

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by inserting after the title 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Whereas, current law imposes outdated restrictions that hinder the ability of a Maine domestic insurer to form special purpose reinsurance vehicles; and

Whereas, due to these restrictions, market conditions cause a Maine domestic insurer to seek authorization for special purpose reinsurance vehicles in other states; and

Whereas, this legislation authorizes the establishment of special purpose reinsurance vehicles by Maine domestic insurers with the approval of the Superintendent of Insurance; and

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

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 24-A MRSA §731-B, sub-§1, ¶A, as amended by PL 2003, c. 249, §1, is further amended to read:

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

- (1) The fair value of the assets held ~~in trust~~ by or for the benefit of the ceding insurer equals or exceeds the obligations due and payable to the ceding insurer by the special purpose reinsurance vehicle under the special purpose reinsurance vehicle contract;
- (2) The assets are held ~~in trust~~ in accordance with the requirements in subchapter 6;
- (3) The assets are administered in the manner and pursuant to arrangements under subchapter 6;
- (4) The assets are held or invested in one or more of the forms allowed in section 795; and

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

Sec. 2. 24-A MRSA §781, sub-§7, as enacted by PL 2003, c. 249, §2, is amended to read:

7. Fully funded. "Fully funded" means, with respect to a special purpose reinsurance vehicle contract, that the fair value of the assets under the control of the ceding insurer or held in trust by or on behalf for the benefit of the special purpose reinsurance vehicle ~~ceding insurer~~ under the special purpose reinsurance vehicle contract on the date on which the special purpose reinsurance vehicle contract is effected, equals or exceeds the aggregate limit as defined in ~~this subchapter~~ subsection 1.

Sec. 3. 24-A MRSA §781, sub-§7-A is enacted to read:

7-A. Impairment. "Impairment" or "impaired" means, with respect to a special purpose reinsurance vehicle or any of its protected cells, that either:

A. The available capital of the special purpose reinsurance vehicle or protected cell has fallen below the applicable initial capital requirement without the approval of the superintendent; or

B. The fair value of the assets under the control of the ceding insurer or held in trust for the benefit of the ceding insurer under a special purpose reinsurance vehicle contract is less than the aggregate limit remaining under the contract as of the time the determination is made.

Sec. 4. 24-A MRSA §781, sub-§9, as enacted by PL 2003, c. 249, §2, is amended to read:

9. Insolvency. "Insolvency" or "insolvent" means that the special purpose reinsurance vehicle or one or more of its protected cells is unable to pay its obligations when they are due unless the obligations are the subject of a bona fide dispute.

Sec. 5. 24-A MRSA §781, sub-§11-A is enacted to read:

11-A. Protected cell. "Protected cell" means a separate account established and maintained by a special purpose reinsurance vehicle for one special purpose reinsurance vehicle contract and the accompanying insurance securitization with a ceding insurer as further provided for in section 784-A.

Sec. 6. 24-A MRSA §781, sub-§16, as enacted by PL 2003, c. 249, §2, is amended to read:

16. Special purpose reinsurance vehicle insurance securitization; insurance securitization. "Special purpose reinsurance vehicle insurance securitization" or "insurance securitization" means a package of related risk transfer instruments, capital market offerings and facilitating administrative agreements by which proceeds are obtained by a special purpose reinsurance vehicle directly or indirectly through the issuance of securities and are held in trust or under the control of the ceding insurer pursuant to the requirements of this subchapter to secure the obligations of the special purpose reinsurance vehicle under one or more special purpose reinsurance vehicle contract ~~contracts~~ with one or more ceding insurers, and ~~in which the special purpose reinsurance vehicle's obligation to return the full initial investment to the holders of such securities pursuant to the transaction terms is contingent upon the funds not being used to pay the obligations of the special purpose reinsurance vehicle~~

~~to the ceding insurers under the special purpose reinsurance vehicle contract~~when investment risk to the holders of these securities is contingent upon the obligations of the special purpose reinsurance vehicle to the ceding insurer or ceding insurers under the special purpose reinsurance vehicle contract in accordance with the transaction terms.

Sec. 7. 24-A MRSA §782, sub-§2, ¶H, as enacted by PL 2003, c. 249, §2, is amended to read:

H. A plan of operation, consisting of a description of the contemplated insurance securitization ~~or securitizations~~, the special purpose reinsurance vehicle contract and related transactions, which must include:

(1) Draft documentation or at the discretion of the superintendent a written summary of all material agreements that are planned in order to effectuate the insurance securitization ~~or securitizations~~ and the related contract, including the names of the ceding insurers, the nature of the risks being assumed and the maximum amounts, purpose and nature and the interrelationships of the various transactions required to effectuate the insurance securitization ~~or securitizations~~;

(2) The investment strategy of the special purpose reinsurance vehicle and a representation that the investment strategy complies with the investment requirements set forth in this subchapter and that the strategy includes investment practices or other provisions to preserve asset values that facilitate attainment of full funding during the term of the insurance securitization ~~or securitizations~~ with assets that can be monetized in response to a triggering event without a substantial loss in value;

(3) A description of the method by which losses covered by the contract that may develop after the termination of the contract period are to be addressed under the provisions of the contract; and

(4) ~~A~~If applicable, a representation that the special purpose reinsurance vehicle contract with the ceding insurer, the security agreement or trust agreement under section 784, subsection 24, paragraph D-1 or E and the any trusts holding assets that secure the obligations of the special purpose reinsurance vehicle under the contract and the contract with the ceding insurers in connection with the contemplated insurance securitization are structured in accordance with the requirements under this subchapter; ~~and~~

(5) If protected cells are to be used, a description of the procedures for maintaining and safeguarding separate accounts as required by section 784-A, subsection 1 and an application for approval of each initial protected cell as required by section 784-A, subsection 2.

Sec. 8. 24-A MRSA §782, sub-§6, as enacted by PL 2003, c. 249, §2, is amended to read:

6. Documentation of insurance securitization. The special purpose reinsurance vehicle organizer shall provide a complete set of the documentation of the insurance securitization to the superintendent upon closing of any transactions, including an opinion of legal counsel with respect to compliance with this subchapter and any other applicable laws as of the effective date of any transaction. ~~Any material change to the special purpose reinsurance vehicle's plan of operation filed pursuant to subsection 2, including, but not limited to, the issuance of new securities to continue the insurance securitization activities of the special purpose reinsurance vehicle pursuant to this subchapter after expiration and full satisfaction of the initial securitization transactions, requires prior approval of the superintendent. A change in the counterparty to swap transactions for an existing insurance securitization as allowed under this subchapter is not considered a material change unless the special purpose reinsurance vehicle's managers know or should know that the new counterparty presents a substantial risk of default.~~

Sec. 9. 24-A MRS §782, sub-§7 is enacted to read:

7. Changes in plan of operation. Any material change to the special purpose reinsurance vehicle's plan of operation filed pursuant to subsection 2, including, but not limited to, the initiation of a new insurance securitization to continue the activities of the special purpose reinsurance vehicle pursuant to this subchapter after expiration and full satisfaction of the initial securitization transactions, requires prior approval of the superintendent. A change in the counterparty to swap transactions for an existing insurance securitization as allowed under this subchapter is not considered a material change unless the special purpose reinsurance vehicle's managers know or should know that the new counterparty presents a substantial risk of default.

Sec. 10. 24-A MRS §784, sub-§1, as enacted by PL 2003, c. 249, §2, is amended to read:

1. Contracts. Special purpose reinsurance vehicles authorized under this subchapter may enter into and effectuate special purpose reinsurance vehicle contracts with one or more ceding insurers as long as the contracts:

- A. Obligate the reinsurance vehicle to indemnify the ceding insurer for losses;
- B. Are securitized in full through a single special purpose reinsurance vehicle insurance securitization or, if protected cells are used, through a single special purpose reinsurance vehicle insurance securitization for each protected cell; and
- C. Are fully funded and secured with assets held in trust in accordance with the requirements of this section pursuant to agreements proposed under this subchapter, and invested in a manner that meets the criteria set forth in section 795.

Sec. 11. 24-A MRS §784, sub-§2, as enacted by PL 2003, c. 249, §2, is amended to read:

2. Eligible lines of business. A special purpose reinsurance vehicle contract may only provide catastrophe excess of loss property reinsurance coverage or catastrophe life or health reinsurance coverage, unless the superintendent adopts rules pursuant to section 797 specifying additional lines of business that may be reinsured by a special purpose reinsurance vehicle or approves a waiver of the requirement of this subsection for good cause shown with respect to a particular application.

Sec. 12. 24-A MRSA §784, sub-§3, as enacted by PL 2003, c. 249, §2, is amended to read:

3. Multiple ceding insurers. A special purpose reinsurance vehicle may enter into contracts with multiple ceding insurers only if each contract is attributable to a different protected cell or if:

A. The special purpose reinsurance vehicle reinsures no more than 10 ceding insurers; and

B. Each ceding insurer has no more than \$50,000,000 in surplus as reported in its most recent financial statement filed with its domiciliary regulator, as of the date the special purpose reinsurance vehicle is licensed. A group of ceding insurers under common control may elect to be treated as separate insurers for purposes of this subsection, but only if each insurer in the group that is reinsured by the same special purpose reinsurance vehicle is counted separately for purposes of the 10-cedent limit.

Sec. 13. 24-A MRSA §784, sub-§4, as enacted by PL 2003, c. 249, §2, is amended to read:

4. Terms of operation. A special purpose reinsurance vehicle may enter into agreements with 3rd parties and conduct business necessary to fulfill its obligations and administrative duties incident to the insurance securitization and the special purpose reinsurance vehicle contract. The agreements may include entering into swap agreements or other transactions that have the objective of leveling timing differences in funding upfront or ongoing transaction expenses or managing credit or interest rate risk of the investments in trust to ensure that the assets held in trust are sufficient to satisfy payment or repayment of the securities issued pursuant to an insurance securitization transaction ~~or the~~ and any other obligations of the special purpose reinsurance vehicle ~~under the contract.~~ In fulfilling its function, the special purpose reinsurance vehicle shall adhere to the following requirements and shall, to the extent of its powers, ensure that contracts obligating other parties to perform certain functions incident to its operations are substantively and materially consistent with the following requirements and guidelines.

A. A special purpose reinsurance vehicle must have a distinct name, which must include the designation "SPRV" or "Special Purpose Reinsurance Vehicle." The name of the reinsurance vehicle may not be deceptively similar to, or likely to be confused with or mistaken for, any other existing business name registered in this State.

B. Unless otherwise provided in the plan of operation, the principal place of business and office of any reinsurance vehicle organized under this subchapter must be located in this State.

C. The assets of a reinsurance vehicle must be preserved and administered by or on behalf of the reinsurance vehicle to satisfy the liabilities and obligations of the reinsurance vehicle incident to the insurance securitization and other related agreements including the contract.

D. ~~Assets~~Except as provided in paragraph D-1, assets of the reinsurance vehicle that are pledged to secure obligations of the reinsurance vehicle to a ceding insurer under a contract must be held in trust and administered by a qualified United States financial institution serving as trustee. The qualified United States financial institution may not control, be controlled by or be under common control with the reinsurance vehicle or any ceding insurer.

D-1. If approved by the superintendent, the reinsurance vehicle and the ceding insurer may enter into a written agreement, in compliance with the ceding insurer's applicable domiciliary credit for reinsurance laws, under which the assets pledged as security, in lieu of being held in trust, are held in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control. The security agreement may not be approved unless the superintendent determines that the agreement is consistent with the purposes of this subsection, that the ceding insurer has unconditional access to the funds necessary to fulfill the reinsurance vehicle's obligations to the ceding insurer and that the assets withheld under the control of the ceding insurer are never less than the amount that would otherwise be required to be held in trust.

E. ~~The agreement governing the trust described in paragraph D must create~~must be governed by a written agreement between the reinsurance vehicle and the ceding insurer that creates one or more trust accounts into which all pledged assets must be deposited and held until distributed in accordance with the trust agreement. The pledged assets must be held by the trustee at the trustee's office in the United States and may be held in certificated or electronic form.

F. The provisions for withdrawal by ~~the ceding insurers~~insurer of funds from the trust must comply with the ceding insurer's applicable domiciliary credit for reinsurance laws and be clean and unconditional, subject only to the following requirements:

- (1) The ceding insurer has the right to withdraw assets from the trust account at any time without notice to the reinsurance vehicle subject only to written notice to the trustee from the ceding insurer that funds in the amount requested are due and payable by the reinsurance vehicle;
- (2) No other statement or document need be presented in order to withdraw assets, except that the ceding insurer may be required to acknowledge receipt of withdrawn assets;
- (3) The trust agreement described in paragraph E must indicate that it is not subject to any conditions or qualifications outside of the trust agreement;
- (4) The trust agreement described in paragraph E may not contain references to any other agreements or documents; and
- (5) Reference may not be made to the fact that these funds may represent reinsurance premiums or that the funds have been deposited for any specific purpose.

G. The trust agreement described in paragraph E must be established for the sole use and benefit of the ceding insurer at least to the full extent of the reinsurance vehicle's obligations to the ceding insurer under the contract. In the case of more than one ceding insurer or more than one reinsurance contract with the same ceding insurer, a separate trust agreement must be entered into with each ceding insurer and a separate trust account must be maintained for each ceding insurer.

H. The trust agreement described in paragraph E must provide for the trustee to:

- (1) Receive assets and hold all assets in a safe place;
- (2) Determine that all assets are in a form that the ceding insurer or the trustee, upon direction by the ceding insurer, may whenever necessary negotiate the assets, without consent or signature from the reinsurance vehicle or any other person or entity;
- (3) Furnish to the reinsurance vehicle, the superintendent and the ceding insurer a statement of all assets in the trust account referred to in paragraph E reported at fair value upon its inception and at intervals no less frequent than the end of each calendar quarter;
- (4) Notify the reinsurance vehicle and the ceding insurer within 10 days of any deposits to or withdrawals from the trust account referred to in paragraph E;
- (5) Upon written demand of the ceding insurer, immediately take steps necessary to transfer absolutely all right, title and interest in the assets held in the trust account referred to in paragraph E to the ceding insurer and deliver physical custody of the assets to the ceding insurer; and
- (6) Allow no substitutions or withdrawals of assets from the trust account referred to in paragraph E except on written instructions from the ceding insurer.

I. The trust agreement described in paragraph E must provide that at least 30 days but not more than 45 days before termination of the trust account written notification of termination must be delivered by the ~~3rd party~~trustee to the ceding insurer.

J. The trust agreement described in paragraph E may be made subject to and governed by the laws of any state in addition to the requirements for the trust as provided in this subchapter as long as the state is disclosed in the plan of operation filed with and approved by the superintendent.

K. The trust agreement described in paragraph E must prohibit invasion of the trust account referred to in paragraph E for the purpose of paying compensation to or reimbursing the expenses of the trustee.

L. The trust agreement described in paragraph E must provide that the trustee be liable for the trustee's own negligence, willful misconduct or lack of good faith.

(1) Notwithstanding the provisions of paragraph F, subparagraphs (3) to (5) and paragraph M, subparagraph (5), when a trust agreement described in paragraph E is established in conjunction with a contract, then the trust agreement may provide that the ceding insurer shall undertake to use and apply any amounts drawn upon the trust account without diminution because of the insolvency of the ceding insurer or the reinsurance vehicle for the following purposes:

(a) To pay or reimburse the ceding insurer amounts due to the ceding insurer under the contract, including, but not limited to, unearned premiums due to the ceding insurer if not otherwise paid by the reinsurance vehicle in accordance with the terms of that trust agreement; or

(b) When the ceding insurer has received notification of termination of the trust account referred to in paragraph E and when some or all of the reinsurance vehicle's obligations under the specific contract remain unliquidated and undischarged 10 days before the termination date, to withdraw amounts equal to the undischarged obligations and deposit the amounts in a separate account in the name of the ceding insurer in any qualified United States financial institution apart from its general assets in trust for the sole purpose of discharging any contractual obligations of the reinsurance vehicle that may remain executory after the withdrawal and for any period after the termination date. Assets so held must revert to the reinsurance vehicle when they are no longer necessary to secure the obligations of the reinsurance vehicle and may not exceed the sum of the following amounts as determined in good faith by the ceding insurer:

(i) Losses and loss expenses paid by the ceding insurer but not recovered from the reinsurance vehicle;

(ii) Reserves for losses reported and outstanding;

(iii) Reserves for losses incurred but not reported;

(iv) Reserves for loss expenses;

(v) Reserves for unearned premiums; and

(vi) Any additional amount necessary to maintain full funding of the aggregate limit remaining under the contract if the period of coverage or the agreed-upon period of loss development has yet to expire.

(2) The provisions to be included in the trust agreement described in paragraph E pursuant to this paragraph may instead be included in the underlying contract.

M. A special purpose reinsurance vehicle contract must contain provisions that:

(1) ~~Require the reinsurance vehicle to enter into a trust agreement described in paragraph E and to establish a trust account referred to in paragraph E for the benefit of the ceding insurer and specifying what recoverables or reserves or both the trust agreement is to cover;~~

(a) Enter into a trust agreement described in paragraph E and establish a trust account referred to in paragraph E for the benefit of the ceding insurer; or

(b) Enter into a security agreement described in paragraph D-1.

The trust agreement or security agreement must specify what recoverables or reserves or both the agreement is to cover;

(2) ~~Stipulate that assets deposited in the trust account~~pledged as security be valued according to their current fair value for purposes of the contract and may consist only of permitted investments;

(3) ~~Require~~If applicable, require the reinsurance vehicle, before depositing assets with the trustee, to execute assignments or endorsements in blank or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments in order that the ceding insurer or the trustee upon the direction of the ceding insurer may whenever necessary negotiate any such assets without consent or signature from the reinsurance vehicle or any other entity;

(4) Require that all settlements of account between the ceding insurer and the reinsurance vehicle be made in cash or its equivalent; and

(5) Stipulate that the reinsurance vehicle and the ceding insurer agree that the assets in ~~the~~any trust account referred to in paragraph E and established pursuant to the provisions of the contract may be withdrawn by the ceding insurer at any time notwithstanding any other provisions in the contract and must be used and applied by the ceding insurer or any successor by operation of law of the ceding insurer, including, but not limited to, and subject to the provisions of

section 793, any liquidator, rehabilitator, receiver or conservator of the ceding insurer, without diminution because of insolvency on the part of the ceding insurer or the reinsurance vehicle, only for the following purposes:

(a) To transfer all such assets into one or more trust accounts pursuant to ~~Paragraph~~paragraph L for the benefit of the ceding insurer pursuant to the terms of the contract and in compliance with this subchapter; and

(b) To pay any other amounts that the ceding insurer claims are due under the contract.

N. The contract entered into by the reinsurance vehicle may contain provisions that give the reinsurance vehicle the right to seek approval from the ceding insurer to withdraw from the trust account referred to in paragraph E all or part of the assets contained in the trust account and to transfer the assets to the reinsurance vehicle as long as:

(1) The reinsurance vehicle shall at the time of the withdrawal replace the withdrawn assets with other qualified assets having a fair value equal to the fair value of the assets withdrawn and that meet the requirements of section 795; and

(2) After the withdrawals and transfer, the fair value of the assets in the trust account referred to in paragraph E securing the obligations of the reinsurance vehicle under the contract is no less than an amount needed to satisfy the full funding requirement of the contract. The ceding insurer has the sole discretion to determine whether these provisions have been satisfied but may not unreasonably nor arbitrarily withhold its approval.

O. The contract must provide that investors in the reinsurance vehicle agree that any obligation to repay principal, interest or dividends on the securities issued by the reinsurance vehicle must be reduced upon the occurrence of a triggering event, to the extent that the assets of the reinsurance vehicle held in trust for the benefit of the ceding insurer are remitted to the ceding insurer in fulfillment of the obligations of the reinsurance vehicle under the contract.

P. Assets held by a reinsurance vehicle in trust must be valued at their fair value.

Q. The proceeds from the sale of securities by the reinsurance vehicle to investors must be deposited with the trustee or under the control of the ceding insurer as described in this subchapter and must be held or invested ~~by the trustee~~ in accordance with the requirements of section 795.

R. A reinsurance vehicle organized under this subchapter may engage only in fully funded contracts to support in full the ceding insurer's exposures assumed by the reinsurance vehicle. A contract must be indemnity-triggered unless the superintendent adopts rules pursuant to section 797 authorizing nonindemnity-triggered contracts and addressing the treatment of the portion of the risk that is nonindemnity-based, including accounting, disclosure, risk-based capital treatment and the manner

in which risks associated with a nonindemnity-based contract may be evaluated and managed. Assets of the reinsurance vehicle may be used to pay interest or other consideration on any outstanding debt or other obligation of the reinsurance vehicle and nothing in this paragraph may be construed or interpreted to prevent a reinsurance vehicle from entering into a swap agreement or other transaction that has the effect of guaranteeing interest or other consideration.

S. In the special purpose reinsurance vehicle insurance securitization, the contracts or other relating documentation must contain provisions identifying the reinsurance vehicle that enters into the reinsurance securitization and the contracts or other documentation must clearly disclose that the assets of the reinsurance vehicle and only those assets are available to pay the obligations of that reinsurance vehicle. Notwithstanding this paragraph, and subject to the provisions of this subchapter and any other applicable law, the failure to include such language in the contracts or other documentation may not be used as the sole basis by creditors, reinsurers or other claimants to circumvent the provisions of this subchapter.

T. A reinsurance vehicle is not authorized to:

- (1) Issue or otherwise administer primary insurance policies;
- (2) Have any obligation to the policyholders or reinsureds of the ceding insurer;
- (3) Enter into a contract with a person that is not licensed or otherwise authorized to conduct the business of insurance or reinsurance in at least its state or country of domicile; or
- (4) Assume or retain exposure to insurance or reinsurance losses for its own account that is not initially fully funded by proceeds from an insurance securitization that meets the requirements of this subchapter.

U. At the cessation of business of a reinsurance vehicle, the limited certificate of authority granted by the superintendent under section 782 expires and the reinsurance vehicle may no longer be authorized to conduct activities pursuant to this subchapter until a new certificate of authority is issued pursuant to a new filing in accordance with section 782. The completion of a reinsurance vehicle's securitization activities does not constitute the cessation of business for purposes of this paragraph if the reinsurance vehicle's approved business plan contemplates additional securitizations.

V. It is unlawful for a reinsurance vehicle to lend or otherwise invest or place in custody, trust or under management any of its assets with or to borrow money or receive a loan or advance from, other than by issuance of the securities pursuant to an insurance securitization, from anyone convicted of a felony, anyone who is untrustworthy or of known bad character or anyone convicted of a criminal offense involving the conversion or misappropriation of fiduciary funds or insurance accounts, theft, deceit, fraud, misrepresentation or corruption.

W. A special purpose reinsurance vehicle may purchase reinsurance with the approval of the superintendent to retrocede risks assumed through a special purpose reinsurance vehicle contract. Reinsurance purchased by the reinsurance vehicle does not reduce the aggregate limit of the reinsurance vehicle or the covered protected cell and may only be credited toward the funding requirements of the reinsurance vehicle or the covered protected cell to the extent that the ceding insurer has a direct right of recovery against the retrocessionaire that is secured by assets deposited with the trustee or under the control of the ceding insurer in accordance with this section and held or invested in accordance with the requirements of section 795.

Sec. 14. 24-A MRSA §784-A is enacted to read:

§ 784-A. Protected cells

1. Establishment of protected cells. A special purpose reinsurance vehicle may establish and maintain one or more protected cells with the prior written approval of the superintendent, subject to compliance with the provisions of this section.

A. A protected cell may be established only for the purpose of insuring or reinsuring risks of one or more special purpose reinsurance vehicle contracts with the intent of facilitating an insurance securitization. The establishment of a protected cell in compliance with this section in connection with a lawful insurance securitization does not constitute a fraudulent conveyance, a scheme to defraud creditors or a transaction of business for a fraudulent purpose.

B. Each protected cell must be accounted for separately on the books and records of the special purpose reinsurance vehicle to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends or other distributions for the special purpose reinsurance vehicle contract with each cell and other factors as may be provided in the special purpose reinsurance vehicle contract, insurance securitization transaction documents, plan of operation or business plan, or as required by the superintendent. The special purpose reinsurance vehicle must establish administrative and accounting procedures necessary for the proper attribution of protected cell assets and protected cell liabilities to each protected cell. The directors of a special purpose reinsurance vehicle shall keep the protected cell assets and liabilities attributable to each protected cell separate and separately identifiable from the assets and liabilities of the special purpose reinsurance vehicle's general account and from the protected cell assets and liabilities attributable to any other protected cell.

C. Amounts attributed to a protected cell under this section, including assets transferred to a protected cell account, are owned by the special purpose reinsurance vehicle, and the special purpose reinsurance vehicle is not and may not hold itself out to be a trustee with respect to those protected cell assets of that protected cell account.

D. All attributions of assets and liabilities between a protected cell and the general account must be in accordance with the plan of operation approved by the superintendent. No other attribution of assets or liabilities may be made by a special purpose reinsurance vehicle between the special purpose reinsurance vehicle's general account and its protected cell or cells. The special purpose

reinsurance vehicle must attribute all insurance obligations, assets and liabilities relating to a special purpose reinsurance vehicle contract and the related insurance securitization transaction, including any securities issued by the special purpose reinsurance vehicle as part of the insurance securitization and any taxes or other obligations arising by operation of law, to the associated protected cell.

E. The assets of a protected cell are not chargeable with liabilities arising out of a special purpose reinsurance vehicle contract related to or associated with another protected cell. More than one special purpose reinsurance vehicle contract may not be attributed to the same protected cell unless those special purpose reinsurance vehicle contracts are intended to be, and ultimately are, part of a single securitization transaction.

F. A sale, exchange or other transfer of assets may not be made by the special purpose reinsurance vehicle between or among any of its protected cells without the consent of the superintendent, the ceding insurer or insurers and the holders of the securities issued by each protected cell.

G. A sale, exchange, transfer of assets, dividend or distribution may not be made from a protected cell without the superintendent's approval except as authorized in advance under the special purpose reinsurance vehicle contract or related insurance securitization transaction documents and may not be approved if the sale, exchange, transfer, dividend or distribution would result in insolvency or impairment with respect to a protected cell.

H. A special purpose reinsurance vehicle may pay interest or repay principal, or both, and make distributions or repayments in respect of any securities attributed to a particular protected cell from assets or cash flows relating to or emerging from the special purpose reinsurance vehicle contract and the insurance securitization transactions that are attributable to that particular protected cell in accordance with the provisions of this subchapter or as otherwise approved by the superintendent.

2. Approval of protected cells. A special purpose reinsurance vehicle contract with or attributable to a protected cell does not take effect without the superintendent's prior written approval, and the addition of each new protected cell constitutes a change in the business plan requiring the superintendent's prior written approval and the amendment of the special purpose reinsurance vehicle's limited certificate of authority. The superintendent may retain legal, financial and examination services from outside the bureau to examine and investigate the application for a protected cell, the reasonable cost of which may be charged against the applicant, or the superintendent may use internal resources to examine and investigate the application, the reasonable cost of which may be charged against the applicant up to a maximum of \$12,000, or both. The application for approval of a protected cell must include a plan of operation for the protected cell consistent with the requirements of section 782, subsection 2, paragraph H.

3. Minimum capital requirements. A special purpose reinsurance vehicle with protected cells shall possess and maintain capitalization in each protected cell in the amount and manner required for a special purpose reinsurance vehicle in section 787 and, in addition, shall possess and maintain minimum capitalization separate and apart from the capitalization of its protected cell or cells in an amount

determined by the superintendent after giving due consideration of the special purpose reinsurance vehicle's business plan, feasibility study and proforma financial statements, including the nature of the risks to be insured or reinsured.

4. Status of protected cells. A protected cell is not a legal person separate from the special purpose reinsurance vehicle. However, a protected cell must have its own distinct name or designation that includes the words "protected cell" and all protected cells must be identified by name in the special purpose reinsurance vehicle's limited certificate of authority. The special purpose reinsurance vehicle shall hold all assets attributable to the protected cell in one or more separately established and identified protected cell accounts bearing the name or designation of that protected cell.

A. The assets of a protected cell are available only to the ceding insurer and other creditors of that protected cell and may not be used to pay expenses or claims other than those attributable to the protected cell. Creditors with respect to a protected cell are not entitled to any recourse against the protected cell assets of other protected cells or the assets of the special purpose reinsurance vehicle's general account. If an obligation of a special purpose reinsurance vehicle relates only to the general account, the creditor is entitled to have recourse with respect to that obligation only to the assets of the general account.

B. Protected cell assets may not be pledged or otherwise encumbered except for the benefit of creditors of that protected cell in furtherance of the securitization in accordance with the approved plan of operation.

C. All contracts or other documentation reflecting protected cell liabilities must clearly indicate that only the protected cell assets are available for the satisfaction of those protected cell liabilities. In all special purpose reinsurance vehicle insurance securitizations involving a protected cell, the contracts or other documentation effecting the transaction must contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contracts or other documentation must clearly disclose that the assets of that protected cell, and only those assets, are available to pay the obligations of that protected cell. However, failure to include express language attributing obligations under a contract to a protected cell does not give a party the right to void or reform the contract if the party had notice that the contract related to a protected cell.

D. If the special purpose reinsurance vehicle enters into a contract involving more than one protected cell, the rights and obligations relating to each protected cell must be several rather than joint and the contract must make clear provisions for their apportionment between protected cells.

E. In any action or proceeding involving the potential for monetary recovery by or against a special purpose reinsurance vehicle with protected cells, or for nonmonetary relief relating to a particular protected cell or cells, any process, pleading or order must name the specific cell or cells affected, including if applicable the general account.

5. Separate administrative services. A special purpose reinsurance vehicle may contract with or arrange for an investment advisor, commodity trading advisor or other 3rd party to manage the assets or administer the obligations of a protected cell, if all remuneration, expenses and other

compensation arising out of services performed with respect to that protected cell are payable only from the assets of that protected cell or, with the approval of the superintendent, from the assets of the special purpose reinsurance vehicle's general account.

6. Notice of impairment or insolvency. A special purpose reinsurance vehicle with protected cells shall notify the superintendent in writing within 10 business days after the special purpose reinsurance vehicle or any protected cell becomes impaired or insolvent.

7. Conversion to protected cell framework. A special purpose reinsurance vehicle without protected cells may apply to the superintendent in accordance with subsection 2 to revise its plan of operation to establish one or more protected cells. If there is an existing insurance securitization in force at the time of the application, the revised plan of operation must provide for the establishment of a protected cell for that securitization and the transfer to the protected cell of all assets and liabilities relating to the securitization.

8. Termination of protected cell. At the cessation of business of a protected cell in accordance with the plan approved by the superintendent, the special purpose reinsurance vehicle shall close out the protected cell account and the superintendent shall modify the limited certificate of authority to reflect the termination.

Sec. 15. 24-A MRSA §786, as enacted by PL 2003, c. 249, §2, is amended to read:

§ 786. Affiliation

Notwithstanding the provisions of section 222, the special purpose reinsurance vehicle, the special purpose reinsurance vehicle organizer or subsequent debt or equity investors in special purpose reinsurance vehicle securities are not deemed affiliates of the ceding insurer by virtue of the special purpose reinsurance vehicle contract between the ceding insurer and the reinsurance vehicle, the securities of the reinsurance vehicle or related agreements necessary to implement the special purpose reinsurance vehicle insurance securitization. ~~The reinsurance vehicle may not be controlled by, may not control and may not be under common control with any ceding insurer that is a party to a contract.~~

Sec. 16. 24-A MRSA §788, as enacted by PL 2003, c. 249, §2, is amended to read:

§ 788. Dividends

The special purpose reinsurance vehicle may not declare or pay dividends in any form to its owners unless the dividends do not decrease the capital of cause the reinsurance vehicle below \$5,000 or any of its protected cells to become impaired and, after giving effect to the dividends, the assets of the reinsurance vehicle, including assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to meet its obligations. Except for dividends specifically provided for in the approved plan of operation under section 782, subsection 2, paragraph H, the prior approval of the superintendent is required for any dividend paid during the term of coverage or while the reinsurance vehicle has undischarged obligations to the ceding insurer. The dividends may be declared by the board of directors of the reinsurance vehicle if the dividends would not violate the provisions of this subchapter or the approved plan of operation and would not jeopardize the fulfillment of the obligations of the reinsurance

vehicle or the trustee pursuant to the special purpose reinsurance vehicle insurance securitization, the special purpose reinsurance vehicle contract or any related transaction. The provisions of section 222, subsections 11-A and 11-B do not apply to such dividends.

Sec. 17. 24-A MRSA §789, sub-§2, as enacted by PL 2003, c. 249, §2, is amended to read:

2. Statement of operation. Each special purpose reinsurance vehicle organized under this subchapter shall file with the superintendent no later than March 1st of each year a statement of operations, including a statement of income, a balance sheet and a detailed listing of invested assets, including identification of assets held in trust to secure the reinsurance vehicle's obligations under the special purpose reinsurance vehicle contract, for the year ending the prior December 31st. The statements must be prepared in accordance with statutory accounting principles consistent with section 901-A on forms required by the superintendent. If one or more protected cells have been established, the statement must detail the financial experience of the general account and each protected cell separately, in addition to providing the combined financial experience of the special purpose reinsurance vehicle and all protected cells.

Sec. 18. 24-A MRSA §792, as enacted by PL 2003, c. 249, §2, is amended to read:

§ 792. Dissolution

A special purpose reinsurance vehicle operating under this subchapter may be dissolved at any time by a vote of its directors under section 790 and after the action has been approved by the superintendent. Voluntary dissolution may not be effected or allowed until and unless all of the obligations of the reinsurance vehicle pursuant to the insurance securitization or securitizations have been fully and finally satisfied pursuant to their terms. In the case of voluntary dissolution, the disposition of the affairs of the reinsurance vehicle, including the settlement of all outstanding obligations, must be made by the officers or directors of the reinsurance vehicle and when the liquidation has been completed and a final statement in acceptable form has been filed with and approved by the superintendent the provisions for voluntary dissolution under section 3484 must be followed to dissolve the reinsurance vehicle.

Sec. 19. 24-A MRSA §793, as enacted by PL 2003, c. 249, §2, is amended to read:

§ 793. Conservation, rehabilitation or liquidation

1. Authorized insurer. A special purpose reinsurance vehicle is considered an authorized insurer for purposes of section 4351, subsection 1, and the provisions of chapter 57 apply to a reinsurance vehicle or to any of a reinsurance vehicle's protected cells, except to the extent modified by this section.

2. Grounds for action. Notwithstanding the provisions of sections 4356 and 4357, the Superior Court may issue an order authorizing the superintendent to conserve, rehabilitate or liquidate a special purpose reinsurance vehicle domiciled in this State, or one or more of its protected cells, only if the superintendent proves by clear and convincing evidence or the reinsurance vehicle stipulates after notice and opportunity for hearing that:

A. There has been embezzlement, wrongful sequestration, dissipation or diversion of the assets of the reinsurance vehicle or protected cell intended to be used to pay amounts owed to the ceding insurer or the holders of special purpose reinsurance vehicle securities; or

B. The reinsurance vehicle or protected cell is insolvent and the holders of a majority in outstanding principal amount of each class of special purpose reinsurance vehicle securities request or consent to conservation, rehabilitation or liquidation under this subchapter.

3. Receiver. Notwithstanding any contrary provision of this Title, rules adopted under this Title or any other applicable law, upon any order of conservation, rehabilitation or liquidation of the special purpose reinsurance vehicle or one or more of its protected cells, a receiver is bound to deal with the reinsurance vehicle's assets and liabilities in accordance with the requirements under this subchapter.

3-A. Protected cells. The following provisions apply to the insolvency of a special purpose reinsurance vehicle with protected cells or to the insolvency of a protected cell.

A. The insolvency of one protected cell does not constitute the insolvency of any other protected cell or of the special purpose reinsurance vehicle itself. The insolvency of a special purpose reinsurance vehicle does not constitute the insolvency of any of its solvent protected cells and is not a basis for the receivership of any solvent protected cell capable of independent operation.

B. Notwithstanding the insolvency of the special purpose reinsurance vehicle or of any other protected cell, the obligations attributed to any solvent protected cell must continue to be paid as they come due.

C. The assets attributed to a protected cell may not be applied to the liabilities attributed to another protected cell or to the reinsurance vehicle generally, except that:

(1) If the insolvency of the special purpose reinsurance vehicle renders a protected cell incapable of being managed independently, a receiver may, after consultation with the creditors of the protected cell, contract for the management of the protected cell and charge to the protected cell a reasonable amount for those services;

(2) A general liability of an insolvent special purpose reinsurance vehicle may be apportioned equitably in whole or in part to one or more of its protected cells if the Superior Court determines that the liability arises out of the operations of the protected cell or cells and that the interests of innocent creditors of the protected cell or cells are not unreasonably impaired; and

(3) If assets or liabilities have been commingled, or have been wrongfully transferred between protected cells or between a protected cell and the general account, the Superior Court shall trace the assets and attribute them to the proper accounts, giving due consideration to the terms of any relevant governing instrument or contract.

D. The plan of rehabilitation or liquidation of any special purpose reinsurance vehicle with protected cells must make reasonable provision for the continued operation of all solvent protected cells, which may involve the formation of one or more new special purpose reinsurance vehicles or the transfer of one or more protected cells.

4. Recoverable amounts. With respect to amounts recoverable under a special purpose reinsurance vehicle contract, the amount recoverable by the receiver may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation or liquidation with respect to the ceding insurer, notwithstanding any provisions to the contrary in the contracts or other documentation governing the special purpose reinsurance vehicle insurance securitization.

A. Notwithstanding the provisions of chapter 57, an application or petition in any delinquency proceeding relating to a ceding insurer or any temporary restraining order or injunction issued in any such proceeding may not prohibit the transaction of any business by a reinsurance vehicle, including any payment by a reinsurance vehicle made pursuant to a special purpose reinsurance vehicle security or any action or proceeding against a reinsurance vehicle or its assets.

B. Notwithstanding the provisions of chapter 57, subchapter 2, the commencement of a summary proceeding or other interim proceeding commenced prior to a formal delinquency proceeding with respect to a reinsurance vehicle and any order issued by the court in such proceeding may not prohibit a reinsurance vehicle from making a payment pursuant to a special purpose reinsurance vehicle security or contract or from taking any action required to make the payment.

5. Nonfraudulent transfer. Notwithstanding any other provision of chapter 57 or other state law:

A. A receiver of a ceding insurer may not ~~avoid~~void a nonfraudulent transfer by a ceding insurer to a special purpose reinsurance vehicle of money or other property made pursuant to a special purpose reinsurance vehicle contract; and

B. A receiver of a special purpose reinsurance vehicle may not void a nonfraudulent transfer by the reinsurance vehicle of money or other property made to a ceding insurer pursuant to a special purpose reinsurance vehicle contract or made to or for the benefit of any holder of a special purpose reinsurance vehicle security on account of the special purpose reinsurance vehicle security.

6. Fulfillment of obligations. With the exception of the fulfillment of the obligations under a special purpose reinsurance vehicle contract and notwithstanding any other provisions of this subchapter or other law of this State to the contrary, the assets of a special purpose reinsurance vehicle including assets held in trust may not be consolidated with or included in the estate of a ceding insurer in any delinquency proceeding against the ceding insurer under this subchapter for any purpose, including, without limitation, distribution to creditors of the ceding insurer.

7. Domiciliary receiver. Notwithstanding any other provision of this subchapter:

A. The domiciliary receiver of a special purpose reinsurance vehicle domiciled in another state is vested by operation of law with the title to all of the assets, property, contracts and rights of action and all of the books, accounts and other records of the reinsurance vehicle located in this State. The domiciliary receiver has the immediate right to recover all such vested property, assets and causes of action of the reinsurance vehicle located in this State-; and

Subsection 7, paragraph A should end with "; and"

B. An ancillary proceeding may not be commenced or prosecuted in this State against a special purpose reinsurance vehicle domiciled in another state.

Sec. 20. 24-A MRSA §796, as enacted by PL 2003, c. 249, §2, is amended to read:

§ 796. No transaction of insurance business by investors in securities

The securities issued by the special purpose reinsurance vehicle pursuant to a special purpose reinsurance vehicle insurance securitization are not deemed to be insurance or reinsurance contracts. An investor in such securities issued pursuant to insurance securitization or any holder of such securities may not by sole means of this investment or holding be deemed to be transacting an insurance business in this State. The underwriters or selling agents and their partners, directors, officers, members, managers, employees, agents, representatives and advisors involved in an insurance securitization are not deemed to be ~~conducting an insurance or reinsurance agency, brokerage, intermediary, advisory or consulting business~~ acting as insurance or reinsurance producers, intermediaries or consultants by virtue of their activities in connection with the special purpose reinsurance vehicle or with the insurance securitization.

Sec. 21. 24-A MRSA §796-A is enacted to read:

§ 796-A. Confidentiality of proprietary information

Any requirement established by this subchapter to file proprietary business information with the superintendent does not in and of itself make that information a public record. Information filed with the superintendent pursuant to this subchapter is entitled to any privileges and confidentiality protections that would apply if the special purpose reinsurance vehicle were a captive insurance company licensed by the superintendent pursuant to section 6702.

Sec. 22. 24-A MRSA §798, sub-§3 is enacted to read:

3. Variance. The superintendent may issue an order exempting a special purpose reinsurance vehicle or a protected cell from provisions of this subchapter upon a finding that the variance is necessary for conformance to the laws or regulatory requirements of a ceding insurer's state of domicile and that the variance is consistent with the purposes of this subchapter given the nature of the risks to be insured.

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

SUMMARY

This amendment replaces the bill. The amendment allows the establishment of special purpose reinsurance vehicles to facilitate the securitization of insurance risks. The amendment removes the prohibition on a special purpose reinsurance vehicle being controlled by, controlling, or being under common control with the ceding insurer. The amendment allows a special purpose reinsurance vehicle to use protected cells as part of one special purpose reinsurance vehicle contract. The amendment also makes changes to update the current law to be consistent with similar legislation in other states. The amendment also adds an emergency preamble and emergency clause.

FISCAL NOTE REQUIRED
(See attached)