

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1088

6  
7 H.P. 838

House of Representatives, March 7, 1983

8 Submitted by the Department of Business Regulation pursuant to Joint  
Rule 24.

9 On Motion of Representative Brannigan of Portland, referred to the  
Committee on Business Legislation. Sent up for concurrence and ordered  
10 printed.

EDWIN H. PERT, Clerk

Presented by Representative Racine of Biddeford.

11 Cosponsors: Representative Pouliot of Lewiston, Representative Stevens  
of Bangor and Representative Murray of Bangor.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Amend Provisions of the Maine  
18 Insurance Code Relating to Tender Offers  
19 and to Unfair Trade Practices.  
20

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

23 Sec. 1. 24-A MRSA §222, sub-§7, ¶A, as amended  
24 by PL 1977, c. 694, §388, is further amended to read:

25 A. In the absence of approval by the superinten-  
26 dent, the purchase, exchange, merger of a con-  
27 trolling person of an insurer or other acquisi-  
28 tion of control referred to in subsection 4, may  
29 be made unless the superintendent, ~~acting in ac-~~  
30 ~~cord~~ after a hearing is held in accordance with  
31 the procedures set forth in the Maine Administra-  
32 tive Procedure Act, Title 5, chapter 375, sub-  
33 chapter IV, and ~~within 30 days after the state-~~  
34 ~~ment required by subsection 4 has been filed with~~

1 him, disapproves the purchases, exchanges, merger  
2 of a controlling person of an insurer, or other  
3 acquisitions of control. Any such hearing shall  
4 be held within 30 days after the statement re-  
5 quired by subsection 4 has been filed with the  
6 superintendent. The superintendent shall make a  
7 determination within 30 days after the conclusion  
8 of that hearing. The superintendent may disap-  
9 prove any such transaction within 30 days after  
10 such filing if he finds that:

11 (1) After the change of control, the domes-  
12 tic insurer could not satisfy the require-  
13 ments for the issuance of a certificate of  
14 authority according to requirements in force  
15 at the time of the issuance, or last renewal  
16 or continuation of its certificate of  
17 authority to do the insurance business which  
18 it intends to transact in this State;

19 (2) The effect of the purchases, exchanges,  
20 merger of a controlling person of the  
21 insurer, or other acquisitions of control  
22 may be substantially to lessen competition  
23 in insurance in this State or tend to create  
24 a monopoly therein; or would violate the  
25 laws of this State or of the United States  
26 relating to monopolies or restraints of  
27 trade;

28 (3) The financial condition of an acquiring  
29 person is such as would jeopardize the  
30 financial stability of the insurer or preju-  
31 dice the interest of its policyholders or,  
32 in the case of an acquisition of control,  
33 the interest of any remaining stockholders  
34 who are unaffiliated with the acquiring  
35 person;

36 (4) The plans or proposals which the ac-  
37 quiring person has to liquidate the insurer,  
38 to sell its assets or to merge it with any  
39 person, or to make any other major change in  
40 its business or corporate structure or man-  
41 agement, are unfair or prejudicial to  
42 policyholders;

1 (5) The competence, experience and integ-  
2 rity of those persons who would control the  
3 operation of the insurer indicate that it  
4 would not be in the interest of policyhold-  
5 ers, stockholders or the public to permit  
6 them to do so; or

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

9 Sec. 2. 24-A MRSA §222, sub-§7, ¶D, as enacted  
10 by PL 1975, c. 356, §1, is amended to read:

11 D. Violation

12 (1) Failure to file the statement required  
13 under subsection 4 shall constitute a viola-  
14 tion of this chapter.

15 (2) Effectuation of or any attempt to  
16 effectuate an acquisition of, control of or  
17 merger with a domestic insurer within the  
18 30-day period referred to in this subsection  
19 30 days of the filing of the statement re-  
20 quired by subsection 4, prior to the  
21 superintendent's decision if a hearing is  
22 held or after disapproval of such acquisi-  
23 tion of control or merger by the superinten-  
24 dent shall constitute a violation of this  
25 chapter.

26 Sec. 3. 24-A MRSA §2165, sub-§2, as amended by  
27 PL 1973, c. 585, §12, is repealed and the following  
28 enacted in its place:

29 2. A desist order shall be effective upon  
30 expiration of the time allowed for appeals from the  
31 superintendent's orders, regardless of whether an  
32 appeal is taken, unless stayed by the court. The  
33 filing of an appeal shall not operate as a stay of  
34 the desist order pending judicial review. Applica-  
35 tion for a stay may be made as provided in section  
36 236, and in Title 5, section 11004. An appeal from a  
37 desist order shall be taken in accordance with  
38 section 236, and any intervenor in a hearing held  
39 under this chapter shall have the right to appeal as  
40 so provided.

1       Sec. 4. 24-A MRSA §2168, sub-§1, as enacted by  
2       PL 1969, c. 132, §1, is amended to read:

3       1. No person engaged in the business of financ-  
4       ing the purchase of real or personal property or of  
5       lending money on the security of real or personal  
6       property ~~shall~~ may require, as a condition to ~~such~~  
7       the financing or lending, or as a condition to the  
8       renewal or extension of any such loan or to the per-  
9       formance of any other act in connection with ~~such the~~  
10      financing or lending, that the purchaser or borrower,  
11      or his successors, shall negotiate through a partic-  
12      ular insurer or insurers, insurance agent or agents,  
13      broker or brokers, type of insurer or types of insur-  
14      ers, any policy of insurance or renewal thereof  
15      insuring ~~such that~~ that property. For purposes of this  
16      section, the term "policy" includes, but is not  
17      limited to, any temporary contract or binder, by  
18      whatever name known, under the terms of which insur-  
19      ance coverage commences at a specified time, and con-  
20      tinues until a finished policy is issued or the risk  
21      is declined and coverage is terminated.

22      Sec. 5. 24-A MRSA §2169, as amended by PL 1973,  
23      c. 585, §12, is further amended to read:

24      §2169. Notice of free choice of agent or insurer

25      Every debtor, borrower or purchaser of property  
26      with respect to which insurance of any kind on the  
27      property is required in connection with a debt or  
28      loan secured by ~~such that~~ that property or in connection  
29      with the sale of ~~such that~~ that property shall be informed  
30      by the creditor or lender of his right of free choice  
31      in the selection of the agent and insurer through or  
32      by which ~~such the~~ the insurance is to be placed. There  
33      shall be no interference either directly or indi-  
34      rectly with ~~such the~~ the borrower's, debtor's or  
35      purchaser's free choice of an agent and of an insurer  
36      which complies with the requirements set out in  
37      section 2168, and the creditor or lender shall not  
38      refuse an adequate policy so tendered by the bor-  
39      rower, debtor or purchaser. For purposes of this  
40      section, the term "policy" includes, but is not  
41      limited to, any temporary contract or binder, by  
42      whatever name known, under the terms of which insur-  
43      ance coverage commences at a specified time, and con-

1 tinues until a finished policy is issued or the risk  
2 is declined and coverage is terminated. Upon notice  
3 of any refusal of ~~such~~ this tendered policy, the  
4 superintendent shall order the creditor or lender to  
5 accept the tendered policy, if he determines that  
6 ~~such the~~ refusal is not in accordance with the re-  
7 quirements set out in section 2168. Failure to comply  
8 with such an order of the superintendent shall be  
9 deemed a violation of this section.

10 STATEMENT OF FACT

11 This bill is intended to clarify certain ambiguities  
12 in the Maine Insurance Code and to amend one  
13 other provision which has been found to be imprac-  
14 tical.

15 Sections 1 and 2 extend the time period within  
16 which the superintendent may disapprove the purchase,  
17 exchange, merger of a controlling person of a domes-  
18 tic insurer or other acquisition of a domestic  
19 insurer. Current law provides for a 30-day time  
20 period from the date of filing of the statement re-  
21 quired by statute regardless of whether a hearing is  
22 held. This time period is inadequate to provide for  
23 both a meaningful hearing held in accordance with the  
24 Administrative Procedure Act, Title 5, chapter 375,  
25 subchapter IV, and a meaningful consideration of  
26 underlying substantive matters.

27 Section 3 is intended to clarify that the mere  
28 filing of an appeal of an order of the superintendent  
29 to desist an unfair trade practice does not consti-  
30 tute an automatic stay of the order.

31 Sections 4, 5 and 6 are intended to clarify that,  
32 for purposes of Title 24-A, sections 2168 and 2169,  
33 that an insurance policy includes temporary insurance  
34 contracts which bind coverage until the underlying  
35 risk is declined or a finished policy is issued.

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