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An Act Relating to Insurance Company Formation and Dissolution

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

Sec. 1. 24-A MRSA §743, sub-§1, ¶B, as enacted by PL 1991, c. 828, §20, is amended to read:

B. The superintendent may not license a firm, association, partnership or corporation unless the license is within purposes stated in the partnership agreement or ~~certificate of organization~~articles of incorporation. All licensees are subject to the applicable standards of section 407, subsection 2.

Sec. 2. 24-A MRSA §3306, sub-§3, as enacted by PL 1969, c. 132, §1, is amended to read:

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

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

B. The duration of its existence, which may be perpetual;

C. The kinds of insurance, as defined in this Title, ~~whieh~~that the corporation is formed to transact;

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

E. If a stock corporation, the extent, if any, to which shares of its stock ~~shall be~~are subject to assessment;

F. If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for payment of losses and expenses incurred. Such liability ~~shall~~must be as stated in the ~~certificate of organization~~articles of incorporation, but ~~shall~~may not be less than ~~one~~ or more than 6 times the premium for the member's policy at the annual premium rate for a term of one year;

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

H. The number of directors, ~~not less than 3~~, who shall constitute the board of directors and conduct the affairs of the corporation; and the names, addresses and terms of the members of the initial board of directors, who shall conduct the corporation's affairs for the term specified in the ~~certificate~~articles, but for not more than one year after date of incorporation;

I. The city or town; and county in this State in which the corporation's principal place of business is to be located;

J. The name, residence address and national citizenship of each incorporator; and

K. Other provisions, not inconsistent with law, ~~deemed~~determined appropriate by the incorporators, and including, in the case of life insurers, the power to act as trustee with respect to proceeds of maturity or death benefits payable under life insurance or annuity contracts issued or assumed by it.

Sec. 3. 24-A MRS §3307, as amended by PL 1973, c. 585, §12, is further amended to read:

§ 3307. Articles of incorporation, approval and filing

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

2. When the ~~certificate of organization~~articles of incorporation have been so approved and returned by the Attorney General pursuant to subsection 1, the superintendent shall also endorse ~~his~~the superintendent's approval upon each set ~~thereof~~of the articles of incorporation and return the ~~quadruplicate~~triplicate originals of the ~~certificate of organization~~articles of incorporation to the incorporators. The incorporators shall then file one of ~~sue~~the sets with the Secretary of State ~~of this State~~and one set with the superintendent bearing the certification of the Secretary of State, ~~one set for recording in the registry of deeds of the county in this State in which the corporation's principal place of business is to be located~~, and shall retain the remaining set in the corporate records.

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

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

5. The Secretary of State ~~shall~~ may not permit the filing in ~~that~~ the Secretary of State's office of any ~~such certificate~~ articles of incorporation unless the ~~same bears~~ articles bear the superintendent's approval ~~endorsed thereon~~ as ~~hereinabove~~ provided in this section.

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

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

Sec. 4. 24-A MRSA §3310, as amended by PL 1973, c. 585, §12, is further amended to read:

§ 3310. Amendment of articles of incorporation; change of principal place of business

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

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

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

~~4. An insurer may change its principal place of business without amendment of its certificate of organization articles of incorporation, by resolution of its board of directors. A copy of such the resolution, duly certified under oath by the corporate secretary, shall must be executed in quadruplicate triplicate and filed with the superintendent, with the Secretary of State, the registry of deeds of the county in which the insurer's principal place of business was theretofore located, and in the corporate records. If the principal place of business is thereby changed to another county of this State, the insurer shall also file in the registry of deeds of such county a copy, duly certified by the superintendent, of its certificate of organization and of each amendment thereto, and a certified copy of the resolution by which the principal place of business was so changed.~~

Sec. 5. 24-A MRSA §3353, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

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

- A. For the prompt return to applicant members of all premiums collected in advance;
- B. For payment of all indebtedness of the corporation; and
- C. For payment of costs incurred by the State of Maine in the event of any legal proceedings for liquidation or dissolution of the corporation;

~~all in the event the corporation fails to complete its organization and secure a certificate of authority within one year after the date of its certificate of organization.~~

Sec. 6. 24-A MRSA §3354, sub-§3, as enacted by PL 1969, c. 132, §1, is amended to read:

3. All such applications shall must provide that:

- A. Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;
- B. ~~No insurance~~ Insurance is not in effect unless and until the certificate of authority has been issued; and
- C. The prepaid premium or deposit, and membership or policy fee, if any, shall must be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date shall be may not be later than one year after the date of the certificate of organization articles of incorporation.

Sec. 7. 24-A MRSA §3356, as amended by PL 1973, c. 585, §12, is further amended to read:

§ 3356. Failure to complete and qualify

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

Sec. 8. 24-A MRSA §3358, sub-§1, as enacted by PL 1969, c. 132, §1, is amended to read:

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

Sec. 9. 24-A MRSA §3364, sub-§1, as amended by PL 1981, c. 501, §45, is further amended to read:

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

Sec. 10. 24-A MRSA §3411, as enacted by PL 1969, c. 132, §1, is amended to read:

§ 3411. Directors

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

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

Sec. 11. 24-A MRSA §3417, sub-§1, as enacted by PL 1969, c. 132, §1, is amended to read:

1. If provided for in its articles of incorporation, certificate of organization or charter, a stock insurer or mutual insurer may issue any or all of its policies or contracts with or without participation in profits, savings, unabsorbed portions of premiums or surplus; may classify policies issued and perils

insured on a participating and nonparticipating basis; and may determine the right to participate and the extent of participation of any class or classes of policies. Any such classification or determination ~~shall~~must be reasonable, and ~~shall~~may not unfairly discriminate as between policies so classified.

Sec. 12. 24-A MRSA §3421, sub-§2, as amended by PL 1969, c. 177, §59, is further amended to read:

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

Sec. 13. 24-A MRSA §3423, sub-§2, as enacted by PL 1969, c. 132, §1, is amended to read:

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

Sec. 14. 24-A MRSA §3473, sub-§1, ¶D, as enacted by PL 1969, c. 132, §1, is amended to read:

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

Sec. 15. 24-A MRSA §3473, sub-§1, ¶F, as amended by PL 1973, c. 585, §12, is further amended to read:

F. Upon compliance with paragraphs A to D, and upon filing of the amendment of the certificate of organization or articles of incorporation with the superintendent and otherwise as required by laws applicable to ordinary business corporations, the conversion ~~shall thereupon become~~becomes effective.

Sec. 16. 24-A MRSA §3484, sub-§5, as amended by PL 1973, c. 585, §12, is further amended to read:

5. Following approval of the dissolution and plan ~~therefor~~for dissolution by members or ~~adopted~~thereof~~adoption~~ by stockholders as ~~above~~ provided in this section, and approval by the superintendent, the trustees designated or provided for in the plan shall proceed to execute the plan. When all liabilities of the corporation have been discharged or otherwise adequately provided for, and all assets of the corporation have been liquidated and distributed in accordance with the plan, the trustees shall so certify in ~~quaduplicate~~triplicate under oath in writing. The trustees shall deliver the original and the 32 copies of such certificate to the superintendent, ~~together with the fee for filing the certificate of the trustees with the Secretary of State.~~ The superintendent shall make such examination of the affairs of the corporation, and of the liquidation and distribution of its assets and discharge of or provision for its liabilities as ~~he~~the superintendent determines advisable. If upon such examination ~~he~~the superintendent finds that the facts set forth in the certificate of the trustees are true, ~~he~~the superintendent shall inscribe ~~his~~the superintendent's approval on the certificate, file the original ~~thereof~~of the certificate so inscribed in the office of the Secretary of State, file a copy ~~thereof~~of the certificate in the bureau and return the remaining 2 ~~copies~~copy to the trustees. ~~The trustees shall file one of such copies for recording in the registry of deeds of the county in this State in which the corporation's principal place of business is located, and retain the fourth copy for the corporate files.~~

Sec. 17. 24-A MRSA §3484, sub-§6, as enacted by PL 1969, c. 132, §1, is amended to read:

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

Sec. 18. 24-A MRSA §3487, sub-§§1 and 2, as enacted by PL 1999, c. 113, §23, are amended to read:

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

2. Redomestication of domestic insurers. Any domestic insurer may, upon the approval of the superintendent, transfer its domicile to any other state in which it is authorized to transact the business of insurance in accordance with the procedures established by the laws of that state. The proposed redomestication must be approved if the superintendent determines that the ~~certificate of organization~~ articles of incorporation have been amended in conformance with section 3310 and that the redomestication is not contrary to the interests of policyholders or the public. The insurer ceases to be a domestic insurer as of the date the redomestication is recognized by its new state of domicile. Unless the superintendent determines that the insurer no longer qualifies for a certificate of authority, the insurer's certificate of authority must be amended as of the effective date of the redomestication to reflect the insurer's status as a domestic insurer and its new home office in its new state of domicile, and the insurer is thereafter subject to all provisions of this Title applicable to foreign insurers.

Sec. 19. 24-A MRSA §3605, as enacted by PL 1969, c. 132, §1, is amended to read:

§ 3605. Formation of new assessment plan insurers

Assessment plan insurers ~~shall hereafter~~ must be formed under the applicable provisions of sections 3306 (incorporation of domestic stock, mutual insurers) to 3309 (completion of incorporation; general powers, duties); ~~except;~~ that the ~~certificate of organization~~ articles of incorporation of the corporation ~~shall~~ must stipulate that the corporation is formed to transact insurance on the assessment plan; and other provisions contained in the certificate ~~shall~~ must be consistent with the applicable provisions of this chapter.

Sec. 20. 24-A MRSA §3609, as enacted by PL 1969, c. 132, §1, is amended to read:

§ 3609. New assessment plan insurers; conversion

Mutual insurers hereafter organized to transact insurance on the assessment plan ~~shall~~ are not be authorized to transact any kind of insurance other than property insurance; or to transact insurance of any kind on the cash premium plan, unless the insurer qualifies for such authority in accordance with the requirements of domestic mutual insurers hereafter organized under chapter 47 (organization, corporate powers, procedures of domestic legal reserve stock and mutual insurers), and by appropriate amendment to its ~~certificate of organization~~ articles of incorporation converts to such a legal reserve insurer.

SUMMARY

The purpose of this bill is to address a number of matters relating to insurance company formations and dissolutions that have arisen in practice.

The bill updates references to Maine domestic insurance company “certificates of organization” in the Maine Insurance Code to “articles of incorporation” for consistency with the Maine Business Corporation Act and current corporate parlance, leaving those references to certificates of organization where necessary for clarity with respect to existing insurers.

The bill simplifies and reduces the number of filings that must be made by those either forming or dissolving Maine insurers.

The bill clarifies the procedure for the Secretary of State, the Superintendent of Insurance and insurers to follow with respect to certificates of dissolution.

The bill clarifies 2 statutes whose joint reading currently creates an ambiguity as to the minimum number of directors a newly formed Maine insurer must have.