

# Title 24-A: MAINE INSURANCE CODE

## Chapter 47: ORGANIZATION, CORPORATE POWERS, PROCEDURES OF DOMESTIC LEGAL RESERVE STOCK AND MUTUAL INSURERS

### Table of Contents

<b>Subchapter 1. ORGANIZATION AND GENERAL POWERS.....</b>	<b>5</b>
Section 3301. SCOPE OF CHAPTER.....	5
Section 3302. INSURERS TO BE ORGANIZED UNDER THIS TITLE.....	5
Section 3303. RESERVATION OF POWER.....	5
Section 3304. APPLICABILITY OF GENERAL CORPORATION STATUTES.....	5
Section 3305. "STOCK," "MUTUAL" INSURERS DEFINED.....	6
Section 3306. INCORPORATION OF DOMESTIC STOCK, MUTUAL INSURERS.....	6
Section 3307. ARTICLES OF INCORPORATION, APPROVAL AND FILING.....	7
Section 3308. CERTIFICATE OF SECRETARY OF STATE (REPEALED).....	8
Section 3308-A. FILING BY THE SECRETARY OF STATE.....	8
Section 3309. COMPLETION OF INCORPORATION; GENERAL POWERS, DUTIES.....	9
Section 3310. AMENDMENT OF ARTICLES OF INCORPORATION; CHANGE OF PRINCIPAL PLACE OF BUSINESS.....	9
Section 3311. INSURANCE BUSINESS EXCLUSIVE; EXCEPTIONS.....	10
<b>Subchapter 2. PROVISIONS APPLYING ONLY TO MUTUAL INSURERS.....</b>	<b>10</b>
Section 3352. MUTUAL INSURERS, INITIAL QUALIFICATIONS.....	10
Section 3353. QUALIFYING APPLICATIONS FOR INSURANCE; BOND OR DEPOSIT.....	12
Section 3354. QUALIFYING APPLICATIONS FOR INSURANCE; SOLICITATION.....	12
Section 3355. DEPOSIT OF QUALIFYING PREMIUMS; EFFECTIVE DATE OF INSURANCE.....	13
Section 3356. FAILURE TO COMPLETE AND QUALIFY.....	14
Section 3357. AUTHORITY TO TRANSACT ADDITIONAL KINDS OF INSURANCE.....	14
Section 3358. GUARANTY CAPITAL SHARES.....	14
Section 3359. BYLAWS.....	15
Section 3360. MEMBERS ARE POLICYHOLDERS.....	16
Section 3361. MEETINGS OF MEMBERS, IN GENERAL.....	16
Section 3362. SPECIAL MEETINGS OF MEMBERS.....	17
Section 3363. VOTING RIGHTS OF MEMBERS.....	18
Section 3364. CONTINGENT LIABILITY OF MEMBERS.....	18
Section 3365. LEVY OF CONTINGENT LIABILITY.....	19
Section 3366. ENFORCEMENT OF CONTINGENT LIABILITY.....	19
Section 3367. NONASSESSABLE POLICIES; LIMITS OF ASSESSABILITY; USE OF FUNDS; COMBINATION OPERATION.....	20
<b>Subchapter 3. PROVISIONS APPLYING TO STOCK AND MUTUAL INSURERS.....</b>	<b>20</b>

Section 3408. HOME OFFICE, RECORDS, ASSETS TO BE IN STATE; EXCEPTIONS.....	21
Section 3409. VOUCHERS FOR EXPENDITURES.....	22
Section 3410. DESTRUCTION OF RECORDS.....	22
Section 3411. DIRECTORS.....	23
Section 3412. OFFICERS; NOTICE OF CHANGE.....	23
Section 3413. PROHIBITED PECUNIARY INTEREST OF OFFICIALS AND OTHERS; USE OF CONFIDENTIAL INFORMATION PROHIBITED.....	24
Section 3414. MANAGEMENT, COMMISSION, EXCLUSIVE AGENCY CONTRACTS.....	24
Section 3415. BORROWED CAPITAL FUNDS.....	26
Section 3416. DIVIDENDS TO STOCKHOLDERS.....	27
Section 3417. PARTICIPATING POLICIES.....	27
Section 3418. DIVIDENDS TO POLICYHOLDERS.....	28
Section 3419. PENSION AND OTHER PLANS FOR EMPLOYEES AND OTHERS.....	28
Section 3420. INSURANCE BENEFITS FOR EMPLOYEES AND OTHERS.....	29
Section 3421. SOLICITATION, INSURING IN OTHER STATES.....	29
Section 3422. PURCHASE OF OWN SHARES BY STOCK INSURER.....	29
Section 3423. IMPAIRMENT OF CAPITAL FUNDS.....	30
Section 3424. RESTRICTIONS DURING IMPAIRMENT; PENALTY.....	31
<b>Subchapter 4. CONVERSION, AMALGAMATION, DISSOLUTION.....</b>	<b>31</b>
Section 3471. SCOPE OF SUBCHAPTER.....	31
Section 3472. MUTUALIZATION OF STOCK INSURER.....	31
Section 3473. CONVERSION OF STOCK INSURER TO ORDINARY BUSINESS CORPORATION.....	32
Section 3474. MERGER, CONSOLIDATION OF STOCK INSURERS.....	33
Section 3475. EXCHANGE OF SECURITIES BETWEEN INSURERS.....	35
Section 3476. ACQUISITION OF CONTROLLING STOCK.....	35
Section 3477. CONVERSION OF MUTUAL TO STOCK INSURER.....	36
Section 3478. MERGER, CONSOLIDATION OF MUTUAL INSURERS AUTHORIZED.....	38
Section 3479. -- PLAN, AGREEMENT OF MERGER, CONSOLIDATION; APPROVAL BY CORPORATIONS.....	39
Section 3480. -- APPROVAL BY SUPERINTENDENT.....	39
Section 3481. -- REVIEW BY ATTORNEY GENERAL; FILING WITH SECRETARY OF STATE.....	40
Section 3482. -- EFFECTIVE DATE OF MERGER, CONSOLIDATION; EFFECT AS TO ASSETS, LIABILITIES, RIGHTS AND POWER.....	40
Section 3483. BULK REINSURANCE.....	41
Section 3484. VOLUNTARY DISSOLUTION.....	42
Section 3485. MUTUAL MEMBER'S SHARE OF ASSETS ON LIQUIDATION.....	43

Section 3486. PLANS FOR ACQUISITION OF MINORITY INTERESTS IN DOMESTIC STOCK INSURANCE COMPANIES AND APPRAISAL OF STOCK OF DISSENTING SHAREHOLDERS.....	44
Section 3487. REDOMESTICATION OF INSURERS.....	47
Section 3488. REORGANIZATION OF MUTUAL INSURER THROUGH FORMATION OF MUTUAL HOLDING COMPANY.....	48
Section 3489. REQUIREMENTS APPLICABLE TO A MUTUAL HOLDING COMPANY.....	50
Section 3490. CONVERSION OF MUTUAL HOLDING COMPANY.....	54



Maine Revised Statutes

Title 24-A: MAINE INSURANCE CODE

Chapter 47: ORGANIZATION, CORPORATE POWERS, PROCEDURES  
OF DOMESTIC LEGAL RESERVE STOCK AND MUTUAL INSURERS

Subchapter 1: ORGANIZATION AND GENERAL POWERS

**§3301. SCOPE OF CHAPTER**

This chapter applies only as to domestic stock and mutual insurers transacting insurance on the cash premium or legal reserve plan. [1973, c. 788, §107 (AMD).]

1.

[ 1973, c. 788, §107 (RP) .]

2.

[ 1973, c. 788, §107 (RP) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 788, §107 (AMD).

**§3302. INSURERS TO BE ORGANIZED UNDER THIS TITLE**

All domestic stock and mutual legal reserve insurers hereafter organized shall be organized under the provisions of this Title, and not otherwise. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

**§3303. RESERVATION OF POWER**

The Legislature shall have power to amend, repeal or modify this Title at pleasure. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

**§3304. APPLICABILITY OF GENERAL CORPORATION STATUTES**

Domestic stock and mutual insurers shall be governed by the applicable provisions of the general statutes of this State relating to private corporations organized for profit, as such statutes are now or hereafter may be constituted, except where such general statutes are in conflict with the express provisions of this Title and the reasonable implications thereof, and in which case the provisions of this Title shall govern. [1969, c. 132, §1 (NEW).]

SECTION HISTORY

1969, c. 132, §1 (NEW).

## §3305. "STOCK," "MUTUAL" INSURERS DEFINED

1. A "stock" insurer is as defined in section 400.

[ 1969, c. 132, §1 (NEW) .]

2. A "mutual" insurer is as defined in section 401.

[ 1969, c. 132, §1 (NEW) .]

### SECTION HISTORY

1969, c. 132, §1 (NEW) .

## §3306. INCORPORATION OF DOMESTIC STOCK, MUTUAL INSURERS

1. **This section applies to stock and mutual insurers hereafter incorporated in this State.** Such an insurer may be formed for the purpose of transacting any kind or kinds of insurance, as well as annuity business.

[ 1969, c. 132, §1 (NEW) .]

2. **Incorporators.** Three or more individuals, none of whom is less than 18 years of age, may incorporate a stock insurer; 10 or more such individuals may incorporate a mutual insurer. At least a majority of the incorporators must be citizens of the United States of America.

[ 1973, c. 625, §148 (AMD) .]

3. **Articles of incorporation.** The incorporators shall execute articles of incorporation in triplicate, and at least a majority of the incorporators shall acknowledge their execution of the articles of incorporation under oath. The articles of incorporation must state and show:

A. The name of the corporation, which must be generally indicative of the business to be transacted and be subject to section 408 (name of insurer); if a mutual, the word "mutual" must be a part of the name. An alternative name or names may be specified for use in foreign countries, or in jurisdictions where conflict of name with that of another insurer or organization might otherwise prevent the corporation from being authorized to transact insurance in the foreign country; [2013, c. 299, §2 (AMD) .]

B. The duration of its existence, which may be perpetual; [2013, c. 299, §2 (AMD) .]

C. The kinds of insurance, as defined in this Title, that the corporation is formed to transact; [2013, c. 299, §2 (AMD) .]

D. If a stock corporation, its authorized capital and the number of shares of stock into which divided. The capital stock must consist entirely of common stock of one uniform class, par value not less than \$1.00 per share, each outstanding share of which having equal rights in every respect with every other such share, except that treasury stock may not have dividend or voting rights. Shares without par value may not be authorized; [2013, c. 299, §2 (AMD) .]

E. If a stock corporation, the extent, if any, to which shares of its stock are subject to assessment; [2013, c. 299, §2 (AMD) .]

F. If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability must be as stated in the articles of incorporation, but may not be less than one or more than 6 times the premium for the member's policy at the annual premium rate for a term of one year; [2013, c. 299, §2 (AMD) .]

G. If a mutual corporation, the amount, if any, of its guaranty capital shares, the number and par value of shares into which divided, the voting and other rights of such shares, and the conditions under which such shares must or may be retired by the corporation, all consistent with section 3358 (guaranty capital shares); [2013, c. 299, §2 (AMD).]

H. The number of directors who constitute the board of directors and conduct the affairs of the corporation; and the names, addresses and terms of the members of the initial board of directors, who shall conduct the corporation's affairs for the term specified in the articles, but for not more than one year after date of incorporation; [2013, c. 299, §2 (AMD).]

I. The city or town and county in this State in which the corporation's principal place of business is to be located; [2013, c. 299, §2 (AMD).]

J. The name, residence address and national citizenship of each incorporator; and [2013, c. 299, §2 (AMD).]

K. Other provisions, not inconsistent with law, determined appropriate by the incorporators, and including, in the case of life insurers, the power to act as trustee with respect to proceeds of maturity or death benefits payable under life insurance or annuity contracts issued or assumed by it. [2013, c. 299, §2 (AMD).]

[2013, c. 299, §2 (AMD).]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 625, §148 (AMD). 2013, c. 299, §2 (AMD).

### **§3307. ARTICLES OF INCORPORATION, APPROVAL AND FILING**

1. The incorporators of a proposed insurer shall deliver the triplicate originals of the articles of incorporation to the superintendent. The superintendent shall deliver one set of such originals to the Attorney General of this State, and the Attorney General shall examine the same. If the Attorney General finds that the articles of incorporation comply with law, the Attorney General shall so certify in writing and return the original of the articles of incorporation, so certified, to the superintendent.

[2013, c. 299, §3 (AMD).]

2. When the articles of incorporation have been approved and returned by the Attorney General pursuant to subsection 1, the superintendent shall also endorse the superintendent's approval upon each set of the articles of incorporation and return the triplicate originals of the articles of incorporation to the incorporators. The incorporators shall then file one of the sets with the Secretary of State and one set with the superintendent bearing the certification of the Secretary of State and shall retain the remaining set in the corporate records.

[2013, c. 299, §3 (AMD).]

3. For filing the articles of incorporation of a mutual insurer, the Secretary of State shall charge and collect a filing fee of \$25; except that if it is a mutual insurance corporation with provision for guaranty capital shares, the Secretary of State shall charge and collect for the filing of the articles of incorporation the same amount as would be payable by a stock insurance corporation having a like amount of authorized capital stock.

[2013, c. 299, §3 (AMD).]

4. If the Attorney General finds that the proposed articles of incorporation do not comply with law, the Attorney General shall refuse to approve the same and shall return the set of the articles of incorporation to the superintendent, together with a written statement of the respects in which the Attorney General finds that the articles do not comply. The superintendent shall return all sets of the proposed articles of incorporation to the proposed incorporators together with the Attorney General's written statement.

[ 2013, c. 299, §3 (AMD) .]

5. The Secretary of State may not permit the filing in the Secretary of State's office of any articles of incorporation unless the articles bear the superintendent's approval as provided in this section.

[ 2013, c. 299, §3 (AMD) .]

6. The approval of the Attorney General or superintendent, as provided for in this section, is considered to relate only to the form and contents of the articles, and does not constitute approval or commitment as to any other aspect or operation of the proposed insurer or relative to its entitlement, if any, to a certificate of authority.

[ 2013, c. 299, §3 (AMD) .]

7. The superintendent and Attorney General shall perform all duties required of them under this section within a reasonable time after the articles of incorporation have been submitted to the superintendent as provided in subsection 1.

[ 2013, c. 299, §3 (AMD) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2013, c. 299, §3 (AMD).

### **§3308. CERTIFICATE OF SECRETARY OF STATE**

*(REPEALED)*

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2009, c. 56, §17 (RP).

### **§3308-A. FILING BY THE SECRETARY OF STATE**

**1. Duty to file.** If a document delivered to the office of the Secretary of State for filing pursuant to this chapter satisfies the requirements of Title 13-C and this chapter, the Secretary of State shall file the document.

[ 2013, c. 299, §4 (AMD) .]

**2. Recording as filed; acknowledgment.** The Secretary of State files a document pursuant to subsection 1 by recording it as filed on the date of receipt. After filing a document, the Secretary of State shall deliver to the corporation or its representative a copy of the document with an acknowledgment of the date of filing.

[ 2009, c. 56, §18 (NEW) .]

**3. Evidentiary effect of copy of filed document.** A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State is conclusive evidence that the original document is on file with the Secretary of State.

[ 2009, c. 56, §18 (NEW) .]

SECTION HISTORY

2009, c. 56, §18 (NEW). 2013, c. 299, §4 (AMD).

### **§3309. COMPLETION OF INCORPORATION; GENERAL POWERS, DUTIES**

The incorporation of an insurer is effective as of the date of filing of the appropriate document by the Secretary of State as provided for in section 3308-A, and thereupon the corporation is vested with all the powers, rights and privileges and is subject to all the duties, liabilities and restrictions applicable to insurer corporations subject to qualification and application for, and issuance to the corporation of, a certificate of authority as an insurer by the superintendent under this Title. [2009, c. 56, §19 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2009, c. 56, §19 (AMD) .

### **§3310. AMENDMENT OF ARTICLES OF INCORPORATION; CHANGE OF PRINCIPAL PLACE OF BUSINESS**

1. A stock insurer may amend its articles of incorporation for any lawful purpose by authorization or vote of stockholders as provided for business corporations in general under the laws of this State applicable to such business corporations.

[ 2013, c. 299, §5 (AMD) .]

2. A mutual insurer may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members entitled to vote and present or represented by proxy at a lawful meeting of its members of which the notice given members included due notice of the proposal to amend and the substance of such proposal, and by affirmative vote of the holders of at least 2/3 of the insurer's outstanding guaranty capital shares, if any.

[ 2013, c. 299, §5 (AMD) .]

3. Upon adoption of an amendment under subsection 1 or 2, the insurer shall make in triplicate a certificate, sometimes referred to as a "certificate of amendment", setting forth the amendment and the date and manner of the adoption of the amendment. The certificate must be executed by the insurer's president or vice-president and secretary or assistant secretary and duly sworn to by one of them. The insurer shall deliver to the superintendent the triplicate originals of the certificate for review, certification and approval or disapproval by the Attorney General and the superintendent, and filing and recording, all as provided for original articles of incorporation under section 3307. The Secretary of State shall charge and collect for the use of the State a fee of \$20 for filing and recording the certificate of amendment of a mutual insurer. The amendment is effective when duly approved and filed with the Secretary of State.

[ 2015, c. 329, Pt. B, §3 (AMD) .]

4. An insurer may change its principal place of business without amendment of its articles of incorporation, by resolution of its board of directors. A copy of the resolution, duly certified under oath by the corporate secretary, must be executed in triplicate and filed with the superintendent, with the Secretary of State and in the corporate records.

[ 2013, c. 299, §5 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2013, c. 299, §5 (AMD). 2015, c. 329, Pt. B, §3 (AMD).

## **§3311. INSURANCE BUSINESS EXCLUSIVE; EXCEPTIONS**

1. No domestic insurer heretofore or hereafter formed shall engage in any business other than the insurance business and in business activities reasonably and necessarily incidental to such insurance business.

[ 1969, c. 132, §1 (NEW) .]

2. Except that:

A. A title insurer may also engage in business as an escrow agent; [1969, c. 132, §1 (NEW).]

B. Any insurer may also engage in business activities reasonably related to the management, supervision, servicing of, and protection of its interests as to its lawful investments; [1969, c. 132, §1 (NEW) .]

C. An insurer may own subsidiaries or subsidiaries owning other subsidiaries which may engage in such businesses all as provided for in section 1115 (stocks of subsidiaries) or in section 1157 (investment in subsidiaries); [1987, c. 399, §17 (AMD) .]

D. An insurer may utilize its facilities to perform administrative services for any governmental body, unit or agency; and [1987, c. 399, §17 (AMD) .]

E. An insurer transacting business of a type described in section 702, life insurance; section 703, annuity; or section 704, health insurance; or any combination of those types of business, may engage in any other business in which it is otherwise qualified to engage to the extent and in the manner approved by the superintendent. [1987, c. 399, §18 (NEW) .]

[ 1987, c. 399, §§17, 18 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1987, c. 399, §§17,18 (AMD).

## **Subchapter 2: PROVISIONS APPLYING ONLY TO MUTUAL INSURERS**

### **§3352. MUTUAL INSURERS, INITIAL QUALIFICATIONS**

1. When hereafter newly organized, a mutual insurer may be authorized to transact any one of the kinds of insurance listed in the schedule contained in subsection 2 or any combination of such kinds as provided in subsection 3.

[ 1969, c. 132, §1 (NEW) .]

2. When applying for an original certificate of authority, the insurer must be otherwise qualified therefor under this Title, and must have received and accepted bona fide applications as to substantial insurable subjects for insurance coverage of a substantial character of the kind of insurance proposed to be transacted, must have collected in cash the full premium therefor at a rate not less than that usually charged

by other insurers for comparable coverages, must have surplus funds on hand and deposited as of the date such insurance coverages are to become effective, or, in lieu of such applications, premiums and surplus, may deposit and thereafter maintain surplus, all in accordance with that part of the following schedule which applies to each kind of insurance the insurer proposes to transact:

(A) Kind of Ins.	(B) Min. No. of Apps. Accepted	(C) Min. No. Subjects Covered	(D) Minimum Premium Collected	(E) Minimum Amount Ins. Ea. Subject
Life (1)	500	500	Annual	\$2,500
Health (2)	500	500	Quarterly	100 (wkly. indem.)
Prop-erty (3)	100	250	Annual	10,000
Casu-alty (4)	250	500	Annual	25,000

The following provisions are respectively applicable to the foregoing schedule and provisions as indicated by like numerals appearing in such schedule.

- (1) No group insurance or term policies for terms of less than 10 years may be included.
- (2) No group, blanket or family plans of insurance may be included. In lieu of weekly indemnity, a like premium value in medical, surgical and hospital benefits may be provided. Any accidental death or dismemberment benefit provided shall not exceed \$15,000.
- (3) Only insurance of the owner's interest in real property may be included.
- (4) Such insurance must include coverage of legal liability for bodily injury and property damage, to which the maximum and minimum insured amounts apply.
- (5) The maximums provided for in column (F) are net of applicable reinsurance.
- (6) The deposit of surplus in the amount specified in columns (G) and (H) must thereafter be maintained unimpaired. The deposit is subject to chapter 15 (administration of deposits).
- (7) Deposit surplus, when utilized, in lieu of the alternative procedure of accepting deposit application funds shall be in those amounts enumerated for each identified kind of insurance.

Expendable surplus: In addition to surplus deposited and thereafter to be maintained as shown in columns (G) or (H), the insurer when first authorized must have on hand surplus funds, which it can thereafter expend in the conduct of its business, in amount not less than 50% of the applicable deposited and maintained surplus required of it under the schedule set up in this subsection.

Notwithstanding the requirements for expendable surplus otherwise required by this section for newly organized insurance companies seeking a certificate of authority in this State, any such insurer may transact legal services insurance, to the extent provided for in chapter 38, without additional expendable funds, if the corporation is otherwise qualified for a certificate of authority to transact the business of health, life and health or multiple lines insurance, and possesses and thereafter maintains, in addition to the amounts enumerated in the table in this subsection, an additional amount of unimpaired basic surplus of not less than \$500,000.

[ 1983, c. 801, §12 (AMD) . ]

3. An insurer may initially qualify for authority to transact both life and health insurances by fulfilling the foregoing requirements as to each such kind of insurance; and may in like manner initially qualify for authority to transact both property and casualty insurance. An insurer shall not, however, so qualify to transact any other combination of such insurances, except as provided in section 3357.

[ 1969, c. 132, §1 (NEW) . ]

4. Domestic mutual insurers, possessing a certificate of authority to conduct business solely on an assessment plan upon the effective date of this subsection, and newly organized assessment plan mutual insurers authorized after the effective date of this subsection shall be governed as to surplus funds requirements by the provisions of chapter 51.

[ 1983, c. 709, §3 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §57 (AMD). 1983, c. 709, §§2,3 (AMD). 1983, c. 801, §12 (AMD).

### **§3353. QUALIFYING APPLICATIONS FOR INSURANCE; BOND OR DEPOSIT**

1. Before soliciting any applications for insurance required under section 3352 as qualification for the original certificate of authority, the incorporators of the proposed insurer shall file with the superintendent a corporate surety bond in the penalty of \$15,000, in favor of the State and for the use and benefit of the State and of applicant members and creditors of the corporation. The bond must be conditioned in the event the corporation fails to complete its organization and secure a certificate of authority within one year after the date of its articles of incorporation:

A. For the prompt return to applicant members of all premiums collected in advance; [1969, c. 132, §1 (NEW).]

B. For payment of all indebtedness of the corporation; and [1969, c. 132, §1 (NEW).]

C. For payment of costs incurred by the State in the event of any legal proceedings for liquidation or dissolution of the corporation. [2013, c. 299, §6 (AMD).]

[ 2013, c. 299, §6 (AMD) .]

2. In lieu of such bond, the incorporators may deposit with the commissioner \$15,000 in cash or United States government bonds, negotiable and payable to the bearer, with a market value at all times of not less than \$15,000 and to be held in trust upon the same conditions as required for the bond.

[ 1969, c. 132, §1 (NEW) .]

3. The superintendent shall release and discharge any such bond filed or deposit or remaining portion thereof held under this section upon settlement and termination of all liabilities against it.

[ 1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2013, c. 299, §6 (AMD).

### **§3354. QUALIFYING APPLICATIONS FOR INSURANCE; SOLICITATION**

1. Upon receipt of the superintendent's approval of the bond or deposit as provided in section 3353, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.

[ 1973, c. 585, §12 (AMD) .]

2. All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this State.

[ 1969, c. 132, §1 (NEW) .]

3. All applications must provide that:

A. Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority; [1969, c. 132, §1 (NEW).]

B. Insurance is not in effect until the certificate of authority has been issued; and [2013, c. 299, §7 (AMD).]

C. The prepaid premium or deposit, and membership or policy fee, if any, must be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date may not be later than one year after the date of the articles of incorporation. [2013, c. 299, §7 (AMD).]

[ 2013, c. 299, §7 (AMD) .]

4. All qualifying premiums collected shall be in cash.

[ 1969, c. 132, §1 (NEW) .]

5. Solicitation for such qualifying applications for insurance must be by licensed producers of the corporation, and the superintendent shall, upon the corporation's application therefor, issue temporary producer's licenses expiring on the date specified pursuant to subsection 3, paragraph C to individuals qualified as for a resident producer's license except as to the taking or passing of an examination. The superintendent may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of producers in general under chapter 16.

[ 1997, c. 457, §44 (AMD); 1997, c. 457, §55 (AFF) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1997, c. 457, §44 (AMD). 1997, c. 457, §55 (AFF). 2013, c. 299, §7 (AMD).

### **§3355. DEPOSIT OF QUALIFYING PREMIUMS; EFFECTIVE DATE OF INSURANCE**

1. All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this State under a written trust agreement consistent with this section and with section 3354, subsection 3, paragraph C. The corporation shall file an executed copy of such trust agreement with the superintendent.

[ 1973, c. 585, §12 (AMD) .]

2. Upon issuance to the corporation of a certificate of authority as an insurer for the kind or kinds of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

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

### **§3356. FAILURE TO COMPLETE AND QUALIFY**

If the proposed domestic mutual insurer fails to complete its organization and to secure its original certificate of authority within one year after the date its articles of incorporation were filed with the Secretary of State, its corporate powers cease, and the superintendent shall return or cause to be returned to the persons entitled to them all advance deposits or payments of premium held in trust under section 3355. [2013, c. 299, §8 (AMD).]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2013, c. 299, §8 (AMD).

### **§3357. AUTHORITY TO TRANSACT ADDITIONAL KINDS OF INSURANCE**

After being authorized to transact one kind or combination of kinds of insurance as provided in section 3352, a mutual insurer may be authorized by the superintendent to transact such additional kinds of insurance as are permitted under section 409 (combinations of insuring powers), while otherwise in compliance with this Title and while maintaining unimpaired surplus and guaranty capital funds in an amount not less than the amount of paid-in capital stock required to be maintained by a like domestic stock insurer transacting the same kinds of insurance. [1973, c. 585, §12 (AMD).]

#### SECTION HISTORY

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

### **§3358. GUARANTY CAPITAL SHARES**

1. A mutual insurer formed to transact or transacting any kind of insurance has the right to provide for guaranty capital shares in its articles of incorporation. Outstanding guaranty capital shares at the par value take the place of a like amount of basic surplus otherwise required for authority to transact insurance.

[2013, c. 299, §9 (AMD).]

2. Shares of guaranty capital stock shall have a par value of \$100 each, and shall be paid for in cash. Nothing in this Title shall be deemed to prohibit the sale of such shares at a price above such par value in order to provide the insurer with capital surplus.

[1969, c. 132, §1 (NEW).]

3. Only one class of such guaranty capital shares shall be provided for, and each such share outstanding shall have equal voting, dividend, retirement and other rights with every other such share. Each such share shall have one vote on matters coming to a vote at meetings of the insurer's shareholders and members. Policyholders of the insurer shall have the same voting rights as would exist in the absence of such guaranty capital.

[1969, c. 132, §1 (NEW).]

4. Noncumulative dividends, not exceeding in any one year 12% or lesser reasonable amount as determined by prevailing rates for loans of similar risk characteristics at the time the shares are issued, may be declared and paid by the insurer on outstanding guaranty capital shares out of that portion of the insurer's expendable surplus representing net realized earnings from its operations; and may be so paid even though the amount of the insurer's expendable surplus is then less in amount than any prior total of expendable

contributed, borrowed or paid-in surplus. Such a dividend may be paid in cash or in guaranty capital shares, or part in each. An amount equal to the par value of shares so distributed as dividend shall be transferred from the insurer's earned surplus account to its guaranty capital shares account.

[ 1981, c. 501, §44 (AMD) . ]

5. If the guaranty capital becomes impaired, the impairment shall be cured as provided in section 3423 (impairment of capital funds).

[ 1969, c. 132, §1 (NEW) . ]

6. The insurer shall retire and cancel the guaranty capital shares, in part and in whole as soon as is reasonably possible, out of expendable surplus resulting from net realized earnings from its operations, or out of surplus created through issuance of agreements authorized by section 3415. The insurer shall retire and cancel the guaranty capital shares in their entirety when such retirement would, in the superintendent's opinion, leave the insurer with surplus as to policyholders reasonably adequate to enable it to continue to transact the kinds and volume of insurance business transacted.

[ 1973, c. 585, §12 (AMD) . ]

7. In any liquidation of the insurer, outstanding guaranty capital shares shall have the same rights and priority as to the insurer's assets as are possessed by the stockholders of a like stock insurer.

[ 1969, c. 132, §1 (NEW) . ]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1981, c. 501, §44 (AMD). 2013, c. 299, §9 (AMD).

### **§3359. BYLAWS**

1. A domestic mutual insurer shall have bylaws for the government of its affairs. The insurer's initial board of directors shall adopt original bylaws, subject to the approval of the insurer's members at the next meeting of members.

[ 1969, c. 132, §1 (NEW) . ]

2. The bylaws shall contain provisions, consistent with this Title, relating to:

A. The voting rights of members; [1969, c. 132, §1 (NEW).]

B. Election of directors, and the number, qualifications, terms of office and powers of directors; [1969, c. 132, §1 (NEW).]

C. Annual and special meetings of members; [1969, c. 132, §1 (NEW).]

D. The number, designation, election, terms and powers and duties of the respective corporate officers; [1969, c. 132, §1 (NEW).]

E. Deposit, custody, disbursement and accounting for corporate funds; [1969, c. 132, §1 (NEW).]

F. Fidelity bonds covering such officers and employees of the insurer as handle its funds, to be issued by a corporate surety and to be in such amount as may be reasonable; and [1969, c. 132, §1 (NEW).]

G. Such other matters as may be customary, necessary or convenient for the management or regulation of corporate affairs. [1969, c. 132, §1 (NEW).]

[ 1969, c. 132, §1 (NEW) .]

3. The insurer shall promptly file with the superintendent a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The superintendent shall disapprove any bylaw provision deemed by him, after a hearing held thereon, to be unlawful, unreasonable, inadequate, unfair or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

[ 1973, c. 585, §12 (AMD) .]

#### SECTION HISTORY

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

### **§3360. MEMBERS ARE POLICYHOLDERS**

1. Each policyholder of a domestic mutual insurer, other than of a reinsurance contract, is a member of the insurer with all rights and obligations of such membership, as the charter and as the policy shall so specify.

[ 1969, c. 132, §1 (NEW) .]

2. Any person, government or governmental agency, state or political subdivision thereof, public or private corporation, board, association, firm, estate, trustee or fiduciary may be a member of a domestic, foreign or alien mutual insurer. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, and shall not be personally liable upon any contract of insurance for acting in such representative capacity.

[ 1969, c. 132, §1 (NEW) .]

3. Any domestic corporation may participate as a member of a mutual insurer as an incidental purpose for which such corporation is organized, and as much granted as the rights and powers expressly conferred.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW).

### **§3361. MEETINGS OF MEMBERS, IN GENERAL**

1. Meetings of members of a domestic mutual insurer shall be held in the city or town of its principal office in this State, except as may otherwise be provided in the insurer's bylaws with the superintendent's approval.

[ 1973, c. 585, §12 (AMD) .]

2. Each such insurer shall, during the first 6 months of each calendar year, hold the annual meeting of its members to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs and transact such other business as may properly be brought before it.

[ 1969, c. 132, §1 (NEW) . ]

3. Written notice of the time and place of the annual meeting of members shall be given members not less than 30 days prior to the meeting. Notice may be given by imprinting the notice plainly on the policies issued by the insurer or in any other appropriate manner. Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change, among other appropriate methods, may be given:

A. By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting; or [1969, c. 132, §1 (NEW) . ]

B. Unless the superintendent otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the 24 months immediately following such meeting. [1973, c. 585, §12 (AMD) . ]

[ 1973, c. 585, §12 (AMD) . ]

4. If more than 6 months are allowed to elapse after an annual meeting of members is due to be held and without such annual meeting being held, the superintendent shall, upon written request of any officer, director or member of the insurer, cause written notice of such meeting to be given to the insurer's members, and the meeting shall be held as soon as reasonably possible thereafter.

[ 1973, c. 585, §12 (AMD) . ]

#### SECTION HISTORY

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

## §3362. SPECIAL MEETINGS OF MEMBERS

**1. A special meeting of the members of a mutual insurer may be held for any lawful purpose.** The meeting shall be called by the corporate secretary pursuant to request of the insurer's president or of its board of directors, or upon request in writing signed by not less than 1/10 of the insurer's members. The meeting shall be held at such time as the secretary may fix, but not less than 10 nor more than 30 days after receipt of the request. If the secretary fails to issue such call, the president, directors or members making the request may do so.

[ 1969, c. 132, §1 (NEW) . ]

**2. Not less than 10 days' written notice of the meeting shall be given.** Notice addressed to the insurer's members at their respective post-office addresses last of record with the insurer and deposited, postage prepaid, in a letter depository of the United States post office, shall be deemed to have been given when so mailed. In lieu of mailed notice, the insurer may publish the notice in such publication or publications as shall afford a majority of its members a reasonable opportunity to have actual advance notice of the meeting. The notice shall state the purposes of the meeting, and no business shall be transacted at the meeting of which notice was not so given.

[ 2015, c. 2, §15 (COR) . ]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). RR 2015, c. 2, §15 (COR).

### §3363. VOTING RIGHTS OF MEMBERS

1. Each member of a mutual insurer is entitled to one vote upon each matter coming to a vote at a meeting of members, or to such other vote as may be provided for on a reasonable basis in the insurer's bylaws with the superintendent's approval.

[ 1973, c. 585, §12 (AMD) .]

2. A member shall have the right to vote in person or by his written proxy filed with the corporate secretary not less than 20 days prior to the meeting. No such proxy shall be made irrevocable, nor be valid beyond the earlier of the following dates:

A. The date of expiration set forth in the proxy; or [1969, c. 132, §1 (NEW) .]

B. The date of termination of membership; or [1969, c. 132, §1 (NEW) .]

C. 5 years from the date of execution of the proxy. [1969, c. 132, §1 (NEW) .]

[ 1969, c. 132, §1 (NEW) .]

3. No member's vote upon any proposal to divest the insurer of its business or assets, or the major part thereof, shall be registered or taken, except in person or by proxy newly executed and specific as to the matter to be voted upon.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

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

### §3364. CONTINGENT LIABILITY OF MEMBERS

1. Except as provided otherwise in section 3367 with respect to nonassessable policies, each member of a domestic mutual insurer has a contingent liability, pro rata and not one for another, for the discharge of its obligations, which contingent liability may not be greater than 6 times the annual premium for the member's policy at the annual premium rate, as is specified in the insurer's articles of incorporation or bylaws.

[ 2013, c. 299, §10 (AMD) .]

2. Every policy issued by the insurer shall contain a plain and legible statement of the contingent liability upon either the face or back thereof.

[ 1969, c. 132, §1 (NEW) .]

3. Termination of the policy of any such member shall not relieve the member of contingent liability for his proportion of the obligations of the insurer which accrued while the policy was in force.

[ 1969, c. 132, §1 (NEW) .]

4. Unrealized contingent liability of members does not constitute an asset of the insurer in any determination of its financial condition.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1981, c. 501, §45 (AMD). 2013, c. 299, §10 (AMD).

### **§3365. LEVY OF CONTINGENT LIABILITY**

1. If at any time the assets of a domestic mutual insurer are less than its liabilities, exclusive of guaranty capital shares, if any, at par value, and the minimum amount of surplus required to be maintained by it under this Title for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors may, if the same is approved by the superintendent as being reasonable and in the best interests of the insurer and its members, levy an assessment only on its members who held the policies providing for contingent liability at any time within the 12 months next preceding the date the levy was authorized by the board of directors, and such members shall be liable to the insurer for the amount so assessed.

[ 1973, c. 585, §12 (AMD) . ]

2. The levy of assessment shall be for such an amount as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed 5% of the sum of the insurer's liabilities and such minimum required surplus as of the date of the levy.

[ 1969, c. 132, §1 (NEW) . ]

3. As to the respective policies subject to the levy, the assessment shall be computed upon the basis of premium earned during the period covered by the levy.

[ 1969, c. 132, §1 (NEW) . ]

4. No member shall have an offset or counterclaim against any assessment for which he is liable, on account of any claim for unearned premium or loss payable.

[ 1969, c. 132, §1 (NEW) . ]

5. As to life insurance, any part of such an assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the superintendent as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held or to be held by the insurer to the credit of the member's policy.

[ 1973, c. 585, §12 (AMD) . ]

#### SECTION HISTORY

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

### **§3366. ENFORCEMENT OF CONTINGENT LIABILITY**

1. The insurer shall notify each member of the amount of assessment to be paid, and the date -- not less than 20 days after mailing date -- by which payment is to be made, by written notice mailed to the member at his address last of record with the insurer. Failure of the member to receive the notice so mailed, within the time specified therein for the payment of the assessment or at all, shall be no defense in any action to collect the assessment.

[ 1969, c. 132, §1 (NEW) . ]

2. If a member fails to pay the assessment within the period specified in the notice, the insurer may institute suit to collect the same.

[ 1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

### **§3367. NONASSESSABLE POLICIES; LIMITS OF ASSESSABILITY; USE OF FUNDS; COMBINATION OPERATION**

1. A domestic mutual insurer may extinguish the contingent liability to assessment of its members as to cash premium plan policies in force and may omit provisions imposing contingent liability in such policies currently issued while it has and maintains surplus, as determined by its financial statement filed with the superintendent as of the year end next preceding, of not less than \$100,000 as to an insurer formed prior to January 1, 1968, and of not less than \$200,000 as to an insurer formed after January 1, 1968.

[ 1973, c. 585, §12 (AMD) .]

2. If the insurer after qualifying to issue such a nonassessable policy fails to maintain the applicable above requirement, it shall cease to issue nonassessable policies until it has again met and maintained the requirement for a period of one year.

[ 1969, c. 132, §1 (NEW) .]

3. Any assessment levied under the contingent liability provisions of the policy shall be for the exclusive benefit of the holders of policies subject to contingent liability, and such policyholders shall not be liable to assessment in an amount greater in proportion to the total deficiency than the ratio that the deficiency attributable to the contingently liable business bears to the total deficiency. An assessment shall apply only to the holders of the type of policy or plan under which the deficiency occurred, and funds received from the assessment shall be for the exclusive benefit of such holders.

[ 1969, c. 132, §1 (NEW) .]

4. Nothing in this chapter shall be deemed to prohibit a domestic mutual insurer formed prior to January 1, 1968 from at any one time transacting, in respective departments or divisions of its operations, insurance business on any two or all of the following bases:

A. Cash premium plan, without contingent liability to assessment, and issuance of nonassessable policies if qualified therefor as above provided in this section; [1969, c. 132, §1 (NEW) .]

B. Cash premium plan, with contingent liability to assessment; and [1969, c. 132, §1 (NEW) .]

C. Assessment plan. [1969, c. 132, §1 (NEW) .]

[ 1969, c. 132, §1 (NEW) .]

SECTION HISTORY

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

### **Subchapter 3: PROVISIONS APPLYING TO STOCK AND MUTUAL INSURERS**

### **§3408. HOME OFFICE, RECORDS, ASSETS TO BE IN STATE; EXCEPTIONS**

1. Every domestic insurer shall have and maintain its principal place of business and home office in this State, and shall keep therein accurate and complete accounts and records of its assets, transactions and affairs in accordance with the usual and accepted principles and practices of insurance accounting and record keeping as applicable to the kinds of insurance transacted by the insurer.

[ 1969, c. 132, §1 (NEW) . ]

2. Every domestic insurer shall have and maintain its assets in this State, except as to:

A. Real property and personal property appurtenant thereto lawfully owned by the insurer and located outside this State; [2015, c. 1, §29 (COR) . ]

B. Such property of the insurer as may be customary, necessary and convenient to enable and facilitate the operation of its branch offices located outside this State as referred to in subsection 4; and [1981, c. 501, §46 (AMD) . ]

C. United States public obligations and other corporate securities for which definitive certificates have not been issued, but are issued through the book-entry systems of federal reserve banks or depository trust companies. Insurers investing in securities in book-entry form shall make available at the time of examination the following:

(1) A copy of the custodial or safekeeping agreement entered into by the insurer and the custodian, a state-chartered bank, a member bank of the federal reserve system or a depository trust company if the deposit was made directly to the entity, which sets forth the provisions for the use of the book-entry securities on behalf of the insurer by the custodian. The agreement shall provide for a standard of responsibility on the part of the custodian which shall be the responsibility of a bailee for hire under the law of the jurisdiction of the custodian's state of domicile. The agreement shall provide that the securities held by the custodian are subject to the instructions of the insurer and may be withdrawn immediately upon demand of the insurer; and

(2) Affidavits evidencing ownership of the book-entry securities signed by a responsible official of the custodian and stating that the custodian is holding the securities for the insurer pursuant to the terms of the custodial agreement. These book-entry securities shall be treated as "admitted assets" of the insurer on production of the affidavit.

The required custodial agreement and affidavit shall conform to such standards as may be prescribed from time to time by the Superintendent of Insurance. [1981, c. 501, §47 (NEW) . ]

[ 2015, c. 1, §29 (COR) . ]

3. No person shall remove all or a material part of the records or assets of a domestic insurer from this State, except pursuant to a plan of merger, consolidation or bulk reinsurance approved by the superintendent under this Title, or for such reasonable purposes and periods of time as may be approved by the superintendent in writing in advance of such removal, or conceal such records or assets or such material part thereof from the superintendent. Any person who removes or attempts to remove such records or assets or such material part thereof from the home office or other place of business or of safekeeping of the insurer in this State with the intent to remove the same from this State, or who conceals or attempts to conceal the same from the superintendent, in violation of this section, shall upon conviction thereof be guilty of a felony, punishable by a fine of not more than \$10,000 or by imprisonment for not more than 5 years, or by both in the discretion of the court. Upon any removal or attempted removal of such records or assets, or upon retention of such records or assets or material part thereof outside this State, beyond the period therefor specified in the superintendent's consent under which the records were so removed thereat, or upon concealment of or attempt to conceal records or assets in violation of this section, the superintendent may institute delinquency proceedings against the insurer pursuant to chapter 57.

[ 1973, c. 585, §12 (AMD) . ]

4. This section shall not be deemed to prohibit or prevent an insurer from:

A. Establishing and maintaining regional home offices or branch offices in other states or countries where necessary or convenient to the transaction of its business, and keeping therein the detailed records and assets customary and necessary for the servicing of its insurance in force and affairs in the territory served by such an office, as long as such records and assets are made readily available at such office for examination by the superintendent at his request; [1973, c. 585, §12 (AMD).]

B. Having, depositing or transmitting funds and assets of the insurer in or to jurisdictions outside of this State required by the law of such jurisdiction or as reasonably and customarily required or convenient in the regular course of its business. [1969, c. 132, §1 (NEW).]

[ 1973, c. 585, §12 (AMD) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1981, c. 501, §§46,47 (AMD). RR 2015, c. 1, §29 (COR).

### §3409. VOUCHERS FOR EXPENDITURES

1. No insurer shall make any disbursement of \$50 or more, unless such disbursement is evidenced by a voucher or other document correctly describing the consideration for the payment and supported by a check or receipt endorsed or signed by or on behalf of the person receiving the money, or made through an electronic or wire funds transfer system supported by accurate records identifying the payor, payee, date of electronic or wire transfer payment, and the nature of the disbursement so made.

[ 1981, c. 501, §47-A (AMD) .]

2. If the disbursement is for services and reimbursement, the voucher or other document, or some other writing referred to therein, shall describe the services and itemize the expenditures.

[ 1969, c. 132, §1 (NEW) .]

3. If in a particular instance a required voucher cannot be obtained, the expenditure must be supported by an affidavit executed by an officer of the insurer stating the reasons for such inability and the particulars of such expenditure as otherwise required in this section.

[ 1981, c. 501, §47-A (AMD) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1981, c. 501, §§47-A (AMD).

### §3410. DESTRUCTION OF RECORDS

1. An insurer may destroy its obsolete records after expiration of such reasonable period after completion of the transactions to which they relate as the insurer may deem proper. The insurer may so destroy its closed files relating to losses and claims arising under its policies after the first to occur of the following events:

A. Completion of a regular examination of the insurer by the superintendent and to which the closed file was subject; or [1973, c. 585, §12 (AMD).]

B. Expiration of 6 years after the file was duly closed. [1969, c. 132, §1 (NEW).]

[ 1973, c. 585, §12 (AMD) .]

2. Records preserved on microfilm or other similar process and freely retrievable shall not be deemed to have been destroyed.

[ 1969, c. 132, §1 (NEW) .]

3. This section shall not relieve the insurer of any responsibility or liability otherwise arising under law with respect to the existence and availability of any record.

[ 1969, c. 132, §1 (NEW) .]

SECTION HISTORY

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

### **§3411. DIRECTORS**

1. The affairs of every domestic insurer must be managed by a board of directors consisting of not less than 7 directors or more than 21 directors, except that a domestic insurer may be managed by an initial board of not less than 3 directors during its first year of existence if so provided for by its articles of incorporation.

[ 2013, c. 299, §11 (AMD) .]

2. Directors, other than initial directors named in the insurer's articles of incorporation, must be elected by the members or stockholders of a domestic insurer at the annual meeting of stockholders or members. Directors may be elected for terms of not more than 3 years each and until their successors are elected and have qualified; and, if the directors are to be elected for terms of more than one year, the insurer's bylaws may provide for a staggered term system under which the terms of a proportionate part of the members of the board of directors expire on the date of each annual meeting of stockholders or members. A directorship becoming vacant before expiration of the term may be filled by the board of directors for the remainder of the term.

[ 2013, c. 299, §11 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 2013, c. 299, §11 (AMD).

### **§3412. OFFICERS; NOTICE OF CHANGE**

1. An insurer's board of directors shall elect one of their number as president, and shall elect a corporate secretary and such other officers as may be provided for in the bylaws or otherwise required by law. Any such officer shall serve for such term as may be fixed in the bylaws or by the board of directors, but shall be subject to removal as an officer by the board of directors at any time.

[ 1969, c. 132, §1 (NEW) .]

2. Each officer shall have such powers and duties as may be prescribed by or pursuant to the insurer's charter or bylaws.

[ 1969, c. 132, §1 (NEW) .]

SECTION HISTORY

1969, c. 132, §1 (NEW).

### **§3413. PROHIBITED PECUNIARY INTEREST OF OFFICIALS AND OTHERS; USE OF CONFIDENTIAL INFORMATION PROHIBITED**

1. Any officer or director, or any member of any committee or any employee of a domestic insurer, having the duty or power of investing or handling the insurer's funds, shall not deposit or invest such funds except in the insurer's name; shall not borrow the funds of the insurer; or be pecuniarily interested in any loan, pledge, deposit, security, investment, sale, purchase, exchange, reinsurance or other similar transaction or property of the insurer except as a stockholder, member, employee or director, unless the transaction is authorized or approved by the insurer's board of directors, with knowledge and recording of such pecuniary interest, by affirmative vote of not less than 2/3 of the directors; and shall not take or receive to his own use any fee, brokerage, commission, gift or other similar consideration for or on account of any such transaction made by or on behalf of the insurer.

[ 1969, c. 132, §1 (NEW) .]

2. No director, officer or employee of a domestic insurer shall directly or indirectly use for his own private pecuniary advantage confidential information concerning the insurer or its past, existing or proposed affairs or transactions acquired by him in the course of his services as such director, officer or employee. The amount of any financial gain realized directly or indirectly by any such individual and accompanied by violation of this subsection shall belong to the insurer, and shall be recoverable by the insurer by civil suit. This subsection shall not apply as to transactions in shares of a stock insurer which are subject to section 16 of the Securities Exchange Act of 1934, as amended.

[ 1969, c. 132, §1 (NEW) .]

3. No insurer shall guarantee the financial obligation of any of its officers or directors.

[ 1969, c. 132, §1 (NEW) .]

4. This section shall not prohibit such a director, officer, member of a committee, or employee from becoming a policyholder of the insurer and enjoying the usual rights of a policyholder or from participating as beneficiary in any pension trust, deferred compensation plan, profit sharing plan, stock option plan or similar plan authorized by the insurer and to which he may be eligible; or prohibit any director or member of a committee from receiving a reasonable fee for lawful services actually rendered to the insurer.

[ 1969, c. 132, §1 (NEW) .]

5. The superintendent may, by regulation from time to time, define and permit additional exceptions to the prohibition contained in subsection 1 solely to enable payment of reasonable compensation to a director who is not otherwise an officer or employee of the insurer, or to a corporation or firm in which a director is interested, for necessary services performed or sales or purchases made to or for the insurer in the ordinary course of the insurer's business and in the usual private professional or business capacity of such director, corporation or firm.

[ 1973, c. 585, §12 (AMD) .]

#### SECTION HISTORY

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

### **§3414. MANAGEMENT, COMMISSION, EXCLUSIVE AGENCY CONTRACTS**

1. No domestic insurer shall hereafter make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the material exclusion of its board of directors or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, or, if an officer,

director or otherwise part of the insurer's management, is to receive any commission, bonus or compensation based upon the volume of the insurer's business or transactions, unless the contract is filed with and not disapproved by the superintendent. The contract shall become effective in accordance with its terms unless disapproved by the superintendent within 20 days after date of filing, subject to such reasonable extension of time as the superintendent may require by notice given within such 20 days. Any disapproval shall be delivered to the insurer in writing stating the grounds therefor.

[ 1973, c. 585, §12 (AMD) . ]

2. Any such contract shall provide that any such manager, producer of its business or contract holder shall within 90 days after expiration of each calendar year furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, with specification of the emoluments received therefrom by the respective directors, officers and other principal management personnel of the manager or producer, and with such classification of items and further detail as the insurer's board of directors may reasonably require.

[ 1969, c. 132, §1 (NEW) . ]

3. The superintendent shall disapprove any such contract if he finds that it:

A. Subjects the insurer to excessive charges; or [1969, c. 132, §1 (NEW) . ]

B. Is to extend for an unreasonable length of time; or [1969, c. 132, §1 (NEW) . ]

C. Does not contain fair and adequate standards of performance; or [1969, c. 132, §1 (NEW) . ]

D. Contains other inequitable provision or provisions which impair the proper interests of stockholders or members of the insurer. [1969, c. 132, §1 (NEW) . ]

[ 1973, c. 585, §12 (AMD) . ]

4. The superintendent may, after a hearing held thereon, disapprove any such contract theretofore permitted to become effective, if he finds that the contract should be disapproved on any of the grounds referred to in subsection 3.

[ 1973, c. 585, §12 (AMD) . ]

5. This section does not apply as to contracts entered into prior to January 1, 1970, or to amendment of such contracts other than extensions thereof.

[ 1973, c. 625, §149 (AMD) . ]

6. This section shall not be deemed to prohibit receipt of commissions on insurance written personally by a director or officer who is duly licensed and regularly engaged in business as an insurance agent or broker; or to prohibit receipt of vested commissions by a director or officer based upon insurance business theretofore written by him.

[ 1969, c. 132, §1 (NEW) . ]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1973, c. 625, §149 (AMD).

## §3415. BORROWED CAPITAL FUNDS

1. A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. The agreement may provide for interest not exceeding, per annum, a rate of 5 percentage points in excess of the then current discount rate of the Federal Reserve Bank, Boston, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus as stipulated in the agreement. No commission or promotion expense may be paid in connection with any such loan, except that if sale is made of the loan securities through established securities brokers or by public offering, the insurer may pay the reasonable costs thereof approved by the superintendent.

[ 1983, c. 709, §4 (RPR) .]

2. Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any set-off or counterclaim; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.

[ 1969, c. 132, §1 (NEW) .]

3. Any such loan shall be subject to the superintendent's approval. The insurer shall, in advance of the loan, file with the superintendent a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within 15 days after date of such filing the insurer is notified of the superintendent's disapproval and the reasons therefor. The superintendent shall disapprove any proposed loan or agreement if he finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

[ 1973, c. 585, §12 (AMD) .]

4. Any such loan to an insurer or substantial portion thereof may be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan, whether heretofore or hereafter outstanding shall be made, other than as provided in the loan agreement, unless approved in advance by the superintendent.

[ 1973, c. 585, §12 (AMD) .]

5. This section shall not apply to other kinds of loans obtained by the insurer in ordinary course of business, or to loans secured by pledge or mortgage of assets.

[ 1969, c. 132, §1 (NEW) .]

6. Loans authorized under this section may be made by domestic insurers as well as by other persons; but such a loan shall not constitute an asset in any determination of the financial condition of the lending insurer.

[ 1969, c. 132, §1 (NEW) .]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §58 (AMD). 1973, c. 585, §12 (AMD). 1983, c. 709, §4 (AMD).

## §3416. DIVIDENDS TO STOCKHOLDERS

1. A domestic stock insurer shall not pay any cash dividend to stockholders except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and net realized capital gains.

[ 1969, c. 132, §1 (NEW) . ]

2. A cash dividend otherwise lawful may be payable out of the insurer's earned surplus even though its total surplus is then less than the aggregate of its past contributed or paid-in surplus.

[ 1969, c. 132, §1 (NEW) . ]

3. A stock dividend may be paid out of any available surplus funds, other than "surplus" resulting from borrowed capital funds such as provided for under section 3415.

[ 1969, c. 132, §1 (NEW) . ]

### SECTION HISTORY

1969, c. 132, §1 (NEW).

## §3417. PARTICIPATING POLICIES

1. If provided for in its articles of incorporation, certificate of organization or charter, a stock insurer or mutual insurer may issue any or all of its policies or contracts with or without participation in profits, savings, unabsorbed portions of premiums or surplus; may classify policies issued and perils insured on a participating and nonparticipating basis; and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination must be reasonable, and may not unfairly discriminate as between policies so classified.

[ 2013, c. 299, §12 (AMD) . ]

2. A life insurer may issue both participating and nonparticipating policies or contracts if the right or absence of right to participate is reasonably related to the premium charged.

[ 1969, c. 132, §1 (NEW) . ]

3. After the first policy year, no dividend, otherwise earned under a life or health insurance policy or annuity contract, shall be made contingent upon the payment of renewal premium on any such policy or contract; except that a participating life or health insurance policy providing for participation at the end of the first or second policy year may provide that the dividend or dividends will be paid subject to payment of premium for the next ensuing year.

[ 1969, c. 132, §1 (NEW) . ]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 2013, c. 299, §12 (AMD).

## §3418. DIVIDENDS TO POLICYHOLDERS

1. The directors of a domestic mutual insurer may from time to time apportion and pay or credit to its members dividends only out of that part of its accumulated surplus funds which represents net realized savings, net realized earnings and net realized capital gains, all in excess of the surplus required by law to be maintained by the insurer.

[ 1969, c. 132, §1 (NEW) .]

2. A dividend otherwise proper may be payable out of such savings, earnings and gains even though the insurer's total surplus is then less than the aggregate of contributed surplus remaining unpaid by the insurer.

[ 1969, c. 132, §1 (NEW) .]

3. A domestic stock insurer may pay dividends to holders of its participating policies out of any available surplus funds.

[ 1969, c. 132, §1 (NEW) .]

4. No dividend shall be paid which is inequitable, or which unfairly discriminates as between classifications of policies or policies within the same classifications.

[ 1969, c. 132, §1 (NEW) .]

### SECTION HISTORY

1969, c. 132, §1 (NEW).

## §3419. PENSION AND OTHER PLANS FOR EMPLOYEES AND OTHERS

1. Pursuant to the terms of a pension plan or plans or any modification thereof, heretofore or hereafter adopted by the insurer's board of directors and approved by the superintendent, any domestic stock or mutual insurer may pay the whole or any part of the cost of retirement or disability pensions for such of its officers, employees or full-time insurance agents as are specified in such plan or plans or modifications thereof. If so specified in the plan or plans, in lieu of such pensions actuarially equivalent benefits may be paid to such officers, employees or full-time agents or to their designated beneficiaries.

[ 1973, c. 585, §12 (AMD) .]

2. The superintendent shall approve any such plan unless he finds the same not to be within the reasonable financial resources of the insurer or not fair and equitable as between the respective classifications of participants therein.

[ 1973, c. 585, §12 (AMD) .]

3. Nothing contained in this section or in section 3420 shall be deemed to prohibit profit-sharing, stock option or similar plans for an insurer's officers, employees or agents.

[ 1969, c. 132, §1 (NEW) .]

### SECTION HISTORY

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

## **§3420. INSURANCE BENEFITS FOR EMPLOYEES AND OTHERS**

Pursuant to vote of its board of directors heretofore or hereafter made, any domestic stock or mutual insurer may provide for its officers, employees or full-time insurance agents a plan or plans of insurance, to be issued under group or individual policies. The insurer may pay the cost, in whole or in part, of such insurance; or, if duly authorized by its charter and bylaws, may itself provide such benefits directly as the insurer thereof, without requirement of placement through a licensed insurance agent, and in such case may adjust the premium rate for the insurance to reflect such savings in expense as the insurer may deem applicable. [1969, c. 132, §1 (NEW).]

### SECTION HISTORY

1969, c. 132, §1 (NEW).

## **§3421. SOLICITATION, INSURING IN OTHER STATES**

1. No domestic insurer shall knowingly solicit insurance business in any reciprocating state in which not then licensed as an authorized insurer. This subsection shall not prohibit advertising through publications and radio, television and other media originating outside such reciprocating state, if the insurer is licensed in the state in which the advertising originates and the advertising is not specifically directed to residents of such reciprocating state. This subsection shall not apply as to surplus lines insurance, or reinsurance, or prohibit insurance covering persons or risks located in a reciprocating state, under contracts solicited and issued in states in which the insurer is then licensed, or insurance otherwise effectuated in accordance with the laws of the reciprocating state. A "reciprocating" state, as used herein, is one under the laws of which a similar prohibition is imposed upon and enforced against insurers domiciled in that state.

[ 1969, c. 132, §1 (NEW) .]

2. A domestic insurer duly authorized to transact insurance in another jurisdiction may frame and issue policies for delivery in such jurisdiction pursuant to applications for insurance solicited and obtained therein, in accordance with the laws thereof, subject only to such restrictions, if any, as may be contained in the insurer's articles of incorporation or bylaws; and subject, in the case of health insurers, to the provisions of section 2733 (policies issued for delivery in another state).

[ 2013, c. 299, §13 (AMD) .]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1969, c. 177, §59 (AMD). 2013, c. 299, §13 (AMD).

## **§3422. PURCHASE OF OWN SHARES BY STOCK INSURER**

A domestic stock insurer shall have the right to purchase or acquire shares of its own stock only as follows: [1969, c. 132, §1 (NEW).]

1. For elimination of fractional shares.

[ 1969, c. 132, §1 (NEW) .]

2. Incidental to the enforcement of rights of the insurer with respect to lawful transactions previously entered into in good faith for purposes other than the acquisition of such shares.

[ 1969, c. 132, §1 (NEW) .]

3. For the purposes of a general savings and investment plan for employees or agents of the insurer.

[ 1969, c. 132, §1 (NEW) .]

4. For mutualization of the insurer, as provided in section 3472.

[ 1969, c. 132, §1 (NEW) .]

5. For retirement or otherwise of the shares under a plan submitted to and approved in writing by the superintendent. The superintendent shall not approve a plan unless found by him to be reasonable, fair and equitable as to remaining stockholders of the insurer, and not materially adverse to the protection of the insurer's policyholders.

[ 1973, c. 585, §12 (AMD) .]

SECTION HISTORY

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

### §3423. IMPAIRMENT OF CAPITAL FUNDS

1. If a domestic stock insurer's paid-in capital stock, as represented by the aggregate par value of its outstanding capital stock, becomes impaired, or the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of basic surplus required to be maintained by it under this Title for authority to transact the kinds of insurance being transacted, the superintendent shall at once determine the amount of deficiency and serve notice upon the insurer to cure the deficiency and file proof thereof with him within the period specified in the notice, which period shall be not less than 30 nor more than 90 days from the date of the notice. Such notice may be so served by delivery to the insurer, or by mailing to the insurer addressed to its registered office in this State.

[ 1973, c. 585, §12 (AMD) .]

2. The deficiency may be made good in cash or in assets eligible under chapter 13 (investments) for the investment of the insurer's funds or by amendment of the insurer's certificate of authority to cover only such kind or kinds of insurance thereafter for which the insurer has sufficient paid-in capital stock, if a stock insurer, or surplus, if a mutual insurer, under this Title; or, if a stock insurer, by reduction of the number of shares of the insurer's authorized capital stock or the par value of the capital stock through amendment of its certificate of organization or articles of incorporation, to an amount of authorized and unimpaired paid-in capital stock not below the minimum required for the kinds of insurance thereafter to be transacted.

[ 2013, c. 299, §14 (AMD) .]

3. If the deficiency is not made good and proof thereof filed with the superintendent within the period required by the notice as specified in subsection 1, the insurer shall be deemed insolvent and the superintendent shall institute delinquency proceedings against it under chapter 57.

[ 1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2013, c. 299, §14 (AMD).

## **§3424. RESTRICTIONS DURING IMPAIRMENT; PENALTY**

1. During the existence of impairment of the capital stock or surplus of an insurer, as referred to in section 3423, the superintendent shall require such restriction of, or arrangements as to, operations of the insurer while the impairment exists as he deems advisable for protection of policyholders, the insurer or the public.

[ 1973, c. 585, §12 (AMD) .]

2. Any officer, director, representative or employee of the insurer who knowingly violates or fails to comply with any such restriction or requirement shall upon conviction thereof be subject to fine of not less than \$500 or more than \$5,000, or imprisonment for less than one year or to both such fine and imprisonment.

[ 1969, c. 132, §1 (NEW) .]

### SECTION HISTORY

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

## Subchapter 4: CONVERSION, AMALGAMATION, DISSOLUTION

### **§3471. SCOPE OF SUBCHAPTER**

This subchapter applies as to domestic stock and mutual insurers whether heretofore or hereafter formed, including insurers chartered under special legislative Acts, notwithstanding any inconsistent provisions in the charters of the insurers. [1985, c. 399, §2 (RPR).]

### SECTION HISTORY

1969, c. 132, §1 (NEW). 1985, c. 399, §2 (RPR).

### **§3472. MUTUALIZATION OF STOCK INSURER**

1. A stock insurer other than a title insurer may become a mutual insurer, or a combination stock and mutual insurer, under such plan and procedure as may be approved by the superintendent after a hearing thereon.

[ 1973, c. 585, §12 (AMD) .]

2. The superintendent shall not approve any such plan, procedure or mutualization unless:

A. It is equitable to stockholders and policyholders; [1969, c. 132, §1 (NEW).]

B. It is subject to approval by the holders of not less than 2/3 of the insurer's outstanding capital stock having voting rights, and by not less than 2/3 of the insurer's policyholders who vote on such plan in person, by proxy or by mail pursuant to such notice and procedure as may be approved by the superintendent; [1973, c. 585, §12 (AMD).]

C. If a life insurer, the right to vote thereon is limited to holders of policies other than term or group policies, and whose policies have been in force for more than one year; [1969, c. 132, §1 (NEW).]

D. Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers; [1969, c. 132, §1 (NEW).]

E. The plan provides for the purchase of the shares of any nonconsenting stockholder in the same manner and subject to the same applicable conditions as provided by the general corporation law of the State as to rights of nonconsenting stockholders, with respect to consolidation or merger of private corporations; [1969, c. 132, §1 (NEW).]

F. The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and [1969, c. 132, §1 (NEW).]

G. The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance, and for the kinds of insurance included in its certificates of authority in such states. [1969, c. 132, §1 (NEW).]

[ 1973, c. 585, §12 (AMD) .]

3. Any such combination stock and mutual insurer referred to in subsection 1 above must have and maintain separate paid-in capital stock and basic surplus in respective amounts as would be required under this Title of separate domestic stock and mutual insurers transacting the same kind or kinds of insurance.

[ 1969, c. 132, §1 (NEW) .]

4. No director, officer, agent or employee of the insurer, or any other person, shall receive any fee, commission or other valuable consideration whatsoever, other than their customary salaries or other regular compensation, for in any manner aiding, promoting or assisting in the mutualization, except as set forth in the plan of mutualization as approved by the superintendent.

[ 1973, c. 585, §12 (AMD) .]

5. This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under chapter 57.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

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

### **§3473. CONVERSION OF STOCK INSURER TO ORDINARY BUSINESS CORPORATION**

1. A domestic stock insurer may convert to a Maine ordinary business corporation through the following procedures:

A. The insurer must give the superintendent written notice of its intent to convert to an ordinary business corporation; [1973, c. 585, §12 (AMD).]

B. The insurer must bulk reinsure all of its insurance, if any, in force, with another authorized insurer under a bulk reinsurance agreement approved by the superintendent as provided in section 3483. The agreement of bulk reinsurance may be made contingent upon approval of stockholders as provided in paragraph D; [1973, c. 585, §12 (AMD).]

C. The insurer must set aside funds in a special reserve in such amount and subject to such administration as may be found by the superintendent to be reasonable and adequate for the purpose, for payment of all obligations, if any, of the insurer incurred by it and remaining unpaid under its insurance contracts prior to the effective date of such bulk reinsurance, or make other reasonable disposition satisfactory to the superintendent for such payment; [1973, c. 585, §12 (AMD).]

D. The proposed conversion must be approved by affirmative vote of not less than 2/3 of each class of outstanding securities of the insurer having voting rights, at a special meeting of holders of such securities called for the purpose; and at such meeting and by a like vote the certificate of organization or articles of incorporation of the corporation must be amended to remove from the certificate of organization or articles of incorporation the power to transact an insurance business as an insurer, to provide for such new powers and purposes authorized by the general corporation laws of this State as may be consistent with the purposes for which the corporation is thereafter to exist, and to make such further alterations in the certificate of organization or articles of incorporation as may be required under such general corporation laws of an ordinary business corporation; [2013, c. 299, §15 (AMD).]

E. Security holders of the corporation who dissent from such proposed conversion shall have the same applicable rights as exist under such general corporation laws with respect to dissent from a proposed merger of the corporation; and [1969, c. 132, §1 (NEW).]

F. Upon compliance with paragraphs A to D, and upon filing of the amendment of the certificate of organization or articles of incorporation with the superintendent and otherwise as required by laws applicable to ordinary business corporations, the conversion becomes effective. [2013, c. 299, §16 (AMD).]

[ 2013, c. 299, §§15, 16 (AMD) .]

2. An insurer which has once converted to an ordinary business corporation shall not have power thereafter to convert to an insurer; and no ordinary business corporation shall have power to convert to an insurer.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2013, c. 299, §§15, 16 (AMD).

### **§3474. MERGER, CONSOLIDATION OF STOCK INSURERS**

1. Subject to the provisions of this section, a domestic stock insurer, whether or not authorized to transact insurance in this State, may merge or consolidate with one or more domestic or foreign stock corporations by complying with the applicable provisions of the laws of this State governing the merger or consolidation of stock corporations formed for profit.

A. A corporation merging or consolidating with a domestic stock insurer must be incorporated as an insurer in the manner provided by its state of incorporation, but the corporation need not be authorized or licensed to transact insurance by any state prior to the merger or consolidation. [1989, c. 611, §2 (NEW); 1989, c. 611, §4 (AFF).]

B. A foreign or alien insurer may merge or consolidate pursuant to this section with a domestic insurer only if, at the time of the merger or consolidation:

(1) The domestic insurer is authorized to transact insurance in this State; or

(2) The foreign or alien insurer meets all requirements applicable to a domestic insurer set forth in this Title for initial authorization to transact in this State the kinds of insurance, as defined in chapter 9, then transacted by that insurer in any jurisdiction. [1989, c. 611, §2 (NEW); 1989, c. 611, §4 (AFF).]

C. A domestic insurer may not participate in a merger or consolidation that will result in the surviving or new corporation being domiciled in a jurisdiction other than this State unless the surviving or new insurer in the merger or consolidation obtains a certificate of authority in the jurisdiction in which it will be domiciled and in this State to transact the kinds of insurance for which any participating insurers were

authorized at the time of the merger or consolidation and agrees to maintain that certificate of authority in this State until and unless the superintendent approves a plan of withdrawal filed pursuant to section 415-A. [1991, c. 2, §92 (COR).]

D. The following provisions apply to the authority of the surviving or new corporation to transact insurance in this State following the merger or consolidation.

(1) If the surviving or new corporation is a domestic insurer and no participating corporation in the merger or consolidation was authorized or licensed to transact insurance in this State, the surviving or new domestic insurer shall meet all applicable requirements of this Title for initial authorization to transact all kinds of insurance, as defined in chapter 9, formerly transacted by any participating insurer or insurers in any jurisdiction.

(2) If the surviving or new corporation is a domestic insurer and seeks authority to transact kinds of insurance other than those for which the domestic insurer or insurers participating in the merger or consolidation were authorized at the time of the merger or consolidation, that corporation must meet the requirements set forth in this Title for initial authorization to transact those kinds of insurance.

(3) If the surviving or new corporation is a foreign or alien insurer that seeks to transact insurance in this State, that corporation shall meet all applicable requirements of this Title for initial authorization to transact all kinds of insurance, as defined in chapter 9, formerly transacted by any participating insurer or insurers as well as for any additional kinds of insurance for which authority is sought. [1989, c. 611, §2 (NEW); 1989, c. 611, §4 (AFF).]

[ 1991, c. 2, §92 (COR) .]

2. No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the superintendent and approved in writing by the superintendent after a hearing thereon after notice to the stockholders of each insurer involved. The superintendent shall give such approval within a reasonable time after such filing unless the superintendent finds that the plan or agreement:

A. Is contrary to law; [1989, c. 611, §3 (AMD); 1989, c. 611, §4 (AFF).]

B. Is unfair or inequitable to the policyholders of any insurer involved; [1989, c. 611, §3 (AMD); 1989, c. 611, §4 (AFF).]

C. Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this State or elsewhere; [1989, c. 611, §3 (AMD); 1989, c. 611, §4 (AFF).]

D. Would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or [1969, c. 132, §1 (NEW).]

E. Is subject to other material and reasonable objections. [1969, c. 132, §1 (NEW).]

In making any determination required by paragraph C, the superintendent may consider, among other factors, whether the surplus of the surviving or new corporation satisfies the requirements of section 410.

[ 1989, c. 611, §3 (AMD); 1989, c. 611, §4 (AFF) .]

3. No director, officer, agent or employee of any insurer party to the merger or consolidation shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in the plan or agreement.

[ 1969, c. 132, §1 (NEW) .]

4. If the superintendent does not approve the plan or agreement, he shall so notify the insurer in writing specifying his reasons therefor.

[ 1973, c. 585, §12 (AMD) .]

SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1989, c. 611, §§2-4 (AMD). RR 1991, c. 2, §92 (COR).

### **§3475. EXCHANGE OF SECURITIES BETWEEN INSURERS**

1. Upon application of any domestic insurer, the superintendent is authorized to approve the fairness of the terms and conditions of the issuance by the insurer of any shares of its capital stock or of guaranty capital or bonds or its other securities or obligations in exchange for one or more bona fide outstanding securities, claims or property interest of any other insurer or corporation, domestic or foreign, or partly in such exchange and partly for cash; but only after a hearing has been held by the superintendent upon the fairness of such terms and conditions at which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear and be heard.

[ 1973, c. 585, §12 (AMD) .]

2. Notice of such hearing and conduct thereof shall be as provided in chapter 3 (the insurance superintendent).

[ 1973, c. 585, §12 (AMD) .]

SECTION HISTORY

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

### **§3476. ACQUISITION OF CONTROLLING STOCK**

1. Any person proposing to acquire the controlling capital stock or guaranty capital shares of any domestic stock insurer and thereby to change the control of the insurer, other than through merger or consolidation or affiliation as provided for in this chapter, shall first apply to the superintendent in writing for approval of such proposed change of control. The application shall state the names and addresses of the proposed new owners of the controlling stock or shares and contain such additional information as the superintendent may reasonably require.

[ 1973, c. 585, §12 (AMD) .]

2. The superintendent shall not approve the proposed change of control if he finds:

A. That the proposed new owners are not qualified by character, experience and financial responsibility to control and operate the insurer, or cause the insurer to be operated, in a lawful and proper manner; or [1969, c. 132, §1 (NEW).]

B. That as a result of the proposed change of control the insurer may not be qualified for a certificate of authority under section 407 (ownership, management); or [1969, c. 132, §1 (NEW).]

C. That the interests of the insurer or other stockholders of the insurer or policyholder would be impaired through the proposed change of control; or [1969, c. 132, §1 (NEW).]

D. That the proposed change of control would tend materially to lessen competition, or to create any monopoly, in a business of insurance in this State or elsewhere. [1969, c. 132, §1 (NEW).]

[ 1973, c. 585, §12 (AMD) .]

3. If the superintendent does not by affirmative action approve or disapprove the proposed change of control within 30 days after the date such application was so filed with the superintendent, the proposed change may be made without such approval. Except that if the superintendent gives notice to the parties of a hearing to be held by the superintendent with respect to the proposed change of control, and the hearing is held within such 30 days or on a date mutually acceptable to the superintendent and the parties, the superintendent shall have 30 days after the conclusion of the hearing within which to so approve or disapprove the proposed change; and if not so approved or disapproved, the change may thereafter be made without the superintendent's approval.

[ 1989, c. 269, §15 (AMD) .]

4. If the superintendent disapproves the proposed change he shall give written notice thereof to the parties, setting forth in detail the reasons for disapproval.

[ 1973, c. 585, §12 (AMD) .]

5. The superintendent shall file a complaint with the District Court seeking to suspend or revoke the certificate of authority held by any insurer, the control of which has been changed in violation of this section.

[ 1977, c. 694, §428 (RPR); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1977, c. 694, §428 (AMD). 1989, c. 269, §15 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

### §3477. CONVERSION OF MUTUAL TO STOCK INSURER

1. A mutual insurer may amend its charter pursuant to this section to become a stock insurer, or a combination stock and mutual insurer, under such reasonable plan and procedure as may be approved by the superintendent after a hearing thereon of which notice was given to the insurer, its directors or trustees, its officers, employees and its policyholders, all of whom shall have the right to appear and be heard at the hearing.

[ 1985, c. 399, §3 (AMD) .]

2. The superintendent shall not approve any such plan or procedure unless:

A. Its terms and conditions are fair and equitable; [1969, c. 132, §1 (NEW) .]

B. It is subject to approval by vote of not less than 2/3 of the insurer's policyholders voting thereon in person, by proxy, or by mail at a meeting of policyholders called for the purpose pursuant to such reasonable notice and procedure as may be approved by the superintendent and each such policyholder shall be entitled to one vote, provided that only persons who were policyholders both at least one year prior to the submission of the insurer's plan to the superintendent and on a subsequent date, found reasonable by the superintendent, prior to the vote shall be entitled to vote; provided that as to life insurers chartered by special Act prior to January 1, 1970, the persons entitled to vote shall be further limited to owners of life insurance policies and contracts, and those persons shall be entitled to one vote and to an additional vote for each \$1,000 of insurance above 1,000, except that in the case of any policy or contract of group life insurance or any group annuity contract providing life insurance, the employer or other person, firm, corporation or association, to whom or in whose name the master policy or contract shall have been issued or held, shall be deemed to be the owner within the meaning of this

paragraph and shall be entitled to one vote for each such policy or contract of group life insurance or each such group annuity contract irrespective of the number of lives insured under that policy or contract; [1985, c. 399, §4 (RPR).]

C. The equity of each member in the insurer is determinable under a fair and reasonable formula approved by the superintendent, which such equity shall be based upon the insurer's entire surplus as shown by the insurer's financial statement filed with the superintendent, including all voluntary reserves but excluding contingently repayable funds and outstanding guaranty capital shares at the redemption value thereof, and without taking into account the value of nonadmitted assets or of insurance business in force; [1973, c. 585, §12 (AMD).]

D. The plan gives to each member of the insurer as specified in paragraph E, a preemptive right to acquire his proportionate part of all of the proposed capital stock of the insurer, or all of the stock of a proposed parent corporation of the insurer, within a designated reasonable period, as such part is determinable under the plan of conversion, and to apply upon the purchase thereof the amount of his equity in the insurer as determined under paragraph C, except that the plan may provide, subject to the approval of the superintendent, that such preemptive right will not apply to members who reside in jurisdictions in which the issuance of stock is impossible, would involve unreasonable delay or would require the insurer to bear unreasonable costs, provided that any such member shall receive 100% of his equity share in the insurer in the form of a cash payment; [1985, c. 399, §5 (AMD).]

E. The members entitled to participate in the purchase of stock or distribution of assets shall include not less than all policyholders of the insurer as of the date the plan was submitted to the superintendent and each existing person who had been a policyholder of the insurer within 3 years prior to such date; [1985, c. 399, §6 (AMD).]

F. Shares are to be offered to members at a price not greater than to be thereafter offered under the plan to others; [1969, c. 132, §1 (NEW).]

G. The plan provides for payment to each member of his entire equity share in the insurer, with that payment to be made in cash or to be applied for or upon the purchase of stock to which the member is preemptively entitled, or both, provided that with respect to each member who is not given the option of receiving his entire equity share in cash, the plan shall provide that that member shall have the option to receive a reasonable portion of his equity share, as provided in the plan, but not in excess of 50% of his entire equity, in the form of a cash payment, which payment together with the amount applied to the purchase of stock shall constitute full payment and discharge of the member's equity or property interest in that mutual insurer; provided further that the superintendent may permit an insurer to forego the option of making a cash payment to members if he determines that it would be reasonable not to provide for the cash election, after taking into account all the facts and circumstances, including whether there is expected to be an active market for the stock to be received in the conversion; [1985, c. 399, §7 (RPR).]

H. The plan, when completed, would provide for the converted insurer paid-in capital stock in an amount not less than the minimum paid-in capital stock required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance, together with expendable surplus funds in amount not less than 1/2 of such required capital stock; and [1969, c. 132, §1 (NEW).]

I. The superintendent finds that the insurer's management has not, through reduction in volume of new business written, or cancellation or through any other means sought to reduce, limit, or affect the number or identity of the insurer's members to be entitled to participate in such plan, or to secure for the individuals comprising management any unfair advantage through such plan. [1973, c. 585, §12 (AMD).]

[ 1985, c. 399, §§4-7 (AMD) .]

3. Any such combination stock and mutual insurer referred to in subsection 1 must have and maintain separate paid-in capital stock and basic surplus in respective amounts as would be required under this Title of separate domestic stock and mutual insurers transacting the same kind or kinds of insurance.

[ 1969, c. 132, §1 (NEW) .]

4. Subsection 2 shall not be deemed to prohibit the inclusion in the conversion plan of provisions under which the individuals comprising the insurer's management and employee group shall be entitled to purchase for cash at the same price as offered to the insurer's members, shares of stock not taken by members on the preemptive offering to members, in accordance with such reasonable classification of such individuals as may be included in the plan and approved by the superintendent.

[ 1973, c. 585, §12 (AMD) .]

5. No director, officer, agent or employee of the insurer, or any other person, shall receive any fee, commission or other valuable consideration whatsoever, other than their usual regular salaries and compensation, for in any manner aiding, promoting or assisting in such conversion except as set forth in the plan approved by the superintendent. This provision shall not be deemed to prohibit the payment of reasonable fees and compensation to attorneys at law, accountants and actuaries for services performed in the independent practice of their professions, even though also directors of the insurer.

[ 1973, c. 585, §12 (AMD) .]

6. Costs. For the purpose of determining whether a conversion plan meets the requirements of this section and any other relevant provisions of this Title, the superintendent may employ staff personnel and outside consultants. All reasonable costs related to the review of a plan of conversion, including those costs attributable to the use of staff personnel, shall be borne by the insurer or insurers making the filing.

[ 1985, c. 399, §8 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1985, c. 399, §§3-8 (AMD).

### **§3478. MERGER, CONSOLIDATION OF MUTUAL INSURERS AUTHORIZED**

1. Any one or more mutual insurers existing under any of the laws of this State, may absorb by merger or consolidation, or be merged into or consolidate with, any one or more domestic or foreign mutual insurers either authorized to transact insurance in this State or qualified for such authority. The procedure for effectuation of such merger or consolidation shall be as set forth in sections 3479 to 3482.

[ 1969, c. 132, §1 (NEW) .]

2. Nothing in this section shall authorize the merger or consolidation of a mutual insurer with a stock insurer.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW).

### **§3479. -- PLAN, AGREEMENT OF MERGER, CONSOLIDATION; APPROVAL BY CORPORATIONS**

1. The plan and agreement for a merger or consolidation referred to in section 3478 shall be in writing signed by the duly authorized officers and under the corporate seals of the respective insurers; and shall be acknowledged to be the act, deed and agreement of the insurer by one of the executing officers of the respective insurers before an officer authorized by law to take acknowledgments of deeds. The plan and agreement shall be approved and authorized by vote of the majority of the directors of the respective insurers, and approved by vote of at least 2/3 of such policyholders of the respective insurers who are entitled to vote and do vote thereon in person or by proxy at a special meeting of such members call for the purpose.

[ 1969, c. 132, §1 (NEW) .]

2. Notice of such special meeting of members shall be given by publishing the same once weekly for 3 consecutive weeks in a newspaper circulated in each county of this State, the last such publication to be at least 7 days prior to such meeting. Notice to its members by a foreign insurer shall be in accordance with the laws of its domiciliary jurisdiction.

[ 1969, c. 132, §1 (NEW) .]

3. All of the members of the insurer shall be bound by the vote of policyholders as above provided for, and shall not have thereafter any right as to dissent or appraisal.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW).

### **§3480. -- APPROVAL BY SUPERINTENDENT**

1. The plan and agreement referred to in section 3479 shall not be effectuated until filed with and approved by the superintendent in writing. The insurers shall furnish the superintendent such additional information in relation to the proposed merger or consolidation as the superintendent may reasonably require.

[ 1973, c. 585, §12 (AMD) .]

2. The superintendent shall approve the plan and agreement unless he finds that it:

A. Is contrary to law; or [1969, c. 132, §1 (NEW) .]

B. Is inequitable to the policyholders of any domestic insurer involved; or [1969, c. 132, §1 (NEW) .]

C. Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer; or [1969, c. 132, §1 (NEW) .]

D. Would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or [1969, c. 132, §1 (NEW) .]

E. Is subject to other material and reasonable objections. [1969, c. 132, §1 (NEW) .]

[ 1973, c. 585, §12 (AMD) .]

3. If the superintendent does not approve the plan and agreement he shall so notify the insurers parties thereto in writing, specifying his reasons therefor.

[ 1973, c. 585, §12 (AMD) .]

SECTION HISTORY

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

**§3481. -- REVIEW BY ATTORNEY GENERAL; FILING WITH SECRETARY OF STATE**

1. Upon approval by the superintendent as provided in section 3480, the plan and agreement of merger or consolidation shall be submitted to the Attorney General and be examined by him. If the Attorney General finds the plan and agreement to be properly drawn and signed and otherwise in conformity with the Constitution and laws of this State, he shall so certify thereon in writing.

[ 1973, c. 585, §12 (AMD) .]

2. Within 60 days from date of approval by the superintendent, both an original and a copy of the plan and agreement showing thereon the certificate of the Attorney General, shall be delivered to the office of the Secretary of State. The Secretary of State shall file such copy and enter the date of filing on both the copy and the original, shall record the copy and return the original to the surviving merged or consolidated corporation.

[ 1973, c. 585, §12 (AMD) .]

3. From time of filing the copy of the plan and agreement in the office of the Secretary of State, the agreement shall be deemed to be the agreement and act of merger or consolidation of the insurers, and the original of such agreement or a certified copy thereof shall be evidence of the existence of such merged or consolidated corporation and of the performance of all acts and conditions necessary for the effectuation of such merger or consolidation.

[ 1969, c. 132, §1 (NEW) .]

4. If a domestic insurer is merged into or consolidated with a foreign insurer, the foreign insurer shall not transact insurance in this State until it has procured a certificate of authority from the superintendent therefor under this Title.

[ 1973, c. 585, §12 (AMD) .]

SECTION HISTORY

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

**§3482. -- EFFECTIVE DATE OF MERGER, CONSOLIDATION; EFFECT AS TO ASSETS, LIABILITIES, RIGHTS AND POWER**

1. When the plan and agreement for merger or consolidation has been so signed, acknowledged, approved, authorized, certified, filed and recorded as provided in sections 3478 to 3481, then the separate existence of all of the constituent corporations other than the surviving corporation into which the other corporation or corporations parties have merged or consolidated shall cease.

[ 1969, c. 132, §1 (NEW) .]

2. The surviving corporation shall be the merged or consolidated corporation by the name provided for in the agreement; and shall thereby possess all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and shall thereby be subject to all the liabilities, restrictions and duties, of each of the merged or consolidated corporations, and have all and singular the rights, privileges, powers, franchises and immunities of each of such corporations, together with all property, real, personal and mixed, wheresoever located, and all debts due to any of such constituent corporations on whatever account; and all other things in action of each of such corporations, are by virtue of such merger or consolidation automatically vested in such surviving corporation.

[ 1969, c. 132, §1 (NEW) .]

3. All such property, rights, privileges, powers, franchises and immunities and all and every other such interest shall be thereafter as effectually the property of the surviving corporation as they were of the respective constituent corporations; and title to any real estate, whether by deed or otherwise, under the laws of this State, vested in any of such constituent corporations shall not revert or be in any way impaired by reason of such merger or consolidation. All rights of creditors and all liens upon the property of any of such constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the merger or consolidation; and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to the surviving corporation and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

[ 1969, c. 132, §1 (NEW) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW).

### **§3483. BULK REINSURANCE**

1. A domestic insurer may reinsure, and thereby transfer its direct liability as the insurer with respect to, all or substantially all of its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the superintendent, or if disapproved by him.

[ 1973, c. 585, §12 (AMD) .]

2. The superintendent shall disapprove such agreement within a reasonable time after filing if he finds:

A. That the plan and agreement are unfair and inequitable to any insurer or to policyholders involved; or [1969, c. 132, §1 (NEW) .]

B. That the reinsurance, if effectuated, would substantially reduce the protection or service to the policyholders of any domestic insurer involved; or [1969, c. 132, §1 (NEW) .]

C. That the agreement does not embody adequate provisions by which the reinsuring insurer becomes liable to the original insureds for any loss or damage occurring under the policies reinsured in accordance with the original terms of such policies; or [1969, c. 132, §1 (NEW) .]

D. That the assuming reinsurer is not authorized to transact such insurance in this State, or is not qualified as for such authorization or will not appoint the superintendent and his successors as its irrevocable attorney for service of process, so long as any policy so reinsured or claim thereunder remains in force or outstanding; or [1973, c. 585, §12 (AMD) .]

E. That such reinsurance would materially tend to lessen competition in the insurance business in this State or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or [1969, c. 132, §1 (NEW) .]

F. That the proposed bulk reinsurance is not free of other reasonable objections. [1969, c. 132, §1 (NEW).]

[ 1973, c. 585, §12 (AMD) .]

3. If the superintendent disapproves the agreement, he shall forthwith notify in writing each insurer involved, specifying his reasons therefor.

[ 1973, c. 585, §12 (AMD) .]

4. If for reinsurance of all or substantially all of the business in force of an insurer at a time when the insurer's capital, if a stock insurer, or surplus, if a mutual insurer, is not impaired, the plan and agreement of such reinsurance must be approved by a vote of not less than 2/3 of the insurer's outstanding stock having voting rights, if a stock insurer, or of members, if a mutual insurer, voting thereon, at a meeting of stockholders or members called for the purpose pursuant to such reasonable notice and procedure as is provided for in the agreement. If a mutual life insurer, right to vote may be limited to members otherwise entitled to vote and whose policies are other than term policies for terms of less than 20 years, or group policies, and have been in effect for more than one year.

[ 1969, c. 132, §1 (NEW) .]

5. No director, officer, agent or employee of any insurer party to such reinsurance, or any other person, shall receive any special compensation for arranging or with respect to, any such reinsurance except as is set forth in the reinsurance agreement filed with the superintendent.

[ 1973, c. 585, §12 (AMD) .]

6. The superintendent may adopt rules, subject to Title 5, chapter 375, to effectuate this section.

[ 1989, c. 846, Pt. E, §3 (NEW); 1989, c. 846, Pt. E, §4 (AFF) .]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 1989, c. 846, §§E3,4 (AMD).

### **§3484. VOLUNTARY DISSOLUTION**

1. A solvent domestic stock or mutual insurer, which then is not the subject of a delinquency proceeding under chapter 57, may voluntarily dissolve under a plan therefor in writing authorized by its board of directors, approved or adopted by stockholders or members as hereinafter provided, and filed with and approved by the superintendent. The plan shall provide for the disposition, by bulk reinsurance or other lawful procedure, of all insurance in force in the insurer, for full discharge of all obligations of the insurer, and designate or provide for trustees to conduct and administer the settlement of the insurer's affairs.

[ 1973, c. 585, §12 (AMD) .]

2. The superintendent shall approve the plan unless found by him to be unlawful or unfair or inequitable or prejudicial to the interests of any stockholder, policyholder or creditor.

[ 1973, c. 585, §12 (AMD) .]

3. If a mutual insurer, the plan must have been approved by vote of not less than 2/3 of the policyholders voting thereon at a special meeting of such policyholders called and held for the purpose pursuant to such reasonable notice and information as the superintendent may have approved.

[ 1973, c. 585, §12 (AMD) . ]

4. If a stock insurer, the plan must have been adopted by vote of not less than 2/3 of all outstanding voting securities of the insurer at a special meeting of such security holders called and held for the purpose.

[ 1969, c. 132, §1 (NEW) . ]

5. Following approval of the dissolution and plan for dissolution by members or adoption by stockholders as provided in this section, and approval by the superintendent, the trustees designated or provided for in the plan shall proceed to execute the plan. When all liabilities of the corporation have been discharged or otherwise adequately provided for, and all assets of the corporation have been liquidated and distributed in accordance with the plan, the trustees shall so certify in triplicate under oath in writing. The trustees shall deliver the original and the 2 copies of such certificate to the superintendent, together with the fee for filing the certificate of the trustees with the Secretary of State. The superintendent shall make such examination of the affairs of the corporation, and of the liquidation and distribution of its assets and discharge of or provision for its liabilities as the superintendent determines advisable. If upon such examination the superintendent finds that the facts set forth in the certificate of the trustees are true, the superintendent shall inscribe the superintendent's approval on the certificate, file the original of the certificate so inscribed in the office of the Secretary of State, file a copy of the certificate in the bureau and return the remaining copy to the trustees for the corporate files.

[ 2013, c. 299, §17 (AMD) . ]

6. Upon receipt of the filing of the certificate of the trustees as provided in subsection 5, the Secretary of State shall issue to the trustees the Secretary of State's acknowledgment of the date of filing. The effective date of dissolution is the effective date of that filing with the Secretary of State. The Secretary of State shall charge and collect a fee of \$25 for the filing of the trustee's certificate, and shall deposit the same with the Treasurer of State for credit to the General Fund.

[ 2013, c. 299, §18 (AMD) . ]

#### SECTION HISTORY

1969, c. 132, §1 (NEW). 1973, c. 585, §12 (AMD). 2013, c. 299, §§17, 18 (AMD).

### **§3485. MUTUAL MEMBER'S SHARE OF ASSETS ON LIQUIDATION**

1. Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, retirement of guaranty fund capital shares and payment of expenses of administration and of the dissolution and liquidation procedure, shall be distributed to currently existing persons who had been members of the insurer for at least a year and who were its members at any time within 36 months next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority, whichever date is the earlier; except, that if the superintendent has reason to believe that those in charge of the insurer's management have caused or encouraged the reduction of the number of members of the insurer, or changed the identity thereof, in anticipation of liquidation and for the purpose of reducing or controlling thereby the number or identity of persons who may be entitled to share in distribution of the insurer's assets, he may enlarge the qualification period in such manner as he deems to be reasonable.

[ 1973, c. 585, §12 (AMD) . ]

2. The insurer shall make a reasonable classification of its policies so held by such members, and a formula based upon such classification for determination of the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the superintendent, who shall approve the same except for reasonable cause.

[ 1973, c. 585, §12 (AMD) .]

SECTION HISTORY

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

## **§3486. PLANS FOR ACQUISITION OF MINORITY INTERESTS IN DOMESTIC STOCK INSURANCE COMPANIES AND APPRAISAL OF STOCK OF DISSENTING SHAREHOLDERS**

1. Any parent corporation directly or indirectly owning at least 95% of the aggregate issued and outstanding shares of all classes of voting stock of a domestic stock insurance company or any such domestic stock insurance company whose voting stock is so owned may, pursuant to a plan for acquisition of minority interests in such subsidiary, acquire all of its remaining issued and outstanding shares of voting stock, by exchange of stock, other securities, cash, other consideration or any combination thereof.

[ 1977, c. 377, (NEW) .]

2. The board of directors, trustees or other governing body of the parent corporation or the domestic stock insurance company may adopt a plan for the acquisition of minority interests in such subsidiary insurer. Every plan shall set forth:

A. The name of the company whose shares are to be acquired; [1977, c. 377, (NEW) .]

B. The total number of issued and outstanding shares of each class of voting stock of the company, the number of its shares owned by the parent corporation and, if either of the foregoing is subject to change prior to the effective date of acquisition, the manner in which any change may occur; [1977, c. 377, (NEW) .]

C. The terms and conditions of the plan, including the manner and basis of exchanging the shares to be acquired for shares or other securities of the parent corporation, for cash, other consideration, or any combination of the foregoing, the proposed effective date of acquisition and a statement clearly describing the rights of dissenting shareholders to demand appraisal; [1977, c. 377, (NEW) .]

D. If the parent corporation has adopted the plan and is neither a domestic corporation nor an authorized insurer, its agreement to be bound by this section with respect to the plan, its consent to the enforcement against it in this State of the rights of shareholders pursuant to the plan, and a designation of the superintendent as the agent upon whom process may be served against the parent corporation in the manner set forth in section 421 in any action or proceeding to enforce any such rights; and [1977, c. 377, (NEW) .]

E. Such other provisions with respect to the plan as the board of directors, trustees or other governing body deems necessary or desirable, or which the superintendent may prescribe. [1977, c. 377, (NEW) .]

[ 1977, c. 377, (NEW) .]

3. Upon adoption of the plan, it shall be duly executed by the president and attested by the secretary, or the executive officers corresponding thereto, under the corporate seal of the parent corporation or the domestic stock insurance company which has adopted the plan, as the case may be. Thereupon, a certified copy of the plan, together with a certificate of its adoption subscribed by such officers and affirmed by them as true under the penalties of perjury and under the seal of the parent corporation or the domestic

stock insurance company, as the case may be, shall be submitted to the superintendent for his approval. The superintendent shall thereupon consider the plan and, if satisfied that it complies with this section, is fair and equitable and not inconsistent with law, he shall approve the plan. If the superintendent disapproves the plan, notification of his disapproval, assigning the reasons therefor, shall be given in writing by him to the parent corporation or domestic stock insurance company that submitted the plan. No plan shall take effect unless the approval of the superintendent has been obtained.

[ 1977, c. 377, (NEW) . ]

4. If the superintendent approves the plan, the parent corporation or the domestic stock insurance company which has adopted the plan shall deliver to each person who, as of the date of delivery, is a holder of record of stock to be acquired pursuant to the plan, a copy of the plan, or a summary thereof approved by the superintendent, in person or by depositing the same in the post office, postage prepaid, addressed to the stockholder at his address of record. On or before the date of acquisition proposed in the plan, the parent corporation or the domestic stock insurance company which has adopted the plan shall file with the superintendent a certificate, executed by its president and attested by its secretary, or the executive officers corresponding thereto, and subscribed by such officers and affirmed by them as true under the penalties of perjury, and under the seal of the parent corporation or the domestic stock insurance company, as the case may be, attesting to compliance with this subsection.

[ 1977, c. 377, (NEW) . ]

5. Upon compliance with this section, ownership of the shares to be acquired pursuant to the plan shall vest in the parent corporation or the domestic stock insurance company which has adopted the plan on the date of acquisition proposed in the plan whether or not the certificates for such shares have been surrendered for exchange. If the plan was adopted by the parent corporation it shall be entitled to have new certificates registered in its name. If the plan was adopted by the domestic stock insurance company the shares shall be retired and the capital of the domestic company reduced by the par value of the retired shares. Shareholders whose shares have been so acquired shall thereafter retain only the right either to receive the consideration to be paid in exchange for their shares pursuant to the plan or to dissent to the plan and demand appraisal and receive payment of the fair value of their shares as hereinafter provided. The fair value of shares shall be determined as of the day prior to the date on which the plan was adopted, excluding any appreciation or depreciation of shares in anticipation of such corporate action. A shareholder may not dissent as to less than all of the shares registered in his name.

[ 1977, c. 377, (NEW) . ]

6. A dissenting shareholder shall file, within 20 days after the delivery to that shareholder of either a copy of the plan or a summary of the plan pursuant to subsection 4, a written notice of the shareholder's election to dissent from the plan and a demand for payment of the fair value of the shareholder's shares. The notice and demand must be filed with the company that adopted the plan by personally delivering it, or by mailing it via certified or registered mail, to the company at its registered office within this State or to its principal place of business as shown on its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority pursuant to Title 13-C, section 130.

[ 2003, c. 344, Pt. D, §13 (AMD) . ]

7. At the time of filing his notice and demand for the payment of the fair value of his shares, or within 20 days thereafter, a dissenting shareholder shall surrender the certificate or certificates representing his shares to the company which adopted the plan.

[ 1977, c. 377, (NEW) . ]

**8.** Within 10 days after the expiration of the period provided in subsection 6 for the shareholder to file his notice and demand, the company which adopted the plan shall make a written offer to each dissenting shareholder to pay for such shares at a specified price deemed by such company to be the fair value thereof. Such offer shall be made at the same price per share to all dissenting shareholders of the same class. The notice and offer shall be accompanied by a balance sheet of the corporation, the shares of which the dissenting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such offer and a profit and loss statement of such corporation, for the 12-months' period ended on the date of such balance sheet.

[ 1977, c. 377, (NEW) . ]

**9.** If, within 20 days after the date by which the company is required by the terms of subsection 8 to make a written offer to each dissenting shareholder to pay for his shares, the fair value of such shares is agreed upon between any dissenting shareholder and the company, payment therefor shall be made within 90 days after the date of delivery of the plan or a summary thereof as provided in subsection 4. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares.

[ 1977, c. 377, (NEW) . ]

**10.** If, within the additional 20-day period prescribed by subsection 9, one or more dissenting shareholders and the company have failed to agree as to the fair value of the shares, then Title 13-C, chapter 13, subchapter 3 applies, except that:

A. The term "the corporation" as used in that subchapter is deemed to refer to the company that adopted a plan pursuant to subsection 2; [2003, c. 344, Pt. D, §14 (AMD).]

B. [2003, c. 344, Pt. D, §14 (RP).]

C. The references in Title 13-C, chapter 13, subchapter 3 to a shareholder's "demand for payment under section 1327" is deemed to refer to a shareholder's notice and demand filed pursuant to subsection 6; [2003, c. 344, Pt. D, §14 (AMD).]

D. [2003, c. 344, Pt. D, §14 (RP).]

E. The reference in Title 13-C, section 1331, subsection 2 to the county in the State where the principal office or the registered office of the domestic corporation merged with the foreign corporation is located is deemed, where the parent corporation that has adopted the plan is neither a domestic corporation nor an authorized insurer, to include the county where the registered office of the subsidiary domestic stock insurance company whose stock is being acquired is located; [2003, c. 344, Pt. D, §14 (AMD).]

F. [2003, c. 344, Pt. D, §14 (RP).]

G. [2003, c. 344, Pt. D, §14 (RP).]

H. Title 13-C, section 1331, subsection 5, paragraph B does not apply; and [2003, c. 344, Pt. D, §14 (NEW).]

I. The reference in Title 13-C, section 1332, subsection 2, paragraph A to the corporation's failure to substantially comply with the requirements of section 1321, 1323, 1325 or 1326 is deemed to refer to the corporation's failure to comply with this section, and the reference in Title 13-C, section 1332, subsection 4 to the failure of the corporation to make required payments pursuant to section 1325, 1326 or 1327 is deemed to refer to the failure of the corporation to make required payments under this section. [2003, c. 344, Pt. D, §14 (NEW).]

[ 2003, c. 344, Pt. D, §14 (AMD) . ]

**11.**

[ 2003, c. 344, Pt. D, §15 (RP) . ]

**12.** If the court determines pursuant to Title 13-C, chapter 113, subchapter 3 that a shareholder is not entitled to receive payment of the fair value of the shareholder's shares because of the shareholder's failure to satisfy the requirements of Title 13-C, chapter 113, subchapter 3 and of this section, then the shareholder shall receive the consideration that was specified as payment in exchange for the shareholder's shares pursuant to the plan. Such payment may not include the allowance for interest specified in Title 13-C, section 1331, subsection 5.

[ 2003, c. 344, Pt. D, §16 (AMD) .]

**13.** Neither the right granted by this section nor the exercise thereof by a parent corporation or domestic stock insurance company shall preclude the exercise by it of any other rights it may have under this section.

[ 1977, c. 377, (NEW) .]

**14.** The provisions of Title 33, chapter 41 apply to any unclaimed payment to which a shareholder may be entitled under this section.

[ 2003, c. 344, Pt. D, §16 (AMD) .]

**15.** All laws and parts of laws of this State inconsistent with this section are superseded with respect to matters covered by this section.

[ 1977, c. 377, (NEW) .]

#### SECTION HISTORY

1977, c. 377, (NEW). 2003, c. 344, §§D13-16 (AMD). 2003, c. 344, §D14 (AMD). 2003, c. 344, §D15 (AMD). 2003, c. 344, §D16 (AMD).

## §3487. REDOMESTICATION OF INSURERS

**1. Redomestication of foreign insurers to Maine.** Any stock or mutual insurer that is organized under the laws of any other state and has a valid certificate of authority to do business in this State may become a domestic insurer with approval of the superintendent by amending its articles of incorporation or equivalent corporate charter and by designating a location in this State as its principal place of business. The redomestication must be approved if the chief insurance regulatory official of the other state certifies to the superintendent that the redomestication is in compliance with all requirements established by the laws of that state, and the superintendent determines that the insurer's operations and corporate organization will comply with the requirements of this chapter and that the redomestication is not contrary to the interests of policyholders or the public. The amendments to the insurer's articles of incorporation may provide that the corporation is a continuation of the corporate identity of the original foreign corporation and that the original date of incorporation in its original domiciliary state is the date of incorporation of the domestic insurer. The insurer's certificate of authority must be amended as of the effective date of the superintendent's approval to reflect the insurer's status as a domestic insurer and its new home office, and the insurer is thereafter subject to all provisions of this Title applicable to domestic insurers.

[ 2013, c. 299, §19 (AMD) .]

**2. Redomestication of domestic insurers.** Any domestic insurer may, upon the approval of the superintendent, transfer its domicile to any other state in which it is authorized to transact the business of insurance in accordance with the procedures established by the laws of that state. The proposed redomestication must be approved if the superintendent determines that the articles of incorporation have been amended in conformance with section 3310 and that the redomestication is not contrary to the interests of policyholders or the public. The insurer ceases to be a domestic insurer as of the date the redomestication

is recognized by its new state of domicile. Unless the superintendent determines that the insurer no longer qualifies for a certificate of authority, the insurer's certificate of authority must be amended as of the effective date of the redomestication to reflect the insurer's status as a domestic insurer and its new home office in its new state of domicile, and the insurer is thereafter subject to all provisions of this Title applicable to foreign insurers.

[ 2013, c. 299, §19 (AMD) .]

**3. Effect of redomestication.** The certificate of authority, producers' appointments and licenses, rate approvals and all other actions and permissions by the superintendent that are in effect at the time any insurer authorized to transact the business of insurance in this State transfers its corporate domicile to this State or any other state pursuant to this section or by merger, consolidation or any other lawful method continue in full force and effect upon the redomestication if the insurer remains duly qualified to transact the business of insurance in this State. All outstanding policies and other legal or contractual obligations of any redomesticating insurer remain in full force and need not be endorsed as to the new name of the company or its new location unless ordered by the superintendent. The insurer shall file new policy forms with the superintendent on or before the effective date of the redomestication but may use existing policy forms with appropriate endorsements if allowed by and under such conditions as approved by the superintendent. Each redomesticating insurer shall notify the superintendent of the details of the proposed redomestication and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the superintendent.

[ 1999, c. 113, §23 (NEW) .]

**4. Filing with Secretary of State.** Each insurer that transfers its domicile to this State shall file with the Secretary of State a long-form certificate of good standing or its equivalent, duly certified by the proper official of the previous state of domicile and an application for redomestication to become a Maine insurer in a form prescribed by the Secretary of State and approved by the superintendent. Each foreign insurer qualified to do business in this State that transfers its domicile to a state other than Maine shall file with the Secretary of State a notification by a foreign insurer of redomestication in a form prescribed by the Secretary of State and approved by the superintendent. Each domestic insurer that transfers its domicile to another state shall file with the Secretary of State a notification of redomestication in a form prescribed by the Secretary of State and approved by the superintendent.

[ 1999, c. 1, §36 (COR) .]

#### SECTION HISTORY

RR 1999, c. 1, §36 (COR). 1999, c. 113, §23 (NEW). 2013, c. 299, §19 (AMD).

## **§3488. REORGANIZATION OF MUTUAL INSURER THROUGH FORMATION OF MUTUAL HOLDING COMPANY**

**1. Procedure for reorganization as stock insurer.** A mutual insurer may be reorganized as a stock insurer within a mutual holding company as provided in this section. The mutual insurer shall submit to the superintendent a reasonable reorganization plan, referred to in this section as the "plan," and the procedure for putting the plan into effect. A hearing must be held on the plan. Notice of the hearing must be provided pursuant to section 230 to the insurer, its directors or trustees, its officers, employees and its policyholders, all of whom have the right to appear and be heard at the hearing. The plan may not take effect unless approved by the superintendent.

[ 1999, c. 656, §5 (NEW) .]

**2. Plan requirements.** The plan must contain provisions for:

- A. The reorganizing insurer to become a stock insurer; [1999, c. 656, §5 (NEW).]
- B. The formation of a mutual holding company; [1999, c. 656, §5 (NEW).]
- C. The members of the reorganizing insurer to become members of the mutual holding company with membership interests therein and the membership interests in the reorganizing insurer to be extinguished; and [1999, c. 656, §5 (NEW).]
- D. At least 51% of the voting stock issued and outstanding by the reorganized insurer to be acquired and held, directly or through one or more stock holding companies, by the mutual holding company. [1999, c. 656, §5 (NEW).]

[ 1999, c. 656, §5 (NEW) . ]

**3. Number of stock holding companies.** The plan may provide for the formation of one or more intermediate stock holding companies.

[ 1999, c. 656, §5 (NEW) . ]

**4. Approval of plan.** The superintendent may not approve a plan unless:

- A. The terms and conditions of the plan are fair and equitable; [1999, c. 656, §5 (NEW).]
- B. The plan is subject to approval by vote of not less than 2/3 of the insurer's policyholders voting on the plan in person, by proxy or by mail at a meeting of policyholders called by the insurer for that purpose pursuant to reasonable notice of the meeting and procedures as approved by the superintendent. The plan must specify that only persons who were policyholders both at least one year before the submission of the plan to the superintendent and on a subsequent date before the vote found reasonable by the superintendent are entitled to vote. Each eligible policyholder is entitled to one vote; [1999, c. 656, §5 (NEW).]
- C. The plan, when completed, would provide paid-in capital stock for the reorganized insurer in an amount not less than the minimum paid-in capital stock required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance, together with expendable surplus funds in an amount not less than 1/2 of such required capital stock; and [1999, c. 656, §5 (NEW).]
- D. The superintendent finds that the insurer's management has not, through reduction in volume of new business written or cancellation or any other means, sought to reduce, limit or affect the number or identity of the reorganizing insurer's members to be entitled to participate in the plan or to secure for the individuals comprising management any unfair advantage through the plan. [1999, c. 656, §5 (NEW).]

[ 1999, c. 656, §5 (NEW) . ]

**5. Compensation.** A director, officer, agent or employee of the reorganizing insurer or any other person may not receive any fee, commission or other valuable consideration whatsoever, other than that person's usual regular salary and compensation, for in any manner aiding, promoting or assisting in the reorganization except as set forth in the plan approved by the superintendent. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants or actuaries for services performed in the independent practice of their professions, even though they also may be directors of the insurer.

[ 1999, c. 656, §5 (NEW) . ]

**6. Effective date of plan.** The plan becomes effective, after approval by the superintendent and by the policyholders, upon the filing with the superintendent and the Secretary of State of amended and restated articles of incorporation of the reorganized insurer pursuant to section 3310 and articles of incorporation of the mutual holding company and any related stock holding company.

[ 1999, c. 656, §5 (NEW) . ]

**7. Consequence of effective plan.** The following are the consequences of a plan that becomes effective pursuant to subsection 6.

A. The reorganizing insurer immediately becomes a domestic stock insurer. [1999, c. 656, §5 (NEW).]

B. The members of the reorganizing insurer on the effective date immediately become members of the mutual holding company with membership interests in that holding company. All membership interests in the reorganizing insurer are extinguished. [1999, c. 656, §5 (NEW).]

C. A person becoming a policyholder of the reorganized insurer after the effective date of the plan becomes a member of the mutual holding company immediately upon issuance of the policy or contract. [1999, c. 656, §5 (NEW).]

D. One hundred percent of the voting stock issued by the reorganized insurer in the reorganization is owned, directly or through one or more stock holding companies, by the mutual holding company. All stock issued by the reorganized insurer in the reorganization is considered duly and validly issued, fully paid and nonassessable. [1999, c. 656, §5 (NEW).]

E. The reorganized insurer is a continuation of the reorganizing insurer. The reorganization may not annul, modify or change any of the insurer's existing suits, rights, contracts or liabilities except as provided in the plan. [1999, c. 656, §5 (NEW).]

[ 1999, c. 656, §5 (NEW) .]

**8. Assistance in determining approval of plan.** For the purpose of determining whether a plan meets the requirements of this section and any other relevant provisions of this Title, the superintendent may employ staff personnel and outside consultants. All reasonable costs related to the review of a plan, including those attributable to the use of staff personnel, must be borne by the insurer or insurers making the filing.

[ 1999, c. 656, §5 (NEW) .]

**9. Injunctive relief and damages.** If the reorganizing insurer complies substantially and in good faith with the requirements of subsection 4, paragraph B with respect to the giving of any required notice to policyholders, the insurer's failure to give notice to a person entitled to notice does not impair the validity of the actions and proceedings taken under this section or entitle that person to any injunctive or other equitable relief with respect to those actions and proceedings. This subsection does not impair any claim for damages that person would otherwise have due to failure to give notice.

[ 1999, c. 656, §5 (NEW) .]

**10. Exclusion of certain insurers.** This section does not apply to an insurer authorized to transact life insurance or annuities or an insurer formed pursuant to chapter 52.

[ 1999, c. 656, §5 (NEW) .]

#### SECTION HISTORY

1999, c. 656, §5 (NEW).

## §3489. REQUIREMENTS APPLICABLE TO A MUTUAL HOLDING COMPANY

**1. Definitions.** As used in section 3488, this section and section 3490, unless the context otherwise indicates, the following terms have the following meanings.

A. "Mutual holding company" means a mutual holding company formed pursuant to section 3488. [1999, c. 656, §5 (NEW).]

B. "Outside director" means a person who is not an officer, employee or consultant of the mutual holding company, a related stock holding company, the reorganized insurer or other subsidiary of the mutual holding company or a related stock holding company. [1999, c. 656, §5 (NEW).]

C. "Public offering" means an offer that includes an offer to individuals that is made by means of public advertising or general solicitation. "Public offering" does not include:

- (1) Issuance of stock to the mutual holding company or any related stock holding company; or
- (2) An offer or sale that is exempt from registration by virtue of Title 32, section 16202, subsections 13, 15, 16, 19 or 26. [2005, c. 65, Pt. C, §11 (AMD).]

D. "Reorganized insurer" means a mutual insurer reorganized as a stock insurer pursuant to section 3488. [1999, c. 656, §5 (NEW).]

E. "Stock holding company" and "related stock holding company" mean an incorporated entity that holds, directly or indirectly, at least 51% of the voting stock of a reorganized insurer. [1999, c. 656, §5 (NEW).]

F. "Voting stock" means common stock with general voting rights in the election of directors. [1999, c. 656, §5 (NEW).]

[ 2005, c. 65, Pt. C, §11 (AMD) .]

**2. Mutual holding company formed through reorganization.** The following provisions apply to a mutual holding company.

A. The provisions of Title 13-C that are applicable to a mutual insurer apply to a mutual holding company as though it were a mutual insurer. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §44 (COR).]

B. A mutual holding company may not dissolve, liquidate or wind up except through proceedings under this Title for the liquidation or dissolution of the reorganized insurer or as the superintendent may otherwise approve. In the event proceedings are instituted for the complete liquidation of the reorganized insurer:

- (1) The mutual holding company automatically becomes a party to the proceedings;
- (2) All of the mutual holding company's assets, including its holdings of shares in the reorganized insurer or any stock holding company, are deemed assets of the estate of the reorganized domestic stock insurer to the extent necessary to satisfy claims of persons who have class 1, class 2, class 3 or class 4 claims under section 4379; and
- (3) Members of the mutual holding company are deemed to hold class 8 claims with respect to the mutual holding company under section 4379. [1999, c. 656, §5 (NEW).]

C. The name of a mutual holding company must contain the word "mutual" and may not contain the words "insurance," "assurance" or "annuity." The mutual holding company's powers may not include doing insurance business. The articles of incorporation of a mutual holding company must contain provisions stating that:

- (1) It is "a mutual holding company organized under the Maine Revised Statutes, Title 24-A, section 3488";
- (2) A purpose of the mutual holding company is to hold, directly or through one or more stock holding companies, not less than 51% of the voting stock of a reorganized insurer;
- (3) It is not authorized to issue voting stock;
- (4) It is not authorized to conduct any business other than that of a holding company, except for the acquisition, ownership, management and disposition of its assets and all reasonably related actions; and

(5) Its members have the rights specified in, and are subject to, sections 3360, 3361, 3362, 3363, 3488, this section, the mutual holding company's articles of incorporation and its bylaws. [1999, c. 656, §5 (NEW).]

D. At least a majority of the directors of the mutual holding company and any related stock holding company and any committee of the board of directors of the mutual holding company and of any related stock holding company must be outside directors. [1999, c. 656, §5 (NEW).]

E. Each time voting stock of the reorganized insurer or any related stock holding company is offered in a public offering for a price payable in cash, each policyholder of the reorganized insurer must receive, without payment, nontransferable subscription rights to purchase that voting stock at the same price and in accordance with procedures approved by the superintendent as fair and equitable. [1999, c. 656, §5 (NEW).]

F. At least 30 days before the issuance of any voting stock or securities convertible into voting stock of the reorganized insurer or any related stock holding company, other than in an underwritten public offering or a bona fide sale to an unrelated 3rd party, the reorganized insurer or related stock holding company shall provide to the superintendent written notice of the proposed price of those securities or the procedure whereby the price will be determined and the terms and conditions of the offering. The superintendent may disapprove the issuance of the stock or securities if the superintendent finds that the price is unfair. The superintendent's failure to make a finding on a transaction subject to this paragraph within 30 days after it has been filed with the superintendent has the effect of an approval unless the superintendent has requested supplemental information or issued a notice of hearing. [1999, c. 656, §5 (NEW).]

G. The stock holding company or the reorganized insurer may not award any stock options or stock grants to officers or directors of the mutual holding company, the stock holding company or the reorganized insurer until 6 months after the completion of either a public offering or private placement of voting stock or securities convertible into voting stock of the reorganized insurer or a related stock holding company to any person other than the mutual holding company or the stock holding company. [1999, c. 656, §5 (NEW).]

H. The aggregate percentage of voting stock of the reorganized insurer or any related stock holding company directly or indirectly owned or controlled by outside directors may not exceed 18%, unless the reorganized insurer or the related stock holding company has provided at least 30 days' prior written notice to the superintendent and the superintendent has not objected to a higher percentage. [1999, c. 656, §5 (NEW).]

I. The aggregate percentage of voting stock of the reorganized insurer or any related stock holding company directly or indirectly owned or controlled by directors and officers of the mutual holding company, a related stock holding company or the reorganized insurer who are also employed by any of the foregoing may not exceed 18% of the voting stock of the reorganized insurer or any related stock holding company, unless the reorganized insurer or the related stock holding company has provided 30 days' prior written notice to the superintendent and the superintendent has not objected to a higher percentage. [1999, c. 656, §5 (NEW).]

J. A trust established in connection with an employee stock ownership plan or other employee benefit plan established for the benefit of employees of the reorganized insurer, a related stock holding company or the mutual holding company may not directly or indirectly own or control, in the aggregate, more than 10% of the voting stock of the stock holding company or the reorganized insurer, unless the reorganized insurer or the related stock holding company has provided 30 days' prior written notice to the superintendent and the superintendent has not objected to a higher percentage. The holdings of any such employee stock ownership plan or other employee benefit plan that are allocated to directors and officers who are employees must be included in determining compliance with paragraph I. [1999, c. 656, §5 (NEW).]

K. A person may not own or control, directly or indirectly, more than 15% of any class of voting stock of the reorganized insurer or any related stock holding company without the prior approval of the superintendent. [1999, c. 656, §5 (NEW).]

L. All voting stock of the reorganized insurer or any related stock holding company acquired by any person in excess of the maximum amount permitted to be acquired by that person pursuant to this subsection is deemed to be nonvoting stock for so long as it is held by any person in excess of those limitations. In addition to any other enforcement powers of the superintendent under this Title, a violation of the limitations of ownership may be enforced or enjoined, as the case may be, by appropriate proceedings commenced by the reorganized insurer or any related stock holding company, the superintendent, the attorney general, any member of the mutual holding company or any stockholder of the reorganized insurer or of any related stock holding company. The action must be commenced in the Kennebec County Superior Court or the superior court in the jurisdiction of which the reorganized insurer has its home office, and the court may issue any order, injunctive or otherwise, that it finds necessary to cure the violation or to prevent the action. [1999, c. 656, §5 (NEW).]

M. A mutual holding company and a related stock holding company are each deemed to be a holding company of the reorganized insurer within the meaning of section 222, and all provisions of that section apply to transactions occurring between the mutual holding company, the stock holding company and the reorganized insurer. Approval of the plan of reorganization by the superintendent pursuant to section 3488 is considered approval of the acquisition of control by a mutual holding company and any related stock holding company under sections 222 and 3476. [1999, c. 656, §5 (NEW).]

N. For purposes of the limitations on ownership or control of voting stock contained in this subsection, any issued and outstanding securities that represent the right to acquire or that are convertible into voting stock, including warrants, options and rights to purchase voting stock, are deemed to represent the number of shares of voting stock issuable upon conversion or exercise of such securities or rights for the purposes of both the number of shares owned or controlled by a person and the total number of shares of voting stock outstanding.

For purposes of determining ownership or control of voting stock, the indirect ownership of stock in the reorganized insurer by virtue of having an ownership interest in the mutual holding company may not be considered. [1999, c. 656, §5 (NEW).]

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §44 (COR) .]

**3. Merger or consolidation by mutual holding company or stock holding company.** With the written approval of the superintendent, a mutual holding company or stock holding company may:

A. Merge or consolidate with or acquire the assets of a mutual holding company organized pursuant to this chapter or pursuant to the mutual holding company laws of another state; [1999, c. 656, §5 (NEW) .]

B. Either alone or together with one or more of the reorganized insurers or stock holding companies or subsidiaries of any of them, merge or consolidate with or acquire the assets of a mutual insurer; or [1999, c. 656, §5 (NEW) .]

C. Merge or consolidate with any other person. [1999, c. 656, §5 (NEW) .]

[ 1999, c. 656, §5 (NEW) .]

**4. Merger with another mutual holding company.** If a mutual holding company merges with a mutual holding company organized under the laws of another state or acquires the membership interests in a foreign mutual insurer, that merger or acquisition must comply with the requirements of Maine law and rules and of any other state's law, rule or regulation that is applicable to the foreign mutual holding company or mutual insurer. In the event of a conflict of state laws, rules or regulations, Maine laws and rules apply. A foreign

mutual insurer that is merged or acquired pursuant to this section may at the same time redomesticate to this State by complying with the applicable requirements of this State and of the foreign mutual insurer's state of domicile.

[ 1999, c. 656, §5 (NEW) .]

**5. Acquisition of stock or assets of other persons.** A mutual holding company may acquire the capital stock or assets of other persons.

[ 1999, c. 656, §5 (NEW) .]

**6. Membership interest.** A membership interest in a mutual holding company does not constitute a security under Title 32, section 16102, subsection 28 or any other law of this State and is not transferable.

[ 2005, c. 65, Pt. C, §12 (AMD) .]

**7. Election of directors.** Directors of the mutual holding company must be elected by plurality vote of all members voting in that election in person or by proxy. If the mutual holding company takes any action, other than election of its directors, that would require a vote of policyholders if the mutual holding company were a mutual insurer, then that action requires a vote of members of the mutual holding company.

[ 1999, c. 656, §5 (NEW) .]

#### SECTION HISTORY

1999, c. 656, §5 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B44 (COR). 2005, c. 65, §§C11,12 (AMD).

## §3490. CONVERSION OF MUTUAL HOLDING COMPANY

**1. Approval of reorganization plan.** A mutual holding company may be reorganized in accordance with a plan of reorganization:

A. Approved by the superintendent, if the superintendent finds the plan to be fair and equitable, after a hearing of which notice has been given to the company's members pursuant to section 230; and [1999, c. 656, §5 (NEW).]

B. Approved by vote of not less than 2/3 of the company's members voting on the plan in person, by proxy or by mail at a meeting of members called by the company for that purpose. The mutual holding company shall provide reasonable notice to its members and determine the procedure for the meeting, subject to approval by the superintendent. The plan must specify that only persons who were members both at least one year before the submission of the plan and on a subsequent date before the vote found reasonable by the superintendent are entitled to vote. Each member is entitled to one vote. [1999, c. 656, §5 (NEW).]

[ 1999, c. 656, §5 (NEW) .]

**2. Membership interests disposition.** A plan of reorganization pursuant to subsection 1 must provide for extinguishment of the membership interests in the mutual holding company and may provide for either:

A. The conversion of the mutual holding company into a stock corporation, in which event the consideration, if any, distributed to members of the mutual holding company must be equal to that required under section 3477; or [1999, c. 656, §5 (NEW).]

B. The distribution to eligible members of the mutual holding company of consideration consisting of all assets of the mutual holding company, including all stock of the reorganized insurer or any stock holding company owned by the mutual holding company, or other consideration having equivalent aggregate value. The form of the other consideration may be cash, securities, additional insurance or

annuity benefits or policy credits, increased dividends or other consideration. All such consideration must be allocated among eligible members of the mutual holding company in a manner that is fair and equitable to the company's members. [1999, c. 656, §5 (NEW).]

[ 1999, c. 656, §5 (NEW) .]

SECTION HISTORY

1999, c. 656, §5 (NEW).

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