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**STATE OF MAINE**  
**ONE HUNDRED AND THIRTIETH LEGISLATURE**  
**COMMITTEE ON HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES**

**TO:** Sen. Anne Carney, Senate Chair  
Rep. Thomas Harnett, House Chair  
Joint Standing Committee on Judiciary

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

**DATE:** February 19, 2021

**RE:** Public Records Exception Review of LD 6

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We are writing to request review of LD 6, 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; a copy of the bill and draft committee amendment (adding an emergency preamble and emergency clause) is attached.

During the 129<sup>th</sup> Legislature, this same bill was considered as LD 2026, An Act To Revise Certain Financial Regulatory Provisions of the Maine Insurance Code. Although LD 2026 was reported out of the HCIFS Committee, it could not be fully considered by the Legislature due to the pandemic. As part of the committee process, the Judiciary had the opportunity to review the proposed public records exception in LD 2026 and recommended no changes in the language. See attached memo. When the bill was introduced in the 130<sup>th</sup> Legislature as LD 6, it included the same proposed public records exception from LD 2026.

There is a provision in LD 6 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 6:

*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 requirements for the initial application for certification and on an ongoing basis. The provision in LD 6 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.

*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 6 and draft committee amendment, JUD memo on LD 2026

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

**LD 6**  
**OTP-A**  
**FOR HCIFS REVIEW**  
Changes highlighted in yellow

Committee: HCIFS  
LA: CMR  
File Name: G:\COMMITTEES\IFS\Bill amendments\130th 1st\011402.docx  
LR (item): 0114 (02)  
New Title?: n  
Add Emergency?: Y  
Date: February 15, 2021

**COMMITTEE AMENDMENT ". " TO LD 6, An Act An Act To Revise Certain Financial Regulatory Provisions of the Maine Insurance Code**

Amend the bill by inserting before the enacting clause the following:

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this legislation was previously considered in the 129<sup>th</sup> Legislature but not enacted by the Legislature due to the COVID-19 pandemic; and

**Whereas,** this legislation has been reintroduced for consideration by the 130<sup>th</sup> Legislature by the Bureau of Insurance; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Amend the bill at the end before the summary the following:

**Emergency clause.** In view of the emergency cited in the preamble, the Act takes effect when approved.

**SUMMARY**

This amendment adds an emergency preamble and emergency clause to the bill.



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 6

S.P. 13

In Senate, January 13, 2021

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

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Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Received by the Secretary of the Senate on January 11, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 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 repealed.

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

5 **3-A.** ~~On or after January 1, 1994 the~~ The superintendent may accept a full examination  
6 report by the insurance regulatory authority of the insurance company's state of domicile  
7 or port-of-entry state for any foreign or alien insurer licensed in this State in lieu of an  
8 examination by the superintendent if, at the time of the examination, that regulatory  
9 authority was accredited under the National Association of Insurance Commissioners'  
10 Financial Regulation Standards and Accreditation Program or if the examination was  
11 performed under the supervision of an accredited insurance regulatory authority or with the  
12 participation of one or more examiners who are employed by an accredited insurance  
13 regulatory authority and who, after a review of the examination workpapers and report,  
14 state under oath that the examination was performed in a manner consistent with the  
15 standards and procedures required by the regulatory authority.

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

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

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

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

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

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

40 (5) The competence, experience and integrity of those persons who would control  
41 the operation of the insurer indicate that it would not be in the interest of  
42 policyholders or the public to permit them to do so;

43 (6) Any merger of a domestic insurer does not comply with section 3474; or

1 (7) The change of control would tend to affect adversely the contractual  
2 obligations of the domestic insurer or its ability and tendency to render service in  
3 the future to its policyholders and the public.

4 **Sec. 4. 24-A MRSA §222, sub-§7-A, ¶D,** as enacted by PL 2013, c. 238, Pt. A,  
5 §15 and affected by §34, is amended by amending subparagraph (3) to read:

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

10 **Sec. 5. 24-A MRSA §222, sub-§8, ¶B-3,** as enacted by PL 2013, c. 238, Pt. A,  
11 §18 and affected by §34, is amended to read:

12 B-3. A domestic insurer that is subject to registration, and has annual premium of  
13 \$500,000,000 or more or is a member of an insurance holding company system with  
14 annual premium of \$1,000,000,000 or more, shall conduct an own risk and solvency  
15 assessment in accordance with the requirements of this paragraph and the ORSA  
16 guidance manual at least annually, and also at any time when there are significant  
17 changes to the risk profile of the insurer or its insurance holding company system,  
18 except as otherwise provided in subparagraph (1). For purposes of this paragraph,  
19 "premium" means direct written and unaffiliated assumed premium, including  
20 international direct and assumed premium but excluding premiums reinsured with the  
21 Federal Crop Insurance Corporation within the United States Department of  
22 Agriculture, Risk Management Agency and with the National Flood Insurance  
23 Program within the United States Department of Homeland Security, Federal  
24 Emergency Management Agency.

25 (1) This paragraph does not apply if:

26 (a) The insurer is an agency, authority or instrumentality of the United States,  
27 its possessions and territories, the Commonwealth of Puerto Rico, the District  
28 of Columbia or a state or political subdivision of a state;

29 (b) The insurer and its insurance holding company system did not meet either  
30 of the minimum premium criteria of this paragraph in the financial statements  
31 immediately preceding their most recent financial statements and the  
32 superintendent has not required compliance with this paragraph under  
33 subparagraph (2); or

34 (c) The superintendent has granted a waiver from the requirements of this  
35 paragraph based upon unique circumstances. In deciding whether to grant a  
36 waiver, the superintendent may consider the type and volume of business  
37 written by the insurer, the ownership and organizational structure of the insurer  
38 and its insurance holding company system and any other factor the  
39 superintendent considers relevant to the insurer or the insurer's insurance  
40 holding company system. If the insurer's insurance holding company system  
41 includes insurers domiciled in more than one state, the superintendent shall  
42 coordinate with the lead regulator and with other domiciliary regulators in  
43 considering whether to grant the insurer's request for a waiver.

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

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

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

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

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

15 (3) If an insurer's insurance holding company system has annual premium of  
16 \$1,000,000,000 or more, the assessment and reporting required by this paragraph  
17 must be conducted for each insurer within the insurance holding company system,  
18 either on a systemwide basis or separately for insurers or combinations of insurers  
19 within the insurance holding company system.

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

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

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

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

41 (c) The insurer's or insurance holding company system's chief risk officer, or  
42 other executive having responsibility for the oversight of the insurer's  
43 enterprise risk management process, shall sign the ORSA summary report  
44 attesting to the best of the signer's belief and knowledge that the insurer applies

1 the enterprise risk management process described in the ORSA summary  
2 report and that a copy of the report has been provided to the insurer's board of  
3 directors or the appropriate committee of the board.

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

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

16 **Sec. 6. 24-A MRSA §731-B, sub-§1**, as amended by PL 2007, c. 169, Pt. C, §1, is  
17 further amended to read:

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

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

31 (1) The fair value of the assets held by or for the benefit of the ceding insurer  
32 equals or exceeds the obligations due and payable to the ceding insurer by the  
33 special purpose reinsurance vehicle under the special purpose reinsurance vehicle  
34 contract;

35 (2) The assets are held in accordance with the requirements in subchapter 6;

36 (3) The assets are administered in the manner and pursuant to arrangements under  
37 subchapter 6;

38 (4) The assets are held or invested in one or more of the forms allowed in section  
39 795; and

40 (5) The contract complies with all other relevant requirements of subchapter 6;

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

43 (1) Submits to the authority of this State to examine its books and records; and

1 (2) Except where reinsurance is ceded and assumed pursuant to pooling  
2 arrangements among insurers in the same holding company system, maintains a  
3 surplus regarding policyholders in an amount not less than \$20,000,000;

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

6 (1) To apply for accreditation, a reinsurer shall file with the superintendent a  
7 written application on a form prescribed by the superintendent, accompanied by  
8 the fee prescribed in section 601, subsection 26 and an agreement to submit to the  
9 jurisdiction of the courts of this State and to the authority of the superintendent to  
10 examine the reinsurer's books and records.

11 (2) An accredited reinsurer must be licensed to transact insurance or reinsurance  
12 in at least one state, or in the case of a United States branch of an alien reinsurer,  
13 that reinsurer must be entered through and licensed to transact insurance or  
14 reinsurance in at least one state.

15 (3) An accredited reinsurer shall file with the superintendent, as part of its  
16 application and annually thereafter, a copy of its annual statement filed with the  
17 insurance department of its state of domicile or United States port of entry and a  
18 copy of its most recent audited financial statement.

19 (4) A reinsurer applying for accreditation that maintains a surplus as regards to  
20 policyholders in an amount not less than \$20,000,000 is deemed to be accredited  
21 if the reinsurer's application is not denied by the superintendent within 90 days  
22 after submission of the application. The superintendent has the discretion to grant  
23 accreditation to an applicant with a surplus less than \$20,000,000 subject to such  
24 terms and conditions as the superintendent determines to be necessary and  
25 appropriate for the protection of domestic ceding insurers and their policyholders;

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

28 (1) To be eligible for certification, the assuming insurer must meet the following  
29 requirements:

30 (a) The assuming insurer must be domiciled and licensed to transact insurance  
31 or reinsurance in a jurisdiction determined by the superintendent to be a  
32 qualified jurisdiction pursuant to subparagraph (3);

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

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

39 (d) The assuming insurer must agree to submit to the jurisdiction of this State  
40 and to appoint an agent for service of process in the same manner as provided  
41 for authorized insurers under section 421 and agree to provide security for  
42 100% of the assuming insurer's liabilities attributable to reinsurance ceded by

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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.

(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

1 States judgments and arbitration awards. The superintendent may consider  
2 additional factors.

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

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

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

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

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

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

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

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

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

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

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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).

(1) For purposes of this paragraph, the following terms have the following meanings.

(a) "Covered agreement" means an agreement, entered into pursuant to the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 United States Code, Sections 313 and 314, that is in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance.

(b) "Reciprocal jurisdiction" means a jurisdiction that is:

(i) A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, as long as each agreeing jurisdiction is within its legal authority to enter the agreement, or, in the case of a covered agreement between the United States and the European Union, a member state of the European Union;

(ii) A United States jurisdiction that meets the requirements for accreditation under the financial regulation standards and accreditation program of the National Association of Insurance Commissioners; or

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(iii) A qualified jurisdiction, as determined by the superintendent pursuant to paragraph B-2, subparagraph (3), that meets certain additional requirements, consistent with the terms and conditions of covered agreements, as specified by the superintendent by rule.

(2) The assuming insurer must have its domicile or head office in, and be licensed in, a reciprocal jurisdiction.

(3) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology applicable in its domiciliary jurisdiction, in an amount established by rule. If the assuming insurer is an association that includes incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus equivalents, net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts established by rule.

(4) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as established by rule. If the assuming insurer is an association that includes incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, in the jurisdiction where the assuming insurer has its head office or is domiciled, as applicable.

(5) The assuming insurer must agree, and provide adequate assurance to the superintendent in a form specified by the superintendent by rule, as follows:

(a) The assuming insurer must provide prompt written notice and explanation to the superintendent if it fails to meet the minimum 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

1                    enforceable arbitration award, whether the judgment or award is obtained by  
2                    the ceding insurer or by its legal successor on behalf of its resolution estate.  
3                    As used in this division, "resolution estate" means the estate of an insurer or  
4                    reinsurer that has been placed into a receivership or comparable legal status;  
5                    and  
6                    (e) The assuming insurer must confirm that it is not participating in any solvent  
7                    scheme of arrangement that involves this State's ceding insurers and must  
8                    agree to notify the ceding insurer and the superintendent and to provide  
9                    security for the full amount of the assuming insurer's liabilities to the ceding  
10                   insurer should the assuming insurer enter into such a solvent scheme of  
11                   arrangement. Such security must be in a form consistent with the provisions of  
12                   paragraph B-2 and subsection 3 and as specified by the superintendent by rule.  
13                   (6) The assuming insurer or its legal successor must provide, on behalf of itself  
14                   and any legal predecessors, certain documentation to the superintendent as  
15                   specified by the superintendent by rule, if requested by the superintendent.  
16                   (7) The assuming insurer must maintain a practice of prompt payment of claims  
17                   under reinsurance agreements, pursuant to criteria established by rule.  
18                   (8) The supervisory authority for insurance for the jurisdiction of the assuming  
19                   insurer must confirm to the superintendent on an annual basis that, as of the  
20                   preceding December 31st or the annual date specified in statute for reporting to  
21                   that supervisory authority in the assuming insurer's jurisdiction, the assuming  
22                   insurer complies with the requirements of subparagraphs (3) and (4).  
23                   (9) The assuming insurer may provide additional information on a voluntary basis.  
24                   (10) The superintendent shall promptly create, publish and administer a list of  
25                   reciprocal jurisdictions as described in this subparagraph.  
26                   (a) The superintendent shall include all reciprocal jurisdictions identified in  
27                   subparagraph (1), division (b), subdivisions (i) and (ii) in the list maintained  
28                   pursuant to this subparagraph.  
29                   (b) If the National Association of Insurance Commissioners has published a  
30                   list of recommended reciprocal jurisdictions, the superintendent shall consider  
31                   that list and may defer to that list in determining whether a jurisdiction qualifies  
32                   as a reciprocal jurisdiction pursuant to subparagraph (1), division (b),  
33                   subdivision (iii). The superintendent may determine that a jurisdiction that  
34                   does not appear on the recommended list is a reciprocal jurisdiction in  
35                   accordance with criteria established in rules adopted by the superintendent.  
36                   (c) If a jurisdiction has been determined to be a reciprocal jurisdiction pursuant  
37                   to subparagraph (1), division (b), subdivision (iii), the superintendent, in  
38                   accordance with a process established by rule by the superintendent, may  
39                   determine that the jurisdiction is no longer a reciprocal jurisdiction and remove  
40                   it from the list of reciprocal jurisdictions upon a determination that the  
41                   jurisdiction no longer meets the conditions of this paragraph. Upon removal  
42                   of a reciprocal jurisdiction from the list, credit for reinsurance ceded to an  
43                   assuming insurer that has its head office or is domiciled in that jurisdiction is  
44                   allowed only as otherwise allowed pursuant to this section.

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

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

15 (a) While an assuming insurer's recognition for credit is suspended, a  
16 reinsurance agreement issued, amended or renewed after the effective date of  
17 the suspension does not qualify for credit under this paragraph. Credit may be  
18 granted only to the extent that the assuming insurer's obligations under the  
19 contract are secured in accordance with other provisions of this subsection or  
20 with subsection 3.

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

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

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

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

43 This subparagraph does not alter or impair a ceding insurer's right to take credit for  
44 reinsurance, to the extent that credit is not available under this paragraph, as long

1 as the reinsurance qualifies for credit under any other applicable provision of this  
2 section.

3 (16) Nothing in this paragraph:

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

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

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

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

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

35 (3-A) A group including incorporated and individual unincorporated underwriters  
36 may secure its obligations with funds held in trust in compliance with the following  
37 standards.

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

43 (b) Notwithstanding the other provisions of this section, for reinsurance ceded  
44 under reinsurance agreements with an inception date on or before December

1 31, 1992 and not amended or renewed after that date, the trust must consist of  
2 a trustee account in an amount not less than the respective underwriters'  
3 several insurance and reinsurance liabilities attributable to business written in  
4 the United States.

5 (c) In addition, the group shall maintain a trustee surplus of at least  
6 \$100,000,000 held jointly for the benefit of the United States domiciled ceding  
7 insurers of any member of the group for all years of account.

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

16 (4-A) The superintendent in rules adopted pursuant to subsection 7 may establish  
17 alternative criteria for approval of a reinsurance trust if the superintendent  
18 determines that the criteria provide adequate protection to policyholders of United  
19 States ceding insurers and are in substantial conformance with standards approved  
20 by the National Association of Insurance Commissioners.

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

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

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

41 D. Does not meet the requirements of paragraph A, B, B-1, B-2, B-3 or C, but only  
42 with respect to risks located in a jurisdiction where that reinsurance is required by law.  
43 The superintendent may waive the requirements of subsections 2 and 5 to the extent  
44 that compliance with those requirements is not feasible for compulsory reinsurance  
45 subject to this paragraph. The superintendent for good cause after notice and

1 opportunity for hearing may disallow or reduce the credit otherwise permitted under  
2 this paragraph.

3 **Sec. 7. 24-A MRSA §731-B, sub-§2-B, ¶E**, as enacted by PL 2017, c. 169, Pt. C,  
4 §2, is amended to read:

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

6 (1) Is certified in this State pursuant to subsection 1, paragraph B-2; ~~or~~

7 (2) Maintains at least \$250,000,000 in capital and surplus as determined in  
8 accordance with section 901-A, excluding the impact of any permitted or  
9 prescribed practices; ~~and is:~~

10 (a) Licensed in at least 26 states; or

11 (b) Licensed in at least 10 states and licensed or accredited in a total of at least  
12 35 states; ~~or~~

13 (3) Is eligible for credit for assumed reinsurance by reciprocity pursuant to  
14 subsection 1, paragraph B-3.

15 **Sec. 8. 24-A MRSA §731-B, sub-§3, ¶B**, as amended by PL 2013, c. 238, Pt. B,  
16 §8, is further amended to read:

17 B. Securities listed by the Securities Valuation Office of the National Association of  
18 Insurance Commissioners, including those designated as exempt from filing in the  
19 purposes and procedures manual of the Securities Valuation Office, and qualifying as  
20 admitted assets; ~~or~~

21 **Sec. 9. 24-A MRSA §731-B, sub-§3, ¶C**, as amended by PL 1993, c. 313, §18, is  
22 further amended by amending subparagraph (2) to read:

23 (2) The letter of credit must indicate that it is not subject to any condition or  
24 qualification outside the letter of credit, and that the beneficiary need only draw a  
25 sight draft under the letter and present the letter to obtain funds and that no other  
26 document need be presented; ~~or~~

27 **Sec. 10. 24-A MRSA §731-B, sub-§3, ¶D** is enacted to read:

28 D. Any other form of security that the superintendent may permit by rule adopted as  
29 set forth in subsection 7.

30 **Sec. 11. 24-A MRSA §1151-A, sub-§41**, as enacted by PL 1999, c. 715, §8, is  
31 amended to read:

32 **41. Repurchase transaction.** "Repurchase transaction" means a transaction in which  
33 an insurer ~~purchases securities from a counter party that is obligated to repurchase the~~  
34 ~~purchased securities or equivalent securities from the insurer~~ sells securities to a qualified  
35 bank or a qualified business entity or to a bank or a business entity whose obligations with  
36 respect to the transaction are guaranteed by a qualified bank or a qualified business entity  
37 and the insurer is obligated to repurchase the sold securities or equivalent securities from  
38 the bank or business entity at a specified price, either within a specified period of time or  
39 upon demand.

40 **Sec. 12. 24-A MRSA §1151-A, sub-§42**, as enacted by PL 1999, c. 715, §8, is  
41 amended to read:



1 the same procedural requirements as other Department of Professional and Financial  
2 Regulation, Bureau of Insurance adjudicatory proceedings and that multistate proceedings  
3 conducted under Maine law are considered public proceedings to the same extent as single-  
4 state proceedings subject only to the exceptions expressly enumerated in Title 24-A, section  
5 222, subsection 7-A, paragraph D.

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

10 It corrects a conflict between Title 24-A, section 731-B, subsections 1 and 3, clarifying  
11 that subsection 1 is not the exclusive mechanism by which credit for reinsurance may be  
12 granted, and clarifies that section 731-B, subsection 3 allows other forms of security to the  
13 extent authorized by the Superintendent of Insurance by rule.

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

16 It brings Maine into compliance with the bilateral agreements entered into by the  
17 United States with the European Union and the United Kingdom by enacting the 2019  
18 amendments to the NAIC Credit for Reinsurance Model Law, which provide a mechanism  
19 for large, financially strong non-United States reinsurers to qualify for eligibility by  
20 reciprocity to assume reinsurance from domestic insurers without posting security.

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

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

32 It amends the reciprocity provisions of Maine's receivership laws by recognizing as  
33 reciprocal states those states with laws determined by the Superintendent of Insurance to  
34 be adequate or substantially similar to the NAIC's model insolvency laws, and brings Maine  
35 into conformity with the NAIC's guidelines for interstate recognition of stays and  
36 injunctions in receivership.

**SENATE**

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**SHENNA BELLOWS**, DISTRICT 14  
**LISA M. KEIM**, DISTRICT 18

**MARGARET J. REINSCH**, SENIOR LEGISLATIVE ANALYST  
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**STATE OF MAINE**  
**ONE HUNDRED AND TWENTY-NINTH LEGISLATURE**  
**COMMITTEE ON JUDICIARY**

July 29, 2020

**TO:** Senator Heather B. Sanborn, Senate Chair  
Representative Denise A. Tepler, House Chair  
Joint Standing Committee on Health Care, Insurance and Financial Services

**FROM:** Senator Michael Carpenter, Senate Chair  
Representative Donna Bailey, House Chair  
Joint Standing Committee on Judiciary

**Re:** LD 2026, An Act to Revise Certain Financial Regulatory  
Provisions of the Maine Insurance Code

This memo memorializes the recommendations of the Joint Standing Committee on Judiciary pursuant to Title 1, section 434 on the proposed committee amendment to LD 2026, An Act to Revise Certain Financial Regulatory Provisions of the Maine Insurance Code. Please let us know if you would like a more detailed report of our evaluation and review.

The Committee reviewed the draft attached to the July 7, 2020 memo, and recommends no changes concerning freedom of access issues in the proposed language.

We would appreciate the work that went into the memo transmitting the amended bill to our committee for review and evaluation.

Thank you for your serious consideration of the Freedom of Access issues, and for your cooperation in this process.

Please contact us if you have any questions.