

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 964

S. P. 299

In Senate, February 20, 1973

Referred to Committee on Business Legislation. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Cox of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

**AN ACT to Amend the Maine Insurance Code to Provide for Regulation of
Insurance Holding Company Systems.**

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

R. S., T. 24-A, § 222, repealed and replaced. Section 222 of Title 24-A of the Revised Statutes, as enacted by section 1 of chapter 132 of the public laws of 1969, is repealed and the following enacted in place thereof:

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

1. **Examination.** For the purpose of ascertaining compliance with law, or relationships and transactions between any such person and any insurer or proposed insurer, the commissioner may as often as he deems advisable examine the accounts, records, documents and transactions pertaining to or affecting the insurance affairs or proposed insurance affairs and transactions of:

A. Any insurance holding company; or person holding the shares of voting stock or policyholder proxies of an insurer as voting trustee or otherwise, for the purpose of controlling the management thereof;

B. Any insurance agent, broker, general agent, surplus lines broker, adjuster, consultant, insurer representatives or any person holding himself out as any of the foregoing;

C. Any person having a contract under which he enjoys by terms or in fact the exclusive or dominant right to manage or control the insurer;

D. Any person in this State engaged in, or proposing to be engaged in this State in, or holding himself out in this State as so engaging or proposing, or in this State assisting in the promotion, formation or financing of an insurer or insurance holding corporation, or corporation or other group to finance an insurer or the production of its business.

2. Definitions. As used in this subsection, unless the context otherwise requires, the following words shall have the following meanings.

A. Affiliate. "Affiliate" of, or a person "affiliated" with, a specific person, means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

B. Control. "Control," including "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 other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10% or more of the voting securities, or voting insurance policies in the case of mutual or reciprocal insurers, of any other person. This presumption may be rebutted by showing that control does not exist in fact.

C. Insurance holding company system. "Insurance holding company system" shall consist of 2 or more affiliated persons, one or more of whom is an insurer.

D. Insurer. "Insurer" shall have the same meaning given it in section 4 of the Maine Insurance Code.

E. Person. "Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization or any similar entity, or any combination of the foregoing acting in concert.

F. Subsidiary. "Subsidiary" of a specified person shall mean an affiliate controlled by such person directly, or indirectly through one or more intermediaries.

3. Tender offers. No person other than the issuer thereof or an affiliate of the issuer shall make a tender offer for or a request or invitation for tenders of, or agreement to exchange securities for or otherwise acquire, any voting security or any security convertible into a voting security of a domestic insurer if, as a result of the consummation thereof, the person making such tender offer, request or agreement, would, directly or indirectly, acquire actual control of such insurer, unless:

A. Such person has filed with the commissioner a statement containing such of the following information as may be applicable, and such additional

information as the commissioner may by rule or regulation prescribe as necessary or appropriate in the public interest or for the protection of policyholders:

(1) The background and identity of all persons by whom or on whose behalf the purchases or the exchange, merger or other acquisition of control are to be effected;

(2) The source and amount of the funds or other consideration used or to be used in making the purchases or in effecting the exchange, merger or other acquisition of control, and, if any part of such funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the purchases or effecting the exchange, merger or other acquisition of control, a description of the transaction and the names and identities of the parties thereto;

(3) Any plans or proposals which such persons may have to liquidate such insurer, or the controlling person thereof, or to sell its assets or merge it with any person, or to make any other major change in its business or corporate structure or management;

(4) The amount of each class of voting securities, or securities which may be converted into voting securities, of such insurer or such controlling person, which are beneficially owned, and the amount of each class of voting securities or securities which may be converted into voting securities of such insurer or such controlling person concerning which there is a right to acquire beneficial ownership, by each such person and by each such affiliate;

(5) Information as to all contracts, arrangements or understandings with any person with respect to any securities of such insurer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements or understandings have been entered into, and giving the details thereof; and

(6) A copy of all such agreements, and any amendments thereto, to exchange or otherwise acquire securities or to merge with or otherwise to acquire control of such insurer or such controlling person; and

B. Approval has been given by the commissioner, or the time for disapproval, as provided in subsection 6, including any agreed extensions, has elapsed.

4. Tender offer material. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such voting securities for control of a domestic insurer made by or on behalf of any such person shall contain such of the information specified in subsection 3 as the commissioner may prescribe, and shall be filed with the commissioner at least 10 days prior to the time such material is first published or sent or given to security holders. Copies of any additional material soliciting

or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and stockholders, and shall be filed with the commissioner at least 10 days prior to the time copies of such material are first published or sent or given to security holders.

5. Information as to tender offeror. If the person required to file the statement referred to in subsection 3 is a partnership, limited partnership, syndicate or other group, the commissioner may require that the information called for by said subsection 3 shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If the person required to file the statement referred to in said subsection 3 is a corporation, the commissioner may require that the information called for thereby shall be given with respect to such corporation and each officer and director thereof and each person who is directly or indirectly the beneficial owner of more than 10% of the outstanding securities of such corporation.

6. Approval, disapproval of proposed acquisition.

A. In the absence of approval by the commissioner, the purchases, exchanges, merger (of a controlling person of an insurer) or other acquisition of control referred to in subsection 3 may be made unless the commissioner, within 20 days after the statement required by said subsection has been filed with him, disapproves the purchases, exchanges, merger (of a controlling person of an insurer) or other acquisitions of control. The commissioner may disapprove any such transaction within 20 days after such filing if he finds that:

(1) After the change of control, the domestic insurer could not satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance, or last renewal or continuation of its certificate of authority to do the insurance business which it intends to transact in this State;

(2) The effect of the purchases, exchanges, merger (of a controlling person of the insurer), or other acquisitions of control may be substantially to lessen competition in insurance in this State or tend to create a monopoly therein; or would violate the laws of this State or of the United States relating to monopolies or restraint of trade;

(3) The financial condition of an acquiring person is such as would jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or, in the case of an acquisition of control, the interest of any remaining stockholders who are unaffiliated with the acquiring person;

(4) The plans or proposals which the acquiring person has to liquidate the insurer, to sell its assets, or to merge it with any person, or to make any other major change in its business or corporate structure or management, are unfair or prejudicial to policyholders; or

(5) The competence, experience and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders, stockholders or the public to permit them to do so.

B. Subsections 3 to 6 do not apply to any change of control if and to the extent that the commissioner, by rule or regulation or by order, shall exempt the same from the provisions of such sections as not comprehended within the purpose of this section.

C. Merger, consolidation or bulk reinsurance as to a domestic insurer shall be effectuated only pursuant to the applicable provisions of chapter ?? subchapter V and section 3875, as related to organization and powers of insurers.

7. Registration of holding company system insurers.

A. Every insurer which is authorized to do business in this State and which is a member of an insurance holding company system shall register with the commissioner; except, that such requirements shall not apply to a foreign insurer domiciled in a jurisdiction which has adopted by statute or regulation disclosure requirements and standards substantially similar to those contained in this chapter. Each insurer which is subject to registration under the provisions of this section shall register within 60 days after the effective date of this chapter or 15 days after it becomes subject to registration, whichever is later, unless the commissioner, for good cause shown, extends the time for registration, and then within such extended time. Nothing in this section shall be construed to prohibit the commissioner from requesting any authorized insurer which is a member of a holding company system and not subject to registration under the provisions of this section for a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its state of domicile. Upon request of the insurer or of the insurance regulatory authority of another jurisdiction in which the insurer is authorized to transact insurance, the commissioner at the insurer's expense shall furnish a copy of the registration statement or other information filed by a domestic insurer with the commissioner pursuant to this chapter.

B. Every insurer subject to registration shall file a registration statement, on a form provided by the commissioner, which shall contain current information about:

- (1) The capital structure, general financial condition, ownership and management of the insurer and of any person controlling the insurer;
- (2) The following transactions currently outstanding between the insurer and its affiliates:
 - (a) Loans and other investments, and purchases, sales or exchanges of securities of the affiliate by the insurer or of the insurer by its affiliates;
 - (b) Purchases, sales or exchanges of assets;

- (c) Transactions not in the ordinary course of business;
- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
- (e) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;
- (f) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding insurer; and

(3) Other matters concerning transactions between the insurer and any affiliate as may be required by the commissioner.

C. No information need be disclosed on the registration statement filed pursuant to this section if such information is not material to the purposes of this chapter. Unless the commissioner by rule, regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit or investments, involving $\frac{1}{2}$ of 1% or less of an insurer's admitted assets as of December 31 immediately preceding shall not be deemed material for purposes of this section.

D. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting on forms provided by the commissioner all material changes or additions on or before the 15th day of the month following that in which it learns of each such change or addition.

E. The commissioner shall terminate the registration of any insurer which demonstrates that it is no longer a member of an insurance holding company system.

F. 2 or more affiliated insurers subject to registration hereunder may file a consolidated registration statement or consolidated reports amending their respective consolidated statements or their individual registration statements so long as such consolidated filings correctly reflect the condition of and transactions between such persons.

G. The commissioner may allow any insurer, which is authorized to do business in this State and which is part of an insurance holding company system, to register on behalf of any affiliated insurer which is required to register under paragraph A of this subsection and to file all information and material required to be filed under this chapter.

H. This section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule, regulation or order shall exempt the same from the provisions of this section as not comprehended within the purposes thereof.

I. Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by the in-

suror or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and the insurer as well as the bases for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows the disclaimer. The commissioner shall disallow a disclaimer only after a hearing thereon with notice to all parties in interest, and after making specific findings of fact to support such disallowance.

8. Transactions with affiliates; standards. Material transactions by registered insurers with their affiliates occurring after the effective date of this chapter shall be subject to the following standards:

- A. The terms shall be fair and reasonable;
- B. The books, accounts and records of each party shall be so maintained as to disclose clearly and accurately the nature and details of the transaction; and
- C. The insurer's surplus to policyholders following any dividends or distributions to stockholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

9. Insurer's surplus; adequacy factors. For the purposes of this chapter, in determining whether an insurer's surplus to policyholder is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- A. The size of the insurer as measured by its assets, capital and surplus, reserves, premium writing, insurance in force and other appropriate criteria;
- B. The extent to which the insurer's business is diversified among the several lines of insurance;
- C. The number and size of the risks insured in each line of business;
- D. The extent of the geographical dispersion of the insurer's insured risks;
- E. The nature and extent of the insurer's reinsurance program;
- F. The quality, diversification and liquidity of the insurer's investment portfolio;
- G. The recent past and projected future trend in the size of the insurer's surplus to policyholders;
- H. The surplus to policyholders maintained by other comparable insurers;
- I. The adequacy of the insurer's reserves; and
- J. The quality and liquidity of investments in subsidiaries.

10. Dividends and distributions. No insurer subject to registration under this chapter shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until 60 days after the commissioner

has received notice of the declaration thereof, and has not within such period disapproved such payment, or the commissioner shall have approved such payment within such 60-day period. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distributions made within the preceding 12 months, exceeds the greater of 10% of the insurer's surplus to policyholders as of December 31 of the year immediately preceding, or the net gain from operations of the insurer if the insurer is a life insurer, or the net investment income if the insurer is not a life insurer, for the 12-month period ending December 31 of the year immediately preceding, but shall not include pro rata distributions of any class of the insurer's own securities. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, and such a declaration shall confer no rights upon stockholders until the commissioner has approved the payment of the dividend or distribution or the commissioner has not disapproved such payment within the period referred to above.

11. Verification of information.

A. Subject to the limitations contained in this section and in addition to the powers which the commissioner has under chapter 3 relating to the examination of insurers, the commissioner shall also have the power to order any insurer registered under the provisions of this chapter to produce such records, books or papers in the possession of the insurer or affiliates as shall be necessary to verify the information required to be contained in the insurer's registration statement, and any additional information pertinent to transactions between the insurer and affiliates. Such books, records, papers and information shall be examined in the manner prescribed in such chapter 3 relating to the time, place and expense of examination.

B. The purposes of the examination shall be to verify the registration statement and any addition or amendment thereto made or required pursuant to this chapter.

12. Confidential communications. Every report made pursuant to this chapter, including every report of examination or investigation, and any duly authenticated copy thereof in the possession of any person subject to this chapter, shall be a confidential communication, shall not be subject to subpoena and shall not be made public by the commissioner without the prior written consent of the insurer, unless the commissioner determines that the interests of policyholders, stockholders or the public will be served by the publication thereof, in which event he may make a public record or publish all or any part thereof in such manner as he may deem appropriate.

13. Jurisdiction of courts. Any person obtaining or attempting to obtain control of a domestic insurer shall by such act subject such person to the jurisdiction of the courts of this State.

14. Rules and regulations. The commissioner may, upon notice and opportunity for all interested parties to be heard, issue such reasonable rules,

regulations and orders as shall be necessary to carry out and effectuate provisions of this chapter.

15. Supplemental to existing provisions. This section, as to holding company systems, supplements in particular those provisions contained in sections 407, subsection 2; 410, subsection 1, paragraph B; 413; 425; 1115; 1136; 3414; 3474; 3475; 3476; 3483; 3875 and 4407; and the provisions of this section shall be deemed to supersede or modify any such provisions or any other provisions of the Maine Insurance Code, as it may be amended, only to the extent entirely inconsistent therewith.

STATEMENT OF FACT

This bill provides for regulation and supervision by the Insurance Commissioner of acquisition of control of insurance companies and registration, regulation and supervision of insurance holding company systems by the amendment of Title 24-A, chapter 3, section 222 to: Define "affiliate," "control," "insurance holding company system," "insurer," "person," "subsidiary" and "commissioner"; provide that tender offers for acquisition of control directly or indirectly of a domestic insurer are subject to actual or constructive approval of the Insurance Commissioner, and require filing of specified information with the commissioner relative to the tender offer, persons associated therein, agreements and plans, prior to making a tender offer; require that material proposed to be used in making a tender offer be filed with the commissioner in advance, and specify requirements as to the contents of such material; require filing with the commissioner of additional information as to members of tender offer or partnerships and syndicates, and as to officers, directors and security holders of tender offer or corporations; provide that the commissioner may disapprove a proposed acquisition of control of an insurer within 20 days after filing of required information with him, stating the grounds for such disapproval, and provide that the proposed acquisition may be made if not so disapproved, provide for exemptions from the approval requirement, and that merger, consolidation or bulk reinsurance of domestic insurers are subject to other specified laws; require registration with the commissioner of insurer members of an insurance holding company system, specify the information to be included within such registration, require such information to be kept current, provide for termination of registration, for consolidated and joint registration by affiliated insurers, for exemptions from registration, and for disclaimer of affiliation between insurers and holding companies; provide standards governing material transactions between insurers and their affiliates; provide bases for determination of adequacy of an insurer's surplus, as related to transactions with affiliates; prohibit payment by insurers of extraordinary dividends or other extraordinary distributions to its stockholders without actual or constructive approval of the commissioner within a designated period, define "extraordinary dividend or distribution" and authorize declaration of such a dividend or distribution if conditioned upon the commissioner's approval; provide for examination by the commissioner of records, books, papers of insurer and affiliates for verification

of information contained in insurer's registration statement, or relative to transactions between the insurer and its affiliates; provide that reports made under this law are confidential communications not subject to subpoena, and state the bases upon which such reports may be made public or published by the commissioner; provide for jurisdiction of courts of this State over persons obtaining or attempting to obtain control of a domestic insurer, authorize the commissioner to make rules, regulations and orders for effectuation of this law; provide that this chapter is supplemental to existing provisions as to transactions between insurers and the parent corporation, subsidiaries and affiliates; and provide an effective date.