

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 71, L.D. 127, Bill, "An Act to Revise the Law Respecting Insurers' Dividend Distributions"

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-2 is enacted to read:

A-2. "Continuing director" means:

(1) Any member of a domestic insurer's board of directors, while that person is a member of the board of directors, who was a member of that board of directors prior to the time that any person acquires control of the domestic insurer or any person controlling the insurer; and

(2) Any successor of a continuing director, while the successor is a member of the board of directors, who is recommended or elected to succeed a continuing director by a number of continuing directors equal to a majority of continuing directors in office immediately preceding the acquisition of control.

Sec. 2. 24-A MRSA §222, sub-§11, as enacted by PL 1975, c. 356, §1, is amended to read:

11. **Dividends and distributions.** No An insurer subject to registration under this section shall may not 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 that period disapproved such the payment, or until the superintendent shall ~~have approved such~~ approves

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2 that payment within such the 60-day period. For purposes of this
3 section, ~~an extraordinary dividend or distribution is any~~
4 ~~dividend or distribution which, together with other dividends or~~
5 ~~distributions made within the preceding 12 months, exceeds the~~
6 ~~greater of 10% of the insurer's surplus to policyholders as of~~
7 ~~December 31st of the immediate preceding 12 months or the net~~
8 ~~gain from operations of the insurer if the insurer is a life~~
9 ~~insurer or the net investment income if the insurer is not a life~~
10 ~~insurer, for the 12-month period ending December 31st of the year~~
11 ~~immediately preceding, but shall not include pro-rata~~
12 ~~distributions of any class of the insurer's own securities. A pro~~
13 ~~rata distribution of any class of the insurer's own securities is~~
14 ~~not considered an extraordinary dividend or distribution for~~
15 ~~purposes of this section.~~ Notwithstanding any other provision of
16 law, an insurer may declare an extraordinary dividend or
17 distribution which that is conditional upon the superintendent's
18 approval thereof, and such a declaration shall does not confer ne
19 any rights upon stockholders until the superintendent has
20 approved the payment of the dividend or distribution or the
21 superintendent has not disapproved such the payment within the
22 period referred to above in this subsection. The insurer's
23 surplus following any dividends or distributions to shareholder
24 affiliates shall must be reasonable in relation to the insurer's
25 outstanding liabilities and shall be adequate to meet its
26 financial needs. For purposes of this section, an extraordinary
dividend or distribution is any dividend or distribution that:

27 A. Exceeds the greater of:

28
29 (1) Ten percent of the insurer's surplus to
30 policyholders as of December 31st of the preceding
31 year; or

32
33 (2) The net gain from operations of the insurer for the
34 12-month period ending December 31st of the preceding
35 year when taken together with all other dividends or
36 distributions paid after December 31st of the preceding
37 year;

38
39 B. Is declared at any time when the insurer has recorded or
40 realized a net operating loss for the period subsequent to
41 December 31st of the preceding year that is equal to or
42 greater than 20% of the insurer's surplus to policyholders
43 as of that preceding December 31st;

44
45 C. Is declared at any time when the insurer has realized an
46 aggregate net operating loss over the immediately preceding
47 12 calendar quarters;

48
49 D. Is declared at any time when the insurer has realized a
50 net operating loss in any 8 of the immediately preceding 12
51 calendar quarters;

2 E. Is declared at any time when the insurer has, in any one
4 of the previous 3 years, paid a dividend that exceeded the
 operating gain for the calendar year that preceded the
 payment; or

6
8 F. Is declared at any time within 5 years following any
 acquisition of control of a domestic insurer or any person
10 controlling such insurer unless the dividend or distribution
 is approved by a number of continuing directors equal to a
12 majority of the continuing directors in office immediately
 preceding such acquisition of control.

14 An extraordinary dividend or distribution that is permissible
16 under statutory terms and conditions in the insurer's state of
 domicile is deemed to meet the requirements of this subsection if
18 the value of the dividend or distribution does not materially
 exceed that which would be permissible under this subsection.'

20

STATEMENT OF FACT

22

24 This amendment adds a definition for "continuing directors"
 when any person acquires control of a domestic insurer.

26

28 The amendment clarifies and adds to the definition of
 "extraordinary dividend," which is a type of dividend requiring
 60 days advance notice to the Superintendent of Insurance.

30

32 The amendment specifies the treatment to be afforded under
 the Maine Insurance Code to extraordinary dividends declared by
 insurance companies that are not Maine companies.

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

(3/20/91)

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