

MAINE STATE LEGISLATURE

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BANKING & INSURANCE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 829, L.D. 1115, Bill, "An Act to Require Insurers to Obtain Written Consent from the Policy Owner before Transferring a Policy to Another Insurer"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Assumption Reinsurance'

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

'24-A MRSA c. 9, sub-c. V is enacted to read:

SUBCHAPTER V

ASSUMPTION REINSURANCE

§761. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Assuming insurer. "Assuming insurer" means the insurer that acquires an insurance obligation or risk from the transferring insurer pursuant to an assumption reinsurance agreement.

2. Assumption reinsurance agreement. "Assumption reinsurance agreement" means a contract that both:

COMMITTEE AMENDMENT

2 A. Transfers insurance obligations or risks of existing or
4 in-force contracts of insurance from a transferring insurer
to an assuming insurer; and

6 B. Is intended to effect a novation of the transferred
8 contract of insurance with the result that the assuming
10 insurer becomes directly liable to the policyholders of the
12 transferring insurer and the transferring insurer's
insurance obligations or risks under the contracts are
extinguished.

14 3. Contract of insurance. "Contract of insurance" means a
16 written agreement between an insurer and policyholder pursuant to
18 which the insurer, in exchange for premium or other
20 consideration, agrees to assume an obligation or risk of the
22 policyholder or to make payments on behalf of, or to, the
policyholder or its beneficiaries. Contract of insurance may
include property, casualty, life, health, accident, surety, title
and annuity business authorized to be written pursuant to the
insurance laws of this State.

24 4. Home service business. "Home service business" means
26 insurance business on which premiums are collected on a weekly or
monthly basis by an agent of the insurer.

28 5. Notice of transfer. "Notice of transfer" means the
30 written notice to policyholders required by section 764,
subsection 1.

32 6. Policyholder. "Policyholder" means an individual or
34 entity that has the right to terminate or otherwise alter the
36 terms of a contract of insurance. It includes a
38 certificateholder whose certificate is in force on the proposed
effective date of the assumption, if the certificateholder has
the right to keep the certificate in force without change in
benefit following termination of the group policy.

40 The right to keep the certificate in force referred to in this
42 section does not include the right to elect individual coverage
under the Consolidated Omnibus Budget Reconciliation Act of 1985,
COBRA, of the Employee Retirement Income Security Act of 1974, as
amended, 29 United States Code, Section 1161 to 1168.

44 7. Transferring insurer. "Transferring insurer" means the
46 insurer that transfers an insurance obligation risk to an
48 assuming insurer pursuant to an assumption reinsurance agreement.

50 §762. Scope

1. Application. This subchapter applies to an insurer authorized in this State that either assumes or transfers the obligations or risks on contracts of insurance pursuant to an assumption reinsurance agreement.

2. Exceptions. This subchapter does not apply to the following:

A. A reinsurance agreement or transaction in which the ceding insurer continues to remain directly liable for its insurance obligations or risks under the contracts of insurance subject to the reinsurance agreement;

B. The substitution of one insurer for another upon the expiration of insurance coverage pursuant to statutory or contractual requirements and the issuance of a new contract of insurance by another insurer;

C. The transfer of contracts of insurance pursuant to mergers or consolidations of 2 or more insurers to the extent that those transactions are regulated by law;

D. An insurer subject to a judicial order of liquidation or rehabilitation;

E. A reinsurance agreement or transaction to which a state insurance guaranty association is a party, except that policyholders do not lose any rights or claims afforded under their original policies pursuant to chapter 57, subchapter III and chapter 62; or

F. The transfer of liabilities from one insurer to another under a single group policy upon the request of the group policyholder, unless the certificateholder pays all or substantially all of the premium.

§763. Notice requirements of intent to transfer insurance contract

1. Notice to policyholders, agents and brokers. Notice to policyholders, agents and brokers is required as follows.

A. The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with acknowledged receipt. A notice of transfer must also be sent to the transferring insurer's agents or brokers of record on the affected policies.

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2 B. The notice of transfer must state or provide:

4 (1) The date the transfer and novation of the
6 policyholder's contract of insurance is proposed to
 take place;

8 (2) The names and addresses and telephone numbers of
10 the assuming and transferring insurers;

12 (3) That the policyholder has the right to either
 consent to or reject the transfer and novation;

14 (4) The procedures and time limit for consenting to or
16 rejecting the transfer and novation;

18 (5) A summary of an effect that consenting to or
 rejecting the transfer and novation has on the
20 policyholder's rights;

22 (6) A statement that the assuming insurer is licensed
 to write the type of business being assumed in the
24 state where the policyholder resides or is otherwise
 authorized, as provided in this subchapter, to assume
26 the business;

28 (7) The name and address of the person at the
 transferring insurer to whom the policyholder should
30 send a written statement of acceptance or rejection of
 the transfer and novation;

32 (8) The address and phone number of the Bureau of
 Insurance so that the policyholder may write or call
34 for further information regarding the financial
 condition of the assuming insurer; and

36 (9) The following financial data for both companies:

38 (a) Ratings for the last 5 years if available or
40 for a lesser period as are available from 2
42 nationally recognized insurance rating services
44 acceptable to the superintendent including the
 rating service's explanation of the meaning of the
46 ratings. If ratings are unavailable for a year of
 the 5-year period, this must also be disclosed;

48 (b) A balance sheet as of December 31st for the
 previous 3 years if available or for a lesser
50 period as is available and as of the date of the
 most recent quarterly statement;

2 (c) A copy of the Management's Discussion and
4 Analysis that was filed as a supplement to the
previous year's annual statement; and

6 (d) An explanation of the reason for the transfer.

8 C. Notice must be given in a manner that conforms to the
10 following form:

12 **NOTICE OF TRANSFER**

14 **IMPORTANT: THIS NOTICE AFFECTS YOUR CONTRACT RIGHTS.**
16 **PLEASE READ IT CAREFULLY.**

18 Transfer of Policy

20 The [name of assuming insurer] has agreed to replace us
as your insurer under [policy or certificate name and
22 number] effective [date]. The [name of assuming insurer]
principal place of business is [address]. Certain financial
24 information concerning both companies is attached, including
(1) ratings for the time period required by the Bureau of
26 Insurance from 2 nationally recognized insurance rating
services; (2) balance sheets for the time period required by
28 the Bureau of Insurance and as of the date of the most
recent quarterly statement; (3) a copy of the Management's
30 Discussion and Analysis that was filed as a supplement to
the previous year's annual statement; and (4) an explanation
32 of the reason for the transfer. You may obtain additional
information concerning [name of assuming insurer] from
34 reference materials in your local library or by contacting
the Superintendent of Insurance at [address and phone
36 number].

38 The [name of assuming insurer] is licensed to write
this coverage in your state. The Superintendent of
40 Insurance in your state has reviewed the potential effect of
the proposed transaction and has approved the transaction.

42 Your Rights

44 You may choose to consent to or reject the transfer of
46 your policy to [name of assuming insurer]. If you want your
policy transferred, you may notify us in writing by signing
48 and returning the enclosed preaddressed, postage-paid card
or by writing to us at:

50 [name, address and facsimile number of contact person]

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[name of transferring insurer
address
phone]

[name of assuming insurer
address
phone]

[Notice Date]

RESPONSE CARD

____ Yes, I accept the transfer of my policy from
[name of transferring insurer] to [name of
assuming insurer].

____ No, I reject the proposed transfer of my
policy from [name of transferring insurer] to
[name of assuming insurer] and wish to retain
my policy with [name of transferring insurer].

Date: Signature:

Name:

Address:

D. The notice of transfer must include a preaddressed, postage-paid response card that a policyholder may return as the written statement of acceptance or rejection of the transfer and novation.

E. The notice of transfer must be filed as part of the prior approval requirement set forth in subsection 2, paragraph A.

2. Notification and prior approval. The requirements for notification and prior approval are as follows:

A. Prior approval by the superintendent is required for a transaction when an insurer domiciled in this State assumes or transfers obligations or risks on contracts of insurance under an assumption reinsurance agreement. An insurer

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2 licensed in this State may not transfer obligations or risks
3 on contracts of insurance issued to or owned by residents of
4 this State to an insurer that is not licensed in this
5 State. An insurer domiciled in this State may not assume
6 obligations or risks on contracts of insurance issued to or
7 owned by policyholders residing in another state unless it
8 is licensed in the other state or the insurance regulatory
9 official of that state has approved the assumption.

10 B. A licensed foreign insurer that enters into an
11 assumption reinsurance agreement that transfers the
12 obligations or risks on contracts of insurance issued to or
13 owned by residents of this State shall file or cause to be
14 filed the assumption certificate with the superintendent a
15 copy of the notice of transfer and an affidavit that the
16 transaction is subject to substantially similar requirements
17 in the state of domicile of both the transferring and
18 assuming insurer.

20 C. A licensed foreign insurer that enters into an
21 assumption reinsurance agreement that transfers the
22 obligations or risks on contracts of insurance issued to or
23 owned by residents of this State shall obtain prior approval
24 of the superintendent and be subject to all other
25 requirements of this subchapter unless the transferring and
26 assuming insurers are subject to assumption reinsurance
27 requirements adopted by law or rule in the jurisdiction of
28 their domicile, which are substantially similar to those
29 contained in this subchapter.

32 D. The following factors, along with such factors as the
33 superintendent determines appropriate under the
34 circumstances, must be considered by the superintendent in
35 reviewing a request for approval:

36 (1) The financial condition of the transferring and
37 assuming insurers and the effect the transaction has on
38 the financial condition of each company;

40 (2) The competence, experience and integrity of those
41 persons who control the operation of the assuming
42 insurer;

44 (3) The plans or proposals the assuming party has with
45 respect to the administration of the policies subject
46 to the proposed transfer;

48 (4) Whether the transfer is fair and reasonable to the
49 policyholders of both companies; and
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(5) Whether the notice of transfer to be provided by the insurer is fair, adequate and not misleading.

§764. Rights of policyholder

1. Right to reject. Every policyholder has the right to reject the transfer and novation of the contracts of insurance. A policyholder electing to reject the assumption transaction shall return to the transferring insurer the preaddressed, postage-paid response card or other written notice and indicate on the response card that the assumption is rejected.

2. Payment of premium. Payment of the next premium to the assuming company after notice is received is determined to indicate the policyholder's acceptance of the transfer to the assuming insurer and a novation is determined to have been effected if the premium notice clearly states that payment of the premium to the assuming insurer constitutes acceptance of the transfer. The premium notice must also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer. With respect to a home service business not using premium notices, the disclosures and procedural requirements of this subsection are to be set forth in the notice of transfer required by section 763, subsection 1, paragraph A and in the assumption certificate.

3. Additional notice. No fewer than 24 months after the mailing of the initial notice of transfer required under section 763, if positive consent to the transfer and assumption has not been received or consent has not been determined to have occurred under subsection 1, the transferring company shall send to the policyholder a 2nd and final notice of transfer as specified in section 763, subsection 1. If the policyholder does not reject the transfer during the one-month period immediately following the date on which the transferring insurer mailed the 2nd and final notice of transfer, the policyholder's consent is determined to have occurred and novation of the contract is effected. With respect to the home service business, the 24 and one-month periods must be measured from the date of delivery of the notice of transfer pursuant to section 763, subsection 1, paragraph A.

4. Response cards. The transferring insurer is deemed to have received the response card on the date it is postmarked. A policyholder may also send a response card by facsimile or other electronic transmission or by registered mail, express delivery or courier service, in which case the response card is determined to have been received by the assuming insurer on the date of actual receipt by the transferring insurer.

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§765. Effect of consent by the policyholder

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If a policyholder consents to the transfer pursuant to section 764 or if the transfer is effected under section 766, there is a novation of the contract of insurance subject to the assumption reinsurance agreement with the result that the transferring insurer is relieved of all insurance obligations or risks transferred under the assumption reinsurance agreement and the assuming insurer is directly and solely liable to the policyholder for those insurance obligations or risks.

§766. Authority of the insurance regulatory official

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1. Transfer in the best interest of the policyholders. If an insurer domiciled in this State or in a jurisdiction having a substantially similar law is determined by the domiciliary insurance regulatory official to be in hazardous financial condition or an administrative proceeding has been instituted against it for the purpose of reorganizing or conserving the insurer, and the transfer of the contracts of insurance is in the best interest of the policyholders, as determined by the domiciliary insurance regulatory official, a transfer and novation may be effected notwithstanding the provisions of this subchapter. This may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer as approved by the insurance regulatory official.

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2. Protection. Notwithstanding any other provision of law, in the event that a transfer and novation is effected by a decision of a domiciliary insurance regulatory official under this section, the residents of this State whose policies are transferred to an unlicensed insurer are entitled to full protection under chapter 57, subchapter III and chapter 62.'

STATEMENT OF FACT

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This amendment retitles and replaces the entire bill. It adds a fiscal note.

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This amendment defines assuming insurer as an insurer who acquires an insurance obligation or risk from the transferring insurer pursuant to an assumption reinsurance agreement. It defines assumption reinsurance agreement as the contract that transfers insurance obligations or risks and is intended as a novation of the contract. It defines contract of insurance, notice of transfer, policyholder and transferring insurer. It defines home service business as insurance on which the premiums are collected weekly or monthly by an agent of the insurer.

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COMMITTEE AMENDMENT "A" to H.P. 829, L.D. 1115

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This amendment provides for the regulation of the transfer and novation of contracts of insurance by way of assumption reinsurance. It does not apply to the required substitution of one insurer for another upon the expiration of coverage and new coverage by the new insurer or transfers of contracts upon the merger of 2 insurers as regulated by law. It does not apply to any insurer subject to a judicial order of liquidation or consolidation or agreements.

This amendment requires the transferring insurer to notify the policyholder and the insurer's agents or brokers. The policyholder has the right to consent or reject the transfer and novation. The notice must contain information about the proposed change, how to contact the Bureau of Insurance and financial data on both companies. Prior approval from the Bureau of Insurance is required for assumption reinsurance contracts. The Superintendent of Insurance is required to consider the financial condition of both insurers, the persons in control of the assuming insurer, proposed administrative plans of the assuming insurer, whether the transfer is fair and reasonable to both insurers' policyholders and whether the notice proposed to be given is fair, adequate and not misleading.

The policyholder may reject the transfer and the premium notice must provide for a way to pay and reject and a way to pay and consent. If the transferring company does not receive a response from the policyholder 24 months after the first notice, the insurer sends another notice. Consent is deemed if the policyholder does not reject within one month after the 2nd notice.

If the policyholder consents, or if consent is deemed under the law, there is a novation of the contract subject to the assumption reinsurance contract. The assuming insurer takes all obligations and risks.

Novation of the insurance contract and transfer of risk may occur by order of the Superintendent of Insurance or the insurance regulatory official in a state with laws substantially similar to the laws of Maine.

COMMITTEE AMENDMENT