

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1043

S.P. 399

In Senate, April 5, 1989

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

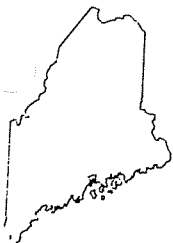
Presented by Senator THERIAULT of Aroostook.

Cosponsored by Representative RAND of Portland, Representative CURRAN of Westbrook and Senator CLARK of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Clarify the Application of Insurance Holding Company Laws to Holding Companies of Domestic Insurers.



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

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

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

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

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

19 Provided that a person is not deemed the beneficial owner of
21 any security, policy or share if that person has or shares
23 voting power over the security, policy or share solely from
25 a revocable proxy given in response to a proxy solicitation
 made in accordance with the applicable rules and regulations
 under the Exchange Act, and is not then reportable on a
 Schedule 13D under the Exchange Act, or any comparable or
 successor report.

27 **Sec. 2. 24-A MRSA §222, sub-§2, ¶B**, as repealed and replaced by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

31 **B. Control**

33 (1) 'Control,' including 'controlling,' 'controlled
35 by' and 'under common control with,' means the
37 possession, direct or indirect, of the power to direct
39 or cause the direction of the management and policies
41 of a person, whether through the ownership of voting
43 securities, by contract other than a commercial
45 contract for goods or nonmanagement services, or
47 otherwise, unless the power is solely the result of an
49 official position with or a corporate office held by
51 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~~ is
 the beneficial owner of 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, 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

1 with the Securities and Exchange Commission pursuant to
3 the Exchange Act unless the beneficial owner knows or
5 has reason to believe that the information contained
7 therein is inaccurate. Two or more domestic mutual
9 insurance companies who have restricted their licensed
11 territories to the State of Maine shall not be deemed
 to be subject of 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.

13 (2) Notwithstanding the presumption of control
15 contained in subparagraph (1), the superintendent, upon
17 application of the insurance company, or the beneficial
19 owner, may determine that the insurer is not controlled
21 by the person presumed to control it. Control shall be
23 presumed again to exist upon the acquisition of
 beneficial ownership of each additional 5% or more of
 the voting securities of the other person. In addition,
 the superintendent, after notice and an opportunity to
 be heard, may determine, notwithstanding the absence of
 the presumption in subparagraph (1), that a person does
 control an insurance company or companies.

25 **Sec. 3. 24-A MRSA §222, sub-§2, ¶¶B-1 and D-1** are enacted to
27 read:

29 B-1. Exchange Act. "Exchange Act" shall mean the United
31 States Securities Exchange Act of 1934, as amended.

33 D-1. Issuer. "Issuer" of a security, policy or share shall
35 mean the person who issues the security, policy or share,
37 any subsidiary of that person, or any profit-sharing,
 employee stock ownership or other employee benefit plan of
 that person or any trustee of that plan when acting in that
 capacity.

39 **Sec. 4. 24-A MRSA §222, sub-§4,** as repealed and replaced by PL
41 1975, c. 356, §1, is repealed.

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

45 4-A. Tender offers. No person other than the issuer may
47 make a tender offer for, or a request or invitation for tenders
49 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 that controlling person is not
 primarily engaged either directly or through its affiliates in

1 any business other than that of insurance if, as a result of the
2 consummation thereof, the person making the tender offer, request
3 or agreement, would, directly or indirectly, acquire actual
4 control of the insurer or controlling person. No person may
5 enter into an agreement to merge with or otherwise acquire
6 control of a domestic insurer or controlling person, unless:

7
8 A. The person has filed with the superintendent and has
9 sent the domestic insurer and any controlling person a
10 statement containing the information required by subsection
11 4-B;

12
13 B. The offer, request, invitation, agreement or acquisition
14 has been approved by the superintendent in the manner
15 prescribed in subsection 7; and

16
17 C. Ten days have elapsed from the date of approval by the
18 superintendent and no injunction or other court order
19 precludes consummation of the offer, request, invitation,
20 agreement or acquisition.

21
22 The superintendent, by rule or by order, may exempt from this
23 subsection any offer, request, invitation or agreement which is
24 expressly contingent by its terms upon approval under subsection
25 7.

26
27 4-B. Application for approval. Each statement required in
28 subsection 4-A shall contain the following information as
29 applicable:

30
31 A. The background and identity of all persons by whom or on
32 whose behalf the purchases or the exchange, merger or other
33 acquisition of control are to be effected;

34
35 B. The source and amount of the funds or other
36 consideration which have been used or will be used in making
37 the purchases or in effecting the exchange, merger or other
38 acquisition of control and, if any part of these funds or
39 other consideration has been or will be borrowed or
40 otherwise obtained for the purpose of making the purchases
41 or effecting the exchange, merger or other acquisition of
42 control, a description of the transaction and the names and
43 identities of the parties involved;

44
45 C. Any plans or proposals which those persons may have to
46 liquidate the insurer, or the controlling person thereof, or
47 to sell its assets or merge it with any person or make any
48 other major change in its business or corporate structure or
49 management;

50
51 D. The amount of each class of voting securities, or
securities which may be converted into voting securities, of

1 the insurer or controlling person, which are beneficially
2 owned, and the amount of each class of voting securities or
3 securities which may be converted into voting securities of
4 that insurer or controlling person concerning which there is
5 a right to acquire beneficial ownership, by each person and
6 by each affiliate;

7
8 E. Information as to all contracts, arrangements or
9 understandings with any person with respect to any
10 securities of the insurer or the controlling person,
11 including, but not limited to, transfer of any of the
12 securities, joint ventures, loan or option arrangements,
13 puts or calls, guarantees of loans, guarantees against loss
14 or guarantees of profits, division of losses or profits, or
15 the giving or withholding of proxies, naming the persons
16 with whom those contracts, arrangements or understandings
17 have been entered into, and giving the details thereof;

18 F. A copy of all those agreements, and any amendments
19 thereto, to exchange or otherwise acquire securities or to
20 merge with or otherwise acquire control of the insurer or
21 the controlling person; and

22
23 G. Any other information as the superintendent may by rule
24 prescribe as necessary or appropriate in the public interest
25 or for the protection of policyholders.

26
27
28 **Sec. 6. 24-A MRSA §222, sub-§5,** as enacted by PL 1975, c. 356,
29 §1, is amended to read:

30
31 **5. Tender offer material.** All requests or invitations for
32 tenders or advertisements making a tender offer or requesting or
33 inviting tenders of such voting securities for control of a
34 domestic insurer made by or on behalf of any such person shall
35 contain ~~such of the~~ any information specified in subsection 4 ~~4-B~~
36 as the superintendent may prescribe, and shall be filed with the
37 superintendent at least ~~10 days prior to~~ the time ~~such~~ that
38 material is first published or sent or given to security holders.
39 Copies of any additional material soliciting or requesting such
40 tender offers subsequent to the initial solicitation or request
41 shall contain ~~such~~ the information as ~~that~~ the superintendent may
42 prescribe as necessary or appropriate in the public interest or
43 for the protection of policyholders ~~and stockholders,~~ and shall
44 be filed with the superintendent at least ~~10 days prior to~~ the
45 time copies of ~~such~~ that material are first published or sent or
46 given to security holders.

47
48 **Sec. 7. 24-A MRSA §222, sub-§7, ¶A,** as amended by PL 1983, c.
49 394, §1, is further amended to read:

50
51 ~~A. In the absence of approval by the superintendent, the~~
~~purchase, exchange, merger of a controlling person of an~~

1 ~~insurer or other acquisition of control referred to in~~
2 ~~subsection 4, may be made unless the superintendent, after a~~
3 ~~hearing is held~~ The superintendent may hold a hearing in
4 accordance with the procedures set forth in the Maine
5 Administrative Procedure Act, Title 5, chapter 375,
6 subchapter IV, ~~disapproves the purchases, exchanges, merger~~
7 ~~of a controlling person of an insurer, or other acquisitions~~
8 ~~of control. Any such hearing shall be held~~ within 30 days
9 after the statement required by subsection 4 4-A has been
10 filed with the superintendent, and shall hold that hearing
11 upon application by either the domestic insurer, control of
12 which is proposed to be acquired, or by the acquiring
13 person. The superintendent shall make a determination
14 within 30 days after the conclusion of that hearing or
15 waiver thereof. ~~The superintendent may disapprove any such~~
16 ~~transaction if he finds that~~ shall approve any purchase,
17 exchange, merger or other acquisition of control referred to
18 in subsection 4-A unless the superintendent finds that:

19
20 (1) After the change of control, the domestic insurer
21 could not satisfy the requirements for the issuance of
22 a certificate of authority according to requirements in
23 force at the time of the issuance, or last renewal or
24 continuation of its certificate of authority to do the
25 insurance business which it intends to transact in this
26 State;

27
28 (2) The effect of the purchases, exchanges, merger of
29 a controlling person of the insurer, or other
30 acquisitions of control may be substantially to lessen
31 competition in insurance in this State or tend to
32 create a monopoly therein; or would violate the laws of
33 this State or of the United States relating to
34 monopolies or restraints of trade;

35
36 (3) The financial condition of an acquiring person is
37 such as would jeopardize the financial stability of the
38 insurer or prejudice the interest of its policyholders
39 ~~or, in the case of an acquisition of control, the~~
40 ~~interest of any remaining stockholders who are~~
41 ~~unaffiliated with the acquiring person;~~

42
43 (4) The plans or proposals which the acquiring person
44 has to liquidate the insurer, to sell its assets or to
45 merge it with any person, or to make any other major
46 change in its business or corporate structure or
47 management, are unfair or prejudicial to policyholders;

48
49 (5) The competence, experience and integrity of those
50 persons who would control the operation of the insurer
51 indicate that it would not be in the interest of

1 policyholders, ~~stockholders~~ or the public to permit
2 them to do so; ~~or~~

3
4 (6) Any party to an agreement to merge with a domestic
5 insurer is not itself an insurer; ~~or~~

6
7 (7) The acquisition of control would tend to affect
8 adversely the contractual obligations of the domestic
9 insurer or its ability and tendency to render service
10 in the future to its policyholders and the public;

11 **Sec. 8. 24-A MRSA §222, sub-§7, ¶B,** as enacted by PL 1975, c.
12 356, §1, is amended to read:

13
14 B. Subparagraphs (3) to ~~(6)~~ (7) do not apply to any change
15 of control if and to the extent that the superintendent, by
16 rule ~~or regulation~~ or by order, shall exempt the same from
17 the provisions of such those subparagraphs as not
18 comprehended within the purpose of this subsection;

19
20 **Sec. 9. 24-A MRSA §222, sub-§13,** as enacted by PL 1975, c.
21 356, §1, is amended to read:

22
23 13. Confidential communications. Any registration
24 statement, tender offer, or request or invitation for tenders,
25 advertisement making a tender offer or requesting or inviting
26 tenders of voting securities, option to purchase, agreement to
27 merge or consolidate, or contract to manage filed pursuant to
28 this section including any duly authenticated copy thereof in the
29 possession of any person subject to this section shall be a
30 confidential communication, shall not be subject to a subpoena
31 and shall not be made public by the superintendent without prior
32 written consent of the insurer, unless the superintendent
33 determines that the interests of policyholders, ~~stockholders~~ or
34 the public will be served by the publication thereof, in which
35 event he the superintendent may make a public record or publish
36 all or any part thereof in such manner as he the superintendent
37 may deem appropriate. The distribution of reports on examination
38 referred to in section 227 shall not be regarded as confidential
39 communications and shall be excepted from the confidential
40 requirements of this subsection.

41
42 **Sec. 10. 24-A MRSA §222, sub-§20** is enacted to read:

43
44 **20. Private remedies**

45
46 A. Any person who fails to comply with subsection 4-A, 4-B,
47 5 or 6 or with any order of the superintendent pertaining to
48 a tender offer for securities of, or acquisition of control
49 of, a domestic insurance company or person controlling such
50 company shall be liable to that domestic insurance company
51 in the amount of any damages caused by that failure. The

1 domestic insurance company may bring an action for damages
3 and for such equitable relief, including an injunction, as
 the court may deem to be necessary and proper in the event
5 that any person has failed to comply with subsection 4-A,
 4-B, 5 or 6.

7 B. Upon commencement of any action brought under this
 subsection, the clerk of courts shall mail a copy of the
9 complaint or other initial pleading to the superintendent
 and, upon entry of any judgment or decree in the action,
11 shall mail a copy of the judgment or decree to the
 superintendent.

13

15

STATEMENT OF FACT

17

 This bill removes significant ambiguities from the Maine
Insurance Code, the Maine Revised Statutes, Title 24-A, section
19 222, which requires approval by the Superintendent of Insurance
of acquisitions of control of domestic insurance companies. The
21 bill clarifies that these provisions apply to the acquisition of
control of holding companies of domestic insurers, more
23 specifically defines the concept of control, and requires that
the insurer be afforded notice of the filing of tender offer
25 materials with the superintendent.