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
Rep. Denise A. Tepler, House Chair
Joint Standing Committee on Health Coverage, Insurance and Financial Services

DATE: February 22, 2022

RE: Public Records Exception Review of LD 1815

We are writing to request review of LD 1815, An Act To Revise Certain Financial Regulatory Provisions of the Maine Insurance Code To Be Consistent with Model Laws from the National Association of Insurance Commissioners, 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 the draft committee amendment is attached.

LD 1815 makes changes to the Maine Insurance Holding Company Act regulating insurance holding companies domiciled in Maine. The changes are being made to update Maine's laws to reflect the model legislation adopted by the National Association of Insurance Commissioners (NAIC). Adoption of these changes are necessary to maintain Maine's accreditation by the NAIC as an insurance regulator. The proposed public records exception in LD 1815 designates as confidential any group capital calculation or liquidity stress test, including all supporting information, conducted under the authority of a non-United States financial supervisor or the Board of Governors of the Federal Reserve System with respect to an insurance holding company. This financial calculation at the group level and a liquidity stress test are important tools for the Bureau of Insurance to assess an insurance holding company's financial position See Sec. 17 of the bill enacting 24-A MRSA §222, sub-§ 13, ¶ A, sub-¶ 2-A on page 7 of the bill. (lines 7 to 9).

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We have reviewed the statutory criteria in Title 1, section 434, subsection 2 and we offer the following comments on LD 1815:

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 any group capital calculation or liquidity stress test, including all supporting information to ensure the financial stability and solvency of an insurance holding company domiciled in Maine. The provision in LD 1815 reflects the recommendation of the NAIC that this information is 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 and sensitivity of the financial information involved. We believe it is reasonable and appropriate for the Bureau of Insurance to keep this information confidential. The interest of the public is met by the regulatory oversight and examination of insurance holding 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 this information may affect the company's competitive position toward other insurers and that these interests outweigh the public interest in full disclosure of the records.

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.

G-1. Whether public access to the record ensures or would ensure that members of the public are able to make informed health and safety decisions.

G-1. We do not believe paragraph G-1 is applicable.

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

H. Yes, we believe the language is crafted in this manner and that keeping this information confidential is appropriate.

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 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 1815 and draft committee amendment

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

130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document **No. 1815**

S.P. 642 In Senate, December 17, 2021

An Act To Revise Certain Financial Regulatory Provisions of the Maine Insurance Code To Be Consistent with Model Laws from the National Association of Insurance Commissioners

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

Received by the Secretary of the Senate on December 15, 2021. Referred to the Committee on Health Coverage, Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SANBORN of Cumberland.

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

Sec. 1. 24-A MRSA §15 is enacted to read:

§15. NAIC defined

As used in this Title, "NAIC" or "National Association of Insurance Commissioners" means the National Association of Insurance Commissioners or its successor organization of insurance regulators.

Sec. 2. 24-A MRSA §208, first ¶, as corrected by RR 2021, c. 1, Pt. B, §150, is amended to read:

The superintendent may from time to time contract for such additional actuarial, examination, rating and other technical and professional services as ~~the superintendent~~ may ~~require~~ be required for discharge of the superintendent's duties. If a contractor retained pursuant to this section has access to confidential information, the contract must require the contractor to comply with the requirements of section 216, subsection 5, paragraph B-1.

Sec. 3. 24-A MRSA §216, sub-§5, ¶B-1 is enacted to read:

B-1. The superintendent may authorize a contractor retained pursuant to section 208, or any other person outside the bureau that is otherwise designated to act on behalf of the superintendent, to receive confidential information. The recipient of confidential information is under the direction and control of the superintendent, is subject to the same confidentiality standards and requirements as the superintendent and shall act in a purely advisory capacity. The recipient of confidential information shall comply with the requirements of this paragraph.

(1) Access to confidential information may not be granted unless the recipient agrees in writing that:

(a) The recipient will maintain the confidentiality of any confidential information that the superintendent has authorized the recipient to access, and establish appropriate procedures to protect such information from unauthorized access or use;

(b) Ownership of any confidential information shared by the superintendent pursuant to this paragraph remains with the superintendent and that the use of such information by the recipient is subject to the direction of the superintendent;

(c) The recipient will not store confidential information obtained or created under the contract in a permanent file or database after the work involving the information is completed;

(d) The recipient will provide prompt notice to the superintendent of any subpoena, request for disclosure or request for production of confidential information; and

(e) The recipient will consent to intervention by an insurer in any judicial or administrative action in which the recipient may be required to disclose confidential information about the insurer that has been shared pursuant to this paragraph.

(2) The recipient of confidential information shall confirm in writing to the superintendent that the recipient is free from conflicts of interest and will conduct ongoing monitoring for conflicts of interest for the duration of the work involving the confidential information.

Sec. 4. 24-A MRSA §216, sub-§5, ¶C, as enacted by PL 2013, c. 238, Pt. A, §1 and affected by §34, is amended to read:

C. The superintendent may enter into one or more written agreements with the National Association of Insurance Commissioners governing sharing and using information under this subsection that:

(1) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners ~~and its affiliates and subsidiaries~~ pursuant to this paragraph, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal or international insurance regulators;

(2) Specify that ownership of information shared with the National Association of Insurance Commissioners ~~and its affiliates and subsidiaries~~ pursuant to this paragraph remains with the superintendent and that the use of information by the National Association of Insurance Commissioners is subject to the direction of the superintendent;

(2-A) Prohibit the National Association of Insurance Commissioners from storing confidential information in a permanent file or database after the analysis of the confidential information is completed, other than liquidity stress test information obtained pursuant to section 222, subsection 8, paragraph B-1, subparagraph (3);

(3) Require prompt notice to be given by the National Association of Insurance Commissioners to any insurer whose confidential information is in the possession of the National Association of Insurance Commissioners pursuant to this paragraph when that information is the subject of a request or subpoena for disclosure or production; and

(4) Require the National Association of Insurance Commissioners ~~and its affiliates and subsidiaries~~ to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners ~~and its affiliates and subsidiaries~~ may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners ~~and its affiliates and subsidiaries~~ pursuant to this paragraph.

Sec. 5. 24-A MRSA §222, sub-§2, ¶B-4 is enacted to read:

B-4. "Group capital calculation" means a method for insurance groups to assess the financial condition of the group, including noninsurance entities within the group, in order to identify and quantify potential risks.

Sec. 6. 24-A MRSA §222, sub-§2, ¶B-5 is enacted to read:

B-5. "Group capital calculation instructions" means the group capital calculation instructions as adopted by the NAIC and as amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

Sec. 7. 24-A MRSA §222, sub-§2, ¶D-7 is enacted to read:

D-7. "Liquidity stress test" means a method for insurance groups to assess the potential effects of liquidity risk to the insurer and to the financial markets.

Sec. 8. 24-A MRSA §222, sub-§2, ¶D-8 is enacted to read:

D-8. "NAIC Liquidity Stress Test Framework" means the NAIC publication that includes the applicable scope criteria and liquidity stress test instructions and reporting templates, as adopted by the NAIC and amended from time to time in accordance with the procedures adopted by the NAIC.

Sec. 9. 24-A MRSA §222, sub-§2, ¶E-1 is enacted to read:

E-1. "Scope criteria" means the designated exposure bases and minimum magnitudes, as detailed in the NAIC Liquidity Stress Test Framework, used to establish a preliminary list of insurers that are presumptively within the scope of the NAIC Liquidity Stress Test Framework.

Sec. 10. 24-A MRSA §222, sub-§4-C, ¶C, as amended by PL 2017, c. 169, Pt. B, §5, is further amended by amending subparagraph (12) to read:

(12) An agreement by the person required to file the application to provide the annual enterprise risk report required by subsection 8, paragraph B-1, subparagraph (1) for as long as control by the person exists;

Sec. 11. 24-A MRSA §222, sub-§8, ¶B-1, as enacted by PL 2013, c. 238, Pt. A, §18 and affected by §34, is amended to read:

B-1. The controlling person with ultimate control of an insurer subject to registration shall ~~also~~ file an annual enterprise risk report~~. The report must be appropriate to the nature, scale and complexity of the operations of the insurance holding company system and must, to the best of the controlling person's knowledge and belief, identify the material risks within the insurance holding company system, if any, that could pose enterprise risk to the insurer~~ in accordance with subparagraph (1) and, if applicable, shall file any additional reports required by this paragraph. The ~~report~~ reports must be filed with the lead state regulator of the insurance holding company system as determined by the procedures within the ~~financial analysis handbook adopted by the National Association of Insurance Commissioners;~~ NAIC Financial Analysis Handbook or successor publication.

(1) The enterprise risk report must be appropriate to the nature, scale and complexity of the operations of the insurance holding company system and must, to the best of the controlling person's knowledge and belief, identify the material risks within the insurance holding company system, if any, that could pose enterprise risk to the insurer.

(2) Except as otherwise provided in this subparagraph, the ultimate controlling person of an insurer subject to registration shall file an annual group capital calculation concurrently with the registration required by paragraph A. The report must be completed as directed by the lead state regulator in accordance with the group capital calculation instructions, which may permit the lead state regulator to allow a controlling person that is not the ultimate controlling person to file the group capital calculation.

(a) An insurance holding company is exempt from filing the group capital calculation if it has only one insurer within its holding company structure and that insurer is not licensed outside this State to transact insurance, does not write business outside this State and does not assume reinsurance from any other insurer.

(b) An insurance holding company is exempt from filing the group capital calculation if it is required to perform a group capital calculation specified by the Board of Governors of the Federal Reserve System and the lead state regulator has obtained the current group capital calculation from the board of governors. If this State is the insurance holding company system's lead state, the superintendent shall request the calculation from the board of governors under the terms of information sharing agreements in effect.

(c) An insurance holding company is exempt from filing the group capital calculation if its groupwide supervisor is located within a non-United States jurisdiction that the superintendent has designated as a reciprocal jurisdiction pursuant to section 731-B, subsection 1, paragraph B-3, subparagraph (1), division (b) and that recognizes the United States system of group supervision and group capital regulation.

(d) An insurance holding company is exempt from filing the group capital calculation if its groupwide supervisor is located in a non-United States jurisdiction and:

(i) The lead state regulator meets the requirements for accreditation under the NAIC financial standards and accreditation program and the insurance holding company system provides information to the lead state regulator, either directly or indirectly through the groupwide supervisor, that the lead state regulator has determined to be satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC Financial Analysis Handbook or successor publication; and

(ii) The groupwide supervisor recognizes and accepts the group capital calculation as the worldwide group capital assessment for United States insurance groups that operate in that non-United States jurisdiction, consistent with criteria specified by the superintendent by rule.

(e) Notwithstanding divisions (c) and (d), a non-United States-based insurance holding company system shall file a group capital calculation limited to its United States operations if its lead state regulator determines, after any necessary consultation with other supervisors or officials, that requiring a United States group capital calculation is appropriate for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(f) If this State is an insurance holding company system's lead state, the superintendent may exempt the ultimate controlling person from filing an annual group capital calculation or may accept a limited group capital filing or report in accordance with criteria specified by the superintendent by rule. An exemption or modification granted under a substantially similar law of another jurisdiction that is the lead state of an insurance holding company system that

includes a domestic insurer applies to a filing otherwise required by this subparagraph.

(g) If the lead state regulator determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this subparagraph, the insurance holding company system shall file the group capital calculation at the next annual filing date unless given an extension by the lead state regulator based on reasonable grounds shown.

(3) The ultimate controlling person of an insurer subject to registration shall file the results of a liquidity stress test for each data year for which the insurer's insurance holding company system is within the scope of that year's NAIC Liquidity Stress Test Framework, as determined by the lead state regulator.

(a) If this State is the lead state, the determination that an insurer is within scope or out of scope must be based on whether the insurer or its insurance holding company system meets at least one threshold in the applicable scope criteria, unless the superintendent determines, in consultation with the NAIC Financial Stability Task Force or its successor organization, that there is good cause to exclude an insurer or insurance holding company system that meets one or more thresholds or to include an insurer or insurance holding company system that does not meet any of the thresholds. In making that determination, the superintendent shall consider the goal of providing a stable experience base and avoiding insurers moving in and out of scope frequently.

(b) A liquidity stress test under this subparagraph must be performed, and its results must be filed, in accordance with the NAIC Liquidity Stress Test Framework's instructions and reporting templates for that data year.

(c) For the purposes of this subparagraph, any change to the NAIC Liquidity Stress Test Framework, including the data to be used in applying the scope criteria, is effective on January 1st of the year following the calendar year when the change is adopted by the NAIC.

Sec. 12. 24-A MRSA §222, sub-§8, ¶B-3, as amended by PL 2021, c. 16, §5, is further amended by amending subparagraph (5), division (a) to read:

(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~~ the NAIC Financial Analysis Handbook or successor publication. 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.

Sec. 13. 24-A MRSA §222, sub-§8, ¶C, as amended by PL 2013, c. 238, Pt. A, §19 and affected by §34, is further amended to read:

C. An insurer does not need to disclose on the registration statement filed pursuant to this subsection information that is not material to the purposes of this section. ~~Unless~~

~~the superintendent by rule or order provides otherwise, sales,~~ Sales, purchases, exchanges, loans or extensions of credit or investments involving 1/2 of 1% or less of an insurer's admitted assets as of December 31st immediately preceding are not material for purposes of this section~~;~~, except:

(1) For purposes of the group capital calculation and liquidity stress test in accordance with paragraph B-1, subparagraphs (2) and (3);

(2) When the instructions for a specific filing specify a different materiality threshold or specify that no materiality threshold applies; or

(3) As the superintendent otherwise provides by rule or order.

Sec. 14. 24-A MRSA §222, sub-§9, ¶D-1 is enacted to read:

D-1. If an insurer subject to this Title is determined by the superintendent to be in hazardous financial condition as defined by rule or a condition that would be grounds for a delinquency proceeding under chapter 57, the superintendent may require the insurer to secure and maintain either a deposit, held by the Treasurer of State on behalf of the superintendent, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of a contract or agreement or the duration of the condition for which the superintendent required the deposit or the bond. In determining whether a deposit or a bond is required, the superintendent shall consider whether concerns exist with respect to the affiliated person's ability to fulfill all of its contracts or agreements if the insurer were to be put into liquidation. If the insurer is determined to be in hazardous financial condition or in a condition that would be grounds for a delinquency proceeding, and a deposit or bond is required, the superintendent has discretion to determine the amount of the deposit or bond, not to exceed the aggregate value in any one year of all contracts or agreements secured by the deposit or bond, and whether the deposit or bond should be required for a single contract, multiple contracts or a contract with a specific person.

Sec. 15. 24-A MRSA §222, sub-§9, ¶D-2 is enacted to read:

D-2. All records and data of the insurer held by an affiliate are and remain the property of the insurer, must be subject to control of the insurer, must be identifiable and must be segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including, but not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records and similar records within the possession, custody or control of the affiliate. At the request of the insurer or its receiver, the affiliate shall allow the insurer or receiver to obtain a complete set of all records of any type that pertain to the insurer's business and obtain access to the electronic operating systems on which the data is maintained or software that runs those systems either through assumption of licensing agreements or otherwise and shall restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement.

Sec. 16. 24-A MRSA §222, sub-§9, ¶D-3 is enacted to read:

D-3. Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any offset in the event that an insurer is placed into receivership is subject to section 4381.

Sec. 17. 24-A MRSA §222, sub-§13-A, ¶A, as amended by PL 2017, c. 169, Pt. B, §10, is further amended by enacting a new subparagraph (2-A) to read:

(2-A) Any group capital calculation or liquidity stress test, including all supporting information, conducted under the authority of a non-United States financial supervisor or the Board of Governors of the Federal Reserve System;

Sec. 18. 24-A MRSA §222, sub-§13-A, ¶C, as enacted by PL 2013, c. 238, Pt. A, §26 and affected by §34, is amended by amending subparagraph (4) to read:

(4) ORSA-related information subject to subsection 8, paragraph B-3 may, with the written consent of the insurer, be shared with a ~~3rd-party consultant under an agreement containing the conditions specified in section 216, subsection 5, paragraph C~~ person under contract with the superintendent pursuant to section 208. In addition, any agreement for sharing ORSA-related information with the person under the contract with the superintendent or with the National Association of Insurance Commissioners ~~or a 3rd-party consultant~~ must further provide that:

(a) The recipient of the information agrees in writing to maintain the confidentiality and privileged status of the ORSA-related information and has verified in writing the legal authority to maintain confidentiality; and

(b) Any preauthorization granted under the agreement for further sharing of information provided by the superintendent must be limited to only the domiciliary regulators of other insurers in the same insurance holding company system~~; and~~.

~~(c) The National Association of Insurance Commissioners or a 3rd-party consultant may not store ORSA-related information shared pursuant to this subparagraph in a permanent database after the underlying analysis is completed.~~

Sec. 19. 24-A MRSA §222, sub-§13-A, ¶C, as enacted by PL 2013, c. 238, Pt. A, §26 and affected by §34, is amended by enacting a new subparagraph (5) to read:

(5) If the superintendent authorizes a contractor to have access to liquidity stress test information provided pursuant to subsection 8, paragraph B-1, subparagraph (3), the superintendent shall disclose the identity of the contractor to the applicable insurers.

Sec. 20. 24-A MRSA §222, sub-§13-A, ¶F is enacted to read:

F. Except as otherwise required under this section, directly or indirectly publicly disseminating a statement in print or electronically regarding a group capital calculation required under subsection 8, paragraph B-1, subparagraph (2) or its resulting group capital ratio, a liquidity stress test required under subsection 8, paragraph B-1, subparagraph (3) or its results or supporting disclosures of any insurer or any insurance group or of any component derived in the calculation by any insurer, producer or other person engaged in any manner in the insurance business is prohibited.

The insurer may publish in a written publication an announcement the sole purpose of which is to rebut any materially false statement or inappropriate comparison if the materially false statement or inappropriate comparison relating to a group capital calculation, group capital ratio, liquidity stress test or test results or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the superintendent with substantial proof the falsity of that statement or the inappropriateness, as the case may be.

Sec. 21. 24-A MRSA §222, sub-§14-B is enacted to read:

14-B. Supervision, seizure, conservatorship or receivership proceedings. This subsection governs an affiliate's obligations under supervision, seizure, conservatorship or receivership proceedings against an insurer.

A. An affiliate that is party to an agreement or contract with a domestic insurer that is subject to subsection 9, paragraph E, subparagraph (4) is subject to the jurisdiction of a supervision, seizure, conservatorship or receivership proceeding against the insurer and to the authority of a supervisor, rehabilitator or liquidator for the insurer appointed pursuant to chapter 57 for the purpose of interpreting, enforcing and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that are:

(1) An integral part of the insurer's operations, including, but not limited to, management, administrative, accounting, data processing, marketing, underwriting, claims handling and investment functions and any other similar functions; or

(2) Essential to the insurer's ability to fulfill its obligations under insurance policies.

B. The superintendent may require that an agreement or contract subject to subsection 9, paragraph E, subparagraph (4) for the provision of services described in paragraph A, subparagraph (1) or (2) specify that the affiliate consents to jurisdiction as set forth in this subsection.

Sec. 22. 24-A MRSA §423-G, sub-§1, ¶E, as enacted by PL 2017, c. 169, Pt. A, §5, is repealed.

Sec. 23. 24-A MRSA §423-G, sub-§4-A is enacted to read:

4-A. Sharing CGAD information with the NAIC. The superintendent may share confidential information provided or obtained under this section with the NAIC only in accordance with a written agreement that contains the provisions specified in section 216, subsection 5, paragraph C and the following additional provisions:

A. Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurance carriers. The agreement must provide that the recipient agrees to maintain the confidentiality and privileged status of the CGAD-related documents, materials or other information and must document the NAIC's legal authority to maintain confidentiality;

B. A provision requiring the NAIC to provide prompt notice to the superintendent, in addition to the notice to the domestic insurance carrier or insurance group required by section 216, regarding any subpoena, request for disclosure or request for production

of the domestic insurance carrier's or insurance group's CGAD-related information; and

C. A provision expressly requiring the written consent of the domestic insurance carrier before any information shared pursuant to this section may be made public.

Sec. 24. 24-A MRSA §423-G, sub-§5, as enacted by PL 2017, c. 169, Pt. A, §5, is amended to read:

5. ~~NAIC and independent~~ Independent consultants. This subsection governs independent consultants retained to review corporate governance annual disclosure and compliance with this section.

A. The superintendent may retain, at the domestic insurance carrier's expense, independent consultants as provided in section 208, including attorneys, actuaries, accountants and other experts as may be reasonably necessary to assist the superintendent in reviewing the CGAD and related information or the domestic insurance carrier's compliance with this section.

B. Any persons retained under paragraph A ~~must be under the direction and control of the superintendent, are subject to the same confidentiality standards and requirements as the superintendent and must act in a purely advisory capacity~~ are subject to the requirements of section 216, subsection 5, paragraph B-1.

C. The superintendent may not retain an independent consultant that has not verified to the superintendent, with notice to the domestic insurance carrier, that it is free of a conflict of interest and that it has internal procedures in place to monitor ongoing freedom from conflicts and to comply with the confidentiality standards and requirements of this section.

~~D. The superintendent may share confidential information provided or obtained under this section with the NAIC only in accordance with a written agreement that contains the provisions specified in section 216, subsection 5, paragraph C and the following additional provisions:~~

~~(1) Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurance carriers. The agreement must provide that the recipient agrees to maintain the confidentiality and privileged status of the CGAD related documents, materials or other information and must document the NAIC's legal authority to maintain confidentiality;~~

~~(2) A provision that prohibits the NAIC from storing the information shared pursuant to this section in a permanent database after the underlying analysis is completed;~~

~~(3) A provision requiring the NAIC to provide prompt notice to the superintendent, in addition to the notice to the domestic insurance carrier or insurance group required by section 216, regarding any subpoena, request for disclosure or request for production of the domestic insurance carrier's or insurance group's CGAD related information; and~~

~~(4) A provision expressly requiring the written consent of the domestic insurance carrier before any information shared pursuant to this section may be made public.~~

E. The superintendent may share confidential information provided or obtained under this section with an independent consultant only in accordance with a written agreement that makes compliance with the confidentiality requirements of this section one of the consultant's duties as a state contractor and includes all protections that the NAIC is required to provide in an agreement entered into under ~~paragraph D~~ subsection 4-A.

Sec. 25. 24-A MRSA §951-A, sub-§2, as enacted by PL 2013, c. 238, Pt. C, §2, is repealed.

Sec. 26. 24-A MRSA §992, sub-§2, as enacted by PL 2007, c. 281, §2 and affected by §3, is repealed.

Sec. 27. 24-A MRSA §6451, sub-§5, as enacted by PL 1993, c. 634, Pt. A, §1, is repealed.

SUMMARY

This bill amends the Maine Revised Statutes, Title 24-A, section 222 to enact the most recent revisions to the National Association of Insurance Commissioners Holding Company Model Act, which establish the group capital calculation and liquidity stress test framework and provide additional safeguards to ensure the performance of contracts between a domestic insurer and its noninsurer affiliates. The bill also provides a uniform definition of "National Association of Insurance Commissioners" or "NAIC" throughout Title 24-A and a unified framework for controlling access to confidential information when the Department of Professional and Financial Regulation, Bureau of Insurance engages outside contractors.

DRAFT

COPY

L.D. 1815

Date: (Filing No. S-)

HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

130TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to S.P. 642, L.D. 1815, "An Act To Revise Certain Financial Regulatory Provisions of the Maine Insurance Code To Be Consistent with Model Laws from the National Association of Insurance Commissioners"

Amend the bill by inserting after the title and before the enacting clause the following:

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

Whereas, this legislation is immediately necessary so group capital standards adopted in Maine law apply to operations of insurance holding companies domiciled in this State that do business internationally rather than standards adopted by the European Union pursuant to bilateral agreements entered into by the United States with the European Union and the United Kingdom; 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 by inserting after section 20 the following:

'**Sec. 21. 24-A MRSA §222, sub-§13-A, ¶G** is enacted to read:

G. A group capital calculation required under subsection 8, paragraph B-1, subparagraph (2) or its resulting group capital ratio or a liquidity stress test required under subsection 8, paragraph B-1, subparagraph (3) or its results and supporting disclosures is not a means to rank any insurers or insurance holding company systems.'

Amend the bill by adding before the summary the following:

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

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment provides that certain information is not a means to rank any insurers or insurance holding company systems.

The amendment also adds an emergency preamble and emergency clause to the bill.

CURRENT LAW

§222. Registration, regulation, supervision and examination of holding company systems, agents, promoters and others

1. Examination.

[PL 2013, c. 238, Pt. A, §2 (RP); PL 2013, c. 238, Pt. A, §34 (AFF).]

1-A. Examination. For purposes of ascertaining compliance with law, or relationships and transactions between any person as defined hereafter and any insurer or proposed insurer subject to this section, the superintendent may as often as the superintendent determines to be advisable examine the accounts, records, documents and transactions pertaining to or affecting the insurance affairs or proposed insurance affairs, or transactions of the insurer or proposed insurer as may be in the possession of any holding company, its subsidiaries or affiliates as is necessary to ascertain the financial condition, including the enterprise risk to the insurer by the ultimate controlling party, or legality of conduct of the insurer or proposed insurer or the insurance holding company system as a whole or any combination of entities within the insurance holding company system and to verify the accuracy of any information provided or required to be provided to the superintendent pursuant to this section.

A. The superintendent's investigatory and examination authority under this subsection extends to the examination of:

(1) Any business entity structured to hold the stock of an insurance company, or person holding the shares of voting stock or policyholder proxies of an insurer as voting trustee or otherwise, for the purpose of controlling the management thereof;

(2) Any insurance producer, adjuster or consultant or other insurance or reinsurance representative or intermediary or any person acting as or purporting to be any of the foregoing;

(3) Any person having a contract giving that person by its terms or in fact the exclusive or dominant right to manage or control the insurer; and

(4) Any person in this State engaged in or proposing to be engaged in or acting as or purporting to be so engaged or proposing to be engaged in the business of insurance or in this State assisting in the promotion, formation or financing of an insurer or insurance holding corporation or corporation or other group financing an insurer or the production of its business. [PL 2013, c. 238, Pt. A, §3 (NEW); PL 2013, c. 238, Pt. A, §34 (AFF).]

B. Subject to the limitations contained in this subsection and in addition to the powers that the superintendent has under section 221 and sections 223 to 228 relating to the examination of insurers, the superintendent may order an insurer registered under subsection 8 to produce records, books or papers in the possession of the insurer or affiliates as may be necessary to verify the accuracy of the information required to be provided to the superintendent under this section and any additional information pertinent to transactions between the insurer and affiliates. The books, records, papers and information are subject to examination in the same manner as prescribed in this chapter for an examination conducted under section 221, except that expenses incurred by the superintendent in examining an affiliate that is not an insurer must be borne by the registered insurer subject to the limitations of section 228, subsection 1. The superintendent may issue subpoenas, administer oaths and examine any person under oath for purposes of determining compliance with this subsection. [PL 2013, c. 238, Pt. A, §3 (NEW); PL 2013, c. 238, Pt. A, §34 (AFF).]

C. A member of an insurer's insurance holding company system shall comply fully and accurately with a request by the insurer to provide it with information necessary to respond to an examination request by the superintendent pursuant to this section. [PL 2013, c. 238, Pt. A, §3 (NEW); PL 2013, c. 238, Pt. A, §34 (AFF).]

D. The superintendent may order an insurer registered under subsection 8 to produce information not in the possession of the insurer if the insurer can obtain access to the information pursuant to

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A. An insurer shall notify the superintendent within 5 days after the declaration of any dividend or distribution. If the dividend or distribution is not disapproved pursuant to paragraph B and is not an extraordinary dividend as defined in paragraph C, the insurer may pay the dividend or distribution once the superintendent has approved the payment or 10 days have elapsed after the superintendent's receipt of notice. [PL 2009, c. 511, Pt. A, §5 (NEW).]

B. The superintendent shall issue an order restricting or disallowing the payment of dividends and distributions if the superintendent determines that the insurer's surplus would not be reasonable in relation to the insurance company's outstanding liabilities, that the insurer's surplus would be inadequate to that company's financial needs, that the insurer's financial condition would constitute a condition hazardous to policyholders, claimants or the public or that a violation of subsection 4-C prevents the superintendent from sufficiently understanding the enterprise risk to the insurer posed by its affiliates or by its insurance holding company system. [PL 2013, c. 238, Pt. A, §23 (AMD); PL 2013, c. 238, Pt. A, §34 (AFF).]

C. An extraordinary dividend may not be paid until affirmatively approved by the superintendent or until at least 60 days after the superintendent has received a request to pay an extraordinary dividend.

(1) For purposes of this subsection, "extraordinary dividend" means any dividend or distribution, other than a pro rata distribution of a class of the insurer's own securities, that:

(a) When aggregated with all other dividends and distributions paid or proposed to be paid by the insurer less than a full year before the payment date, exceeds the greater of 10% of the insurer's surplus to policyholders as of December 31st of the preceding year and the net gain from operations for the preceding calendar year;

(b) Is declared within 5 years after any acquisition of control of a domestic insurer or of any person controlling that insurer, unless it has been approved by a number of continuing directors equal to a majority of the directors in office immediately preceding that acquisition of control; or

(c) Is not paid entirely from unassigned funds. For purposes of this division, 50% of the net of unrealized capital gains and unrealized capital losses, reduced, but not to less than zero, by that portion of the asset valuation reserve attributable to equity investments, must be excluded from the calculation of unassigned funds.

(2) An insurer may declare an extraordinary dividend on a conditional basis, subject to the superintendent's approval. A declaration pursuant to this subparagraph does not confer any rights upon stockholders until the superintendent has approved the payment or the 60-day review period has elapsed. [PL 2017, c. 169, Pt. B, §9 (AMD).]

[PL 2017, c. 169, Pt. B, §9 (AMD).]

12. Verification of information.

[PL 2013, c. 238, Pt. A, §24 (RP); PL 2013, c. 238, Pt. A, §34 (AFF).]

13. Confidential communications.

[PL 2013, c. 238, Pt. A, §25 (RP); PL 2013, c. 238, Pt. A, §34 (AFF).]

13-A. Confidential information. This section applies to holding company information that is in the possession or control of the superintendent or that is in the possession or control of the National Association of Insurance Commissioners as a result of a filing under this section or as a result of information sharing by the superintendent as authorized by this section.

A. For purposes of this subsection, "holding company information" means any of the following documents, materials and other information if the document, material or other information has not specifically and expressly been designated as a public record by other applicable law:

(1) Information obtained by the superintendent pursuant to an examination or investigation pursuant to subsection 1-A to the same extent as the information would have been confidential if obtained in an examination or investigation conducted under section 220 or 221;

(2) A registration statement or report filed under subsection 8, including all supporting information;

(3) A report filed under subsection 9, including all supporting information;

(4) A notice of proposed divestiture filed under subsection 4-C, paragraph B, until the divestiture transaction has occurred;

(5) A disclosure of the beneficial owner of securities made by a broker-dealer pursuant to subsection 4-C, paragraph E;

(6) The identity of a lender that is to finance a proposed transaction if declared confidential under subsection 4-C, paragraph C, subparagraph (2);

(7) Information filed in support of any required attestation of risk management or internal controls under subsection 4-C, paragraph C, subparagraph (12) or (13);

(8) A competitive impact statement filed under subsection 4-C, paragraph C, subparagraph (14), including all supporting information;

(8-A) Groupwide supervision information reported or provided to the superintendent under subsection 7-C;

(9) Information obtained under an information-sharing agreement entered into pursuant to this section to the extent that it is protected by the confidentiality provisions of the agreement;

(10) Information obtained pursuant to this section from a jurisdiction other than this State to the extent that it is confidential under the laws of the jurisdiction in which it is normally maintained; and

(11) Information obtained under this section to the extent that it is confidential under other applicable law, including, but not limited to, section 216, section 225 and Title 1, section 402, subsection 3. [PL 2017, c. 169, Pt. B, §10 (AMD).]

B. Except as otherwise provided by paragraphs D and E or specifically and expressly provided by other applicable law, holding company information is confidential, is not a public record, is not subject to a subpoena, is not subject to discovery or admissible as evidence in any private civil action and may not be made public by the superintendent without prior written consent of the relevant insurer. The privilege provided under this paragraph does not supersede any other applicable privilege or confidentiality protection, nor does disclosure of confidential holding company information to the superintendent constitute a waiver of any such privilege or protection. Neither the superintendent nor any person who received holding company information from or under the authority of the superintendent under this section may be permitted or required to testify in any private civil action concerning holding company information that is confidential under this subsection. [PL 2013, c. 238, Pt. A, §26 (NEW); PL 2013, c. 238, Pt. A, §34 (AFF).]

C. The superintendent may share holding company information that is confidential under this subsection only in accordance with the requirements of section 216, subsection 5 and the following additional requirements.

(1) The recipient of the information must agree in writing to maintain the same level of confidentiality as is available under Maine law. This requirement may be satisfied through a multilateral confidentiality agreement to which both the superintendent and the recipient are parties.

(2) The superintendent may not share confidential holding company information with or through the National Association of Insurance Commissioners except in accordance with an information-sharing agreement entered into in accordance with section 216, subsection 5, paragraph C.

(3) If the recipient of the information is in the United States, the recipient's state must have statutes or rules that expressly protect holding company information at a level at least equivalent to the protections provided by this subsection and section 216, subsection 5.

(4) ORSA-related information subject to subsection 8, paragraph B-3 may, with the written consent of the insurer, be shared with a 3rd-party consultant under an agreement containing the conditions specified in section 216, subsection 5, paragraph C. In addition, any agreement for sharing ORSA-related information with the National Association of Insurance Commissioners or a 3rd-party consultant must further provide that:

(a) The recipient of the information agrees in writing to maintain the confidentiality and privileged status of the ORSA-related information and has verified in writing the legal authority to maintain confidentiality;

(b) Any preauthorization granted under the agreement for further sharing of information provided by the superintendent must be limited to only the domiciliary regulators of other insurers in the same insurance holding company system; and

(c) The National Association of Insurance Commissioners or a 3rd-party consultant may not store ORSA-related information shared pursuant to this subparagraph in a permanent database after the underlying analysis is completed. [PL 2013, c. 238, Pt. A, §26 (NEW); PL 2013, c. 238, Pt. A, §34 (AFF).]

D. This subsection does not prohibit the superintendent from using holding company information in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties. [PL 2013, c. 238, Pt. A, §26 (NEW); PL 2013, c. 238, Pt. A, §34 (AFF).]

E. Unless otherwise provided by applicable law, the superintendent may, after giving notice and opportunity for hearing to the insurer and any affiliates, controlling person or other persons that would be affected, order one or more items of holding company information, other than ORSA-related information, to be made a public record in its entirety or in redacted form if the superintendent determines that public disclosure will be in the interest of policyholders, shareholders or the public. [PL 2013, c. 238, Pt. A, §26 (NEW); PL 2013, c. 238, Pt. A, §34 (AFF).]

[PL 2017, c. 169, Pt. B, §10 (AMD).]

14. Penalties.

A. Any person who willfully violates any of the provisions of this section, or the rules and regulations promulgated by the superintendent under authority thereof, or any person who willfully, in a filing pursuant to subsection 4-C or a registration pursuant to subsection 8, paragraph B, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, must upon conviction be fined not more than $1,000 or imprisoned not more than 3 years, or both; [PL 2013, c. 238, Pt. A, §27 (AMD); PL 2013, c. 238, Pt. A, §34 (AFF).]

B. Any person who is found, after notice and opportunity to be heard, to have willfully violated any of the provisions of this section or any rule or regulations promulgated by the superintendent under the authority thereof, shall, in addition to any other penalty provided by law, forfeit to this State the sum of $50 for a first violation and an additional sum of $25 for each day such violation shall continue; [PL 1975, c. 356, §1 (NEW).]

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PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 11/16/21

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)	
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)	
C. Whether federal law requires the record to be confidential	
Does the proposed exception meet one or more of the following (D, E, F, G or I)	
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure	
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	
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	
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	
H. Whether the proposed exception is as narrowly tailored as possible *(applies in all reviews)*	
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	
NOTE: 5 MRSA §95-C, sub-§1, ¶C provides that records of archival value that are transferred to the Maine State Archives for permanent retention lose their confidential status, even if the statute designates such records as confidential, when they have been in existence for 75 years.	
***If the proposed exception creates broad confidentiality for an entity*: 2-A. Accountability review of agency or official.** In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public	
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.	