis for the receivership of any solvent protected cell capable of independent operation. [2007, c. 386, §19 (NEW).]

B. Notwithstanding the insolvency of the special purpose reinsurance vehicle or of any other protected cell, the obligations attributed to any solvent protected cell must continue to be paid as they come due. [2007, c. 386, §19 (NEW).]

C. The assets attributed to a protected cell may not be applied to the liabilities attributed to another protected cell or to the reinsurance vehicle generally, except that:

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

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

(3) If assets or liabilities have been commingled, or have been wrongfully transferred between protected cells or between a protected cell and the general account, the Superior Court shall trace the assets and attribute them to the proper accounts, giving due consideration to the terms of any relevant governing instrument or contract. [2007, c. 386, §19 (NEW).]

D. The plan of rehabilitation or liquidation of any special purpose reinsurance vehicle with protected cells must make reasonable provision for the continued operation of all solvent protected cells, which may involve the formation of one or more new special purpose reinsurance vehicles or the transfer of one or more protected cells. [2007, c. 386, §19 (NEW) .]

[2007, c. 386, §19 (NEW) .]

4. Recoverable amounts. With respect to amounts recoverable under a special purpose reinsurance vehicle contract, the amount recoverable by the receiver may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation or liquidation with respect to the ceding insurer, notwithstanding any provisions to the contrary in the contracts or other documentation governing the special purpose reinsurance vehicle insurance securitization.

A. Notwithstanding the provisions of chapter 57, an application or petition in any delinquency proceeding relating to a ceding insurer or any temporary restraining order or injunction issued in any such proceeding may not prohibit the transaction of any business by a reinsurance vehicle, including any payment by a reinsurance vehicle made pursuant to a special purpose reinsurance vehicle security or any action or proceeding against a reinsurance vehicle or its assets. [2003, c. 249, §2 (NEW) .]

B. Notwithstanding the provisions of chapter 57, subchapter 2, the commencement of a summary proceeding or other interim proceeding commenced prior to a formal delinquency proceeding with respect to a reinsurance vehicle and any order issued by the court in such proceeding may not prohibit a reinsurance vehicle from making a payment pursuant to a special purpose reinsurance vehicle security or contract or from taking any action required to make the payment. [2003, c. 249, §2 (NEW) .]

[2003, c. 249, §2 (NEW) .]

5. Nonfraudulent transfer. Notwithstanding any other provision of chapter 57 or other state law:

A. A receiver of a ceding insurer may not void a nonfraudulent transfer by a ceding insurer to a special purpose reinsurance vehicle of money or other property made pursuant to a special purpose reinsurance vehicle contract; and [2007, c. 386, §19 (AMD) .]

B. A receiver of a special purpose reinsurance vehicle may not void a nonfraudulent transfer by the reinsurance vehicle of money or other property made to a ceding insurer pursuant to a special purpose reinsurance vehicle contract or made to or for the benefit of any holder of a special purpose reinsurance vehicle security on account of the special purpose reinsurance vehicle security. [2003, c. 249, §2 (NEW) .]

[2007, c. 386, §19 (AMD) .]

6. Fulfillment of obligations. With the exception of the fulfillment of the obligations under a special purpose reinsurance vehicle contract and notwithstanding any other provisions of this subchapter or other law of this State to the contrary, the assets of a special purpose reinsurance vehicle including assets held in trust may not be consolidated with or included in the estate of a ceding insurer in any delinquency proceeding against the ceding insurer under this subchapter for any purpose, including, without limitation, distribution to creditors of the ceding insurer.

[2003, c. 249, §2 (NEW) .]

7. Domiciliary receiver. Notwithstanding any other provision of this subchapter:

A. The domiciliary receiver of a special purpose reinsurance vehicle domiciled in another state is vested by operation of law with the title to all of the assets, property, contracts and rights of action and all of the books, accounts and other records of the reinsurance vehicle located in this State. The domiciliary receiver has the immediate right to recover all such vested property, assets and causes of action of the reinsurance vehicle located in this State ; and [2007, c. 386, §19 (AMD) .]

B. An ancillary proceeding may not be commenced or prosecuted in this State against a special purpose reinsurance vehicle domiciled in another state. [2003, c. 249, §2 (NEW).]

[2007, c. 386, §19 (AMD) .]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §19 (AMD).

§794. NOT SUBJECT TO GUARANTY FUNDS; RESIDUAL MARKET OR SIMILAR ARRANGEMENTS

1. Guaranty funds. The special purpose reinsurance vehicle or the activities, assets and obligations relating to the reinsurance vehicle are not subject to the provisions of chapter 57, subchapter 3 or chapter 62 and a reinsurance vehicle may not be assessed by or otherwise be required to contribute to any guaranty fund or guaranty association in this State with respect to the activities, assets or obligations of a reinsurance vehicle or the ceding insurer.

[2003, c. 249, §2 (NEW) .]

2. Residual market. The special purpose reinsurance vehicle may not be required to participate in any residual market, so-called "FAIR" plan or other similar plan to provide insurance coverage, take out policies, assume risks, make capital contributions, pay or be otherwise obligated for assessments, surcharges or fees or otherwise support or participate in such plans or arrangements.

[2003, c. 249, §2 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW).

§795. ASSET AND INVESTMENT LIMITATIONS

1. Assets. Assets of the special purpose reinsurance vehicle held in trust to secure obligations under the special purpose reinsurance vehicle contract must at all times be held in:

A. Cash and cash equivalents; [2003, c. 249, §2 (NEW).]

B. Securities listed by the Securities Valuation Office of the National Association of Commissioners or its successor organization and qualifying as admitted assets under statutory accounting principles pursuant to section 901-A; or [2003, c. 249, §2 (NEW).]

C. Any other form of security acceptable to the superintendent. [2003, c. 249, §2 (NEW).]

[2003, c. 249, §2 (NEW) .]

2. Investment practices. In addition, the special purpose reinsurance vehicle may enter into swap agreements or other transactions that have the objective of leveling timing differences in funding of upfront or ongoing transaction expenses or managing credit or interest rate risk of the investments in the trust to ensure that the investments are sufficient to ensure payment or repayment of the securities and related interest or principal payments issued pursuant to a special purpose reinsurance vehicle insurance securitization transaction or the reinsurance vehicle's obligations under the special purpose reinsurance vehicle contract.

[2003, c. 249, §2 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW).

§796. NO TRANSACTION OF INSURANCE BUSINESS BY INVESTORS IN SECURITIES

The securities issued by the special purpose reinsurance vehicle pursuant to a special purpose reinsurance vehicle insurance securitization are not deemed to be insurance or reinsurance contracts. An investor in such securities issued pursuant to insurance securitization or any holder of such securities may not by sole means of this investment or holding be deemed to be transacting an insurance business in this State. The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives and advisors involved in an insurance securitization are not deemed to be acting as insurance or reinsurance producers, intermediaries or consultants by virtue of their activities in connection with the special purpose reinsurance vehicle or with the insurance securitization. [2007, c. 386, §20 (AMD) .]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §20 (AMD).

§796-A. CONFIDENTIALITY OF PROPRIETARY INFORMATION

Any requirement established by this subchapter to file proprietary business information with the superintendent does not in and of itself make that information a public record. Information filed with the superintendent pursuant to this subchapter is entitled to any privileges and confidentiality protections that would apply if the special purpose reinsurance vehicle were a captive insurance company licensed by the superintendent pursuant to section 6702. [2007, c. 386, §21 (NEW) .]

SECTION HISTORY

2007, c. 386, §21 (NEW).

§797. AUTHORITY TO ADOPT RULES

The superintendent may adopt rules necessary to effectuate the purposes of this subchapter. Any rules so adopted do not affect a special purpose reinsurance vehicle insurance securitization in effect at the time of adoption. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 249, §2 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW).

§798. EXEMPTION FROM INSURANCE LAWS WITHIN LIMITATIONS

1. Titles consistent. A special purpose reinsurance vehicle is subject to chapters 1, 3 and 5 to the extent consistent with this subchapter.

[2003, c. 249, §2 (NEW) .]

2. Provisions not applicable. No other provisions of this Title are applicable to a special purpose reinsurance vehicle organized under this subchapter, except as expressly provided in this subchapter or in rules adopted by the superintendent pursuant to section 797.

[2003, c. 249, §2 (NEW) .]

3. Variance. The superintendent may issue an order exempting a special purpose reinsurance vehicle or a protected cell from provisions of this subchapter upon a finding that the variance is necessary for conformance to the laws or regulatory requirements of a ceding insurer's state of domicile and that the variance is consistent with the purposes of this subchapter given the nature of the risks to be insured.

[2007, c. 386, §22 (NEW) .]

SECTION HISTORY

2003, c. 249, §2 (NEW). 2007, c. 386, §22 (AMD).

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