

## CHAPTER 53

### RECIPROCAL INSURERS

#### **§3851. "Reciprocal" insurance defined**

"Reciprocal" insurance is that resulting from an interchange among persons, known as "subscribers," of reciprocal agreements of indemnity, the interchange being effectuated through an "attorney-in-fact" common to all such persons. [PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### **§3852. Scope of chapter -- existing insurers**

1. All authorized reciprocal insurers shall be governed by those sections of this chapter not expressly made applicable to domestic reciprocals.

[PL 1969, c. 132, §1 (NEW).]

2. Existing authorized reciprocal insurers shall after January 1, 1970 comply with this chapter, and shall make such amendments to their subscribers' agreement, power of attorney, policies and other documents and accounts and perform such other acts as may be required for such compliance.

[PL 1973, c. 625, §152 (AMD).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 625, §152 (AMD).

#### **§3853. Insuring powers of reciprocals**

1. A reciprocal insurer may, upon qualifying therefore as provided for by this Title, transact any kind or kinds of insurance defined by this Title, other than life or title insurances.

[PL 1969, c. 132, §1 (NEW).]

2. Such an insurer may purchase reinsurance upon the risk of any subscriber, and may grant reinsurance as to any kind of insurance it is authorized to transact direct.

[PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### **§3854. Name; suits**

A reciprocal insurer shall: [PL 1969, c. 132, §1 (NEW).]

1. Have and use a business name. The name shall include the word "reciprocal," or "interinsurer," or "interinsurance," or "exchange," or "underwriters," or "underwriting" or "association."

[PL 1969, c. 132, §1 (NEW).]

2. Sue and be sued in its own name.

[PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### **§3855. Attorney**

1. "Attorney", as used in this chapter, refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, firm or corporation.

[PL 1969, c. 132, §1 (NEW).]

2. The attorney of a foreign reciprocal insurer, which insurer is duly authorized to transact insurance in this State, shall not, by virtue of discharge of its duties as such attorney with respect to the insurer's transactions in this State, be thereby deemed to be doing business in this State within the meaning of any laws of this State applying to foreign persons, firms or corporations.

[PL 1969, c. 132, §1 (NEW).]

3. The subscribers and the attorney-in-fact comprise a reciprocal insurer and a single entity for the purposes of chapter 7 as to all operations under the insurer's certificate of authority.

[PL 1969, c. 132, §1 (NEW).]

## SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

### **§3856. Organization of reciprocal insurer**

1. Twenty-five or more persons domiciled in this State may organize a domestic reciprocal insurer and make application to the superintendent for a certificate of authority to transact insurance.

[PL 1973, c. 585, §12 (AMD).]

2. The proposed attorney shall fulfill the requirements of and shall execute and file with the superintendent when applying for a certificate of authority, a declaration setting forth:

A. The name of the insurer; [PL 1969, c. 132, §1 (NEW).]

B. The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this State; [PL 1969, c. 132, §1 (NEW).]

C. The kinds of insurance proposed to be transacted; [PL 1969, c. 132, §1 (NEW).]

D. The names and addresses of the original subscribers; [PL 1969, c. 132, §1 (NEW).]

E. The designation and appointment of the proposed attorney and a copy of the power of attorney; [PL 1969, c. 132, §1 (NEW).]

F. The names and addresses of the officers and directors of the attorney, if a corporation, or its members if a firm; [PL 1969, c. 132, §1 (NEW).]

G. The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof; [PL 1969, c. 132, §1 (NEW).]

H. That all moneys paid to the reciprocal shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement; [PL 1969, c. 132, §1 (NEW).]

I. A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than 6 months at an adequate rate theretofore filed with and approved by the superintendent; [PL 1973, c. 625, §12 (AMD).]

J. A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by section 410 is on hand; and [PL 1969, c. 132, §1 (NEW).]

K. A copy of each policy, endorsement and application form it then proposes to issue or use. [PL 1969, c. 132, §1 (NEW).]

[PL 1973, c. 585, §12 (AMD).]

The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds. [PL 1969, c. 132, §1 (NEW).]

## SECTION HISTORY

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

**§3857. Certificate of authority**

1. The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.

[PL 1969, c. 132, §1 (NEW).]

2. The superintendent may refuse to grant a certificate of authority, and may file a complaint with the District Court seeking suspension or revocation of a certificate of authority, for failure of the attorney to comply with any applicable provision of this Title, in addition to other grounds for those sanctions.

[PL 1977, c. 694, §429 (RPR); PL 1999, c. 547, Pt. B, §78 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

## SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1977, c. 694, §429 (AMD). PL 1999, c. 547, §B78 (AMD). PL 1999, c. 547, §B80 (AFF).

**§3858. Power of attorney**

1. The rights and powers of the attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.

[PL 1969, c. 132, §1 (NEW).]

2. The power of attorney must set forth:

A. The powers of the attorney; [PL 1969, c. 132, §1 (NEW).]

B. If a domestic reciprocal insurer, that the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged; [PL 1969, c. 132, §1 (NEW).]

C. The general services to be performed by the attorney; [PL 1969, c. 132, §1 (NEW).]

D. The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and [PL 1969, c. 132, §1 (NEW).]

E. Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one nor more than 10 times the premium or premium deposit stated in the policy. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

3. The power of attorney may:

A. Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder; [PL 1969, c. 132, §1 (NEW).]

B. Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers; [PL 1969, c. 132, §1 (NEW).]

C. Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and [PL 1969, c. 132, §1 (NEW).]

D. Contain other lawful provisions deemed advisable. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

4. The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement shall be used or be effective in this State until approved by the superintendent.

[PL 1973, c. 585, §12 (AMD).]

#### SECTION HISTORY

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

#### §3859. Modifications

Modifications of the terms of the subscribers' agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by the attorney and the subscribers' advisory committee. No such modification shall be effective retroactively, nor as to any insurance contract issued prior thereto.

[PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### §3860. Attorney's bond

1. Concurrently with the filing of the declaration provided for in section 3856, the attorney of a domestic reciprocal insurer shall file with the superintendent a bond in favor of this State for the benefit of all persons damaged as a result of breach by the attorney of the conditions of attorney's bond as set forth in subsection 2. The bond must be executed by the attorney and by an authorized corporate surety, and is subject to the superintendent's approval.

[RR 2021, c. 1, Pt. B, §312 (COR).]

2. The bond must be in the penal sum of \$25,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into the attorney's hands, and that the attorney will not withdraw or appropriate to the attorney's own use from the funds of the insurer, any moneys or property to which the attorney is not entitled under the power of attorney.

[RR 2021, c. 1, Pt. B, §313 (COR).]

3. The bond shall provide that it is not subject to cancellation unless 30 days' advance notice in writing of cancellation is given both the attorney and the superintendent.

[PL 1973, c. 585, §12 (AMD).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §§312, 313 (COR).

#### §3861. Deposit in lieu of bond

In lieu of the bond required under section 3860, the attorney may maintain on deposit with the Treasurer of State through the office of the superintendent, a like amount in cash or in value of securities qualified under this Title as insurers' investments, and subject to the same conditions as the bond. [PL 1973, c. 585, §12 (AMD).]

#### SECTION HISTORY

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

#### §3862. Action on bond

Action on the attorney's bond or to recover against any such deposit made in lieu thereof may be brought at any time by one or more subscribers suffering loss through a violation of its conditions, or by a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and become part of the insurer's funds. The total aggregate liability of the surety shall be limited to the amount of the penalty of such bond. [PL 1969, c. 132, §1 (NEW).]

**SECTION HISTORY**

PL 1969, c. 132, §1 (NEW).

**§3863. Service of process; judgment**

1. Legal process must be served upon a domestic reciprocal insurer by serving the insurer's attorney at that attorney's principal offices.

[PL 1997, c. 457, §47 (AMD).]

2. Any judgment based upon legal process so served shall be binding upon each of the insurer's subscribers as their respective interests may appear, but in an amount not exceeding their respective contingent liabilities, if any, the same as though personal service of process was had upon each such subscriber.

[PL 1969, c. 132, §1 (NEW).]

**SECTION HISTORY**

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). PL 1997, c. 457, §47 (AMD).

**§3864. Contributions to insurer**

The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and, except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the superintendent. This section does not apply to bank loans, or to other loans made upon security. [PL 1973, c. 585, §12 (AMD).]

**SECTION HISTORY**

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

**§3865. Financial conditions; method of determining**

In determining the financial condition of a reciprocal insurer the superintendent shall apply the following rules: [PL 1973, c. 585, §12 (AMD).]

1. The superintendent shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.

[RR 2021, c. 1, Pt. B, §314 (COR).]

2. The surplus deposits of subscribers shall be allowed as assets, except that any premium deposits delinquent for 90 days shall first be charged against such surplus deposit.

[PL 1969, c. 132, §1 (NEW).]

3. The surplus deposits of subscribers shall not be charged as a liability.

[PL 1969, c. 132, §1 (NEW).]

4. All premium deposits delinquent less than 90 days shall be allowed as assets.

[PL 1969, c. 132, §1 (NEW).]

5. An assessment levied upon subscribers, and not collected, shall not be allowed as an asset.

[PL 1969, c. 132, §1 (NEW).]

6. The contingent liability of subscribers shall not be allowed as an asset.

[PL 1969, c. 132, §1 (NEW).]

7. The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for expenses and the compensation of the attorney.

[PL 1969, c. 132, §1 (NEW).]

## SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §314 (COR).

**§3866. Who may be subscribers**

Individuals, partnerships and corporations of this State may make application, enter into agreement for and hold policies or contracts in or with and be a subscriber of any domestic, foreign or alien reciprocal insurer. Any corporation now or hereafter organized under the laws of this State shall, in addition to the rights, powers, and franchises specified in its articles of incorporation, have full power and authority as a subscriber to exchange insurance contracts through such reciprocal insurer. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and to be as fully granted as the rights and powers expressly conferred upon such corporations. Government or governmental agencies, state or political subdivisions thereof, boards, associations, estates, trustees or fiduciaries are authorized to exchange nonassessable reciprocal interinsurance contracts with each other and with individuals, partnerships and corporations to the same extent that individuals, partnerships and corporations are herein authorized to exchange reciprocal interinsurance contracts. Any officer, representative, trustee, receiver or legal representative of any such subscriber shall be recognized as acting for or on its behalf for the purpose of such contract but shall not be personally liable upon such contract by reason of acting in such representative capacity. [PL 1969, c. 132, §1 (NEW).]

## SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

**§3867. Subscribers' advisory committee**

1. The advisory committee of a domestic reciprocal insurer exercising the subscribers' rights shall be selected under such rules as the subscribers adopt. [PL 1969, c. 132, §1 (NEW).]

2. Not less than 2/3 of such committee shall be subscribers other than the attorney, or any person employed by, representing, or having a financial interest in the attorney. [PL 1969, c. 132, §1 (NEW).]

3. The committee shall:

A. Supervise the finances of the insurer; [PL 1969, c. 132, §1 (NEW).]

B. Supervise the insurer's operations to such extent as to assure conformity with the subscribers' agreement and power of attorney; [PL 1969, c. 132, §1 (NEW).]

C. Procure the audit of the accounts and records of the insurer and of the attorney at the expense of the insurer; and [PL 1969, c. 132, §1 (NEW).]

D. Have such additional powers and functions as may be conferred by the subscribers' agreement. [PL 1969, c. 132, §1 (NEW).]

[PL 1969, c. 132, §1 (NEW).]

## SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

**§3868. Subscribers' liability**

1. The liability of each subscriber, other than as to a nonassessable policy, for the obligations of the reciprocal insurer shall be an individual, several and proportionate liability, and not joint. [PL 1969, c. 132, §1 (NEW).]

2. Except as to a nonassessable policy, each subscriber has a contingent assessment liability, in the amount provided for in the power of attorney or in the subscribers' agreement, for payment of actual

losses and expenses incurred while the subscriber's policy was in force. Such contingent liability may be at the rate of not less than one nor more than 10 times the premium or premium deposit stated in the policy, and the maximum aggregate thereof must be computed in the manner set forth in section 3872. [RR 2021, c. 1, Pt. B, §315 (COR).]

3. Each assessable policy issued by the insurer shall contain a statement of the contingent liability, set in type of the same prominence as the insuring clause. [PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). RR 2021, c. 1, Pt. B, §315 (COR).

#### **§3869. Subscribers' liability on judgment**

1. No action shall lie against any subscriber upon any obligation claimed against the insurer until a final judgment has been obtained against the insurer and remains unsatisfied for 30 days. [PL 1969, c. 132, §1 (NEW).]

2. Any such judgment is binding upon each subscriber only in such proportion as the subscriber's interests may appear and in amount not exceeding the subscriber's contingent liability, if any. [RR 2021, c. 1, Pt. B, §316 (COR).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). RR 2021, c. 1, Pt. B, §316 (COR).

#### **§3870. Assessments**

1. Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the superintendent; or by the superintendent in liquidation of the insurer. [PL 1973, c. 585, §12 (AMD).]

2. Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event the subscriber's aggregate contingent liability as computed in accordance with section 3872, must be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment. [RR 2021, c. 1, Pt. B, §317 (COR).]

3. In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy. [PL 1969, c. 132, §1 (NEW).]

4. A subscriber may not have an offset against any assessment for which the subscriber is liable, on account of any claim for unearned premium or losses payable. [RR 2021, c. 1, Pt. B, §318 (COR).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §§317, 318 (COR).

#### **§3871. Time limit for assessments**

Every subscriber of a domestic reciprocal insurer having contingent liability is liable for, and shall pay the subscriber's share of any assessment, as computed and limited in accordance with this chapter, if: [RR 2021, c. 1, Pt. B, §319 (COR).]

1. While the subscriber's policy is in force or within one year after its termination, the subscriber is notified by either the attorney or the superintendent of the superintendent's intentions to levy such assessment; or  
[RR 2021, c. 1, Pt. B, §319 (COR).]

2. An order to show cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while the subscriber's policy is in force or within one year after its termination.  
[PL 2023, c. 405, Pt. A, §92 (AMD).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §319 (COR). PL 2023, c. 405, Pt. A, §92 (AMD).

#### §3872. Aggregate liability

No one policy or subscriber as to such policy shall be assessed or charged with an aggregate of contingent liability as to obligations incurred by a domestic reciprocal insurer in any one calendar year, in excess of the amount provided for in the power of attorney or in the subscribers' agreement, computed solely upon premium earned on such policy during that year. [PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### §3873. Nonassessable policies

1. If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock and surplus required to be maintained by a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the superintendent shall issue a certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this State, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this State for so long as all such surplus remains unimpaired.  
[RR 2021, c. 1, Pt. B, §320 (COR).]

2. Upon impairment of such surplus, the superintendent shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.  
[PL 1973, c. 585, §12 (AMD).]

3. The superintendent shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualified to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.  
[PL 1973, c. 585, §12 (AMD).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §320 (COR).

#### §3874. Subscribers' share in assets

Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to



its surplus, and the return of any unused premium, savings or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were such within the 12 months prior to the last termination of its certificate of authority, according to such reasonable formula as the superintendent may approve. [PL 1973, c. 585, §12 (AMD).]

#### SECTION HISTORY

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

#### §3875. Merger or conversion

1. A domestic reciprocal insurer upon affirmative vote of not less than 2/3 of its subscribers who vote on such merger pursuant to due notice and the approval of the superintendent of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.

[PL 1973, c. 585, §12 (AMD).]

2. Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

[PL 1969, c. 132, §1 (NEW).]

3. The superintendent may not approve any plan for such merger or conversion that is inequitable to subscribers, or that, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to the subscriber's interest in the reciprocal insurer as determined in accordance with section 3874 and a reasonable length of time within which to exercise such right.

[RR 2021, c. 1, Pt. B, §321 (COR).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §321 (COR).

#### §3876. Impaired reciprocals

1. If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.

[PL 1969, c. 132, §1 (NEW).]

2. If the attorney fails to make up such deficiency or to make the assessment within 30 days after the superintendent orders the attorney to do so or if the deficiency is not fully made up within 60 days after the date the assessment was made, the insurer must be deemed insolvent and must be proceeded against as authorized by this Title.

[RR 2021, c. 1, Pt. B, §322 (COR).]

3. If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this chapter, as the superintendent determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

[PL 1973, c. 585, §12 (AMD).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD). RR 2021, c. 1, Pt. B, §322 (COR).

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