

SENATE

HOUSE

HEATHER B. SANBORN, DISTRICT 28, CHAIR
GEOFFREY M. GRATWICK, DISTRICT 9
ROBERT A. FOLEY, DISTRICT 34



DENISE A. TEPLER, TOPSHAM, CHAIR
MICHAEL F. BRENNAN, TOPSHAM
ANNE MARIE MASTRACCIO, SANFORD
HEIDI E. BROOKS, LEWISTON
GINA M. MELARAGNO, AUBURN
VICTORIA FOLEY, BIDDEFORD
DWAYNE W. PRESCOTT, WATERBORO
MARK JOHN BLIER, BUXTON
JOSHUA MORRIS, TURNER
GREGORY LEWIS SWALLOW, HOULTON

COLLEEN MCCARTHY REID, LEGISLATIVE ANALYST
VERONICA SNOW, COMMITTEE CLERK

STATE OF MAINE
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE
COMMITTEE ON HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

TO: Sen. Michael E. Carpenter, Senate Chair
Rep. Donna Bailey, House Chair
Joint Standing Committee on Judiciary

FROM: Sen. Heather B. Sanborn, Senate Chair
Rep. Denise A. Tepler, House Chair *did by chairs*
Joint Standing Committee on Health Coverage, Insurance and Financial Services

DATE: July 7, 2020

RE: Public Records Exception Review of LD 2026

We are writing to request review of LD 2026, An Act To Revise Certain Financial Regulatory Provisions of the Maine Insurance Code, pursuant to Title 1, section 434, subsection 2. This bill was submitted by the Bureau of Insurance. The committee held a public hearing on the bill in compliance with the public hearing requirement of Title 1, section 434, subsection 1. The committee voted unanimously OTP; a copy of the bill is attached.

There is a provision in LD 2026 stating that documents filed by an insurer assuming reinsurance with the Superintendent of Insurance are not public records if those records would be confidential under the laws of the assuming insurer's domiciliary jurisdiction. See Sec. 6 of the bill amending 24-A MRSA §731-B, sub-§ 1, ¶ B-2, sub-¶ (e) on page 6 of the bill.

We have reviewed the statutory criteria in Title 1, section 434, subsection 2 and we offer the following comments on LD 2026:

- A. *Whether the record protected by the proposed exception needs to be collected and maintained.*
- B. *The value to the agency or official or to the public in maintaining a record protected by the proposed exception.*

A & B. It is important for the Bureau of Insurance to have access to the records and documents of an insurer that provides reinsurance to another insurer to ensure the financial stability and solvency of the arrangement before certifying the application. The current law recognizes the discretion of the Superintendent of Insurance to establish information filing

P.10 of packet

requirements for the initial application for certification and on an ongoing basis. The provision in LD 2026 adds language to clarify that any records filed with the Bureau of Insurance that are confidential under the laws of the insurer's domicile remain confidential.

C. Whether federal law requires a record covered by the proposed exception to be confidential.

C. We are not aware of any federal law that applies here.

D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records.

D. We believe that the confidentiality of this information filed with the Bureau of Insurance is an important concern for insurance companies because of the proprietary nature of the financial information involved. If the records have been designated as confidential under the laws of the insurer's domicile, we believe it is reasonable and appropriate for the Bureau of Insurance to maintain the confidentiality of those records when filed in this State. The interest of the public is met by the regulatory oversight and examination of insurance companies by the Bureau of Insurance.

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records.

E. Yes, we believe that public disclosure of certain financial records of an insurer may affect the company's competitive position toward other insurers and that these interests outweigh the public interest in full disclosure of the records. We note that the provision in the bill designates as confidential only those records that are confidential under the laws of the insurer's domicile.

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records.

F. We do not believe paragraph F is applicable.

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records.

G. We do not believe paragraph G is applicable.

H. Whether the proposed exception is as narrowly tailored as possible.

H. Yes, we believe the language is crafted in this manner. While the language generally protects the confidentiality of certain information from the public, we note that the provision in the bill designates as confidential only those records that are confidential under the laws of the insurer's domicile.

(2)

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

I. We want to point out that the changes proposed in the bill, including the confidentiality provision, are being made to incorporate changes to model laws adopted by the National Association of Insurance Commissioners in order to maintain the State's compliance with uniform national standards for financial solvency and with the NAIC's accreditation requirements for state insurance regulators.

Thank you for your consideration of our comments. Please contact us or our legislative analyst, Colleen McCarthy Reid, if you have any questions or need additional information. We look forward to discussing this with your committee in work session.

Enclosure: LD 2026

cc: Members, Joint Standing Committee on Health Coverage, Insurance and Financial Services

3



129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2026

S.P. 716

In Senate, January 14, 2020

An Act To Revise Certain Financial Regulatory Provisions of the Maine Insurance Code

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 203.

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

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

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SANBORN, H. of Cumberland.



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

2 **Sec. 1. 24-A MRSA §221, sub-§3**, as amended by PL 1991, c. 828, §2, is
3 repealed.

4 **Sec. 2. 24-A MRSA §221, sub-§3-A**, as enacted by PL 1993, c. 313, §3, is
5 amended to read:

6 **3-A.** ~~On or after January 1, 1994 the~~ The superintendent may accept a full
7 examination report by the insurance regulatory authority of the insurance company's state
8 of domicile or port-of-entry state for any foreign or alien insurer licensed in this State in
9 lieu of an examination by the superintendent if, at the time of the examination, that
10 regulatory authority was accredited under the National Association of Insurance
11 Commissioners' Financial Regulation Standards and Accreditation Program or if the
12 examination was performed under the supervision of an accredited insurance regulatory
13 authority or with the participation of one or more examiners who are employed by an
14 accredited insurance regulatory authority and who, after a review of the examination
15 workpapers and report, state under oath that the examination was performed in a manner
16 consistent with the standards and procedures required by the regulatory authority.

17 **Sec. 3. 24-A MRSA §222, sub-§7, ¶A**, as amended by PL 2013, c. 238, Pt. A,
18 §14 and affected by §34, is further amended to read:

19 A. The superintendent shall hold a hearing in accordance with the procedures set
20 forth in section 231 and the Maine Administrative Procedure Act, Title 5, chapter
21 375, subchapter 4, within 30 days after the application required by subsection 4-C has
22 been filed with the superintendent. The superintendent shall make a determination
23 within 30 days after the conclusion of that hearing. The superintendent shall approve
24 any purchase, exchange, merger or other change of control referred to in subsection
25 4-C unless the superintendent finds that:

26 (1) After the change of control, the domestic insurer could not satisfy the
27 requirements for the issuance of a certificate of authority according to
28 requirements in force at the time of the issuance or last renewal or continuation of
29 its certificate of authority to do the insurance business that it intends to transact in
30 this State;

31 (2) The effect of the purchases, exchanges, merger of a controlling person of the
32 insurer or other changes of control may be substantially to lessen competition in
33 insurance in this State or tend to create a monopoly in this State or would violate
34 the laws of this State or of the United States relating to monopolies or restraints
35 of trade;

36 (3) The financial condition of an acquiring person would jeopardize the financial
37 stability of the insurer or prejudice the interest of its policyholders;

38 (4) The plans or proposals that the acquiring or divesting person has to liquidate
39 the insurer, to sell its assets or to merge it with any person, or to make any other
40 major change in its business or corporate structure or management, are unfair or
41 prejudicial to policyholders;

- 1 (5) The competence, experience and integrity of those persons who would
2 control the operation of the insurer indicate that it would not be in the interest of
3 policyholders or the public to permit them to do so;
- 4 (6) Any merger of a domestic insurer does not comply with section 3474; or
- 5 (7) The change of control would tend to affect adversely the contractual
6 obligations of the domestic insurer or its ability and tendency to render service in
7 the future to its policyholders and the public.

8 **Sec. 4. 24-A MRSA §222, sub-§7-A, ¶D**, as enacted by PL 2013, c. 238, Pt. A,
9 §15 and affected by §34, is amended by amending subparagraph (3) to read:

10 (3) The proceeding is public to the same extent as a proceeding conducted under
11 subsection 7, except that deliberations of a decision-making panel are not public
12 proceedings and communications in the course of those deliberations among
13 panel members and their advisers, other than the decision itself, are not public
14 records.

15 **Sec. 5. 24-A MRSA §222, sub-§8, ¶B-3**, as enacted by PL 2013, c. 238, Pt. A,
16 §18 and affected by §34, is amended to read:

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

- 30 (1) This paragraph does not apply if:
 - 31 (a) The insurer is an agency, authority or instrumentality of the United States,
32 its possessions and territories, the Commonwealth of Puerto Rico, the District
33 of Columbia or a state or political subdivision of a state;
 - 34 (b) The insurer and its insurance holding company system did not meet
35 either of the minimum premium criteria of this paragraph in the financial
36 statements immediately preceding their most recent financial statements and
37 the superintendent has not required compliance with this paragraph under
38 subparagraph (2); or
 - 39 (c) The superintendent has granted a waiver from the requirements of this
40 paragraph based upon unique circumstances. In deciding whether to grant a
41 waiver, the superintendent may consider the type and volume of business
42 written by the insurer, the ownership and organizational structure of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

insurer and its insurance holding company system and any other factor the superintendent considers relevant to the insurer or the insurer's insurance holding company system. If the insurer's insurance holding company system includes insurers domiciled in more than one state, the superintendent shall coordinate with the lead regulator and with other domiciliary regulators in considering whether to grant the insurer's request for a waiver.

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

(a) The superintendent determines that the insurer should be subject to this paragraph due to unique circumstances, including, but not limited to, the type and volume of business written by the insurer, the ownership and organizational structure of the insurer and its insurance holding company system, federal agency requests and international supervisor requests;

(b) The insurer is subject to a corrective order or required to adopt a risk-based capital plan under sections 6453 to 6456;

(c) The superintendent has determined in accordance with rules adopted by the superintendent that the insurer is in hazardous financial condition; or

(d) The superintendent has determined that the insurer otherwise exhibits qualities of a troubled insurer.

(3) If an insurer's insurance holding company system has annual premium of \$1,000,000,000 or more, the assessment and reporting required by this paragraph must be conducted for each insurer within the insurance holding company system, either on a systemwide basis or separately for insurers or combinations of insurers within the insurance holding company system.

(4) An insurer subject to this paragraph shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks. An insurer may satisfy this requirement by participating in an applicable risk management framework maintained by the insurance holding company system of which the insurer is a member.

(5) An insurer subject to this paragraph shall prepare and submit regular ORSA summary reports that satisfy the requirements of this subparagraph and shall provide additional information to the superintendent upon request.

(a) Beginning no later than 2015, the ORSA summary report must be prepared at least annually, on a timetable consistent with the insurer's internal strategic planning processes, and submitted to the lead regulator of the insurer's insurance holding company system, as determined by the procedures within a financial analysis handbook adopted by the National Association of Insurance Commissioners. If the superintendent is not the lead regulator, the insurer shall submit the insurer's or insurance holding company system's most recent ORSA summary report to the superintendent on request.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(b) The ORSA summary report must be prepared consistent with the ORSA guidance manual. Documentation and supporting information must be maintained and made available upon examination by or upon request of the superintendent.

(c) The insurer's or insurance holding company system's chief risk officer, or other executive having responsibility for the oversight of the insurer's enterprise risk management process, shall sign the ORSA summary report attesting to the best of the signer's belief and knowledge that the insurer applies the enterprise risk management process described in the ORSA summary report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board.

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

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

Sec. 6. 24-A MRSA §731-B, sub-§1, as amended by PL 2017, c. 169, Pt. C, §1, is further amended to read:

1. ~~Credit~~ Except to the extent that the liabilities ceded are secured in accordance with subsection 3, credit for reinsurance is allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurance is ceded to a solvent assuming insurer that:

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

- (1) The fair value of the assets held by or for the benefit of the ceding insurer equals or exceeds the obligations due and payable to the ceding insurer by the special purpose reinsurance vehicle under the special purpose reinsurance vehicle contract;
- (2) The assets are held in accordance with the requirements in subchapter 6;



- 1 (3) The assets are administered in the manner and pursuant to arrangements
2 under subchapter 6;
- 3 (4) The assets are held or invested in one or more of the forms allowed in section
4 795; and
- 5 (5) The contract complies with all other relevant requirements of subchapter 6;
- 6 B. Is domiciled and licensed in a state that employs standards regarding credit for
7 reinsurance substantially similar to those applicable under this section, if the insurer:
- 8 (1) Submits to the authority of this State to examine its books and records; and
- 9 (2) Except where reinsurance is ceded and assumed pursuant to pooling
10 arrangements among insurers in the same holding company system, maintains a
11 surplus regarding policyholders in an amount not less than \$20,000,000;
- 12 B-1. Is accredited as a reinsurer in this State, in accordance with the following
13 standards.
- 14 (1) To apply for accreditation, a reinsurer shall file with the superintendent a
15 written application on a form prescribed by the superintendent, accompanied by
16 the fee prescribed in section 601, subsection 26 and an agreement to submit to the
17 jurisdiction of the courts of this State and to the authority of the superintendent to
18 examine the reinsurer's books and records.
- 19 (2) An accredited reinsurer must be licensed to transact insurance or reinsurance
20 in at least one state, or in the case of a United States branch of an alien reinsurer,
21 that reinsurer must be entered through and licensed to transact insurance or
22 reinsurance in at least one state.
- 23 (3) An accredited reinsurer shall file with the superintendent, as part of its
24 application and annually thereafter, a copy of its annual statement filed with the
25 insurance department of its state of domicile or United States port of entry and a
26 copy of its most recent audited financial statement.
- 27 (4) A reinsurer applying for accreditation that maintains a surplus as regards to
28 policyholders in an amount not less than \$20,000,000 is deemed to be accredited
29 if the reinsurer's application is not denied by the superintendent within 90 days
30 after submission of the application. The superintendent has the discretion to
31 grant accreditation to an applicant with a surplus less than \$20,000,000 subject to
32 such terms and conditions as the superintendent determines to be necessary and
33 appropriate for the protection of domestic ceding insurers and their
34 policyholders;
- 35 B-2. Is certified as a reinsurer in this State and secures its obligations in accordance
36 with this paragraph.
- 37 (1) To be eligible for certification, the assuming insurer must meet the following
38 requirements:
- 39 (a) The assuming insurer must be domiciled and licensed to transact
40 insurance or reinsurance in a jurisdiction determined by the superintendent to
41 be a qualified jurisdiction pursuant to subparagraph (3);

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

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

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

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

* [

(e) The assuming insurer must agree to meet applicable information filing requirements as determined by the superintendent, both with respect to an initial application for certification and on an ongoing basis. Documents filed with the superintendent by the assuming insurer are not public records if the documents are confidential under the laws of the assuming insurer's domiciliary jurisdiction;

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

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

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

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

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

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

(10)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

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

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

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

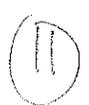
(c) United States jurisdictions that are accredited by the National Association of Insurance Commissioners must be recognized as qualified jurisdictions.

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

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

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

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



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

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

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

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

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

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

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

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

(7) A certified reinsurer that ceases to assume new business in this State may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer shall continue to comply with all applicable requirements of this subsection, and the superintendent shall assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.

B-3. Meets each of the conditions established in subparagraphs (2) to (8).

(12)

- 1 (1) For purposes of this paragraph, the following terms have the following
2 meanings.
- 3 (a) "Covered agreement" means an agreement, entered into pursuant to the
4 federal Dodd-Frank Wall Street Reform and Consumer Protection Act, 31
5 United States Code, Sections 313 and 314, that is in effect or in a period of
6 provisional application and addresses the elimination, under specified
7 conditions, of collateral requirements as a condition for entering into any
8 reinsurance agreement with a ceding insurer domiciled in this State or for
9 allowing the ceding insurer to recognize credit for reinsurance.
- 10 (b) "Reciprocal jurisdiction" means a jurisdiction that is:
- 11 (i) A non-United States jurisdiction that is subject to an in-force covered
12 agreement with the United States, as long as each agreeing jurisdiction is
13 within its legal authority to enter the agreement, or, in the case of a
14 covered agreement between the United States and the European Union, a
15 member state of the European Union;
- 16 (ii) A United States jurisdiction that meets the requirements for
17 accreditation under the financial regulation standards and accreditation
18 program of the National Association of Insurance Commissioners; or
- 19 (iii) A qualified jurisdiction, as determined by the superintendent
20 pursuant to paragraph B-2, subparagraph (3), that meets certain
21 additional requirements, consistent with the terms and conditions of
22 covered agreements, as specified by the superintendent by rule.
- 23 (2) The assuming insurer must have its domicile or head office in, and be
24 licensed in, a reciprocal jurisdiction.
- 25 (3) The assuming insurer must have and maintain on an ongoing basis minimum
26 capital and surplus, or its equivalent, calculated according to the methodology
27 applicable in its domiciliary jurisdiction, in an amount established by rule. If the
28 assuming insurer is an association that includes incorporated and individual
29 unincorporated underwriters, it must have and maintain on an ongoing basis
30 minimum capital and surplus equivalents, net of liabilities, calculated according
31 to the methodology applicable in its domiciliary jurisdiction, and a central fund
32 containing a balance in amounts established by rule.
- 33 (4) The assuming insurer must have and maintain on an ongoing basis a
34 minimum solvency or capital ratio, as applicable, as established by rule. If the
35 assuming insurer is an association that includes incorporated and individual
36 unincorporated underwriters, it must have and maintain on an ongoing basis a
37 minimum solvency or capital ratio, as applicable, in the jurisdiction where the
38 assuming insurer has its head office or is domiciled, as applicable.
- 39 (5) The assuming insurer must agree, and provide adequate assurance to the
40 superintendent in a form specified by the superintendent by rule, as follows:
- 41 (a) The assuming insurer must provide prompt written notice and
42 explanation to the superintendent if it fails to meet the minimum

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

requirements set forth in subparagraph (3) or (4) or if any regulatory action is taken against it for serious noncompliance with applicable law;

(b) The assuming insurer must consent in writing to the jurisdiction of the courts of this State and to the appointment of the superintendent as agent for service of process. The superintendent may require the assuming insurer to include such consent in each reinsurance agreement for which credit is taken under this paragraph. This division does not limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent that such agreements are unenforceable under applicable insolvency or delinquency laws;

(c) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, that are obtained by a ceding insurer or its legal successor and that have been declared enforceable in the jurisdiction where the judgment was obtained;

(d) Each reinsurance agreement for which credit is taken under this paragraph must include a provision requiring the assuming insurer to provide security for the full amount of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction where the final judgment was obtained or resists enforcement of a properly enforceable arbitration award, whether the judgment or award is obtained by the ceding insurer or by its legal successor on behalf of its resolution estate. As used in this division, "resolution estate" means the estate of an insurer or reinsurer that has been placed into a receivership or comparable legal status; and

(e) The assuming insurer must confirm that it is not participating in any solvent scheme of arrangement that involves this State's ceding insurers and must agree to notify the ceding insurer and the superintendent and to provide security for the full amount of the assuming insurer's liabilities to the ceding insurer should the assuming insurer enter into such a solvent scheme of arrangement. Such security must be in a form consistent with the provisions of paragraph B-2 and subsection 3 and as specified by the superintendent by rule.

(6) The assuming insurer or its legal successor must provide, on behalf of itself and any legal predecessors, certain documentation to the superintendent as specified by the superintendent by rule, if requested by the superintendent.

(7) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria established by rule.

(8) The supervisory authority for insurance for the jurisdiction of the assuming insurer must confirm to the superintendent on an annual basis that, as of the preceding December 31st or the annual date specified in statute for reporting to that supervisory authority in the assuming insurer's jurisdiction, the assuming insurer complies with the requirements of subparagraphs (3) and (4).

14

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(9) The assuming insurer may provide additional information on a voluntary basis.

(10) The superintendent shall promptly create, publish and administer a list of reciprocal jurisdictions as described in this subparagraph.

(a) The superintendent shall include all reciprocal jurisdictions identified in subparagraph (1), division (b), subdivisions (i) and (ii) in the list maintained pursuant to this subparagraph.

(b) If the National Association of Insurance Commissioners has published a list of recommended reciprocal jurisdictions, the superintendent shall consider that list and may defer to that list in determining whether a jurisdiction qualifies as a reciprocal jurisdiction pursuant to subparagraph (1), division (b), subdivision (iii). The superintendent may determine that a jurisdiction that does not appear on the recommended list is a reciprocal jurisdiction in accordance with criteria established in rules adopted by the superintendent.

(c) If a jurisdiction has been determined to be a reciprocal jurisdiction pursuant to subparagraph (1), division (b), subdivision (iii), the superintendent, in accordance with a process established by rule by the superintendent, may determine that the jurisdiction is no longer a reciprocal jurisdiction and remove it from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the conditions of this paragraph. Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded to an assuming insurer that has its head office or is domiciled in that jurisdiction is allowed only as otherwise allowed pursuant to this section.

(11) The superintendent shall promptly create, publish and administer a list of assuming insurers that have satisfied the conditions set forth in subparagraphs (2) to (8) for recognition for credit for reinsurance. The superintendent may add an assuming insurer to the list if it has been listed under a substantially similar law by a jurisdiction accredited by the National Association of Insurance Commissioners or if, upon a request for recognition of eligibility, the assuming insurer submits the information to the superintendent as required under subparagraph (5) and complies with any additional requirements that the superintendent may impose by rule, except to the extent that those requirements conflict with an applicable covered agreement.

(12) If the superintendent determines that an assuming insurer no longer meets one or more of the conditions of this paragraph, the superintendent may suspend or revoke the recognition of the assuming insurer for credit for reinsurance under this paragraph in accordance with procedures established by rule.

(a) While an assuming insurer's recognition for credit is suspended, a reinsurance agreement issued, amended or renewed after the effective date of the suspension does not qualify for credit under this paragraph. Credit may be granted only to the extent that the assuming insurer's obligations under the

15

1 contract are secured in accordance with other provisions of this subsection or
2 with subsection 3.

3 (b) If an assuming insurer's recognition for credit is revoked, credit for
4 reinsurance may not be granted after the effective date of the revocation with
5 respect to any reinsurance agreements entered into by the assuming insurer,
6 including reinsurance agreements entered into before the date of revocation,
7 except to the extent that the assuming insurer's obligations under the contract
8 are secured in a form acceptable to the superintendent and consistent with
9 other provisions of this subsection or with subsection 3.

10 (13) If a ceding insurer that has been granted credit under this paragraph is
11 subject to a legal process of rehabilitation, liquidation or conservation, the ceding
12 insurer or its representative may seek and, if determined appropriate by the court
13 in which the proceedings are pending, may obtain an order requiring the
14 assuming insurer to post security for all outstanding ceded liabilities.

15 (14) This paragraph does not limit or in any way alter the capacity of parties to a
16 reinsurance agreement to agree on requirements for security or other terms in that
17 reinsurance agreement, except as expressly prohibited by this section or other
18 applicable law or rule.

19 (15) Credit under this paragraph may be taken only for reinsurance pursuant to
20 reinsurance agreements entered into, renewed or amended on or after the
21 effective date of this paragraph and only with respect to losses incurred or
22 reserves reported on or after the date on which the assuming insurer has met all
23 eligibility requirements pursuant to subparagraphs (2) to (8) or the effective date
24 of the new reinsurance agreement, amendment or renewal, whichever is later.

25 This subparagraph does not alter or impair a ceding insurer's right to take credit
26 for reinsurance, to the extent that credit is not available under this paragraph, as
27 long as the reinsurance qualifies for credit under any other applicable provision
28 of this section.

29 (16) Nothing in this paragraph:

30 (a) Authorizes an assuming insurer to withdraw or reduce the security
31 provided under any reinsurance agreement except as permitted by the terms
32 of the agreement; or

33 (b) Limits, or in any way alters, the capacity of parties to any reinsurance
34 agreement to renegotiate the agreement;

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

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

16

1 (2) In the case of a single assuming insurer, the trust must consist of a trustee
2 account representing the assuming insurer's liabilities attributable to reinsurance
3 ceded by United States ceding insurers and, in addition, unless the assuming
4 insurer has permanently discontinued underwriting new business secured by the
5 trust for at least 3 full years, must include a trustee surplus of at least
6 \$20,000,000. The trust must provide that after the assuming insurer has
7 permanently discontinued underwriting new business secured by the trust for at
8 least 3 full years, the insurance regulator with principal oversight of the trust may
9 authorize a reduction in the required trustee surplus, but only after a finding,
10 based on an assessment of the risk, that the new required surplus level is adequate
11 for the protection of United States ceding insurers, policyholders and claimants in
12 light of reasonably foreseeable adverse loss development. The risk assessment
13 may involve an actuarial review, including an independent analysis of reserves
14 and cash flows, and must consider all material risk factors, including when
15 applicable the lines of business involved, the stability of the incurred loss
16 estimates and the effect of the surplus requirements on the assuming insurer's
17 liquidity or solvency. The minimum required trustee surplus may not be
18 reduced to an amount less than 30% of the assuming insurer's liabilities
19 attributable to reinsurance ceded by United States ceding insurers covered by the
20 trust.

21 (3-A) A group including incorporated and individual unincorporated
22 underwriters may secure its obligations with funds held in trust in compliance
23 with the following standards.

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

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

36 (c) In addition, the group shall maintain a trustee surplus of at least
37 \$100,000,000 held jointly for the benefit of the United States domiciled
38 ceding insurers of any member of the group for all years of account.

39 An incorporated member of the group may not be engaged in any business other
40 than underwriting as a member of the group and is subject to the same level of
41 solvency regulation and control by the group's domiciliary regulator as are the
42 unincorporated members. Within 90 days after its financial statements are due to
43 be filed with the group's domiciliary regulator, the group shall provide to the
44 superintendent an annual certification by the group's domiciliary regulator of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

solvency of each underwriter member of the group or, if a certification is unavailable, financial statements prepared by independent public accountants.

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

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

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

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

D. Does not meet the requirements of paragraph A, B, B-1, B-2, ~~B-3~~ or C, but only with respect to risks located in a jurisdiction where that reinsurance is required by law. The superintendent may waive the requirements of subsections 2 and 5 to the extent that compliance with those requirements is not feasible for compulsory reinsurance subject to this paragraph. The superintendent for good cause after notice and opportunity for hearing may disallow or reduce the credit otherwise permitted under this paragraph.

Sec. 7. 24-A MRSA §731-B, sub-§2-B, ¶E, as enacted by PL 2017, c. 169, Pt. C, §2, is amended to read:

- E. This subsection does not apply to cessions to an assuming insurer that:
- (1) Is certified in this State pursuant to subsection 1, paragraph B-2; ~~or~~
 - (2) Maintains at least \$250,000,000 in capital and surplus as determined in accordance with section 901-A, excluding the impact of any permitted or prescribed practices; ~~and is:~~



- 1 (a) Licensed in at least 26 states; or
2 (b) Licensed in at least 10 states and licensed or accredited in a total of at
3 least 35 states; or
4 (3) Is eligible for credit for assumed reinsurance by reciprocity pursuant to
5 subsection 1, paragraph B-3.

6 **Sec. 8. 24-A MRSA §1151-A, sub-§41**, as enacted by PL 1999, c. 715, §8, is
7 amended to read:

8 **41. Repurchase transaction.** "Repurchase transaction" means a transaction in
9 which an insurer ~~purchases securities from a counter party that is obligated to repurchase~~
10 ~~the purchased securities or equivalent securities from the insurer~~ sells securities to a
11 qualified bank or a qualified business entity or to a bank or a business entity whose
12 obligations with respect to the transaction are guaranteed by a qualified bank or a
13 qualified business entity and the insurer is obligated to repurchase the sold securities or
14 equivalent securities from the bank or business entity at a specified price, either within a
15 specified period of time or upon demand.

16 **Sec. 9. 24-A MRSA §1151-A, sub-§42**, as enacted by PL 1999, c. 715, §8, is
17 amended to read:

18 **42. Reverse repurchase transaction.** "Reverse repurchase transaction" means a
19 transaction in which an insurer ~~sells securities to a qualified bank or a qualified business~~
20 ~~entity or a bank or a business entity whose obligations with respect to such transaction are~~
21 ~~guaranteed by a qualified bank or a qualified business entity and the insurer is obligated~~
22 ~~to repurchase the sold securities or equivalent securities from the bank or business entity~~
23 purchases securities from a counter-party that is obligated to repurchase the purchased
24 securities or equivalent securities from the insurer at a specified price, either within a
25 specified period of time or upon demand.

26 **Sec. 10. 24-A MRSA §4215, sub-§1**, as enacted by PL 1975, c. 503, is amended
27 to read:

28 **1.** The superintendent may make an examination of the affairs of any health
29 maintenance organization as often as ~~he deems~~ the superintendent considers it necessary
30 for the protection of the interests of the people of this State, but not less frequently than
31 once every 3 years. The superintendent may defer making an examination for no more
32 than 2 additional years. In lieu of the superintendent's making an examination of a
33 foreign or alien health maintenance organization, the superintendent may accept a full
34 report of the most recent examination certified by the chief regulatory official of another
35 state with responsibility for the financial oversight of health maintenance organizations.

36 **Sec. 11. 24-A MRSA §4353, sub-§6**, as amended by PL 1973, c. 585, §12, is
37 further amended to read:

38 **6.** "Reciprocal state" means any state other than this State in which there is in force,
39 in substance and effect, a law substantially similar to the uniform insurers liquidation act,
40 as defined in section 4363, is in force Uniform Insurers Liquidation Act or another law

1 determined by the superintendent to establish adequate procedures for the conduct and
2 interstate coordination of the rehabilitation and liquidation of delinquent insurers,
3 including provisions requiring that the ~~Insurance Superintendent~~ insurance superintendent
4 or equivalent insurance supervisory official be the receiver of a delinquent insurer, and in
5 which effective provisions exist for avoidance of fraudulent conveyances and unlawful
6 preferential transfers.

7 **Sec. 12. 24-A MRSA §4367, sub-§3** is enacted to read:

8 3. The courts of this State shall give full faith and credit to any stay of or injunction
9 barring new actions against an insurer or its receiver, or the continuation of existing
10 actions against an insurer or its receiver, when the stay or injunction is pursuant to an
11 order to liquidate or rehabilitate an insurer issued in accordance with the delinquency
12 laws of a reciprocal state.

13 **SUMMARY**

14 This bill updates several provisions of the Maine Insurance Code by incorporating
15 recent amendments to model laws adopted by the National Association of Insurance
16 Commissioners, or NAIC, and making related technical changes.

17 It corrects a conflict in the law governing examination of insurers by the
18 Superintendent of Insurance and eliminates obsolete transition language.

19 It clarifies that adjudicatory proceedings conducted under the Maine Revised
20 Statutes, Title 24-A, section 222 to review changes of control of domestic insurers are
21 governed by the same procedural requirements as other Department of Professional and
22 Financial Regulation, Bureau of Insurance adjudicatory proceedings and that multistate
23 proceedings conducted under Maine law are considered public proceedings to the same
24 extent as single-state proceedings subject only to the exceptions expressly enumerated in
25 Title 24-A, section 222, subsection 7-A, paragraph D.

26 It clarifies that when an insurer or insurance group is required to conduct an own risk
27 and solvency assessment, the assessment must be conducted in compliance with the
28 NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual, as well as include
29 the summary report as required under current law.

30 It corrects a conflict between Title 24-A, section 731-B, subsections 1 and 3,
31 clarifying that subsection 1 is not the exclusive mechanism by which credit for
32 reinsurance may be granted.

33 [It provides that documents that a certified reinsurer is required to file are not public
34 records if they are confidential under the laws of the reinsurer's domiciliary jurisdiction.

35 It brings Maine into compliance with the bilateral agreements entered into by the
36 United States with the European Union and the United Kingdom by enacting the 2019
37 amendments to the NAIC Credit for Reinsurance Model Law, which provide a
38 mechanism for large, financially strong non-United States reinsurers to qualify for

1 eligibility by reciprocity to assume reinsurance from domestic insurers without posting
2 security.

3 It corrects a NAIC drafting error from 2000 that inadvertently transposed the content
4 of the definitions of "repurchase transaction" and "reverse repurchase transaction."

5 It corrects an inconsistency between Title 24-A, section 4215, subsection 1, which
6 requires health maintenance organizations, or HMOs, to be examined by the
7 Superintendent of Insurance at least every 3 years, and Title 24-A, section 221, which
8 applies to HMOs pursuant to Title 24-A, section 4222-B, subsection 5 and which permits
9 the examination period to be extended to 5 years. It also authorizes the superintendent to
10 accept the domiciliary chief regulatory official's examination in satisfaction of Maine's
11 requirement when a company is domiciled outside Maine. The purpose of these
12 amendments is to allow Maine to participate in coordinated examinations with
13 synchronized schedules for HMOs that are members of insurance groups.

14 It amends the reciprocity provisions of Maine's receivership laws by recognizing as
15 reciprocal states those states with laws determined by the superintendent to be adequate
16 or substantially similar to the NAIC's model insolvency laws, and brings Maine into
17 conformity with the NAIC's guidelines for interstate recognition of stays and injunctions
18 in receivership.