

MAINE STATE LEGISLATURE

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L.D. 1043
(Filing No. S-223)

STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 399, L.D. 1043, Bill, "An Act to Clarify the Application of Insurance Holding Company Laws to Holding Companies of Domestic Insurers"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 24-A MRSA §222, sub-§2, ¶A-1 is enacted to read:

A-1. Beneficial owner. "Beneficial owner" of a voting security, voting insurance policy or guaranty capital share means any person or group of persons acting in concert who, directly or indirectly, through any contract, arrangement, proxy appointment, understanding, relationship or otherwise, has or shares:

(1) Voting power over the security, policy or guaranty capital share, including the power to vote or to direct the voting of the security, policy or share; or

(2) Investment power over the security, policy or share, including the power to dispose or to direct the disposition of the security, policy or share.

The superintendent may determine that persons are acting in concert, either on the superintendent's own initiative or upon application of an interested person, based upon evidence that actions taken by those persons, if consummated, may permit the exercise of common control, directly or indirectly, over the domestic insurer. The absence of a determination by the superintendent that persons are acting in concert shall not be construed to exempt those persons from compliance with the requirements of this section.

Sec. 2. 24-A MRSA §222, sub-§2, ¶B, as repealed and replaced by PL 1975, c. 356, §1, is amended to read:

B. Control

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 3 (1) 'Control,' including 'controlling,' 'controlled
 5 by' and 'under common control with,' means the
 7 possession, direct or indirect, of the power to direct
 9 or cause the direction of the management and policies
 11 of a person, whether through the ownership of voting
 13 securities, by contract other than a commercial
 15 contract for goods or nonmanagement services, or
 17 otherwise, unless the power is solely the result of an
 19 official position with or a corporate office held by
 21 the person. Control shall be presumed to exist if any
 23 person, ~~directly or indirectly, owns, controls, holds~~
 25 with the power to vote or holds proxies representing is
 27 the beneficial owner of 10% or more of the voting
 29 securities, or voting insurance policies in the case of
 31 mutual or reciprocal insurers, or guaranty capital
 33 shares if a mutual insurer has established a guaranty
fund, of any other person. A beneficial owner may rely
in determining the amount of voting securities of any
person outstanding upon information set forth in that
person's most recent quarterly or annual report filed
with the Securities and Exchange Commission pursuant to
the Exchange Act unless the beneficial owner knows or
has reason to believe that the information contained
therein is inaccurate. Two or more domestic mutual
 insurance companies who have restricted their licensed
 territories to the State of ~~Maine~~ shall not be deemed
 to be subject of to this section merely because such
 insurance companies commonly share facilities, incurred
 expenses, personnel services, or otherwise utilize cost
 allocations based on generally accepted accounting
 principles including pro rata sharing of assumed risks.

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

49 **Sec. 3. 24-A MRSA §222, sub-§2, ¶B-1 is enacted to read:**

51 B-1. Exchange Act. "Exchange Act" means the United States
Securities Exchange Act of 1934, as amended.

Sec. 4. 24-A MRSA §222, sub-§4, as repealed and replaced by PL
1975, c. 356, §1, is repealed.

Sec. 5. 24-A MRSA §222, sub-§§4-A and 4-B are enacted to read:

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4-A. Tender offers. No person may make a tender offer for, or a request or invitation for tenders of, or an agreement to exchange securities for, or otherwise acquire any voting security, or any security convertible into a voting security, of a domestic insurer or of any person controlling a domestic insurer if, as a result of the consummation thereof, the person making the tender offer, request or agreement, would, directly or indirectly, acquire actual control of the insurer or controlling person, and no person may enter into an agreement to merge with or may otherwise acquire control of a domestic insurer or its controlling person, unless:

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A. The person has filed with the superintendent and has sent the domestic insurer a statement containing the information required by subsection 4-B;

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B. The offer, request, invitation, agreement or acquisition has been approved by the superintendent in the manner prescribed in subsection 7; and

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C. Ten days have elapsed from the date of approval by the superintendent and no injunction or other court order precludes consummation of the offer, request, invitation, agreement or acquisition.

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The superintendent, by rule or by order, may exempt from paragraphs B and C, any offer, request, invitation or agreement which is subject to regulation as a tender offer under the Exchange Act, provided that the acquisition or other transaction contemplated by the offer, request, invitation or agreement may not be consummated unless that acquisition or other transaction is approved by the superintendent in the manner prescribed in subsection 7. The superintendent, by rule or by order, may in addition exempt from paragraphs B and C any offer, request, invitation, agreement, purchase or transaction on the grounds that the interests of the State in regulating that transaction are minimal relative to the interests of other jurisdictions or are minimal relative to the impact of the transaction as a whole, provided that it does not appear likely that exempting the transaction from the application of this section will be detrimental to the interests of Maine policyholders.

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4-B. Application for approval. Each statement required in subsection 4-A shall contain the following information as applicable:

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A. 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;

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B. The source and amount of the funds or other

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1 consideration which have been used or will be used in making
2 the purchases or in effecting the exchange, merger or other
3 acquisition of control and, if any part of these funds or
4 other consideration has been or will be borrowed or
5 otherwise obtained for the purpose of making the purchases
6 or effecting the exchange, merger or other acquisition of
7 control, a description of the transaction and the names and
8 identities of the parties involved;

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10 C. Any plans or proposals which those persons may have to
11 liquidate the insurer, or the controlling person of the
12 insurer, or to sell its assets or merge it with any person
13 or make any other major change in its business or corporate
14 structure or management;

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16 D. The amount of each class of voting securities, or
17 securities which may be converted into voting securities, of
18 the insurer or controlling person, which are beneficially
19 owned, and the amount of each class of voting securities, or
20 securities which may be converted into voting securities, of
21 that insurer or controlling person concerning which there is
22 a right to acquire beneficial ownership, by each person and
23 by each affiliate;

24 E. Information as to all contracts, arrangements or
25 understandings with any person with respect to any
26 securities of the insurer or the controlling person,
27 including, but not limited to, transfer of any of the
28 securities, joint ventures, loan or option arrangements,
29 puts or calls, guarantees of loans, guarantees against loss
30 or guarantees of profits, division of losses or profits, or
31 the giving or withholding of proxies, naming the persons
32 with whom those contracts, arrangements or understandings
33 have been entered into, and giving the details thereof;

34 F. A copy of all those agreements, and any amendments
35 thereto, to exchange or otherwise acquire securities or to
36 merge with or otherwise acquire control of the insurer or
37 the controlling person; and

38 G. Any other information as the superintendent may by rule
39 prescribe as necessary or appropriate in the public interest
40 or for the protection of policyholders.

41 **Sec. 6. 24-A MRSA §222, sub-§5, as enacted by PL 1975, c. 356,**
42 **§1, is amended to read:**

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44 5. Tender offer material. All requests or invitations for
45 tenders or advertisements making a tender offer or requesting or
46 inviting tenders of such voting securities for control of a
47 domestic insurer or its controlling person made by or on behalf
48 of any such person shall contain ~~such--of--the~~ any information

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1 specified in subsection--4- 4-B as the superintendent may
 2 prescribe, and shall be filed with the superintendent at least-10
 3 days-prior-to the time such that material is first published or
 4 sent or given to security holders. Copies of any additional
 5 material soliciting or requesting such tender offers subsequent
 6 to the initial solicitation or request shall contain such the
 7 information as that the superintendent may prescribe as necessary
 8 or appropriate in the public interest or for the protection of
 9 policyholders and--stockholders, and shall be filed with the
 10 superintendent at least-10-days-prior-to the time copies of such
 11 that material are first published or sent or given to security
 12 holders.

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14 **Sec. 7. 24-A MRSA §222, sub-§7, ¶A,** as amended by PL 1983, c.
 15 394, §1, is further amended to read:

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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, after a hearing is held~~ The superintendent shall hold a hearing in accordance with the procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, ~~disapproves the purchases, exchanges, merger of a controlling person of an insurer, or other acquisitions of control.~~ Any such hearing shall be held within 30 days after the statement required by subsection 4-4-A has been filed with the superintendent. The superintendent shall make a determination within 30 days after the conclusion of that hearing. The superintendent ~~may disapprove any such transaction if he finds that~~ shall approve any purchase, exchange, merger or other acquisition of control referred to in subsection 4-A unless the superintendent 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

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1 ~~or, in the case of an acquisition of control, the~~
2 ~~interest of any remaining stockholders who are~~
3 ~~unaffiliated with the acquiring person;~~

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

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

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

19 (7) The acquisition of control would tend to affect
21 adversely the contractual obligations of the domestic
22 insurer or its ability and tendency to render service
23 in the future to its policyholders and the public.

25 **Sec. 8. 24-A MRSA §222, sub-§7, ¶B.** as enacted by PL 1975, c.
26 356, §1, is amended to read:

27 B. Subparagraphs (3) to (6) (7) do not apply to any change
28 of control if and to the extent that the superintendent, by
29 rule ~~or regulation~~ or by order, ~~shall exempt~~ exempts the
30 same from the provisions of such those subparagraphs as not
31 comprehended within the purpose of this subsection; ~~and~~

33 **Sec. 9. 24-A MRSA §222, sub-§13,** as enacted by PL 1975, c.
34 356, §1, is amended to read:

37 13. Confidential communications. Any registration
38 statement, tender offer, or request or invitation for tenders,
39 advertisement making a tender offer or requesting or inviting
40 tenders of voting securities, option to purchase, agreement to
41 merge or consolidate, or contract to manage filed pursuant to
42 this section including any duly authenticated copy thereof in the
43 possession of any person subject to this section shall be a
44 confidential communication, shall not be subject to a subpoena
45 and shall not be made public by the superintendent without prior
46 written consent of the insurer, unless the superintendent
47 determines that the interests of policyholders, ~~stockholders~~ or
48 the public will be served by the publication thereof, in which
49 event he the superintendent may make a public record or publish
50 all or any part thereof in such manner as he the superintendent
51 may deem appropriate. The distribution of reports on examination
referred to in section 227 shall not be regarded as confidential

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1 communications and shall be excepted from the confidential
2 requirements of this subsection.
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5 **FISCAL NOTE**

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7 This bill will require the Superintendent of Insurance to
8 hold a hearing for any purchase, exchange, merger or other
9 acquisition of control of a domestic insurer. Currently, the
10 superintendent has the discretionary authority to hold hearings
11 in these instances. This could result in increases in the
12 administrative costs of the Bureau of Insurance. The additional
13 costs are not expected to be significant.'

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15 **STATEMENT OF FACT**

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17 The amendment removes the language in the bill that would
18 have exempted repurchase of stock by an insurer from the filing
19 requirements and requires the Superintendent of Insurance to hold
20 a hearing for every proposed purchase, exchange or merger of a
21 domestic insurer or a holding company of a domestic insurer which
22 would result in control being acquired. The bill had permitted
23 the superintendent to forego a hearing, provided the domestic
24 insurer and the acquiring person did not object. The amendment
25 also deletes the provision granting a private right of action to
26 any domestic insurer which was harmed by an acquiring person's
27 violation of the provisions of the control statute. The
28 amendment permits the superintendent to exempt a tender offer
29 from the notice requirement if the offer is subject to the United
30 States Securities Exchange Act of 1934 and to exempt an offer and
31 the subsequent transaction from regulation by the State if the
32 superintendent finds that the interests of the State are minimal
33 in relation to other jurisdictions and are minimal relative to
34 the impact of the transaction as a whole.
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37 Finally, the amendment permits the superintendent to
38 determine whether persons are acting to gain control of an
39 insurer, deletes the provision exempting persons with voting
40 power by virtue of a revocable proxy, removes the ability of a
41 beneficial owner to challenge the presumption of control and
makes other minor changes to the bill.

Reported by Senator Collins for the Committee on Banking
and Insurance. Reproduced and Distributed Pursuant to
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(6/7/89)

(Filing No. S-223)