

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

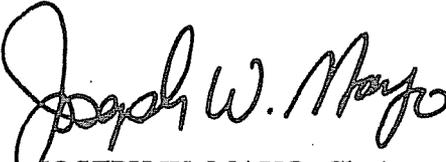
No. 1115

H.P. 829

House of Representatives, April 1, 1993

An Act to Require Insurers to Obtain Written Consent from the Policy Owner before Transferring a Policy to Another Insurer.

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


JOSEPH W. MAYO, Clerk

Presented by Representative CARLETON of Wells.
Cosponsored by Representative: PINEAU of Jay.

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

4 Sec. 1. 24-A MRS.A c. 9, sub-c. V is enacted to read:

6 SUBCHAPTER V

8 TRANSFER OF INSURANCE CONTRACTS

10 §761. Definitions

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

14 1. Assuming company. "Assuming company" means an insurer who proposes to acquire one or more insurance contracts, including all or substantially all liabilities arising under the contracts, from a transferring company.

18 2. Policy owner. "Policy owner" means an individual or entity that has the right either to agree or not to agree to alter the terms of an insurance contract and includes a person issued a certificate under a group insurance contract if the contract vests in that person rights that the owner of the group may not terminate.

20 3. Transferring company. "Transferring company" means an insurer who proposes to transfer one or more insurance contracts, including all or substantially all liabilities arising under the contracts, to an assuming company.

24 §762. Transfers covered; continued liability

26 This subchapter applies to any transfer of one or more insurance contracts from a transferring company to an assuming company when the policy owner is a resident of this State at the time of the proposed transfer, and to transfers of the type known as "assumption reinsurance." True reinsurance, in which an insurer obtains additional security for the original undertaking or a retained contract, is not covered.

28 Unless the transferring company complies fully with the requirements of this subchapter, the transferring company remains liable to policy owners under insurance contracts it issued.

30 §763. Exceptions

32 This subchapter does not apply to the following:

34 1. Mergers or consolidations. Mergers or consolidations;

2 2. Rehabilitation or similar order. A transferring company
3 subject to an order of rehabilitation, conservation, liquidation
4 or similar order issued in this State or any other jurisdiction;

5 3. Withdrawal. Withdrawal from the State by a transferring
6 company pursuant to section 415-A; or

7 4. Absorption. The absorption of an entire subsidiary
8 insurance company by the parent company through a merger. If the
9 parent company acquires only the insurance contracts of the
10 subsidiary company, this subchapter applies.

11 **§764. Notice requirement**

12 1. Notice to owners. The transferring company shall
13 provide to each policy owner at least 30 days' advance written
14 notice of the intent to transfer the insurance contract to an
15 assuming company. The written notice must be sent by United
16 States mail, postage prepaid, addressed to the last known address
17 of the policy owner.

18 2. Recordkeeping. The transferring company shall keep
19 records of all notices returned as undeliverable and also of all
20 responses signed and returned by the policy owner, including both
21 consents and refusals to consent.

22 3. Notice to commissioner. At least 30 days before it
23 sends the notice to the policy owner required by subsection 1,
24 the transferring company shall provide notice of the proposed
25 transfer to the commissioner. This notice must include a
26 complete set of the forms and materials to be sent to policy
27 owners.

28 **§765. Contents of notice**

29 1. Contents. At a minimum, the notice sent to the policy
30 owner must state the following in language easily understood by a
31 policy owner:

32 A. The date upon which the transfer of liabilities arising
33 under the insurance contract is to take place;

34 B. The name and address of the proposed assuming company;

35 C. That the policy owner has a legal right either to
36 consent to the proposed transfer or to refuse to consent to
37 the transfer;

2 D. That a policy owner who wishes to accept the proposed
transfer must do so affirmatively by signing and returning
4 the enclosed consent form;

6 E. That unless the policy owner signs and returns the
enclosed consent form, the proposed transfer will not take
8 place as to that policy owner's insurance contract and as a
result the liabilities arising under that insurance contract
10 will remain with the transferring company;

12 F. Whether the transferring company will or may utilize the
services of the proposed assuming company or another entity
14 for administratively servicing the insurance contract, if
consent to the transfer is not given, even though the
16 obligations and liabilities under the insurance contract
will remain with the transferring company. Examples of such
18 servicing must be illustrated;

20 G. The reason or reasons for the proposed transfer;

22 H. Enough information about both the transferring company
and the assuming company for the policy owner to make an
24 informed choice about whether to consent to the proposed
transfer or not, including without limitation the following:

26 (1) The assets and liabilities of each company; and

28 (2) The business experience of each, particularly with
30 respect to the kind of insurance involved in the
proposed transfer;

32 I. Whether the assuming company holds a valid certificate
of authority or registration for the kind of insurance
34 involved in the proposed transfer, issued by the state of
which the policy owner is a resident;

36 J. Whether the proposed transfer would have any effect upon
38 the availability and extent of protection afforded by any
state guaranty fund, in the event of insolvency of the
40 proposed assuming company; and

42 K. That the transferring company will not unfairly
discriminate against those policy owners who do not consent
44 to the transfer.

46 2. Consent form. The notice and disclosure must be
48 accompanied by a form by which the policy owner may consent to or
reject the proposed transfer. The form must be worded in
50 language easily understood by the policy owner and be accompanied
by a postage prepaid return envelope. All the forms must be in a

2 type size that is easily legible as may be further specified by
3 the superintendent.

4 3. Copy of consent. After processing, the transferring
5 company shall return to consenting policy owners a copy of the
6 consent to transfer for attachment to the insurance contract.
7 The transferring company shall retain the policy owner's written
8 consent with its records pertaining to each insurance contract.

10 **§766. Certificate of assumption**

12 The assuming company shall provide a certificate of
13 assumption to each consenting policy owner. The certificate must
14 include, at a minimum, a statement that the assuming company
15 assumes all contractual obligations under the insurance contract,
16 the name of the assuming company and the address to which
17 communications relating to the insurance contract should be sent.

18 The certificate of assumption becomes a part of the
19 transferred contract. The assuming company shall file the form
20 of certificate of assumption with the superintendent.

22 **§767. Prohibited policy provisions**

24 An insurance contract or other contractual document
25 pertaining to the insurance contract may not contain any waiver
26 of disclaimer of any of the rights recognized or protected by
27 this subchapter.

30 **§768. Transfer to unauthorized insurers**

32 If a resident of the State owns an insurance contract issued
33 by a company authorized to do business in the State, that company
34 may not transfer that insurance contract to a company not
35 authorized to do business in the State. Acting as the assuming
36 company in a transfer of insurance involving a Maine risk
37 constitutes a transaction of insurance for which a state
38 certificate of authority, license or registration is required.

40 **§769. Unfair or deceptive acts or practices**

42 It is an unfair or deceptive act or practice pursuant to
43 section 2152 for a transferring company to:

44 1. Party to transfer. Be a party to a transfer of
45 insurance contracts that violates the provisions of this
46 subchapter;

2 2. Representation of approval. Represent to policy owners
either verbally or in writing that the superintendent has
approved a transfer of insurance contracts; or

4

6 3. Discrimination. Discriminate against a policy owner who
does not consent to a proposed transfer of an insurance contract.

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STATEMENT OF FACT

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12 This bill requires insurers who propose to transfer
insurance contracts to fully disclose to the policy owners the
reasons for and the terms and consequences of the proposed
14 transfer. The bill requires the transferring company to obtain a
policy owner's written consent before it may transfer any
16 contract. It prohibits discrimination against policy owners who
refuse to consent to a transfer. The bill prohibits
18 discrimination against policy owners who refuse to consent to a
transfer. Violations of these provisions constitute unfair trade
20 acts under the Maine Insurance Code and, in addition, insurers
remain liable on contracts transferred without full compliance.