

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 578

H. P. 462

House of Representatives, February 6, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Hewes of Cape Elizabeth.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Provide for Regulation of Insurance Holding Company Systems.

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

24-A MRSA § 222, as last amended by PL 1973, c. 585, § 12, is repealed and the following enacted in place thereof: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 purposes of ascertaining compliance with law, or relationships and transactions between any person as defined hereafter and any insurer or proposed insurer, the superintendent 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, or transactions of the insurer or proposed insurer as may be in the possession of any holding company, its subsidiaries or affiliates as is necessary to ascertain the financial condition or legality of conduct of the insurer or proposed insurer. Such investigatory and examination authority shall also extend to the examination of:

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

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 section, 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 controls, or is controlled by, or is under common control with the person specified;

B. Control

(1) '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, or guaranty capital shares if a mutual insurer has established a guaranty fund, or any other person;

(2) Notwithstanding the presumption of control contained in subparagraph (1), the superintendent, upon application of the insurance company, may determine that the insurer is not controlled by the person presumed to control it. In addition, the superintendent, after notice and an opportunity to be heard, may determine, notwithstanding the presumption in subparagraph (1), that a person does control an insurance company or companies;

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;

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 a person, directly or indirectly, through one or more intermediaries.

3. Subsidiaries of insurers

A. Authorization: Any domestic insurer may invest in or otherwise acquire one or more subsidiaries as authorized in section 1115;

B. Cessation of Control. If an insurer ceases to control a subsidiary, it shall dispose of any investment therein made pursuant to this section within 3 years from the time of the cessation of control or within such further time as the superintendent may prescribe, unless at any time after such investment shall have been made, such investment shall have met the requirements for investment under any other section of this chapter and the insurer has notified the superintendent thereof.

4. **Tender offers.** No person 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 and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer, unless:

A. Such person has filed with the superintendent a statement containing such of the following information as may be applicable and such additional information as the superintendent 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 superintendent or the time for disapproval, as provided in subsection 7, including any agreed extensions, has elapsed.

5. 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 4 as the superintendent may prescribe, and shall be filed with the superintendent 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 superintendent may prescribe as necessary or appropriate in the public interest or for the protection of policyholders and stockholders, and shall be filed with the superintendent at least 10 days prior to the time copies of such material are first published or sent or given to security holders.

6. Information as to tender offeror. If the person required to file the statement referred to in subsection 4 is a partnership, limited partnership, syndicate or other group, the superintendent may require that the information called for by subsection 4 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 subsection 4 is a corporation, the superintendent 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.

7. Approval, disapproval of proposed acquisition.

A. In the absence of approval by the superintendent, the purchase, exchange, merger of a controlling person of an insurer or other acquisition of control referred to in subsection 4, may be made unless the superintendent, within 30 days after the statement required by subsection 4 has been filed with him, disapproves the purchases, exchanges, merger of a controlling person of an insurer, or other acquisitions of control. The superintendent may disapprove any such transaction within 30 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 restraints 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;

(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; or

(6) Any party to an agreement to merge with a domestic insurer is not itself an insurer;

B. Subparagraphs (3) to (6) do not apply to any change of control if and to the extent that the superintendent, by rule or regulation or by order, shall exempt the same from the provisions of such subparagraphs as not comprehended within the purpose of this subsection;

C. Violation

(1) Failure to file the statement required under subsection 4 shall constitute a violation of this chapter.

(2) Effectuation of or any attempt to effectuate an acquisition of, control of or merger with a domestic insurer within the 30-day period referred to in this subsection or after disapproval of such acquisition of control or merger by the superintendent shall constitute a violation of this chapter.

8. 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 superintendent, except that such requirements shall not apply to a foreign insurer domiciled in a jurisdiction which in the opinion of the superintendent has adopted by statute or regulation disclosure statements and standards substantially similar to those contained in this chapter. Any insurer domiciled in a jurisdiction that has not adopted by statute or regu-

lation disclosure requirements and standards substantially similar to those contained in this section may be treated as a domestic insurer for purposes of this section. Each insurer which is subject to registration under this subsection shall register within 60 days after the effective date of this section or 15 days after it becomes subject to registration, whichever is later, unless the superintendent, 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 superintendent from requesting any authorized insurer which is a member of a holding company system and not subject to registration under 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 superintendent at the insurer's expense shall furnish a copy of the registration statement or other information filed by a domestic insurer with the superintendent 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 costsharing 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 superintendent;

C. No information need be disclosed on the registration statement filed pursuant to this subsection if such information is not material to the purposes of this chapter. Unless the superintendent by rule, regulation or or-

der 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 31st 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 superintendent all material changes or additions on or before the 15th days of the month following that in which it learns of each such change or addition;

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

F. Two 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 superintendent may allow or require 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 and to file all information and material required to be filed under this section;

H. This section shall not apply to any insurer, information or transaction if and to the extent that the superintendent 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 superintendent a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by the insurer 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 superintendent disallows the disclaimer. The superintendent 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.

g. 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.

Any material transaction which is not in conformity with this subsection shall constitute a violation of this chapter and, in addition to the penalties contained in subsection 14, shall render the transactions voidable at the initiative of the superintendent or otherwise under applicable law.

10. Insurer's surplus; adequacy factors. For the purposes of this chapter, in determining whether an insurer's surplus to policyholders 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 writings, 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 or affiliates.

11. Dividends and distributions. No insurer subject to registration under this section shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until 60 days after the superintendent has received notice of the declaration thereof, and has not within such period disapproved such payment, or the superintendent 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 31st of the year immediately preceding, or the net gain from operations of the insurer for the 12-month period ending December 31st 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 superintendent's approval thereof, and such

a declaration shall confer no rights upon stockholders until the superintendent has approved the payment of the dividend or distribution or the superintendent has not disapproved such payment within the period referred to above. The insurer's surplus following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and shall be adequate to meet its financial needs.

12. Verification of information.

A. Subject to the limitations contained in this subsection and in addition to the powers which the superintendent has under chapter 3 relating to the examination of insurers, the superintendent shall also have the power to order any insurer registered under 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 chapter 3 relating to the time, place and expense of examination, except that expenses incurred by the superintendent in examining affiliated companies not defined as 'insurer', shall be borne by the person examined subject to the limitations of section 228;

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.

13. 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 section, shall be a confidential communication, shall not be subject to subpoena and shall not be made public by the superintendent without the prior written consent of the insurer, unless the superintendent 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.

14. Penalties.

A. Any person who willfully violates any of the provisions of this section, or the rules and regulations promulgated by the superintendent under authority thereof, or any person who willfully, in a filing pursuant to subsection 4 or a registration pursuant to subsection 8, paragraph B, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than \$1,000 or imprisoned not more than 3 years, or both;

B. Any person who is found, after notice and opportunity to be heard, to have willfully violated any of the provisions of this section or any rule or regulations promulgated by the superintendent under the authority thereof, shall, in addition to any other penalty provided by law, forfeit to this

State the sum of \$50 for a first violation and an additional sum of \$25 for each day such violation shall continue;

C. In addition to other remedies and penalties provided in this section or otherwise available under the laws of this State, any violation of this section is hereby declared to be an unfair method of competition or an unfair or deceptive act and practice in the business of insurance subject to the provisions of chapter 23 and in addition, the superintendent may, after notice and hearing:

(1) Refuse to issue, refuse to renew or reissue, revoke or suspend for a period not exceeding one year any license or certificate of authority issued to or be issued by it to any person found to have violated any of the provisions of this section;

(2) After notice and hearing impose by order and administrative forfeiture upon such person, enforceable by such revocation, suspension or refusal to issue, renew or reissue of any such license or licenses or otherwise pursuant to the law of this State, in an amount not to exceed \$100 for each such violation and for each day's continuance thereof;

(3) Proceed in a court of competent jurisdiction within or without this State against such person, if an insurer, upon the applicable grounds provided for the rehabilitation, conservatorship of liquidation of an insurer or for an injunction to prevent a violation of this section or to reverse or hold invalid any transaction made in violation of this section;

(4) Issue such administrative orders to require compliance with this section, including the filing of evidence of compliance and periodic reporting as to such compliance, enforceable by such revocation, suspension or refusal to issue, renew or reissue of any such license or licenses or otherwise pursuant to the laws of this State; or

(5) Any or all of the foregoing.

15. Additional powers. The powers, remedies, procedures and penalties provided in this section shall be in addition to, and not in limitation of, any other powers, remedies, procedures and penalties otherwise provided by law.

16. Separability of provisions. If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and for this purpose the provisions of this section are separable.

17. 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.

18. Rules and regulations. The superintendent 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 section.

19. 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 inconsistent therewith.

STATEMENT OF FACT

This bill provides for regulation and supervision by the insurance superintendent of acquisition of control of insurance companies and registration, regulation and supervision of insurance holding company systems.