

ATTACHMENT

NEW YORK STATE INSURANCE LAW

ARTICLE 15. HOLDING COMPANIES

§ 1501. Definitions; determinations

(a) In this article, unless the context shall otherwise require:

(1) "Person" means an individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity or any combination of the foregoing acting in concert.

(2) "Control", including the terms "controlling", "controlled by" and "under common control with", means the possession direct or indirect of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no person shall be deemed to control another person solely by reason of his being an officer or director of such other person. Subject to subsection (c) hereof, control shall be presumed to exist if any person directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of any other person.

(3) "Holding company" means any person who directly or indirectly controls any authorized insurer.

(4) "Controlled insurer" means an authorized insurer controlled directly or indirectly by a holding company.

(5) "Controlled person" means any person other than a controlled insurer, who is controlled directly or indirectly by a holding company.

(6) "Holding company system" means a holding company together with its controlled insurers and controlled persons.

(b) Notwithstanding the provisions of paragraph two of subsection (a) of this section, the superintendent may determine, after notice and opportunity to be heard, that a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the insurer's policyholders or shareholders that the person be deemed to control the insurer.

(c) The superintendent may determine upon application that any person does not or will not upon the taking of some proposed action control another person. Such determination shall be made within thirty days or such further period as the superintendent may prescribe. The filing of the application in good faith by any person shall relieve the applicant from any obligation or liability imposed by this article with respect to the subject of the application, except as contained in section one thousand five hundred six of this article, until the superintendent has acted upon the application. The superintendent may prospectively revoke or modify his determination, after notice and opportunity to be heard, whenever in his judgment revocation or modification is consistent with this article.

(d) For the purposes of this article only, every foreign life insurer which is authorized to do business in this state which is controlled by a person not authorized to do an insurance business in this state, and which, during its three preceding fiscal years taken together, or during any lesser period of time if it has been licensed to transact its business in New York only for such lesser period of time, has written an average of more gross premiums in the state of New York than it has written in its state of domicile during the same period, and such gross premiums written constitute twenty percent or more of its total gross premiums written everywhere in the United States for such three year or lesser period, as reported in its three most recent annual statements, shall be deemed a domestic insurer, provided written notice of the applicability of this subsection is given to such company by the superintendent prior to this article being applicable.

§ 1502. Exemptions

(a) Notwithstanding any other provision of this article the following shall not be deemed holding companies:

(1) authorized insurers, including alien insurers transacting business in this state through United States branches, or their subsidiaries; or

(2) the United States, a state or any political subdivision, agency or instrumentality thereof, or any corporation wholly owned directly or indirectly by one or more of the foregoing.

(b) The superintendent may conditionally or unconditionally exempt any specified person or class of persons from any obligation or liability under this article, if and to the extent he finds the exemption necessary or appropriate in the public interest or not adverse to the interests of policyholders or shareholders and consistent with the purposes of this article.

§ 1503. Registration

(a) Every person who becomes a controlled insurer shall, within thirty days thereafter register with the superintendent and such registration shall be amended within thirty days following any change in the identity of its holding company. The superintendent may grant reasonable extensions of the time to register.

(b) Every registrant shall furnish the superintendent with the following information concerning its holding company:

(1) a copy of its charter or articles of incorporation and by-laws;

(2) the identities of its principal shareholders, officers, directors and controlled persons; and

(3) information as to its capital structure and financial condition, and a description of its principal business activities.

§ 1504. Reporting; examination; publication

(a) Every controlled insurer shall file with the superintendent such reports or material as he may direct for the purpose of disclosing information concerning the operations of persons within the holding company system which may materially affect the operations, management or financial condition of the insurer.

(b) Every holding company and every controlled person within a holding company system shall be subject to examination by order of the superintendent if he has cause to believe that the operations of such persons may materially affect the operations, management or financial condition of any controlled insurer within the system and that he is unable to obtain relevant information from such controlled insurer. The grounds relied upon by the superintendent for such examination shall be stated in his order. Such examination shall be confined to matters specified in the order. The cost of such examination shall be assessed against the person examined and no portion thereof shall thereafter be reimbursed to it directly or indirectly by the controlled insurer.

(c) The superintendent shall keep the contents of each report made pursuant to this article and any information obtained in connection therewith confidential and shall not make the same public without the prior written consent of the controlled insurer to which it pertains unless the superintendent after notice and an opportunity to be heard shall determine that the interests of policyholders, shareholders or the public will be served by the publication thereof. In any action or proceeding by the superintendent against the person examined or any other person within the same holding company system a report of such examination published by him shall be admissible as evidence of the facts stated therein.

§ 1505. Transactions within a holding company system affecting controlled insurers

(a) Transactions within a holding company system to which a controlled insurer is a party shall be subject to the following:

(1) the terms shall be fair and equitable;

(2) charges or fees for services performed shall be reasonable; and

(3) expenses incurred and payments received shall be allocated to the insurer on an equitable basis in conformity with customary insurance accounting practices consistently applied.

(b) The books, accounts and records of each party to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(c) The superintendent's prior approval shall be required for the following transactions between a domestic controlled insurer and any person in its holding company system: sales, purchases, exchanges, loans or extensions of credit, or investments, involving five percent or more of the insurer's admitted assets at last year-end.

(d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:

(1) sales, purchases, exchanges, loans or extensions of credit, or investments, involving more than one-half of one percent but less than five percent of the insurer's admitted assets at last year-end;

(2) reinsurance treaties or agreements;

(3) rendering of services on a regular or systematic basis; or

(4) any material transaction, specified by regulation, which the superintendent determines may adversely affect the interests of the insurer's policyholders or shareholders.

Nothing herein contained shall be deemed to authorize or permit any transaction which, in the case of a non-controlled insurer, would be otherwise contrary to law.

(e) The superintendent, in reviewing transactions pursuant to subsections (c) and (d) hereof, shall consider whether they comply with the standards set forth in subsections (a) and (b) hereof and whether they may adversely affect the interests of policyholders.

(f) This section shall not apply to transactions subject to article sixteen or article seventeen or section one thousand four hundred eight or any sections of this chapter which impose notice or approval requirements greater than those in this section.

§ 1506. Acquisition or retention of control of insurers

(a) No person, other than an authorized insurer, shall acquire control of any domestic insurer, whether by purchase of its securities or otherwise, unless:

(1) it gives twenty days' written notice to the insurer, or such shorter period of notice as the superintendent permits, of its intention to acquire control, and

(2) it receives the superintendent's prior approval.

(b) The superintendent shall disapprove such acquisition if he determines, after notice and an opportunity to be heard, that such action is reasonably necessary to protect the interests of the people of this state. Only the following factors may be considered in making such determination:

- (1) the financial condition of the acquiring person and the insurer;
- (2) the trustworthiness of the acquiring person or any of its officers or directors;
- (3) a plan for the proper and effective conduct of the insurer's operations;
- (4) the source of the funds or assets for the acquisition;
- (5) the fairness of any exchange of shares, assets, cash or other consideration for the shares or assets to be received;
- (6) whether the effect of the acquisition may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein; and
- (7) whether the acquisition is likely to be hazardous or prejudicial to the insurer's policyholders or shareholders.

(c) (1) The following conditions affecting any controlled insurer, regardless of when such control has been acquired, are violations of this article:

- (A) the controlling person or any of its officers or directors have demonstrated untrustworthiness; and
- (B) the effect of retention of control, in the case of a domestic controlled insurer, may be substantially to lessen competition in any line of commerce in insurance or to tend to create a monopoly therein, or, in the case of a foreign or alien controlled insurer, may be substantially to lessen competition in any line of commerce in insurance in this state or to tend to create a monopoly therein.

(2) If, after notice and an opportunity to be heard, the superintendent determines that any of the foregoing violations exists, he shall issue an order based on written findings and cause the same to be served upon the insurer and all persons affected thereby directing any person found to be in violation hereof to take appropriate action to cure such violation. Upon the failure of any such person to comply with such order, section one thousand five hundred ten of this article shall become applicable.

(d) The superintendent may require the submission of such information as he deems necessary to determine whether any acquisition or retention of control complies with this article and may require, as a condition of approval of such acquisition or retention of control, that all or any portion of such information be disclosed to the insurer's shareholders.

(e) Unless subject to registration under section one thousand five hundred three of this article, or unless acquisition of its control is subject to subsections (a) and (b) hereof, every authorized insurer shall, within thirty days after any event requiring notice hereunder, notify the superintendent in writing of the identity of any person whom the insurer then knows or has reason to believe controls, or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer.

§ 1507. Management of controlled insurers

(a) Notwithstanding the control of an authorized insurer by any person, the insurer's officers and directors shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.

(b) Nothing herein shall preclude an authorized insurer from having or sharing a common management or cooperative or joint use of personnel, property or services with one or more other persons under arrangements meeting the standards of subsection (a) of section one thousand five hundred five of this article.

§ 1508. Acceptance of reports filed with government agencies

To the extent that any information or material is set forth in forms or other matter on file with any government agency or in a registration form filed with the superintendent by another person within the same holding company system, the controlled insurer may comply with the registration or reporting requirements of this article by referring in its registration form or report to such other filed matter and attaching a copy thereof certified by the insurer as a true and complete copy, to such registration form or report or, if such other filed matter is on file with the superintendent, incorporating such matter by reference.

§ 1509. Prohibition of indirect action

No holding company or controlled person shall directly or indirectly or through another person do or cause to be done for or in behalf of the controlled insurer any act intended to affect the insurance operations of the insurer which, if done by the insurer, would violate section four thousand two hundred twenty-eight, four thousand two hundred twenty-nine, four thousand two hundred thirty or any sections specified in section two thousand four hundred two of this chapter.

§ 1510. Violations; penalties; jurisdiction over non-domiciliaries

(a) In addition to any other penalty provided by law, the superintendent may, upon the wilful failure of any person within a holding company system to comply with this article or any regulation or order promulgated hereunder:

(1) proceed under article seventy-four of this chapter with respect to a domestic insurer within the holding company system;

(2) revoke or refuse to renew the authority to do business in this state of an authorized foreign or alien insurer within the holding company system or refuse to issue such authority to any other insurer in the system;

(3) request the attorney general to commence a proceeding utilizing the procedures of sections seven thousand four hundred seventeen and seven thousand four hundred eighteen of this chapter to enforce compliance or, where appropriate, for an order directing the termination of control of a domestic insurer; or

(4) direct that, in addition to any other penalty provided by law, such person forfeit to the people of this state a sum not exceeding five hundred dollars for a first violation and two thousand five hundred dollars for any subsequent violation. An additional sum not exceeding two thousand five hundred dollars shall be imposed for each month during which any such violation shall continue.

(b) If the superintendent finds after notice and opportunity to be heard that any domestic controlled insurer or any policyholder thereof has suffered any loss or damage because of the wilful violation of this article, or of any regulation or order promulgated hereunder, by any person within the insurer's holding company system, he may request the attorney general to maintain a civil action in the name of the people of the state or intervene in an action brought by or on behalf of the insurer or policyholder for the recovery of compensatory damages for the benefit of the insurer or policyholder or for other appropriate relief.

(c) As to any cause of action enumerated in this section a court may exercise personal jurisdiction over any non-domiciliary who controls or is an officer or director of a person who controls a domestic insurer.

ATTACHMENT

NEW YORK STATE INSURANCE LAW

ARTICLE 41. PROPERTY/CASUALTY INSURANCE COMPANIES

§ 4101. Definitions

In this article:

(a) "Basic kinds of insurance" means the kinds of insurance described in the following paragraphs of subsection (a) of section one thousand one hundred thirteen of this chapter numbered therein as set forth in parentheses below:

- fire (4);
- burglary and theft (7);
- glass (8);
- boiler and machinery (9);
- elevator (10);
- animal (11);
- personal injury liability (13);
- property damage liability (14)--basic as to stock companies only;
- workers' compensation and employers' liability (15);
- fidelity and surety (16);
- credit (17);
- marine and inland marine (20);
- marine protection and indemnity (21)--basic as to mutual companies only.

(b) "Non-basic kinds of insurance" means the kinds of insurance described in the following paragraphs of subsection (a) of section one thousand one hundred thirteen of this chapter numbered therein as set forth in parentheses below:

- accident and health (item (i) of (3));
- non-cancellable disability (item (ii) of (3));
- miscellaneous property (5);
- water damage (6);
- collision (12);
- property damage liability (14) - non-basic as to mutual companies only;
- motor vehicle and aircraft physical damage (19);
- inland marine as specified in marine and inland marine (20);
- marine protection and indemnity (21) -- non-basic as to stock companies only;
- residual value (22);
- credit unemployment (24);
- gap (26);
- prize indemnification (27);
- service contract reimbursement (28);
- legal services insurance (29);
- involuntary unemployment insurance (30) [fig 1];
- salary protection insurance (31).

§ 4102. Powers

(a) A property/casualty insurance company may be organized and licensed to write any one or more basic kinds of insurance.

(b) A property/casualty insurance company organized and licensed to write any one or more basic kinds of insurance, may be licensed to write non-basic kinds of insurance, subject to the following requirements (ref-

erences are to paragraphs of subsection (a) of section one thousand one hundred thirteen of this chapter describing kinds of insurance):

(1) If licensed to write burglary and theft (7), glass (8), boiler and machinery (9), elevator (10), animal (11), personal injury liability (13), property damage liability (14), workers' compensation and employers' liability (15), fidelity and surety (16) or credit (17), it may be licensed to write accident and health (item (i) of (3)), non-cancellable disability (item (ii) of (3)), water damage (6), collision (12), residual value (22), credit unemployment (24), gap (26) [fig 1], prize indemnification (27) [fig 2], service contract reimbursement [fig 3] (28) and involuntary unemployment (30);

(2) If licensed to write fire (4), it may be licensed to write miscellaneous property (5), water damage (6), collision (12), motor vehicle and aircraft physical damage (19) and inland marine as specified in marine and inland marine (20);

(3) If licensed to write marine and inland marine (20), it may be licensed to write collision (12), motor vehicle and aircraft physical damage (19), and marine protection and indemnity (21);

(4) If licensed to write personal injury liability (13) and property damage liability (14), it may be licensed to write motor vehicle and aircraft physical damage (19) and legal services insurance (29); and

(5) In the case of a mutual company licensed to write burglary and theft (7), glass (8), boiler and machinery (9), elevator (10), animal (11), personal injury liability (13), workers' compensation and employers' liability (15), fidelity and surety (16), or credit (17), it may be licensed to write property damage liability (14).

(c) A property/casualty insurance company organized and licensed to write any basic kind of insurance, may be licensed, except with respect to the kinds of insurance defined respectively in the following paragraphs of subsection (a) of section one thousand one hundred thirteen of this chapter: life insurance (1), annuities (2) and title insurance (18), to (i) reinsure risks of every kind or description and (ii) insure property or risks of every kind or description located or resident outside of the United States, its territories and possessions.

(d) A property/casualty insurance company complying with the provisions of this section shall meet all other applicable requirements of this article.

§ 4103. Stock companies; financial requirements

(a) (1) A stock property/casualty insurance company organized in the manner prescribed in subsection (a) of section one thousand two hundred one of this chapter may be licensed under subsection (e) of section one thousand one hundred two of this chapter to write one or more kinds of insurance as specified in TABLE ONE upon meeting the applicable paid-in capital and an additional amount of paid-in surplus for each kind of insurance licensed, in the aggregate at least equal to the requirements specified in TABLE ONE and every such company shall thereafter maintain a minimum capital at least equal to the amount specified in this section and a surplus to policyholders at least equal to the aggregate paid-in capital specified in TABLE ONE for the kind or kinds of insurance licensed.

TABLE ONE

Kind of insurance specified in the following numbered paragraphs of subsection (a) of S 1113: -----	Paid-in Capital -----	Paid-in Surplus -----
Group A:		
7	\$ 300,000	\$ 150,000
8, 9, 10, 11, or 14 - for each such kind	\$ 100,000	\$ 50,000
13 or 15 - for each such kind	\$ 500,000	\$ 250,000
16	\$ 900,000	\$ 450,000
17	\$ 400,000	\$ 200,000
Basic additional amount required for any one or more of the above kinds of insurance	\$ 100,000	\$ 50,000
3(i), 3(ii), 6<1> or 12<2>2 - for each such kind	\$ 100,000	\$ 50,000
22	\$ 2,000,000	\$ 1,000,000
24	\$ 400,000	\$ 200,000
26(B)	\$ 200,000	\$ 100,000
26(A), 26(C), or 26(D) - for each such kind	\$ 600,000	\$ 300,000
27	\$ 300,000	\$ 150,000
28	\$ 2,000,000	\$ 1,000,000
30	\$ 400,000	\$ 200,000
31	\$ 100,000	\$ 50,000
Group B:		
4<3> or 20<4> - for each such kind	\$ 500,000	\$ 500,000

Notes to TABLE ONE

<1> If licensed to write paragraph 4, no additional paid-in capital and surplus is required.

<2> If licensed to write paragraph 4 or 20, no additional paid-in capital and surplus is required.

<3> If licensed to write paragraph 4, no additional paid-in capital and surplus is required for a license to write paragraphs 5, 6, 12, 19 and 20 (inland marine only).

<4> If licensed to write paragraph 20, no additional paid-in capital and surplus is required for a license to write paragraphs 12, 19 and 21.

(2) A stock property/casualty insurance company licensed to write one or more of the kinds of insurance as specified in TABLE ONE, Group A, and having a minimum capital of one million dollars, may be licensed to write any other kind of insurance specified in TABLE ONE, Group A, upon at least having an initial surplus to policyholders equal to the aggregate of the paid-in capital and paid-in surplus specified in TABLE ONE for the kinds of insurance for which it is to be licensed, and shall thereafter maintain a surplus to policyholders at least equal to the aggregate paid-in capital prescribed in TABLE ONE for the kinds of insurance licensed or one million dollars, whichever is greater.

(3) A stock property/casualty insurance company licensed to write any kind of insurance specified in TABLE ONE, Group A, must have a minimum capital of one million dollars and a surplus to policyholders as specified in this paragraph before being licensed to write either kind of insurance specified in Group B. If licensed to write the kind or kinds of insurance specified in TABLE ONE, Group B, it may, in addition write any one or more kinds of insurance specified in TABLE ONE, Group A, provided it has a minimum capital of one million dollars and a surplus to policyholders as specified in this paragraph before being licensed to write any other kind or kinds of insurance specified in TABLE ONE, Group A. Every such company shall have an initial surplus to policyholders at least equal to the aggregate of the paid-in capital and paid-in surplus specified in TABLE ONE for the kinds of insurance for which it is to be licensed and shall thereafter maintain a surplus to

policyholders at least equal to the aggregate paid-in capital prescribed in TABLE ONE for the kinds of insurance licensed or one million dollars whichever is greater.

(4) A stock property/casualty insurance company licensed under subsection (c) of section four thousand one hundred two of this article to reinsure risks or write insurance on risks outside the United States, its territories and possessions, must maintain a surplus to policyholders of at least thirty-five million dollars.

(5) The dollar amounts set forth in paragraphs one (except the dollar amounts set forth for paragraphs (22), (24) and (26)), two and three of this subsection shall be reduced by fifty percent for a domestic stock property/casualty insurance company initially licensed to do business in this state prior to July first, nineteen hundred eighty-two.

(b) No foreign stock property/casualty insurance company shall be granted a license to do business in this state unless it has a paid-in capital and surplus at least equal, respectively, to the amounts required by subsection (a) hereof for the organization of a domestic company to write the same kind or kinds of insurance which such foreign company is to be licensed to write in this state, and every such company shall thereafter maintain a minimum capital and a surplus to policyholders at least equal to the amount required of a domestic company licensed for the same kind or kinds of insurance.

(c) No alien stock property/casualty insurance company shall be granted a license to write any kind of insurance specified in TABLE ONE, Group A, except as permitted by the provisions of notes <1> and <2> to TABLE ONE, unless it has a trustee surplus, as defined in section one thousand three hundred twelve of this chapter, at least equal in amount to one hundred fifty percent of the paid-in capital set forth in TABLE ONE for such kind or kinds of insurance, nor to write any kind of insurance specified in TABLE ONE, Group B, unless it has such a trustee surplus at least equal in amount to two hundred percent of the paid-in capital set forth in TABLE ONE for such kind or kinds of insurance. Every such insurer shall thereafter maintain a trustee surplus at least equal to the paid-in capital set forth in TABLE ONE for such kind or kinds of insurance.

(d) The financial requirements specified in subsections (b) and (c) hereof shall be reduced by fifty percent for a foreign or alien stock property/casualty insurance company initially licensed to do business in this state prior to July first, nineteen hundred eighty-two, but such reduction shall not apply to such a foreign or alien insurer licensed under subsection (c) of section four thousand one hundred two of this article to reinsure risks or write insurance on risks outside the United States, its territories and possessions. Such reduction shall also not apply to the financial requirements specified in subsection (a) of this section in order to write paragraph twenty-two, twenty-four or twenty-six.

§ 4104. Deposits

(a) Before being licensed to write one or more of the kinds of insurance defined respectively in the following paragraphs of subsection (a) of section one thousand one hundred thirteen of this chapter: burglary and theft (7), glass (8), boiler and machinery (9), elevator (10), animal (11), personal injury liability (13), property damage liability (14), workers' compensation and employers' liability (15), fidelity and surety (16), or credit (17), a domestic property/casualty insurance company shall have made a deposit with the superintendent of eligible securities in an amount of at least five hundred thousand dollars or the amount required as paid-in capital or minimum surplus for the kind or kinds of insurance which such company is to be licensed to write, whichever is the lesser, but in no event shall the amount of the deposit be less than four hundred thousand dollars for any stock company writing any two kinds of insurance designated in this subsection.

(b) Before being licensed pursuant to subsection (c) of section four thousand one hundred two of this article to reinsure risks or to write insurance on risks outside of the United States, its territories and possessions, a domestic property/casualty insurance company shall have made a deposit with the superintendent of eligible securities in an amount of at least three million dollars. Such deposit shall be inclusive of any deposit required by subsection (a) or (c) hereof.

(c) Before being authorized to issue non-assessable policies pursuant to section four thousand one hundred thirteen of this article, a domestic mutual property/casualty insurance company shall have made a deposit with the superintendent of eligible securities in an amount of at least five hundred thousand dollars. Such deposit shall be inclusive of any deposit required by subsection (a) or (b) hereof.

(d) Before being granted any license or renewal license, every foreign property/casualty insurance company shall have made a deposit with the superintendent of eligible securities in an amount not less than the amount required for a similar domestic property/casualty insurance company. The superintendent shall accept in lieu of such deposit a certificate of the proper state officer of the state under whose laws such company is organized showing that such company has deposited with the proper officer of such state, in trust for the benefit and protection of, or for the security of, all of its policyholders, or of all of its policyholders and creditors, securities valued at an amount not less than the amount hereinbefore specified. Such certificate and deposit shall be governed by the provisions of sections one thousand three hundred eighteen and one thousand three hundred nineteen of this chapter.

(e) The dollar amounts of the deposits specified in subsections (a) and (c) hereof shall be reduced by fifty percent for any property/casualty insurance company initially licensed to do business in this state prior to July first, nineteen hundred eighty-two.

§ 4105. Domestic stock companies; declaration and payment of dividends

(a) Except as provided in subsection (c) hereof no domestic stock property/casualty insurance company shall declare or distribute any dividend to shareholders except out of earned surplus. No such company shall declare or distribute any dividend to shareholders which, together with all dividends declared or distributed by it during the next preceding twelve months, exceeds the lesser of ten percent of its surplus to policyholders as shown by its last statement on file with the superintendent, or one hundred percent of adjusted net investment income during such period unless, upon prior application therefor, the superintendent approves a greater dividend distribution based upon his finding that the insurer will retain sufficient surplus to support its obligations and writings.

In this section,

(1) "earned surplus" means the portion of the surplus that represents the net earnings, gains or profits, after deduction of all losses, that have not been distributed to the shareholders as dividends, or transferred to stated capital or capital surplus or applied to other purposes permitted by law but does not include unrealized appreciation of assets;

(2) "adjusted net investment income" means net investment income for the twelve months immediately preceding the declaration or distribution of the current dividend increased by the excess, if any, of net investment income over dividends declared or distributed during the period commencing thirty-six months prior to the declaration or distribution of the current dividend and ending twelve months prior thereto; and

(3) "surplus" means the amount of the insurer's admitted assets in excess of its capital and liabilities, and both "surplus" and "surplus to policyholders" include any voluntary reserves, or any part thereof, which are not required by law.

(b) If the superintendent finds, after notice and hearing, that any such company has distributed any dividend in violation of this section, he may order the company to cease doing any new business until the amount of the dividend has been restored to the company. The directors of any such company who vote in favor of the declaration and distribution of any dividend in violation of this section shall, in addition to all other liabilities or penalties prescribed by law, be jointly and severally liable to the creditors, including policyholder creditors, of the company to the extent of the dividend so declared and distributed, and every shareholder receiving any such dividend shall be liable to the creditors of the company to the extent of the dividend received by such shareholder.

(c) Such company may declare and distribute a stock dividend to its shareholders whenever it shall have a surplus, as defined in subsection (a) hereof, in an amount at least equal to the sum of the dividend and thirty percent of its unearned premium liability as shown by its last statement on file with the superintendent and, for such purpose, the company may increase its capital stock from such surplus in the manner prescribed in section one thousand two hundred six of this chapter, and it shall distribute the additional or increased stock to its shareholders in proportion to the stock held by each, respectively.

§ 4106. Stock companies; participating policies

A stock property/casualty insurance company authorized to do business in this state may include in its charter a provision authorizing the board of directors to permit its policyholders from time to time to participate in the profits of its operations through the payment of dividends to policyholders. For the purpose of carrying into effect this provision, the board of directors may from time to time make reasonable classifications of policies. Every such classification of risks shall be filed with the superintendent and shall not be effective as to policies issued or delivered in this state unless approved by the superintendent as fair and equitable and not unfairly discriminatory. Any classification approved by the superintendent shall remain in effect in this state until disapproved by him or until withdrawn or modified with his approval by the company filing the same. No dividends to policyholders shall be declared or paid by any such company except out of its earned surplus as defined in subsection (a) of section four thousand one hundred five of this article.

§ 4107. Domestic mutual companies; financial and other requirements

(a) (1) A mutual property/casualty insurance company organized in the manner prescribed in subsection (a) of section one thousand two hundred one of this chapter may be licensed pursuant to subsection (e) of section one thousand one hundred two of this chapter to write any one kind (but only one kind except as hereinafter in this section provided) of insurance as specified in TABLE TWO upon at least meeting the requirements set forth therein. In this section, "initial surplus" means the paid-in initial surplus required pursuant to subparagraph (A) of paragraph nine of subsection (a) of section one thousand two hundred one and subparagraph (B) of paragraph one of subsection (e) of section one thousand one hundred two of this chapter, and "minimum surplus" means the surplus required to be maintained unimpaired after a company is licensed to do business.

TABLE TWO

Kind of insurance specified in the following numbered paragraphs of subsection(a) of § 1113	Number of Members	Number of Applications	Number of Separate Risks	Number of Insurance Policies	Initial Surplus	Minimum Surplus to be Maintained	Other Requirements
4	50	300	300	---	\$ 300,000<1>	\$ 200,000	see note<2>
7	20	20	200	20	\$ 300,000	\$ 200,000	see note<3>
8	20	20	300	20	\$ 150,000	\$ 100,000	see note<3>
9	20	20	200	20	\$ 300,000	\$ 200,000	see note<3>
10	20	20	300	20	\$ 150,000	\$ 100,000	see note<3>
11	20	20	300	20	\$ 150,000	\$ 100,000	see note<3>
13	100	100	500<4>	---	\$ 500,000<5>	\$ 400,000<5>	see note<6>
15	40 <7>	40	2500<7>	---	\$ 500,000	\$ 400,000	see note<6>
	30 <7>	30	5000<7>	---	\$ 500,000	\$ 400,000	see note<6>
	20 <7>	20	7500<7>	---	\$ 500,000	\$ 400,000	see note<6>
	10 <7>	10	10,000<7>	---	\$ 500,000	\$ 400,000	see note<6>
16	---	---	---	---	\$ 1,500,000	\$ 1,000,000	
17	20	20	2000	20	\$ 750,000	\$ 500,000	see note<3>
20	50	300	300	---	\$	\$ 500,000<8>	see note<9>
					1,000,000<8>		
21	20	20<10>	200<11>	---	\$ 500,000	\$ 500,000	see note<12>

Notes to TABLE TWO

<1> If licensed to write paragraph 4, no additional surplus is required for a license to write paragraphs 5, 6, 12, 19 and 20 (inland marine only).

<2> The aggregate premiums in respect to the separate risks shall be at least \$ 100,000 and each applicant shall have paid one-half of the premium payable with the balance due upon the issuance of the policy.

<3> Shall have received cash from each applicant at least equal to 1/2 of the annual premium on the policy.

<4> Not more than 5 risks from any one member.

<5> If licensed to write paragraph 13, no additional surplus is required for a license to write paragraphs 6, 12 and 14.

<6> The aggregate annual premium cost of such insurance shall be at least \$ 50,000.

<7> Substitute "employers" for "members" and "employees" for "separate risks".

<8> If licensed to write paragraph 20, no additional surplus is required for a license to write paragraphs 12, 19, and 21.

<9> The aggregate amount of cash received for the premiums on the policies applied for shall be at least \$ 150,000.

<10> The 20 applications shall be from persons, firms, corporations, associations or joint stock companies, each owning, operating or chartering one or more vessels.

<11> Applicants shall take insurance covering in the aggregate at least 200 vessels having an aggregate gross tonnage of at least 500,000 tons.

<12> Shall have received cash, from such applicants, on account of the premiums on the respective policies applied for, a sum at least equal to 20 cents per ton upon such aggregate gross tonnage.

(2) A mutual property/casualty insurance company whose membership is limited to hospitals may be organized in the manner prescribed in subsection (a) of section one thousand two hundred one of this chapter and may be licensed pursuant to subsection (e) of section one thousand one hundred two of this chapter to write the kinds of insurance specified in paragraph thirteen or fourteen of subsection (a) of section one thousand one hundred thirteen of this chapter provided (i) it shall have applications from at least forty members on at least forty separate risks, (ii) the total annual premium cost shall be at least seven hundred fifty thousand dollars, (iii) it shall have an initial surplus of at least five hundred thousand dollars and shall maintain a surplus of at least four hundred thousand dollars and (iv) it shall receive from its members advances pursuant to the requirements of section one thousand three hundred seven of this chapter averaging not less than one-third of the average annual indicated premium, but the total thereof shall not be less than the initial minimum surplus.

(b) If licensed to write any kind of insurance specified in TABLE TWO, a mutual property/casualty insurance company may in addition write any one or more of the kinds of insurance specified in Group A and/or Group B of TABLE THREE, and if licensed to write any kind of insurance specified in Group A, it may in addition write any one or more of the kinds of insurance specified in Group C of TABLE THREE, in either case, upon at least meeting the initial surplus requirement prescribed in TABLE THREE for the kinds of insurance for which it is to be licensed. It shall thereafter maintain the minimum surplus prescribed in TABLE THREE for the kinds of insurance licensed.

TABLE THREE

Kind of insurance specified in the following numbered paragraphs of subsection (a) of S 1113: -----	Initial<1> Surplus -----	Surplus<1> be Maintained -----
Group A:		
7 or 9 - for each such kind	\$ 100,000	\$ 100,000
8, 10 or 11 - for each such kind	\$ 50,000	\$ 50,000
13<2>, 15 or 17 - for each such kind	\$ 300,000	\$ 300,000
16	\$ 900,000	\$ 900,000
Group B:		
4<3>	\$ 300,000	\$ 200,000
20<4>	\$ 1,000,000	\$ 500,000
Group C:		
3(i) or 3(ii) - for each such kind	\$ 100,000	\$ 100,000
22	\$ 3,000,000	\$ 2,000,000
24	\$ 300,000	\$ 300,000
26(B)	\$ 300,000	\$ 200,000
26(A), 26(C), or 26(D) - for each such kind	\$ 900,000	\$ 600,000
28	\$ 3,000,000	\$ 2,000,000
6<5>, 12<6> or 14<2> - for each such kind	\$ 50,000	\$ 50,000
27	\$ 300,000	\$ 150,000
30	\$ 300,000	\$ 300,000
31	\$ 100,000	\$ 100,000

Notes to TABLE THREE

<1> The amounts shown in TABLE THREE are added to the initial and minimum surplus for the kind of insurance for which the mutual was organized as set forth in TABLE TWO. In addition, if organized to write paragraphs 4, 20 or 21 the initial and minimum surplus required for paragraphs 7, 8, 9, 10, 11, 13, 15, 16 or

17 shall be determined from TABLE TWO for the kind of insurance with the highest initial surplus requirement as indicated in TABLE TWO. After such determination use TABLE THREE to derive the initial and minimum surplus requirements for all other kinds of insurance.

<2> If licensed to write paragraph 13, no additional surplus is required for a license to write paragraphs 6, 12, and 14.

<3> If licensed to write paragraph 4, no additional surplus is required for a license to write paragraphs 5, 6, 12, 19 and 20 (inland marine only).

<4> If licensed to write paragraph 20, no additional surplus is required for a license to write paragraphs 12, 19, and 21.

<5> If licensed to write paragraph 4 or 13, no additional initial and minimum surplus is required.

<6> If licensed to write paragraphs 4, 13 or 20, no additional initial and minimum surplus is required.

(c) A mutual property/casualty insurance company licensed pursuant to paragraph four of subsection (b) of section four thousand one hundred two of this article to write the kind of insurance specified in paragraph nineteen of subsection (a) of section one thousand one hundred thirteen of this chapter must maintain a minimum surplus of at least six hundred thousand dollars.

(d) A mutual property/casualty insurance company licensed pursuant to subsection (c) of section four thousand one hundred two of this article to reinsure risks or write insurance on risks outside the United States, its territories and possessions, must maintain a surplus to policyholders of at least thirty-five million dollars.

(e) The dollar amounts of initial surplus, minimum surplus and surplus to policyholders set forth in subsections (a), (b) and (c) of this section shall be reduced by fifty percent for any mutual property/ casualty insurance company initially licensed to do business in this state prior to July first, nineteen hundred eighty-two. Such reduction shall not apply to the financial requirements specified in subsection (b) of this section in order to write paragraph twenty-two, twenty-four or twenty-six.

(f) Notwithstanding any provision of this section to the contrary, if licensed to write the kind of insurance specified in paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of this chapter, a mutual property/casualty insurance company may be licensed for the purposes of article nine of the workers' compensation law to write the kind of insurance specified in item (i) of paragraph three of subsection (a) of section one thousand one hundred thirteen of this chapter without having any additional surplus.

§ 4108. Foreign and alien mutual companies; licensing

(a) No foreign or alien mutual property/casualty insurance company shall be granted a license to do business in this state unless it substantially complies with all of the requirements set forth in this chapter for a domestic mutual property/casualty insurance company licensed to write the same kind or kinds of insurance.

(b) No alien mutual property/casualty insurance company shall be authorized to do business in this state unless it maintains a trusteed surplus, as required by section one thousand three hundred twelve of this chapter, at least equal to the surplus to policyholders required to be maintained by a domestic stock property/casualty insurance company licensed to write the same kind or kinds of insurance.

(c) The financial requirements specified in subsections (a) and (b) hereof shall be reduced by fifty percent for a foreign or alien mutual property/casualty insurance company initially licensed to do business in this state prior to July first, nineteen hundred eighty-two, but such reduction shall not apply to such a foreign or alien insurer licensed under subsection (c) of section four thousand one hundred two of this article to reinsure risks or write insurance on risks outside the United States, its territories and possessions. Such reduction

shall also not apply to the amounts required in order to write paragraph twenty-two, twenty-four or twenty-six of subsection (a) of section one thousand one hundred thirteen of this chapter.

§ 4109. Mutual companies; special contingent surplus

(a) A domestic mutual property/casualty insurance company licensed to write any of the kinds of insurance defined respectively in the following paragraphs of subsection (a) of section one thousand one hundred thirteen of this chapter: accident and health (item (i) of (3)), non-cancellable disability (item (ii) of (3)), burglary and theft (7), glass (8), boiler and machinery (9), elevator (10), animal (11), personal injury liability (13), property damage liability (14), workers' compensation and employers' liability (15), fidelity and surety (16) or credit (17), shall establish on its general ledger a special contingent surplus and shall thereafter maintain the same unimpaired so long as it is licensed to write one or more of the foregoing kinds of insurance. An impairment exists in the surplus of any such company at any time when the aggregate value of its admitted assets is less than the amount of all of its liabilities and the special contingent surplus which it is required to maintain at such time.

(b) During each full calendar year except the first two full calendar years next following the calendar year in which such company was licensed to write any kind of insurance specified in subsection (a) hereof, the amount of such contingent surplus shall exceed the required amount thereof at least year-end, by an amount at least equal to one and one-half percent of the net premium income received for the kinds of insurance referred to in subsection (a) hereof during such whole calendar year, until the amount of such contingent surplus shall be at least equal to the amount of surplus to policyholders required under section four thousand one hundred three of this article to be maintained by a similar domestic stock property/casualty insurance company licensed to do any one or more of the kinds of insurance specified in subsection (a) hereof. Such special contingent surplus, by whatever name called, shall be inclusive of the minimum surplus required by the provisions of this chapter and shall be exclusive of any divisible surplus available for the payment of dividends.

(c) No domestic mutual property/casualty insurance company shall declare or pay any dividend to policyholders if, after the payment of such dividend, its special contingent surplus as herein required will be impaired. The declaration and payment of dividends by any such company shall be subject to the provisions of section one thousand two hundred eleven of this chapter.

(d) Any domestic mutual property/casualty insurance company shall be authorized in any year to further increase its special contingent surplus by an amount in excess of the annual accumulation required by this section, and any such excess shall be credited upon the amount which otherwise it would have been required to accumulate by the provisions of this section in any subsequent year or years.

(e) The superintendent may refuse to issue a license or renewal license to do an insurance business in this state to any foreign or alien mutual property/casualty insurance company which does not comply in substance with this section applicable to a similar domestic mutual property/casualty insurance company licensed to write the same kind or kinds of insurance.

§ 4110. Domestic mutual companies; expense limits

(a) No domestic mutual property/casualty insurance company licensed to write a kind of insurance specified in paragraph seven, eight, nine, ten, eleven, thirteen, fourteen, fifteen, sixteen or seventeen of subsection (a) of section one thousand one hundred thirteen of this chapter shall expend in any one calendar year for management expenses a greater amount than thirty percent of the sum of its net premium income and seventy-five percent of its investment income for such year; provided that any insurer whose principal line of business is medical malpractice liability insurance or any insurer who is the subject of a proceeding pursuant to article seventy-four of this chapter shall not expend in any one calendar year for management expenses, a greater amount than thirty percent of its net premium income for such year. Management expenses shall be held to

include all expenses of the company except expenses incurred in the investigation, adjustment and settlement of claims, taxes, fees and expenses of examination, and taxes, repairs and expenses on real estate. In applying the provisions of this section the net premium income of, and expenses of, boiler and machinery insurance or elevator insurance shall not be included.

(b) Subsection (a) hereof shall not apply to a mutual company organized before the effective date of this chapter as a domestic mutual fire or marine or marine protection and indemnity company.

§ 4111. Mutual companies; assessments

(a) Except as provided in section four thousand one hundred thirteen of this article, every domestic mutual property/casualty insurance company shall in its by-laws and policies prescribe the contingent mutual liability of its members for the payment of assessments, in such a way that each member shall be liable to pay the member's proportionate share, subject to the limitations hereinafter specified, of the amount of any assessment or assessments permitted for any purpose under any provisions of this chapter or necessary to make good an impairment of the minimum surplus of such company. The contingent liability of a member may be limited to an amount not less than one additional annual premium on each policy held by a member. The aggregate amount of all assessments whether levied by the board of directors of such insurer or by the superintendent as liquidator or rehabilitator of the insurer, or otherwise, shall be no greater amount than that specified in the by-laws and policies. Except as provided in section four thousand one hundred thirteen of this article, no such insurance company shall make, issue or deliver any policy of insurance, which does not prescribe the contingent liability of the policyholder in clear and explicit language printed in type not smaller than eight point.

(b) If any domestic mutual property/casualty insurance company does not have admitted assets at least equal in amount to the aggregate of its liabilities and its minimum surplus as required by the provisions of this chapter, and if such impairment is not otherwise made good, the board of directors of the company may, with the approval of the superintendent and within such time as he prescribes, order an assessment in the manner specified in the by-laws for an amount which will provide sufficient funds to make good the impairment, except that no member shall be liable for an assessment exceeding the limit specified in his policy in accordance with subsection (a) hereof. All orders of assessment made by the board of directors shall be filed with the superintendent and shall not take effect unless and until approved by him. The superintendent may refuse any such approval if, in his judgment, refusal will best promote the interests of the policyholders and creditors of the company, and of the insuring public. Every assessment shall be made upon all members liable to assessment therefor in the proportion hereinafter specified. Every person, firm or corporation who or which was a member of such company at any time during one year prior to the making of an order of assessment by the board of directors shall be liable to pay and shall pay the member's proportionate share of any assessment which may be made in accordance with law, if the member is notified of the assessment within one year after making of an order of assessment. A member's proportionate part of any assessment shall be determined by applying to the premium earned on the member's policy or policies in force during a period of one year next preceding the order of assessment the ratio of the total assessment to the total premiums earned during such period on all policies subject to assessment.

(c) Unless specifically authorized by the provisions of this chapter to issue non-assessable policies in this state, no foreign mutual property/casualty insurance company shall be or continue to be authorized to do business in this state unless its by-laws and policies issued in this state contain provisions for the levying and collection of assessments upon members, at least for the payment of losses and expenses, which conform in substance to subsection (b) hereof.

(d) In the case of a mutual property/casualty insurance company subject to paragraph two of subsection (a) of section four thousand one hundred seven of this article, an assessment authorized by this section shall be made when, in addition to the grounds set forth in this section, if the ratio of net premium writings to surplus as regards policyholders is four to one or greater, based upon the last annual statement or any quarterly statement projected on an annual basis, subject to the approval of the superintendent, and if, at any time,

upon examination, the superintendent determines that an assessment should be made pursuant to subsection (b) hereof or this subsection the superintendent shall make an appropriate order that the assessment be made.

§ 4112. Mutual companies; protection against assessments

No domestic mutual property/casualty insurance company and no officer or representative thereof shall make any contract whether on behalf of such company or of all or any of its policyholders, whereby the company or the policyholders are insured or indemnified against the imposition or payment of assessments which may be made upon members of the company, if the contract is cancellable or otherwise terminable by any party thereto upon the giving of notice of cancellation or termination within a period of less than one year before the effective date of the cancellation or termination.

§ 4113. Mutual companies; non-assessable policies

(a) Every mutual property/casualty insurance company licensed to do business in this state, if its charter or by-laws permit or are amended to permit the issuance of policies without contingent mutual liability of the policyholder for assessment, may with the permission of the superintendent issue non-assessable policies in this state upon compliance with the following requirements:

(1) It shall maintain a surplus, as determined from its latest filed statement, which together with its unearned premium reserve from its latest filed statement is at least equal to the surplus to policyholders required to be maintained by a domestic stock property/casualty insurance company licensed to write the same kind or kinds of insurance.

(2) It shall have submitted a copy of its proposed non-assessable policy or policies for approval of the superintendent, and shall have obtained his approval.

(b) Every policy issued by any such company shall clearly state whether or not the holder of the policy is subject to a liability for assessment.

(c) Any surplus required for the purposes specified in this section shall be inclusive of any surplus required by any other sections of this chapter.

(d) A mutual property/casualty insurance company subject to paragraph two of subsection (a) of section four thousand one hundred seven of this article and subject to subsection (d) of section four thousand one hundred eleven of this article may with the prior approval of the superintendent amend its charter and by-laws to permit the issuance of policies without contingent mutual liability of the policyholder and may with the permission of the superintendent issue non-assessable policies in this state upon compliance with the requirements of this section.

(e) The financial requirement specified in paragraph one of subsection (a) hereof shall be reduced by fifty percent for a mutual property/casualty insurance company initially licensed to do business in this state prior to July first, nineteen hundred eighty-two.

§ 4114. Mutual companies; dividends

The board of directors of a mutual property/casualty insurance company may from time to time fix and determine an amount to be declared and paid as a dividend or as a return of unused or unabsorbed premiums or premium deposits on policies, retaining such sums as they may deem necessary to meet outstanding policy obligations and for the maintenance of reserves and surplus as herein provided. The determination, declaration and payment of such dividend shall be subject to section one thousand two hundred eleven of this chapter. In declaring any dividend to policyholders, the board of directors may make reasonable classifica-

tions of policies. Every such classification shall be filed with the superintendent and shall not become effective unless approved by the superintendent as fair, equitable, not impracticable in operation and not unfairly discriminatory. Any such classification approved by the superintendent shall remain in effect until disapproved by the superintendent or until withdrawn with the superintendent's approval by the company filing the same. The requirements as to filing and approval, as applied to any foreign or alien mutual property/casualty insurance company, shall apply only to risks located or resident in this state.

§ 4115. Certain mutual companies existing prior to January first, nineteen hundred forty

(a) Notwithstanding the provisions of sections four thousand one hundred eleven, four thousand one hundred thirteen and four thousand one hundred fourteen of this article, any domestic mutual property/casualty insurance company heretofore organized as a domestic mutual marine and fire insurance company under special act of this state and reincorporated pursuant to former section fifty-two of the insurance law in effect immediately before January first, nineteen hundred forty and doing business immediately prior to such date, may continue to issue non-assessable policies in accordance with its charter powers, without making any deposit, if and so long as it maintains a surplus of not less than one million dollars.

(b) Notwithstanding the provisions of sections one thousand two hundred nine and one thousand two hundred eleven of this chapter and section four thousand one hundred fourteen of this article, any such domestic mutual insurance company of the kind specified in subsection (a) hereof, may continue to issue both participating and non-participating policies or contracts of insurance, in accordance with its charter, and may continue to exercise its existing charter powers as to the qualification of its members and trustees and as to the election and powers of its board of trustees.

§ 4116. Domestic mutual companies; voting rights of members

The charter or by-laws of any domestic mutual property/casualty insurance company may, with the approval of the superintendent pursuant to section one thousand two hundred nine of this chapter, provide for the distribution of voting power, at all meetings of the corporation, among the members on the basis of the amount of insurance held, the number of policies held, or the amount of premiums paid, by the member or on any other basis which the superintendent finds to be fair and equitable; but in any event every member whose insurance is in force at the time of the election shall be entitled to at least one vote, and no member shall be entitled to more than ten votes.

§ 4117. Loss and loss expense reserves

(a) In determining the financial condition of any property/casualty insurance company for the purpose of applying the provisions of this chapter, and in any financial statement or report of any such company, there shall be included in the liabilities of such company loss reserves and loss expense reserves at least equal to the amounts required under the provisions of this section, and the amount of such reserves shall be diminished by allowance or credit for reinsurance recoverable from assuming insurers in accordance with paragraph fourteen of subsection (a) of section one thousand three hundred one of this chapter. The date as of which such determination, statement or report is made is hereinafter referred to as the date of determination.

(b) For all outstanding losses and loss expenses, the reserves shall include the following:

(1) the aggregate estimated amounts due or to become due on account of all known losses and claims and loss expenses incurred but not paid, including the estimated liability on any notice received by the company of the occurrence of any event which may result in a loss;

(2) the aggregate amounts of liability for all losses and loss expenses incurred but on which no notice has been received, estimated in accordance with the company's prior experience, if any, otherwise in accordance with the experience of similar companies under similar contracts of insurance. The estimated liabilities

for such losses under all its bonds, policies or contracts of fidelity insurance, shall be not less than ten percent of the net premiums in force thereon, and the estimated liabilities for all such losses under all its surety contracts shall be not less than five percent of the net premiums in force thereon.

(c) Except as provided in subsection (e) hereof the minimum reserves for outstanding losses and loss expenses under policies of personal injury liability insurance and under policies of employers' liability insurance, where the losses were incurred during the three years immediately preceding the date of determination, shall be calculated in accordance with any method adopted or approved by the National Association of Insurance Commissioners and shall be not less than the aggregate of the estimated unpaid losses and loss expenses for claims incurred computed in accordance with subsection (b) hereof.

(d) The minimum reserves for outstanding losses and loss expenses under policies of workers' compensation insurance, except as provided in subsection (e) hereof, shall be computed as follows:

(1) For all such compensation policies where losses were incurred more than three years prior to the date of determination, such reserves shall be the sum of the present values, at percent interest per annum, of the determined and estimated unpaid losses computed on an individual case basis plus the estimated unpaid loss expenses computed in accordance with subsection (b) hereof.

(2) Where losses were incurred during the three years immediately preceding the date of determination, such reserves shall be the sum of the reserves for each year, which shall be calculated in accordance with any method adopted or approved by the National Association of Insurance Commissioners and shall be not less than the sum of the present values, at five percent interest per annum, of the determined and estimated unpaid losses computed on an individual case basis plus the estimated unpaid loss expenses computed in accordance with subsection (b) hereof.

(e) Whenever in the judgment of the superintendent, the loss and loss expense reserves of any property/casualty insurance company doing business in this state calculated in accordance with the foregoing provisions are inadequate or excessive, he may prescribe any other basis which will produce adequate and reasonable reserves.

(f) Every property/casualty insurance company doing business in this state shall keep a complete and itemized record showing all losses and claims on which it has received notices including all notices received by it of the occurrence of any event which may result in a loss.

(g) (1) Effective with the nineteen hundred ninety annual statement, every licensed property/casualty insurer required to file such annual statement with the superintendent by the following April first, shall, unless exempted by the superintendent, engage a qualified independent loss reserve specialist for the following year to render an opinion as to the adequacy of its loss and loss adjustment expense reserves when two of three of such insurer's results of its loss and loss adjustment expense ratios as indicated below are outside of the indicated acceptable ranges:

(A) One Year Reserve Development to Surplus

Add the year-end estimate of the losses that were outstanding one year earlier to the payments on those losses made during that year. The difference between that sum and the reserves that were established at the end of the prior year is the one-year reserve development. The ratio of one-year reserve development to prior year's surplus is the deficiency or redundancy. The acceptable range is less than twenty-five percent deficiency. Any redundancy is acceptable.

(B) Two Year Reserve Development to Surplus

Add the year-end estimate of the losses that were outstanding two years earlier to the payments on those losses made during those two years. The difference between that sum and the reserves that were established at the end of the second prior year is the two-year reserve development. The ratio of two-year reserve development to the second prior year's surplus is the deficiency or redundancy. The acceptable range is less than twenty-five percent deficiency. Any redundancy is acceptable.

(C) Estimated Current Reserve Deficiency to Surplus

For the last two years the reserves as stated in those years are adjusted by the one-year or two-year reserve development as calculated in the above two ratios. This total is then divided by the net premium

earned in the appropriate year to obtain the developed reserve to premium ratio. The estimated reserves required is the current net premium earned multiplied by the average ratio between developed reserves and earned premium for the last two years. The estimated deficiency is the difference between the estimated reserves required by the company and the actual reserves maintained. The estimated current reserve deficiency or redundancy is taken as a percentage of surplus and the acceptable range is less than twenty-five percent deficiency. Any redundancy is acceptable.

(2) Such opinion shall be submitted by the qualified loss reserve specialist to the insurer and the superintendent, by such date established by the superintendent. For the purposes of this section, a "qualified independent loss reserve specialist" shall mean a person who is not an employee, principal or director or indirect owner of the insurer and is a member of the Casualty Actuarial Society, or has such other experience as is acceptable to the superintendent to assure a professional opinion on the adequacy of loss and loss adjustment expense ratios.

(3) Nothing in this subsection shall be construed to restrict or diminish any right or power of the superintendent under any other provision of this chapter.

(4) The superintendent shall keep the contents of each report made pursuant to this subsection and any information obtained in connection therewith confidential and shall not make the same public without the prior written consent of the insurer to which it pertains unless the superintendent after notice and an opportunity to be heard shall determine that the interests of policyholders, shareholders or the public will be served by the publication thereof.

§ 4118. Limitation of risks; fidelity and surety; fire; hospital mutuals

(a) (1) In applying the limitation of section one thousand one hundred fifteen of this chapter to fidelity and surety risks the net amount of exposure on any one fidelity or surety risk shall, except as provided in paragraph four hereof, be deemed within the limit of ten percent if the company is protected in excess of that amount by:

(A) reinsurance in a company authorized to write such business in this state or reinsurance in an accredited reinsurer, as defined in subsection (a) of section one hundred seven of this chapter, which is in such form as to enable the obligee or beneficiary to maintain an action thereon against the ceding insurer jointly with the assuming insurer or, where the commencement or prosecution of actions against the ceding insurer has been enjoined by any court of competent jurisdiction or any justice or judge thereof, against the assuming insurer alone, and to have recovery against the assuming insurer for its share of the liability thereunder and in discharge thereof; or

(B) the co-suretyship of any other company authorized to do such business in this state; or

(C) a deposit of property with it in pledge or conveyance of property to it in trust for its protection; or

(D) a conveyance or mortgage of property for its protection; or

(E) in case a suretyship or guaranty obligation was made on behalf or on account of a fiduciary holding property in a trust capacity, by such a deposit or other disposition of a portion of the property so held in trust that no future sale, mortgage, pledge or other disposition can be made thereof except with the consent of the insurance company or by decree or order of a court of competent jurisdiction.

(2) Notwithstanding the provisions of paragraph one hereof, a company may execute bonds of the kind commonly known as transportation or warehousing bonds for United States internal revenue taxes in a net amount not exceeding twenty percent of its surplus to policyholders, determined as provided in paragraph one hereof.

(3) In determining the net amount of exposure on any one risk, the following rules shall be applicable to the kinds of obligations hereinafter described:

(A) When the penalty of a suretyship obligation exceeds the amount of a judgment prescribed therein as appealed from and thereby secured, or exceeds the amount of the subject matter in controversy or of the estate in the hands of the fiduciary for the performance of whose duties it is conditioned, the bond may be executed by such company if the actual amount of the judgment or the subject matter in controversy or estate not subject to supervision or control of the surety, is not in excess of a limitation of ten percent.

(B) When the penalty of a suretyship obligation executed for the performance of a contract exceeds the contract price, the latter amount shall be taken as the basis for estimating the limit of risk within the meaning of this paragraph.

(4) In addition to any other limitation contained in this chapter, no authorized company shall at any one time be exposed to risks on suretyship obligations guaranteeing the deposits of any single financial institution in an aggregate net amount in excess of ten percent of the surplus to policyholders of such company, determined as provided in paragraph one hereof, unless it shall be protected in excess of that amount by security in accordance with the provisions of subparagraphs (A), (B), (C) and (D) of paragraph one hereof.

(b) No insurer authorized to write fire insurance in this state shall expose itself to any loss on any one fire risk, whether located in this state or elsewhere, in an amount exceeding ten percent of its surplus to policyholders, except that in the case of risks adequately protected by automatic sprinklers or risks principally of non-combustible construction and occupancy such insurer may expose itself to any loss on any one risk in an amount not exceeding twenty-five percent of the sum of its unearned premium reserve and its surplus to policyholders. Any risk or portion of any risk reinsured in an assuming insurer authorized to write such business in this state or in an accredited reinsurer, as defined in subsection (a) of section one hundred seven of this chapter, shall be deducted in determining the limitation of risk prescribed in this subsection.

(c) A mutual property/casualty insurance company subject to paragraph two of subsection (a) of section four thousand one hundred seven of this article may be permitted to write coverage on any one risk in excess of the limitation provided by section one thousand one hundred fifteen of this chapter, based upon criteria approved by the superintendent.

§ 4119. Foreign and alien companies; license qualification

No foreign or alien property/casualty insurance company shall be licensed to do business in this state unless it shall have continuously transacted an insurance business in the state or country of its incorporation for at least three years immediately prior to the issuance of such license. The superintendent may waive or reduce the three year requirement, with respect to a license applicant, upon determination that the three year period is not necessary to safeguard the interests of the public or policyholders.

§ 4120. [Repealed]

§ 4121. Security may be required from banking officers and employees

(a) The board of directors or trustees of each bank, trust company, savings bank or savings and loan associations in this state, may require from each officer and employee thereof an individual fidelity bond in favor of the institution in an amount and form approved by such board of directors or trustees.

(b) Such bond shall be accepted only from a corporation authorized to issue fidelity bonds and doing business in this state under the authority of the department.

(c) The premium for such bond may be paid as a necessary expense of any such banking institution.

ATTACHMENT

NEW YORK STATE INSURANCE LAW

ARTICLE 69. FINANCIAL GUARANTY INSURANCE CORPORATIONS

§ 6901. Definitions

As used in this article:

(a) (1) "Financial guaranty insurance" means a surety bond, an insurance policy or, when issued by an insurer or any person doing an insurance business as defined in paragraph one of subsection (b) of section one thousand one hundred one of this chapter, an indemnity contract, and any guaranty similar to the foregoing types, under which loss is payable, upon proof of occurrence of financial loss, to an insured claimant, obligee or indemnitee as a result of any of the following events:

(A) failure of any obligor on or issuer of any debt instrument or other monetary obligation (including equity securities guaranteed under a surety bond, insurance policy or indemnity contract) to pay when due to be paid by the obligor or scheduled at the time insured to be received by the holder of the obligation, principal, interest, premium, dividend or purchase price of or on, or other amounts due or payable with respect to, such instrument or obligation, when such failure is the result of a financial default or insolvency or, provided that such payment source is investment grade, any other failure to make payment, regardless of whether such obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted;

(B) changes in the levels of interest rates, whether short or long term or the differential in interest rates between various markets or products;

(C) changes in the rate of exchange of currency;

(D) changes in the value of specific assets or commodities, financial or commodity indices, or price levels in general; or

(E) other events which the superintendent determines are substantially similar to any of the foregoing.

(2) Notwithstanding paragraph one of this subsection, "financial guaranty insurance" shall not include:

(A) insurance of any loss resulting from any event described in paragraph one of this subsection if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy or indemnity contract:

(i) a fortuitous physical event;

(ii) failure of or deficiency in the operation of equipment; or

(iii) an inability to extract or recover a natural resource;

(B) fidelity and surety insurance as defined in paragraph sixteen of subsection (a) of section one thousand one hundred thirteen of this chapter;

(C) credit insurance as defined in paragraph seventeen of subsection (a) of section one thousand one hundred thirteen of this chapter;

(D) credit unemployment insurance as defined in paragraph twenty-four of subsection (a) of section one thousand one hundred thirteen of this chapter;

(E) residual value insurance as defined in paragraph twenty-two of subsection (a) of section one thousand one hundred thirteen of this chapter;

(F) mortgage guaranty insurance as defined in paragraph twenty-three of subsection (a) of section one thousand one hundred thirteen of this chapter and as permitted to be written by a mortgage guaranty insurer under article sixty-five of this chapter;

(G) guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions;

(H) indemnity contracts or similar guaranties, to the extent that they are not otherwise limited or proscribed by this chapter:

(i) in which a life insurer or an insurer subject to article forty-three of this chapter guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary (as defined in paragraph forty of subsection (a) of section one hundred seven of this chapter), other than a financial guaranty insurance corporation, provided that:

(I) to the extent that any such obligations or indebtedness are backed by specific assets, such assets must at all times be owned by the insurer or the subsidiary; and

(II) in the case of the guaranty of the obligations or indebtedness of the subsidiary that are not backed by specific assets of such insurer, such guaranty terminates once the subsidiary ceases to be a subsidiary; or

(ii) in which a life insurer guaranties obligations or indebtedness (including the obligation to substitute assets where appropriate) with respect to specific assets acquired by such life insurer in the course of its normal investment activities and not for the purpose of resale with credit enhancement, or guaranties obligations or indebtedness acquired by its subsidiary, provided that the assets acquired pursuant to this item (ii) have been:

(I) acquired by a special purpose entity, whose sole purpose is to acquire specific assets of such life insurer or its subsidiary and issue securities or participation certificates backed by such assets; or

(II) sold to an independent third party; or

(iii) in which a life insurer guaranties obligations or indebtedness of an employee or insurance agent of such life insurer; or

(I) guarantees of higher education loans, unless written by a financial guaranty insurance corporation;

(J) guarantees of insurance contracts, except for:

(i) guarantees authorized pursuant to section one thousand one hundred fourteen of this chapter;

(ii) financial guaranty insurance policies insuring guaranteed investment contracts issued by life insurers, provided that:

(I) the obligations under such contracts are not dependent on the continuance of human life;

(II) the financial guaranty insurance policies do not guaranty death benefits provided by such contracts;

(III) the obligations insured by the financial guaranty insurance policies are investment grade based on the rating of the life insurers or, in the case of separate account guaranteed investment contracts, based on the ratings of such separate accounts;

(IV) the financial guaranty insurance policies shall not condition or delay payment of a claim with respect to such contracts upon the insured or beneficiary making a claim on the contracts with any insurance guaranty fund under this chapter or of any other jurisdiction; and

(V) the financial guaranty insurance policies provide that if, prior to payment by the insurer under the financial guaranty insurance policies, the guaranty fund has paid a claim under such contracts for an amount that, when added to the amount payable under the financial guaranty insurance policies, would exceed the amount owed under such contracts, then the financial guaranty insurer shall pay the portion of the amount payable in excess of the contract amounts to the guaranty fund instead of to the beneficiary under such contracts; or

(K) any other form of insurance covering risks which the superintendent determines to be substantially similar to any of the foregoing.

(b) "Financial guaranty insurance corporation" or "corporation" means an insurer licensed to transact the business of financial guaranty insurance in this state.

(c) "Affiliate" means a person which, directly or indirectly, owns at least ten percent but less than fifty percent of the financial guaranty insurance corporation or which is at least ten percent but less than fifty percent, directly or indirectly, owned by a financial guaranty insurance corporation.

(d) "Aggregate net liability" means the aggregate amount of insured unpaid principal, interest and other monetary payments, if any, of guaranteed obligations insured or assumed, less reinsurance ceded and less collateral.

(e) "Asset-backed securities" mean:

(1) securities or other financial obligations of an issuer provided that:

(A) the issuer is a special purpose corporation, trust or other entity, or (provided that the securities or other financial obligations constitute an insurable risk) is a bank, trust company or other financial institution, deposits in which are insured by the Bank Insurance Fund or the Savings Insurance Fund (or any successor thereto); and

(B) a pool of assets:

(i) has been conveyed, pledged or otherwise transferred to or is otherwise owned or acquired by the issuer;

(ii) such pool of assets backs the securities or other financial obligations issued; and

(iii) no asset in such pool, other than an asset directly payable by, guaranteed by or backed by the full faith and credit of the United States government or that otherwise qualifies as collateral under paragraph one or two of subsection (g) of this section, has a value exceeding twenty percent of the pool's aggregate value; or

(2) a pool of credit default swaps or credit default swaps referencing a pool of obligations, provided that:

(A) the swap counterparty whose obligations are insured under the credit default swap is a special purpose corporation, special purpose trust or other special purpose legal entity;

(B) no reference obligation in such pool, other than an obligation directly payable by, guaranteed by or backed by the full faith and credit of the United States government or that otherwise qualifies as collateral under paragraph two of subsection (g) of this section, has a notional amount exceeding ten percent of the pool's aggregate notional amount; and

(C) the insurer has the benefit of a deductible or other first loss credit protection against claims under its insurance policy.

(f) "Average annual debt service" means the amount of insured unpaid principal and interest on an obligation, multiplied by the number of such insured obligations (assuming each obligation represents one thousand dollars par value), divided by the amount equal to the aggregate life of all such obligations (assuming each obligation represents one thousand dollars par value). This definition, expressed as a formula in regard to bonds, is as follows:

$$\text{Average Annual Debt Service} = \frac{\text{Total Debt Service} \times \text{No. of Bonds}}{\text{Bond Years}}$$

$$\text{Total Debt Service} = \text{Insured Unpaid Principal} + \text{Interest}$$
$$\text{Number of Bonds} = \frac{\text{Total Insured Principal}}{\$ 1,000}$$

$$\text{Bond Years} = \text{Number of Bonds} \times \text{Term in Years}$$

Term in Years = Term to maturity based on scheduled amortization or, in the absence of a scheduled amortization in the case of asset-backed securities or other obligations lacking a scheduled amortization, expected amortization, in each case determined as of the date of issuance of the insurance policy based upon the amortization assumptions employed in pricing the insured obligations or otherwise used by the insurer to determine aggregate net liability.

(g) "Collateral" means:

(1) cash;

(2) the cash flow from specific obligations which are not callable and scheduled to be received based on expected prepayment speed on or prior to the date of scheduled debt service (including scheduled redemptions or prepayments) on the insured obligation provided that (i) such specific obligations are directly payable by, guaranteed by or backed by the full faith and credit of the United States government, (ii) in the case of insured obligations denominated or payable in foreign currency as permitted under paragraph four of subsection (b) of section six thousand nine hundred four of this article, such specific obligations are directly payable by, guaranteed by or backed by the full faith and credit of such foreign government or the central bank thereof, or (iii) such specific obligations are insured by the same insurer that insures the obligations being collateralized, and the cash flows from such specific obligations are sufficient to cover the insured scheduled payments on the obligations being collateralized;

(3) the market value of investment grade obligations, other than obligations evidencing an interest in the project or projects financed with the proceeds of the insured obligations;

(4) the face amount of each letter of credit that:

(A) is irrevocable;

(B) provides for payment under the letter of credit in lieu of or as reimbursement to the insurer for payment required under a financial guaranty insurance policy;

(C) is issued, presentable and payable either:

(i) at an office of the letter of credit issuer in the United States; or

(ii) at an office of the letter of credit issuer located in the jurisdiction in which the trustee or paying agent for the insured obligation is located;

(D) contains a statement that either:

(i) identifies the insurer and any successor by operation of law, including any liquidator, rehabilitator, receiver or conservator, as the beneficiary; or

(ii) identifies the trustee or the paying agent for the insured obligation as the beneficiary;

(E) contains a statement to the effect that the obligation of the letter of credit issuer under the letter of credit is an individual obligation of such issuer and is in no way contingent upon reimbursement with respect thereto;

(F) contains an issue date and a date of expiration;

(G) either:

(i) has a term at least as long as the shorter of the term of the insured obligation or the term of the financial guaranty policy; or

(ii) provides that the letter of credit shall not expire without thirty days prior written notice to the beneficiary and allows for drawing under the letter of credit in the event that, prior to expiration, the letter of credit is not renewed or extended or a substitute letter of credit or alternate collateral meeting the requirements of this subsection is not provided;

(H) states that it is governed by the laws of the state of New York or by the 1983 or 1993 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 or 500) [n1] or any successor Revision if approved by the superintendent, and contains a provision for an extension of time, of not less than thirty days after resumption of business, to draw against the letter of credit in the event that one or more of the occurrences described in Article 19 of Publication 400 or 500 occurs; and

(I) is issued by a bank, trust company, or savings and loan association that:

(i) is organized and existing under the laws of the United States or any state thereof or, in the case of a non-domestic financial institution, has a branch or agency office licensed under the laws of the United States or any state thereof and is domiciled in a member country of the Organisation for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the superintendent;

(ii) has (or is the principal operating subsidiary of a financial institution holding company that has) a long-term debt rating of at least investment grade; and

(iii) is not a parent, subsidiary or affiliate of the trustee or paying agent, if any, with respect to the insured obligation if such trustee or paying agent is the named beneficiary of the letter of credit; or

(5) the amount of credit protection available to the insurer (or its nominee) under each credit default swap that:

(A) may not be amended without the consent of the insurer and may only be terminated: (i) at the option of the insurer; (ii) at the option of the counterparty to the insurer (or its nominee), if the credit default swap provides for the payment of a termination amount equal to the replacement cost of the terminated credit default swap determined with reference to standard documentation of the International Swap and Derivatives Association, Inc. or otherwise acceptable to the superintendent; or (iii) at the discretion of the superintendent acting as a rehabilitator, liquidator or receiver of the insurer upon payment by or on behalf of the insurer of any termination amount due from the insurer;

(B) provides for payment under all instances in which payment under a financial guaranty insurance policy is required, except that payment under the credit default swap may be on a first loss, excess of loss or other non-pro-rata basis and may apply on an aggregate basis to more than one policy;

(C) is provided by:

(i) a counterparty whose obligations under the credit default swap are insured by a financial guaranty insurance corporation licensed under this article or guaranteed by a financial institution referred to in items (ii) and (iii) of this subparagraph;

(ii) a financial institution satisfying the requirements of items (i) through (iii) of subparagraph (I) of paragraph four of this subsection; provided that (A) obligations of such financial institution on parity with its obligations under the credit default swap are investment grade and (B) if such financial institution is not organized under, or acting through a branch or agency office licensed under, the laws of the United States or any state thereof, then such financial institution is required to collateralize the replacement cost of the credit default swap in the event that it shall fail to maintain such rating; or

(iii) any other financial institution that the superintendent determines to be substantially similar to any of the foregoing.

Collateral must be deposited with the insurer; held in trust by a trustee or custodian acceptable to the superintendent for the benefit of the insurer; or held in trust pursuant to the bond indenture or other trust arrangement, for the benefit of security holders in the form of funds for the payment of insured obligations, sinking funds or other reserves which may be used for the payment of insured obligations and trustee and other administrative fees on a first priority basis established and continually maintained pursuant to the bond indenture or other trust arrangement by a trustee acceptable to the superintendent. The superintendent may promulgate regulations to limit the amount of collateral provided by obligations, letters of credit or credit default swaps or to limit the amount of collateral provided by any single issuer, bank or counterparty as provided for in this subsection.

(h) "Commercial real estate" means income producing real property other than residential property consisting of less than five units.

(i) (1) "Consumer debt obligations" guaranties means financial guaranty insurance that indemnifies a purchaser or lender against loss or damage resulting from defaults on a pool of debts owed for extensions of credit (including in respect of installment purchase agreements and leases) to individuals, provided in the normal course of the purchaser's or lender's business, provided that (A) such pool meets the requirements of paragraph two of subsection (e) of this section and (B) such pool has been determined to be investment grade.

(2) Consumer debt obligations guaranty policies shall contain a provision that all coverage under the policies terminates upon sale or transfer of the underlying consumer debt obligation to any transferee not insured by the same insurer under a similar policy.

(j) "Contingency reserve" means an additional liability reserve established to protect policyholders against the effects of adverse economic developments or cycles or other unforeseen circumstances.

(j-1) "Credit default swap" means an agreement referencing the credit derivative definitions published from time to time by the International Swap and Derivatives Association, Inc. or otherwise acceptable to the superintendent, pursuant to which a party agrees to compensate another party in the event of a payment default by, insolvency of, or other adverse credit event in respect of, an issuer of a specified security or other obligation; provided that such agreement does not constitute an insurance contract and the making of such credit default swap does not constitute the doing of an insurance business.

(k) "Governmental unit" means the United States of America, Canada, a member country of the Organization for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the superintendent, a state, territory or possession of the United States of America, the District of Columbia, a province of Canada, a municipality, or a political subdivision of any of the foregoing, or any public agency or instrumentality thereof.

(k-1) "Excess spread" means, with respect to any insured issue of asset-backed securities, the excess of (A) the scheduled cash flow on the underlying assets that is reasonably projected to be available, over the term of the insured securities after payment of the expenses associated with the insured issue, to make debt service payments on the insured securities over (B) the scheduled debt service requirements on the insured securities, provided that such excess is held in the same manner as collateral is required to be held under subsection (g) of this section.

(l) "Industrial development bond" means any security or other instrument, other than a utility first mortgage obligation, under which a payment obligation is created, issued by or on behalf of a governmental unit, to finance a project serving a private industrial, commercial or manufacturing purpose, and not payable or guaranteed by a governmental unit.

(m) "Insurable risk" means, with respect to asset-backed securities, as defined in subsection (e) of this section, that such obligation on an uninsured basis has been determined to be not less than investment grade based solely on the pool of assets backing the insured obligation or securing the insurer, without consideration of the creditworthiness of the issuer.

(n) "Investment grade" means that:

(1) the obligation or parity obligation of the same issuer has been determined to be in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the superintendent;

(2) the obligation or parity obligation of the same issuer has been identified in writing by such rating agency to be of investment grade quality; or

(3) if the obligation or parity obligation of the same issuer has not been submitted to any such rating agency, the obligation is determined to be investment grade (as indicated by a rating in category 1 or 2) by the Securities Valuation Office of the National Association of Insurance Commissioners.

(o) "Municipal bonds" means municipal obligation bonds and special revenue bonds.

(p) "Municipal obligation bond" means any security or other instrument, including a lease payable or guaranteed by the United States or another national government that qualifies as a governmental unit or any agency, department or instrumentality thereof, or by a state or an equivalent political subdivision of another national government that qualifies as a governmental unit, but not a lease of any other governmental unit, under which a payment obligation is created, issued by or on behalf of or payable or guaranteed by a governmental unit or issued by a special purpose corporation, special purpose trust or other special purpose legal entity to finance a project serving a substantial public purpose, and which is:

(1) (A) payable from tax revenues, but not tax allocations, within the jurisdiction of such governmental unit;

(B) payable or guaranteed by the United States or another national government that qualifies as a governmental unit, or any agency, department or instrumentality thereof, or by a housing agency of a state or an equivalent subdivision of another national government that qualifies as a governmental unit;

(C) payable from rates or charges (but not tolls) levied or collected in respect of a non-nuclear utility project, public transportation facility (other than an airport), or public higher education facility; or

(D) with respect to lease obligations, payable from future appropriations; and

(2) provided that, in the case of obligations of a special purpose corporation, special purpose trust or other special purpose legal entity, (A) such obligations are investment grade at the time of issuance; (B) such obligations are payable from sources enumerated in subparagraph (A), (B), (C) or (D) of paragraph one of this subsection; and (C) the project being financed or the tolls, tariffs, usage fees or other similar rates or charges for its use are subject to regulation or oversight by a governmental unit.

(q) "Reinsurance" means cessions qualifying for credit under section six thousand nine hundred six of this article.

(r) "Special revenue bond" means any security or other instrument, under which a payment obligation is created, issued by or on behalf of or payable or guaranteed by a governmental unit to finance a project serving a substantial public purpose, and not payable from any of the sources enumerated in subsection (p) of this section; or securities which are the functional equivalent of the foregoing issued by a not-for-profit corporation or a special purpose corporation, special purpose trust or other special purpose legal entity; provided that, in the case of obligations of a special purpose corporation, special purpose trust or other special purpose legal entity, (1) such obligations are investment grade at the time of issuance; (2) such obligations are not payable from the sources enumerated in subparagraph (A), (B), (C) or (D) of paragraph one of subsection (p) of this section; and (3) the project being financed or the tolls, tariffs, usage fees or other similar rates or charges for its use are subject to regulation or oversight by a governmental unit.

(s) "Utility first mortgage obligation" means any obligation of an issuer secured by a first priority mortgage on utility property owned by or leased to an investor-owned or cooperative-owned utility company and located in the United States, Canada or a member country of the Organisation for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the superintendent; provided that the utility or utility property or the usage fees or other similar utility rates or charges are subject to regulation or oversight by a governmental unit.

§ 6902. Organization; financial requirements

(a) A financial guaranty insurance corporation may be organized and licensed in the manner prescribed in section one thousand two hundred one of this chapter and a foreign insurer may be licensed in the manner

prescribed in section one thousand one hundred six of this chapter, except as modified by the following provisions:

(1) a corporation organized for the purpose of transacting financial guaranty insurance may, subject to all the applicable provisions of this chapter, be licensed to transact only the following additional kinds of insurance:

(A) residual value insurance, as defined in paragraph twenty-two of subsection (a) of section one thousand one hundred thirteen of this chapter;

(B) surety insurance, as defined in subparagraphs (C), (D), (E), (F), (G), (H) and (I) of paragraph sixteen of subsection (a) of section one thousand one hundred thirteen of this chapter; and

(C) credit insurance, as defined in subparagraph (A) of paragraph seventeen of subsection (a) of section one thousand one hundred thirteen of this chapter;

(2) a financial guaranty insurance corporation may only assume those kinds of insurance for which it is licensed to write direct business;

(3) prior to the issuance of a license, unless a plan of operation has been previously approved by the superintendent, a corporation shall submit for the approval of the superintendent a plan of operation, detailing the types and projected diversification of guaranties that will be issued, the underwriting procedures that will be followed, managerial oversight methods, investment policies, and such other matters as may be prescribed by the superintendent; and

(4) a financial guaranty insurance corporation's investments in any one entity insured by that corporation shall not exceed four percent of its admitted assets at last year-end, except that this limit shall not apply to investments payable or guaranteed by a United States governmental unit or New York state if such investments payable or guaranteed by the United States governmental unit or New York state shall be rated in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the superintendent.

(5) in addition to any transaction that an insurer meeting the requirements of subsection (c) of section one thousand four hundred three of this chapter may effect and maintain under any other provision of this chapter, a financial guaranty insurance corporation may effect and maintain transactions in (A) contracts for the future delivery or receipt of the currency of a foreign country, (B) interest rate options, (C) credit default swaps under which the insurer is acquiring credit protection and (D) other products included in the plan referred to in clause (vii) of this subparagraph, in each case meeting the following requirements:

(i) the transaction is used for the purpose of limiting risk of loss under financial guaranty insurance policies or reinsurance contracts covering such policies due to fluctuations in interest rates or currency exchange rates or, in the case of credit default swaps, financial default, insolvency or other credit events;

(ii) the transaction shall not exceed a duration of twelve months beyond the term of such policies or reinsurance contracts;

(iii) the amount of foreign currencies to be purchased under the transaction shall not exceed the amount guaranteed under such policies or reinsurance contracts that is denominated in foreign currency;

(iv) the amount that is subject to interest rate hedging transactions does not exceed the amount guaranteed under such policies or reinsurance contracts that is subject to the risk of interest rate fluctuations;

(v) the counterparty to such transaction has (or is the principal operating subsidiary of a holding company that has) a long term unsecured debt rating or claims-paying ability rating that is at least investment grade;

(vi) the transaction is not conducted for arbitrage purposes; and

(vii) the transaction is entered into pursuant to a plan that has been approved by the board of directors of the financial guaranty insurance corporation and filed with and approved by the superintendent.

(b) (1) A financial guaranty insurance corporation shall not transact business unless it has paid-in capital of at least two million five hundred thousand dollars and paid-in surplus of at least seventy-two million five hundred thousand dollars, and shall at all times thereafter maintain a minimum surplus to policyholders of at least sixty-five million dollars.

(2) An insurer transacting only financial guaranty insurance prior to the effective date of this article which has a paid-in capital of at least two million five hundred thousand dollars and maintains surplus to policy-

holders of at least forty-five million dollars shall have thirty-six months from the effective date of this article to fully comply with the surplus requirements set forth in paragraph one of this subsection.

(3) A financial guaranty insurance company shall be deemed to be in compliance with paragraphs one and two of subsection (b) of section one thousand four hundred two of this chapter if not less than sixty percent of the amount of the required minimum capital or minimum surplus to policyholder investments shall consist of the types specified in paragraphs one and two of subsection (b) of section one thousand four hundred two of this chapter and direct government obligations of any state of the United States or of any county, district or municipality thereof, provided such government obligations have been given the highest quality designation of the Securities Valuation Office of the National Association of Insurance Commissioners. Before investing any part of the required minimum capital or surplus in direct government obligations of any other state of the United States or of any county, district or municipality thereof, such financial guaranty insurance company shall have invested at least ten percent of such required minimum in government obligations of New York state or of any county, district or municipality thereof. Only for purposes of meeting the required investment in government obligations of New York state, the insurer may count investments in any government obligation of New York state, whether direct or otherwise.

§ 6903. Contingency, loss and unearned premium reserves

(a) Contingency reserves.

(1) A corporation shall establish and maintain contingency reserves for the protection of insureds and claimants against the effects of excessive losses occurring during adverse economic cycles.

(2) With respect to all financial guaranties written prior to and in force as of the first day of the next calendar quarter commencing after the date that the act enacting this article shall become law:

(A) the insurer shall establish and maintain a contingency reserve consistent with the requirements applicable for municipal bond guaranties in effect prior to the effective date of this article equal to fifty percent of earned premiums on such policies; and

(B) to the extent that the insurer's contingency reserves maintained as of the first day of the next calendar quarter commencing after the date that the act enacting this article shall become law are less than those required for municipal bond guaranties, the insurer shall have three years from such date to bring its contingency reserves into compliance.

(3) With respect to financial guaranties of municipal obligation bonds, special revenue bonds, industrial development bonds and utility first mortgage obligations written on and after the first day of the next calendar quarter commencing after the date that the act enacting this article shall become law:

(A) the insurer shall establish and maintain a contingency reserve for all such insured issues in each calendar year for each category listed in subparagraph (B) of this paragraph;

(B) the total contingency reserve required shall be the greater of fifty percent of premiums written for each such category or the following amount prescribed for each such category:

(i) municipal obligation bonds, 0.55 percent of principal guaranteed;

(ii) special revenue bonds, and obligations demonstrated to the satisfaction of the superintendent to be the functional equivalent thereof, 0.85 percent of principal guaranteed;

(iii) investment grade industrial development bonds, secured by collateral or having a term of seven years or less, and utility first mortgage obligations, 1.0 percent of principal guaranteed;

(iv) other investment grade industrial development bonds, 1.5 percent of principal guaranteed; and

(v) all other industrial development bonds, 2.5 percent of principal guaranteed; and

(C) Contributions to the contingency reserve required by this paragraph, equal to one-eightieth of the total reserve required, shall be made each quarter for twenty years, provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in items (i) through (v) of subparagraph (B) of this paragraph exceeds the percentages contained in such items (i) through (v) when applied against unpaid principal.

(4) With respect to all other financial guaranties written on or after the first day of the next calendar quarter commencing after the date that the act enacting this article shall become law:

(A) the insurer shall establish and maintain a contingency reserve for all such insured issues in each calendar year for each such category listed in subparagraph (B) of this paragraph;

(B) the total contingency reserve required shall be the greater of fifty percent of premiums written for each such category or the following amount prescribed for each such category:

(i) investment grade obligations, secured by collateral or having a term of seven years or less, 1.0 percent of principal guaranteed;

(ii) other investment grade obligations, 1.5 percent of principal guaranteed;

(iii) non-investment grade consumer debt obligations, 2.0 percent of principal guaranteed;

(iv) non-investment grade asset-backed securities, 2.0 percent of principal guaranteed;

(v) other non-investment grade obligations, 2.5 percent of principal guaranteed; and

(C) Contributions to the contingency reserve required by this paragraph, equal to one-sixtieth of the total reserve required, shall be made each quarter for fifteen years, provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in items (i) through (v) of subparagraph (B) of this paragraph exceeds the percentages contained in such items (i) through (v) when applied against unpaid principal.

(5) Contingency reserves required in paragraphs two, three and four of this subsection may be established and maintained net of collateral and reinsurance, provided that, in the case of reinsurance, the reinsurance agreement requires that the reinsurer shall, on or after the effective date of the reinsurance, establish and maintain a reserve in an amount equal to the amount by which the insurer reduces its contingency reserve, and contingency reserves required in paragraphs three and four of this subsection may be maintained (A) net of refundings and refinancings to the extent the refunded or refinanced issue is paid off or secured by obligations which are directly payable or guaranteed by the United States government and (B) net of insured securities in a unit investment trust or mutual fund that have been sold from the trust or fund without insurance.

(6) The contingency reserves may be released thereafter in the same manner in which they were established and withdrawals therefrom, to the extent of any excess, may be made from the earliest contributions to such reserves remaining therein:

(A) with the prior written approval of the superintendent:

(i) if the actual incurred losses for the year, in the case of the categories of guaranties subject to paragraph three of this subsection exceeds thirty-five percent of earned premiums, or in the case of the categories of guaranties subject to paragraph four of this subsection exceed sixty-five percent of earned premiums; or

(ii) if the contingency reserve applicable to the categories of guaranties subject to paragraph three of this subsection has been in existence for less than forty quarters, or for less than thirty quarters for the categories of guaranties subject to paragraph four of this subsection, upon a demonstration satisfactory to the superintendent that the amount carried is excessive in relation to the insurer's outstanding obligations under its financial guaranties.

(B) upon thirty days prior written notice to the superintendent, provided that the contingency reserve applicable to the categories of guaranties subject to paragraph three of this subsection has been in existence for forty quarters, or thirty quarters for categories of guaranties subject to paragraph four of this subsection, upon a demonstration satisfactory to the superintendent that the amount carried is excessive in relation to the insurer's outstanding obligations under its financial guaranties.

(7) An insurer providing financial guaranty insurance may invest the contingency reserve in tax and loss bonds (or similar securities) purchased pursuant to *section 832(e) of the Internal Revenue Code* (or any successor provision), only to the extent of the tax savings resulting from the deduction for federal income tax purposes of a sum equal to the annual contributions to the contingency reserve. The contingency reserve shall otherwise be invested only in classes of securities or types of investments specified in paragraphs one through three of subsection (b) of section one thousand four hundred two of this chapter and paragraphs one through three of subsection (a) of section one thousand four hundred four of this chapter.

(b) Loss reserves.

(1) The case basis method or such other method as may be prescribed by the superintendent shall be used to establish and maintain loss reserves, net of collateral, for claims reported and unpaid, in a manner

consistent with section four thousand one hundred seventeen of this chapter. A deduction from loss reserves shall be allowed for the time value of money by application of a discount rate equal to the average rate of return on the admitted assets of the insurer as of the date of the computation of any such reserves. The discount rate shall be adjusted at the end of each calendar year.

(2) If the insured principal and interest on a defaulted issue of obligations due and payable during any three years following the date of default exceeds ten percent of the insurer's surplus to policyholders and contingency reserves, its reserve so established shall be supported by a report from an independent source acceptable to the superintendent.

(c) Unearned premium reserve. An unearned premium reserve shall be established and maintained net of reinsurance and collateral with respect to all financial guaranty premiums. Where financial guaranty insurance premiums are paid on an installment basis, an unearned premium reserve shall be established and maintained, net of reinsurance and collateral, computed on a daily or monthly pro rata basis. All other financial guaranty insurance premiums written shall be earned in proportion with the expiration of exposure, or by such other method as may be prescribed by the superintendent.

§ 6904. Limitations

(a) Financial guaranty insurance may be transacted in this state only by a corporation licensed for such purpose pursuant to section six thousand nine hundred two of this article.

(b) Permissible guarantees.

(1) The superintendent shall not permit the writing of financial guaranty insurance except as defined in subparagraph (A) of paragraph one of subsection (a) of section six thousand nine hundred one of this article, and a corporation may insure the timely payment of United States dollar debt instruments, or other monetary obligations, only in the following categories:

(A) municipal obligation bonds;

(B) special revenue bonds;

(C) industrial development bonds;

(D) obligations of corporations, trusts or other similar entities established under applicable law;

(E) partnership obligations;

(F) asset-backed securities, trust certificates and trust obligations other than mortgage-backed securities secured by first mortgages on real property which are insurable by a mortgage guaranty insurer authorized under paragraph twenty-three of subsection (a) of section one thousand one hundred thirteen of this chapter, unless:

(i) such mortgages with loan-to-value ratios in excess of eighty percent are:

(I) in the case of mortgages on property located in the state of New York, insured by mortgage guaranty insurers authorized under paragraph twenty-three of subsection (a) of section one thousand one hundred thirteen of this chapter;

(II) in the case of mortgages on property located in a state other than the state of New York, insured by mortgage guaranty insurers authorized to do business in such other state; or

(III) in an aggregate principal amount less than the single risk limits prescribed in paragraph five of subsection (d) of this section; or

(ii) additional mortgages with principal balances, other collateral with a market value, or (provided the insured risk is investment grade) excess spread in an amount, in each instance at least equal to the coverage that would otherwise be provided by such mortgage guaranty insurers in accordance with item (i) of this subparagraph are pledged as additional security for the asset-backed securities;

(G) installment purchase agreements executed as a condition of sale;

(H) consumer debt obligations;

(I) utility first mortgage obligations; and

(J) any other debt instrument or financial obligation that the superintendent determines to be substantially similar to any of the foregoing or shall otherwise be approved by the superintendent.

(2) An insurer may insure obligations enumerated in subparagraphs (A), (B), and (C) of paragraph one of this subsection that are not investment grade so long as at least ninety-five percent of the insurer's aggregate net liability on the kinds of obligations enumerated in subparagraphs (A), (B) and (C) of paragraph one of this subsection shall be investment grade.

(3) A corporation may insure the timely payment of monetary obligations in any category designated in this subsection notwithstanding that such obligation may be insured by a financial guaranty insurance policy issued by another insurer. In the event that any obligation is insured by more than one financial guaranty insurance policy, then each such insurance policy may by its terms specify its priority of payment in the event of a default under the obligation insured or any other insurance policy; provided that an insurer shall be entitled to take into account payment under another policy insuring such obligation for purposes of establishing and maintaining loss reserves only to the extent that the policy issued by such insurer provides for payment only in the event of payment default under both such obligation and the other policy.

(4) A corporation may also write financial guaranty insurance as defined in subparagraph (A) of paragraph one of subsection (a) of section six thousand nine hundred one of this article to insure the timely payment of non-United States dollar debt instruments or other monetary obligations denominated or payable in foreign currency, only for the categories listed in subparagraphs (A) through (J) of paragraph one of this subsection, provided that:

(A) such currency is that of an Organisation for Economic Co-operation and Development country or such other country (i) whose sovereign rating is investment grade or (ii) as shall not otherwise be disapproved by the superintendent within thirty days following receipt of written notification. The superintendent shall not disapprove such notification upon demonstration that there is no undue risk associated with insuring the timely payment of such instruments or obligations. In making such a determination the superintendent shall take into consideration the corporation's outstanding liabilities on non-investment grade instruments and obligations in relation to its outstanding liabilities on all instruments and obligations and in relation to the amount of its surplus to policyholders;

(B) reserves required pursuant to section six thousand nine hundred three of this article in regard to such obligations shall be established and adjusted quarterly based upon the then current foreign exchange rates;

(C) such obligations shall not exceed twenty-five percent of an insurer's aggregate net liability; and

(D) the aggregate and single risk limitations prescribed by subsections (c) and (d) of this section shall be determined by applying the then current foreign exchange rates.

(c) Aggregate risk limits. The corporation must at all times maintain surplus to policyholders and contingency reserves in the aggregate no less than the sum of:

(1) (A) 0.3333 percent or 1/300th of the aggregate net liability under guaranties of municipal bonds including obligations demonstrated to the satisfaction of the superintendent to be the functional equivalent thereof and investment grade utility first mortgage obligations; plus

(B) 0.6666 percent or 1/150th of the aggregate net liability under guaranties of investment grade asset-backed securities; plus

(C) 1.0 percent or 1/100th of the aggregate net liability under guaranties, secured by collateral or having a term of seven years or less, of:

(i) investment grade industrial development bonds,

(ii) other investment grade obligations; plus

(D) 1.5 percent or 1/66.67th of the aggregate net liability under guaranties of other investment grade obligations; plus

(E) 2.0 percent or 1/50th of the aggregate net liability under guaranties of:

(i) non-investment grade consumer debt obligations, and

(ii) non-investment grade asset-backed securities; plus

(F) 2.5 percent or 1/40th of the aggregate net liability under guaranties of non-investment grade obligations secured by first mortgages on commercial real estate and having loan-to-value ratios of eighty percent or less; plus

(G) 4.0 percent or 1/25th of the aggregate net liability under guaranties of other non-investment grade obligations; and

(H) if the amount of collateral required by subparagraph (C) of this paragraph is no longer maintained, that proportion of the obligation insured which is not so collateralized shall be subject to the aggregate limits specified in subparagraph (D) of this paragraph; and

(2) surplus to policyholders determined by the superintendent to be adequate to support the writing of residual value insurance, surety insurance and credit insurance, if the corporation has elected to transact such kinds of insurance pursuant to subsection (a) of section six thousand nine hundred two of this article.

(d) Single risk limits. A financial guaranty insurance corporation shall limit its exposure to loss on any one risk insured by policies providing financial guaranty insurance, net of collateral and reinsurance, as follows:

(1) for municipal obligation bonds, special revenue bonds, and obligations demonstrated to the satisfaction of the superintendent to be the functional equivalent thereof:

(A) the insured average annual debt service with respect to a single entity and backed by a single revenue source shall not exceed ten percent of the aggregate of the insurer's surplus to policyholders and contingency reserve; and

(B) the insured unpaid principal issued by a single entity and backed by a single revenue source shall not exceed seventy-five percent of the aggregate of the insurer's surplus to policyholders and contingency reserve;

(2) for each issue of asset-backed securities issued by a single entity and for each pool of consumer debt obligations, the lesser of:

(A) insured average annual debt service; or

(B) insured unpaid principal (reduced by the extent to which the unpaid principal of the supporting assets and, provided the insured risk is investment grade, excess spread exceed the insured unpaid principal) divided by nine;

shall not exceed ten percent of the aggregate of the insurer's surplus to policyholders and contingency reserve, provided that no asset in the pool supporting the asset-backed securities exceeds the single risk limits prescribed in paragraph five of this subsection, if directly guaranteed; and provided further that, if the issuer of such insured asset-backed securities is a special purpose corporation, trust or other entity and such issuer shall have indebtedness outstanding with respect to any other pool of assets, either such other indebtedness shall be entitled to the benefits of a financial guaranty policy of the same insurer, or such other indebtedness shall: (i) be fully subordinated to the insured obligation, with respect to, or be non-recourse with respect to, the pool of assets that supports the insured obligation, (ii) be non-recourse to the issuer other than with respect to the asset pool securing such other indebtedness and proceeds in excess of the proceeds necessary to pay the insured obligation ("excess proceeds") and (iii) not constitute a claim against the issuer to the extent that the asset pool securing such other indebtedness or excess proceeds are insufficient to pay such other indebtedness;

(3) for obligations issued by a single entity (3) and secured by commercial real estate, and not meeting the definition of asset-backed securities, the insured unpaid principal less fifty percent of the appraised value of the underlying real estate shall not exceed ten percent of the aggregate of the insurer's surplus to policyholders and contingency reserve;

(4) for utility first mortgage obligations, the insured average annual debt service shall not exceed ten percent of the aggregate of the insurer's surplus to policyholders and contingency reserve; and

(5) for all other policies providing financial guaranty insurance with respect to obligations issued by a single entity and backed by a single revenue source, the insured unpaid principal shall not exceed ten percent of the aggregate of the insurer's surplus to policyholders and contingency reserve.

(e) Except as provided in subsection (f) of this section, if an insurer at any time exceeds any limitation prescribed by subsection (c) or (d) of this section or the last sentence of paragraph one of subsection (b) of this section, the insurer shall within thirty days after the limitations are breached, submit a written plan to the superintendent detailing the steps that it will take or has taken to reduce its exposure to loss to no more than the permitted amounts, and if after notice and hearing the superintendent determines that an insurer has exceeded any limitation prescribed by this section, he may order such insurer to cease transacting any new financial guaranty insurance business until its exposure to loss no longer exceeds said limitations or with re-

spect to the limitations prescribed in the last sentence of paragraph one of subsection (b) of this section, may order such insurer to limit its writing of the types of guaranties permitted under subparagraphs (A), (B) and (C) of paragraph one of subsection (b) of this section to investment grade obligations until such time as it shall be in compliance with such limitations.

(f) An insurer shall not be deemed in violation of any limitation prescribed by subsection (d) of this section with respect to any financial guaranty insurance outstanding prior to the effective date of this article, if the insurer was in compliance with the applicable single risk limit in effect in this state at the time that the financial guaranty insurance policy was issued. If the insurer was not so in compliance, such financial guaranty insurance shall comply with the limitations prescribed by subsection (d) of this section no later than three years after the effective date of this article.

(g) No insurer authorized to transact the business of financial guaranty insurance shall pay any commission or make any gift of money, property or other valuable thing to any employee, agent or representative of any potential purchaser of a financial guaranty insurance policy, as an inducement to the purchase of such a policy, and no such employee, agent or representative of such potential purchaser shall receive any such payment or gift. Violation of the provisions of this section shall not, however, have the effect of rendering void the insurance policy issued by the insurer.

§ 6905. Policy forms and rates

(a) Policy forms and any amendments thereto shall be filed with the superintendent within thirty days of their use by the insurer if not otherwise filed prior to the effective date of this article. Every such policy shall provide that, in the event of a payment default by or insolvency of the obligor, there shall be no acceleration of the payment required to be made under such policy unless such acceleration is at the sole option of the corporation; provided that (1) policies may insure amounts payable under a credit default swap or interest rate, currency or other swap upon a credit event or termination event if the expected amount payable on an accelerated basis in respect of any individual obligation referenced by a credit default swap or in the aggregate under an interest rate, currency or other swap does not exceed the single risk limits prescribed in paragraph five of subsection (d) of section six thousand nine hundred four of this article and (2) policies insuring credit default swaps referencing an obligation shall be treated as if the insurer had directly insured the referenced obligation for all other purposes of this article, except that the currency of amounts owed under the credit default swap, rather than the currency of the obligations referenced by the credit default swap, shall apply for purposes of determining whether the obligation is a permissible guaranty under subsection (b) of section six thousand nine hundred four of this article. The superintendent may prescribe minimum policy provisions determined by the superintendent to be necessary or appropriate to protect policyholders, claimants, obligees or indemnitees.

(b) Rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition, detrimental to the solvency of the insurer, or otherwise unreasonable. In determining whether rates comply with the foregoing standards, the superintendent shall include all income earned by such insurer. Criteria and guidelines utilized by insurers in establishing rating categories and ranges of rates to be utilized shall be filed with the superintendent for information prior to their use by the insurer if not otherwise filed prior to the effective date of this article.

(c) All such filings shall be available for public inspection at the insurance department.

§ 6906. Reinsurance

(a) For financial guaranty insurance that takes effect on or after the effective date of this article, an insurer authorized to transact financial guaranty insurance shall receive credit for reinsurance, in accordance with the provisions of this chapter applicable to property/casualty insurers, as an asset or as a reduction from liabilities provided that such reinsurance is subject to an agreement that, for its stated term and with respect to

any such reinsured financial guaranty insurance in force, the reinsurance agreement (facultative or treaty) may only be terminated or amended (i) at the option of the reinsurer or the ceding insurer, if the reinsurance agreement provides that the liability of the reinsurer with respect to policies in effect at the date of termination shall continue until the expiration or cancellation of each such policy, or (ii) with the consent of the ceding company, if the reinsurance agreement provides for a cutoff of the reinsurance in force at the date of termination, or (iii) at the discretion of the superintendent acting as rehabilitator, liquidator or receiver of the ceding or assuming insurer; and provided that such reinsurance is:

(1) placed with a financial guaranty insurance corporation licensed under this article or an insurer writing only financial guaranty insurance as is or would be permitted by this article; or

(2) placed with a property/casualty insurer or an accredited reinsurer licensed or accredited to reinsure risks of every kind or description (including municipal obligation bonds), as set forth in subsection (c) of section four thousand one hundred two of this chapter, if the reinsurance agreement with such insurer requires that such insurer:

(A) have and maintain surplus to policyholders of at least thirty-five million dollars;

(B) establish and maintain the reserves required in section six thousand nine hundred three of this article, except that if the reinsurance agreement is not pro rata the contribution to the contingency reserve shall be equal to fifty percent of the quarterly earned reinsurance premium. However, the assuming insurer need not establish and maintain such reserve to the extent that the ceding insurer has established and continues to maintain such reserve;

(C) comply with the provisions of subsection (c) of section six thousand nine hundred four of this article, except that the maximum total exposures reinsured net of retrocessions and collateral shall be one-half of that permitted for a financial guaranty insurance corporation;

(D) if a parent of the insurer, another subsidiary of the parent of the insurer, or a subsidiary of the insurer, then the aggregate of all risks assumed by such reinsurers shall not exceed ten percent of the insurer's exposures, net of retrocessions and collateral. Direct or indirect ownership interests of fifty percent or more shall be deemed a parent/subsidiary relationship;

(E) if an affiliate of the insurer, such affiliate shall not assume a percentage of the insurer's total exposures insured net of retrocessions and collateral in excess of its percentage of equity interest in the insurer; and

(F) assumes from the financial guaranty insurer and any affiliate, parent of the insurer, another subsidiary of the parent of the insurer, or subsidiary of the insurer that is a financial guaranty insurance corporation or an insurer writing only financial guaranty insurance as is or would be permitted by this article and such other kinds of insurance that a financial guaranty insurance corporation may write in this state, together with all other reinsurers subject to this paragraph, less than fifty percent of the total exposures insured by the financial guaranty insurer and such affiliates, parents or subsidiaries of the insurer, net of collateral, remaining after deducting any reinsurance placed with another financial guaranty insurance corporation that is not an affiliate, a parent of the financial guaranty insurer, another subsidiary of the parent of the insurer, or a subsidiary of the insurer or a financial guaranty insurer writing only financial guaranty insurance as is or would be permitted by this article that is not an affiliate, a parent of the financial guaranty insurer, another subsidiary of the parent of the insurer, or a subsidiary of the insurer; or

(3) if placed with an unauthorized or unaccredited reinsurer which otherwise meets the requirements of either the opening paragraph of this subsection and paragraph one of this subsection, or the opening paragraph of this subsection and subparagraphs (A), (D), (E) and (F) of paragraph two of this subsection, in an amount not exceeding the liabilities carried by the ceding insurer for amounts withheld under a reinsurance treaty with such reinsurer or amounts deposited by such reinsurer as security for the payment of obligations under the treaty if such funds or deposit are held subject to withdrawal by, and under the control of, the ceding insurer.

(b) In determining whether the insurer meets the aggregate risk limitations, in addition to credit for other types of qualifying reinsurance, the insurer's aggregate risk may be reduced to the extent of the limit for aggregate excess reinsurance, but in no event in an amount greater than the amount of the aggregate risks which will become due during the unexpired term of such reinsurance agreement in excess of the insurer's retention pursuant to such reinsurance agreement.

§ 6907. Transition provisions

A licensed insurer writing financial guaranty insurance prior to the effective date of this article, but which is not authorized to write financial guaranty insurance in this state, shall be subject to all the provisions of this article, except section six thousand nine hundred two of this article, and:

(a) may, unless the superintendent determines after notice and an opportunity to be heard that such activity poses a hazard to the insurer, its policyholders or to the public, continue to write financial guaranties (except guaranties of municipal bonds) of the types authorized by subsection (b) of section six thousand nine hundred four of this article applicable to financial guaranty insurance corporations, subject to the following conditions:

(1) For a transition period not to exceed sixty months from the effective date of this article, if the insurer has and maintains surplus to policyholders of at least seventy-five million dollars (for the purpose of this paragraph, if the insurer is a foreign insurer, its surplus to policyholders shall be computed as if it were a domestic insurer); provided that:

(A) during the sixty month transition period, the amount of surplus to policyholders needed to meet the single and aggregate risk limitations imposed by this article must be less than four percent of the insurer's surplus to policyholders;

(B) within nine months of the effective date of this article, the insurer shall file a reasonable plan of operation, acceptable to the superintendent, which shall contain:

(i) a reasonable timetable and appropriate procedures to implement that timetable to make a determination as to whether or not the insurer will make application to organize a financial guaranty insurance corporation during the aforesaid sixty month period;

(ii) the types and projected diversification of guaranties that will be issued during the transition period;

(iii) the underwriting procedures that will be followed;

(iv) oversight methods;

(v) investment policies; and

(vi) such other matters as may be prescribed by the superintendent.

The plan of operation shall be deemed acceptable unless, within sixty days of its filing, the superintendent notifies the insurer of any specific objections to such plan. The plan shall be updated in the event of a material change with respect to the foregoing and at least annually;

(C) if the insurer has determined that it will not organize a financial guaranty insurance corporation, within thirty days after that determination it shall notify the superintendent, cease writing policies of financial guaranty insurance and comply with the provisions of paragraph four of this subsection; and

(D) the insurer shall file such additional statements or reports as may be required by the superintendent.

(2) For a transition period not to exceed ninety-six months from the effective date of this article, if the insurer has and maintains surplus to policyholders of at least one hundred fifty million dollars (for the purpose of this section, surplus to policyholders means the aggregate surplus to policyholders of said insurer and other member companies of an inter-company pool, and if the insurer is a foreign insurer its surplus to policyholders shall be computed as if it were a domestic insurer) and the aggregate financial guaranty written premium of said insurer and other member companies of an inter-company pool shall have been at least one million dollars in any one of the five years ending December thirty-first, nineteen hundred eighty-eight, provided that:

(A) during the first sixty months of the transition period, the amount of surplus to policyholders needed to meet the aggregate risk limitations imposed by this article must be less than four percent of the insurer's surplus to policyholders. After such sixty month period, provided the insurer complies with subparagraph (D) of this paragraph, the amount of surplus to policyholders needed to meet such aggregate risk limitations must be less than five percent of the insurer's surplus to policyholders for the succeeding twelve month period and less than six percent for the next succeeding twenty-four month period;

(B) during the transition period, the amount of surplus to policyholders needed to meet the single risk limitations imposed by paragraphs two through five of subsection (d) of section six thousand nine hundred four of this article must be less than twenty percent of the insurer's surplus to policyholders, except that the

single risk limitation with respect to investment grade obligations under such paragraph five shall be the lesser of eighty million dollars or seven percent of the insurer's surplus to policyholders;

(C) during the transition period, notwithstanding the last sentence of paragraph one of subsection (b) of section six thousand nine hundred four, industrial development bonds shall not be included in the investment grade requirements set forth in such sentence.

(D) during the transition period, reinsurance in the form of intercompany pooling agreements, shall not be subject to subparagraphs (C), (D), (E) and (F) of paragraph two of subsection (a) of section six thousand nine hundred six of this article, if such intercompany pooling agreements were in effect on January first, nineteen hundred eighty-nine, and reinsurance placed with insurers which are subject to the provisions of paragraph two of subsection (a) of section six thousand nine hundred six and are not members of the ceding company's intercompany pooling agreement may not exceed sixty percent of the total exposures insured net of collateral remaining after deducting any reinsurance placed with another financial guaranty insurance corporation or an insurer writing only financial guaranty insurance as is or would be permitted by this article;

(E) within sixty months of the effective date of this article, the insurer shall file a reasonable plan of operation, acceptable to the superintendent, which shall contain:

(i) a reasonable timetable and appropriate procedures to implement that timetable to make a determination as to whether or not the insurer will make application to organize a financial guaranty insurance corporation during the aforesaid ninety-six month period;

(ii) the types and projected diversification of guaranties that will be issued during the transition period;

(iii) the underwriting procedures that will be followed;

(iv) oversight methods;

(v) investment policies; and

(vi) such other matters as may be prescribed by the superintendent.

The plan of operation shall be deemed acceptable unless, within sixty days of its filing, the superintendent notifies the insurer of any specific objections to such plan. The plan shall be updated in the event of a material change with respect to the foregoing and at least annually;

(F) if the insurer has determined that it will not organize a financial guaranty insurance corporation, within thirty days after that determination it shall notify the superintendent, cease writing policies of financial guaranty insurance and comply with the provisions of paragraph four of this subsection; and

(G) the insurer shall file such additional statements or reports as may be required by the superintendent.

(3) For a transition period not to exceed twelve months from the effective date of this article, in the case of an insurer transacting only financial guaranty insurance prior to the effective date of this article and which qualifies for licensing as a financial guaranty insurance corporation under section six thousand nine hundred two of this article, provided that it makes application to amend its current license to that of a financial guaranty insurance corporation licensed to transact only those kinds of insurance permitted pursuant to section six thousand nine hundred two of this article within sixty days of the effective date of this article, and provided that, for purposes of this paragraph, an insurer shall be deemed to be transacting only financial guaranty insurance prior to the effective date of this article if, with the approval of the superintendent, it has reinsured all of any other insurance liabilities with one or more authorized insurers or has otherwise made provision for such liabilities.

(4) For a transition period not to exceed nine months, in the case of an insurer that does not qualify under either paragraph one, two or three of this subsection or does not file a plan of operation pursuant to paragraph one or two of this subsection, such insurer shall cease writing any new financial guaranty insurance business and may:

(A) reinsure its net in force business with a licensed financial guaranty insurance corporation; or

(B) subject to the prior approval of its domiciliary commissioner, reinsure all or part of its net in force business in accordance with the requirements of paragraph two of subsection (a) of section six thousand nine hundred six of this article, except that subparagraphs (D), (E) and (F) of paragraph two of such subsection shall not be applicable. The assuming insurer shall maintain reserves of such reinsured business in the manner applicable to the ceding insurer under this paragraph; or

(C) thereafter continue the risks then in force and, with thirty days prior written notice to its domiciliary commissioner, issue new financial guaranty policies, provided that the issuing of such policies is reasonably prudent to mitigate either the amount of or possibility of loss in connection with business transacted prior to the effective date of this article. Provided, however, an insurer must receive the prior approval of its domiciliary-

ary commissioner before issuing any new financial guaranty insurance policies that would have the effect of increasing its risk of loss;

(b) shall, for all guaranties in force prior to the effective date of this article, including those which fall under the definition of financial guaranty insurance contained in subsection (a) of section six thousand nine hundred one of this article, be subject to the reserve requirements applicable for municipal bond guaranties in effect prior to the effective date of this article. To the extent that the insurer's contingency reserves maintained as of the effective date of this article are less than those required for municipal bond guaranties, the insurer shall have three years to bring its reserves into compliance, except that a part of the reserve may be released proportional to the reduction in aggregate net liability resulting from reinsurance, provided that the reinsurer shall, on the effective date of the reinsurance, establish a reserve in an amount equal to the amount released and, in addition, a part of the reserve may be released with the approval of the superintendent upon demonstration that the amount carried is excessive in relation to the corporation's outstanding obligations; and

(c) shall be subject to the reserve requirements specified in section six thousand nine hundred three of this article for all policies of financial guaranty insurance issued on or after the effective date of this article.

§ 6908. Applicability of other laws

An insurer issuing policies of financial guaranty insurance shall be subject to all of the provisions of this chapter applicable to property/casualty insurers to the extent that such provisions are not inconsistent with the provisions of this article.

§ 6909. Relationship to security fund

No insurer or agent of an insurer may deliver a policy of financial guaranty insurance unless such policy and any prospectus delivered on or after the effective date of this article with respect to the insured obligations clearly discloses that the policy is not covered by the property/casualty insurance security fund specified in article seventy-six of this chapter.