

# MAINE STATE LEGISLATURE

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L.D. 1743

(Filing No. S-470 )

STATE OF MAINE  
SENATE  
114TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A " to S.P. 648, L.D. 1743, Bill, "An  
Act to Modernize the Capital Structure of Domestic Stock Insurers"

Amend the bill by striking out all of the title and  
inserting in its place the following:

**'An Act to Modernize the Merger Provisions Relating  
to Domestic Stock Insurers'**

Further amend the bill by striking out everything after the  
title and before the statement of fact and inserting in its place  
the following:

**'Emergency preamble. Whereas,** Acts of the Legislature do not  
become effective until 90 days after adjournment unless enacted  
as emergencies; and

**Whereas,** the Maine Insurance Code presently permits a  
domestic stock insurer to merge or consolidate with another  
corporation formed for the purpose of transacting insurance, but  
it is unclear whether all of the participants in such a merger or  
consolidation must be authorized to transact, and actually  
transacting, insurance in this State; and

**Whereas,** these provisions contribute to uncertainty and  
potential delays in transactions that could significantly enhance  
the financial condition of stock insurers for the benefit of  
their policyholders; and

**Whereas,** the Maine Insurance Code contains insufficient  
limitations on the status of a surviving insurer in a merger or a  
new insurer in a consolidation; and

**Whereas,** in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
necessary for the preservation of the public peace, health and  
safety; now, therefore,

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

4           **Sec. 1. 24-A MRSA §222, sub-§7, ¶A,** as amended by PL 1989, c.  
6       385, §7, is further amended by amending sub-¶(6) to read:

8                   ~~(6) Any party-to-an-agreement-to-merge-with merger of~~  
10                   a domestic insurer ~~is-not-itself-an-insurer~~ does not  
12                   comply with section 3474; or

14           **Sec. 2. 24-A MRSA §3474, sub-§1,** as enacted by PL 1969, c.  
16       132, §1, is amended to read:

18           1. A Subject to the provisions of this section, a domestic  
20           stock insurer, whether or not authorized to transact insurance in  
22           this State, may merge or consolidate with one or more domestic or  
24           foreign stock insurers corporations, by complying with the  
              applicable provisions of the statutes laws of this State  
              governing the merger or consolidation of stock corporations  
              formed for profit,--~~but--subject--to--subsections--2--and--3.~~ A  
              ~~domestic-stock-insurer-shall-not-merge-or-consolidate-with-any~~  
              ~~corporation-not-formed-for-the-purpose-of-transacting-insurance~~  
              ~~as-an-insurer.~~

26                   A. A corporation merging or consolidating with a  
28                   domestic stock insurer must be incorporated as an  
30                   insurer in the manner provided by its state of  
              incorporation, but the corporation need not be  
              authorized or licensed to transact insurance by any  
              state prior to the merger or consolidation.

32                   B. A foreign or alien insurer may merge or consolidate  
34                   pursuant to this section with a domestic insurer only  
              if, at the time of the merger or consolidation:

36                           (1) The domestic insurer is authorized to  
38                           transact insurance in this State; or

40                           (2) The foreign or alien insurer meets all  
42                           requirements applicable to a domestic insurer set  
44                           forth in this Title for initial authorization to  
              transact in this State the kinds of insurance, as  
              defined in chapter 9, then transacted by that  
              insurer in any jurisdiction.

46                   C. A domestic insurer may not participate in a merger  
48                   or consolidation that will result in the surviving or  
              new corporation being domiciled in a jurisdiction other  
              than this State unless the surviving or new insurer in  
50                   the merger or consolidation obtains a Certificate of

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Authority in the jurisdiction in which it will be domiciled and in this State to transact the kinds of insurance for which any participating insurers were authorized at the time of the merger or consolidation and agrees to maintain that certificate of authority in this State until and unless the superintendent approves a plan of withdrawal filed pursuant to section 415-A.

D. The following provisions apply to the authority of the surviving or new corporation to transact insurance in this State following the merger or consolidation.

(1) If the surviving or new corporation is a domestic insurer and no participating corporation in the merger or consolidation was authorized or licensed to transact insurance in this State, the surviving or new domestic insurer shall meet all applicable requirements of this Title for initial authorization to transact all kinds of insurance, as defined in chapter 9, formerly transacted by any participating insurer or insurers in any jurisdiction.

(2) If the surviving or new corporation is a domestic insurer and seeks authority to transact kinds of insurance other than those for which the domestic insurer or insurers participating in the merger or consolidation were authorized at the time of the merger or consolidation, that corporation must meet the requirements set forth in this Title for initial authorization to transact those kinds of insurance.

(3) If the surviving or new corporation is a foreign or alien insurer that seeks to transact insurance in this State, that corporation shall meet all applicable requirements of this Title for initial authorization to transact all kinds of insurance, as defined in chapter 9, formerly transacted by any participating insurer or insurers as well as for any additional kinds of insurance for which authority is sought.

Sec. 3. 24-A MRSA §3474, sub-§2, as amended by PL 1973, c. 585, §12, is further amended to read:

2. No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have

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been filed with the superintendent and approved in writing by him  
the superintendent after a hearing thereon after notice to the  
stockholders of each insurer involved. The superintendent shall  
give such approval within a reasonable time after such filing  
unless he the superintendent finds that the plan or agreement:

A. Is contrary to law; or

B. Is unfair or inequitable to the ~~stockholders~~  
policyholders of any insurer involved; or

C. Would substantially reduce the security of and service  
to be rendered to policyholders of the domestic insurer in  
this State or elsewhere; or

D. Would materially tend to lessen competition in the  
insurance business in this State or elsewhere as to the  
kinds of insurance involved, or would materially tend to  
create a monopoly as to such business; or

E. Is subject to other material and reasonable objections.

In making any determination required by paragraph C, the  
superintendent may consider, among other factors, whether the  
surplus of the surviving or new corporation satisfies the  
requirements of section 410.

**Sec. 4. Application.** Notwithstanding the terms of the Maine  
Revised Statutes, Title 1, section 302, this Act shall apply with  
respect to any filing by a domestic stock insurer seeking  
approval of the Superintendent of Insurance of its plan and  
agreement of merger, including any filing which has been  
previously filed with and which is currently pending hearing or  
decision by the Superintendent of Insurance on the effective date  
of this Act.

**Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect when approved.'

**STATEMENT OF FACT**

This amendment strikes the language of the bill relating to  
the types of stock issued by insurers and replaces it with a  
language relating to the merger of stock insurers. The amendment  
clarifies that a domestic stock insurer may merge with another  
corporation incorporated as an insurer whether or not the  
domestic stock insurer or the newly incorporated merger

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2 participant is actually authorized to transact insurance and has  
the necessary capital and surplus to obtain such authority prior  
4 to the merger or consolidation. It also establishes certain  
regulatory requirements applicable to certain surviving or new  
6 insurers following a merger or consolidation for the protection  
of policyholders in this State.

Reported by Senator Theriault for the Committee on Banking  
and Insurance. Reproduced and Distributed Pursuant to Senate  
Rule 12.

(1/19/90)

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