

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1528

S.P. 561

In Senate, May 16, 1995

An Act Concerning Reports of Material Transactions and Other Provisions of the Maine Insurance Code.

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

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator ABROMSON of Cumberland. (GOVERNOR'S BILL).
Cosponsored by Representative: VIGUE of Winslow.

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

PART A

Sec. A-1. 24-A MRSA §423-C is enacted to read:

§423-C. Reports of material transactions

1. Report required. Every domestic insurer must file a report with the superintendent, on or before the 15th day of each month, if it has engaged in a material investment or reinsurance transaction during the preceding month that has not already been separately reported to the superintendent or submitted to the superintendent for prior review.

2. Material transactions defined. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Material investment transaction" means an acquisition or disposition of an asset or the aggregate of a series of related acquisitions or related dispositions during a 30-day period that is nonrecurring, not in the ordinary course of business and involving more than 5% of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the superintendent. Asset acquisitions and dispositions include without limitation a purchase, sale, lease, exchange, merger, consolidation, succession, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment or destruction. Asset acquisition does not include the construction or development of real property for the use of the reporting insurer or the acquisition of materials for such construction or development.

B. "Material reinsurance transaction" means:

(1) A transaction involving property and casualty business, including accident and health business written by a property and casualty insurer, that affects more than 50% of either the insurer's total ceded written premium or the insurer's total ceded indemnity and loss adjustment reserves;

(2) A transaction involving life, annuity or accident and health business that causes a change, either positive or negative, in the current total reserve credit taken for all life, annuity and accident and health business of more than 50% from the total reserve credit taken for such business in the insurer's most

2 recent annual statement. "Total reserve credit"
3 includes reserve credit taken for unearned premiums,
4 reserve credit taken other than for unearned premiums
5 and amounts recoverable on paid and unpaid losses for
6 all reinsurance ceded;

7 (3) Any transaction in which either:

8 (a) An authorized reinsurer representing more
9 than 10% of the insurer's total reserve credit for
10 business ceded is replaced by one or more
11 unauthorized reinsurers; or

12 (b) Previously established collateral
13 requirements have been reduced or waived for one
14 or more unauthorized reinsurers representing
15 collectively more than 10% of the insurer's total
16 reserve credit for business ceded; or

17 (4) Transactions otherwise falling within the scope of
18 this paragraph do not need to be reported if:

19 (a) In the case of a property and casualty
20 insurer, the insurer's total ceded written premium
21 represents, on an annualized basis, less than 10%
22 of its total written premium for direct and
23 assumed business; or

24 (b) In the case of a life, annuity and accident
25 and health insurer, the total reserve credit taken
26 for business ceded represents, on an annualized
27 basis, less than 10% of the statutory reserve
28 requirement before any cession.

29 **3. Reporting procedures.** Reports for material investment
30 transactions and material reinsurance transactions must follow
31 the following procedures.

32 A. A report of a material investment transaction must
33 include the following information:

34 (1) Date of the transaction;

35 (2) Manner of acquisition or disposition;

36 (3) Description of the assets involved;

37 (4) Nature and amount of the consideration given or
38 received;

39 (5) Purpose of or reason for the transaction;

- 2 (6) Manner by which the amount of consideration was
3 determined;
4
5 (7) Gain or loss recognized or realized as a result of
6 the transaction; and
7
8 (8) Name of the person from whom the assets were
9 acquired or to whom they were disposed.

10 B. A report of a material reinsurance transaction must
11 include the following information:

- 12 (1) Effective date of the nonrenewal, cancellation or
13 revision of the reinsurance agreement affected by the
14 transaction;
15
16 (2) The description of the transaction with an
17 identification of the initiator of the transaction;
18
19 (3) Purpose of or reason for the transaction; and
20
21 (4) If applicable, the identity of the replacement
22 reinsurers.
23
24

25 C. Material transactions must be reported on a
26 nonconsolidated basis unless the insurer is part of a
27 consolidated group of insurers that uses a pooling
28 arrangement of 100% reinsurance agreement that affects the
29 solvency and integrity of the insurer's reserves, and the
30 insurer has ceded substantially all of its direct and
31 assumed business to the pool. An insurer is considered to
32 have ceded substantially all of its direct and assumed
33 business to a pool if the insurer has less than \$1,000,000
34 total direct and assumed written premiums during a calendar
35 year that are not subject to a pooling arrangement and the
36 net income of the business not subject to the pooling
37 arrangement represents less than 5% of the insurer's capital
38 and surplus.
39
40

41 4. Confidentiality. All reports obtained by or disclosed
42 to the superintendent pursuant to this section are confidential,
43 are not subject to subpoena and may not be made public by the
44 superintendent, the National Association of Insurance
45 Commissioners or any other person, except to insurance
46 departments of other states, without the prior written consent of
47 the insurer to which it pertains. If the superintendent, after
48 giving the insurer that would be affected notice and an
49 opportunity for hearing, determines that publication is in the
50 interest of policyholders, shareholders or the public, the

2 superintendent may publish all or any part of a report in the
3 manner the superintendent determines to be appropriate.

4
5 **PART B**

6 **Sec. B-1. 24-A MRSA §216, sub-§5** is enacted to read:

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9 5. In order to assist the superintendent in the regulation
10 of insurers in this State, it is the duty of the superintendent
11 to maintain as confidential a document or information received
12 from the National Association of Insurance Commissioners or
13 insurance departments of other states, if the document or the
14 information has been provided to the superintendent with notice
15 that it is confidential under the laws of the jurisdiction that
16 is the source of the document or information. The superintendent
17 may share information, including otherwise confidential
18 information, with the National Association of Insurance
19 Commissioners, insurance departments of other states or other
20 state agencies, if the other jurisdiction or agency agrees to
21 maintain the same level of confidentiality as is available under
22 Maine law. This subsection does not alter prohibitions or
23 restrictions applicable to ex parte contacts in the course of an
24 adjudicatory proceeding in which a state agency is a party. For
25 purposes of this subsection, "other state agencies" includes
26 bureau personnel and consultants designated as serving in an
27 advocacy capacity.

28
29 **PART C**

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31 **Sec. C-1. 24-A MRSA §3**, as enacted by PL 1969, c. 132, §1,
32 is amended to read:

33 **§3. "Insurance" defined**

34
35 "Insurance" is a contract whereby under which one undertakes
36 to pay or indemnify another as to loss from certain specified
37 contingencies or perils, or to pay or grant a specified amount or
38 determinable benefit or annuity in connection with ascertainable
39 risk contingencies, or to act as surety. A charitable gift
40 annuity agreement, as defined in section 703-A, is not considered
41 insurance.

42
43 **Sec. C-2. 24-A MRSA §703**, as enacted by PL 1969, c. 132, §1,
44 is amended to read:

45 **§703. "Annuity" defined**

46
47 For the purposes of this Title, an "annuity" is a contract
48 under which obligations are assumed with respect to periodic

2 payments for a specific term or terms or where the making or
3 continuance of all or of some of such the payments, or the amount
4 of any-such a payment, is dependent upon the continuance of human
5 life, except payments made pursuant to optional modes of
6 settlement under the authority of section 702 ("~~life-insurance~~"
7 defined). ~~Such-a~~ A contract which that includes extra benefits
8 of the kinds set-~~forth~~ defined in sections 702 (~~life-insurance~~
9 defined) and 704 (~~health-insurance-defined~~) ~~shall nevertheless be~~
10 is deemed to be an annuity, if such the extra benefits constitute
11 a subsidiary or incidental part of the entire contract. A
12 charitable gift annuity agreement, as defined in section 703-A,
is not insurance.

14 Sec. C-3. 24-A MRSA §703-A is enacted to read:

16 **§703-A. Charitable gift annuity agreement**

18 **1. Charitable gift annuity agreement defined.** For the
19 purposes of this Title, a "charitable gift annuity agreement" is
20 a written contract in which a qualified organization receives
21 money or other property conditioned upon the organization's
22 agreement to pay an annuity to one or more individuals; as long
23 as, with respect to the organization, the annuity meets the
24 requirements for exclusion from the definition of "acquisition
25 indebtedness" under the Internal Revenue Code, Section 514(c)(5)
26 or a successor provision.

28 **2. Qualified organization defined.** For the purposes of
29 this Title, a "qualified organization" is an organization that is
30 privately and specially established as an instrumentality of the
31 State for a nonprofit purpose or an organization that meets the
32 following requirements.

34 A. The organization is a nonprofit organization that is
35 either:

36 (1) An organization to which the Maine Nonprofit
37 Corporation Act applies; or

38 (2) Organized under the laws of a jurisdiction within
39 the United States and qualified as a foreign
40 corporation pursuant to Title 13-B, chapter 12.

41 B. The organization qualifies as a tax-exempt organization
42 under the Internal Revenue Code, Section 501(c)(3) or a
43 successor provision.

44 C. The organization:

45 (1) Has been operating continuously for 5 or more
46 years;

2 (2) Is a parent or subsidiary of a qualified
3 organization; or

4
5 (3) Is the successor to an organization that meets the
6 requirements of paragraphs A and B and both
7 organizations together have operated continuously for 5
8 or more years.

10 **Sec. C-4. 24-A MRSA §707, sub-§3,** as enacted by PL 1991, c.
11 385, §7, is amended to read:

12
13 3. An insurer other than a casualty insurer may transact
14 employee benefit excess insurance only if that insurer is
15 authorized to insure the class of risk assumed by the underlying
16 benefit plan. Employee benefit excess insurance, even if written
17 by a life or health insurer, is not subject to chapters 29 and 31
18 to 37, except to the extent that particular provisions are made
19 expressly applicable by rule or law. The superintendent may by
20 rule set standards distinguishing excess insurance from basic
21 insurance.

22
23 **Sec. C-5. 24-A MRSA §2501,** as amended by PL 1977, c. 261,
24 §1, is further amended to read:

25 **§2501. Scope of chapter**

26
27 This chapter applies only to contracts of life insurance and
28 annuities, other than reinsurance, group life insurance and group
29 annuities, except that section 2537 (separate accounts) shall
30 also apply applies as to group life insurance and group annuity
31 contracts. ~~No provision of this chapter shall apply to annuity~~
32 ~~agreements executed under chapter 30.~~

33 **Sec. C-6. 24-A MRSA c. 30,** as amended, is repealed.

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35
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37 **PART D**

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39 **Sec. D-1. 24-A MRSA §413-A** is enacted to read:

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41 **§413-A. Alien insurer; port of entry**

42
43 **1. Port of entry.** An alien insurer that has been
44 authorized by the superintendent to use the State as its port of
45 entry for the transaction of business in the United States is
46 considered a domestic insurer to the extent provided in this
47 section.

2 2. Rules. The superintendent shall adopt rules
3 establishing the terms and conditions of port of entry
4 authorization, which include without limitation:

5 A. The requirements an alien insurer must satisfy to
6 qualify for port of entry authorization. These requirements
7 must include, at a minimum:

8 (1) Agreement to adhere to all laws applicable to
9 domestic insurers;

10 (2) Maintenance of appropriate trust surplus or other
11 adequate security within the State;

12 (3) Maintenance of records of all United States
13 operations within the State; and

14 (4) Maintenance of a separate financial reporting
15 system for United States operations;

16 B. The procedures for obtaining, maintaining and
17 terminating port of entry authorization; and

18 C. Modifications of the provisions of this Title, and of
19 the rules adopted by the superintendent that apply to
20 domestic insurers, as the superintendent determines
21 necessary for the appropriate regulation of alien insurers
22 with port of entry authorization.

30 **STATEMENT OF FACT**

31
32
33 Part A contains disclosure standards concerning significant
34 reinsurance and financial transactions of insurers. This
35 language follows a model law designed to ensure that state
36 insurance regulatory programs operate effectively to protect
37 insurance purchasers and companies.

38
39 This disclosure standard benefits both consumers and
40 insurers by permitting the Superintendent of Insurance to
41 identify troubled companies at an early stage and to work with
42 them to prevent insolvencies.

43
44 Part B clarifies confidentiality provisions and permits
45 sharing of confidential information between insurance regulators.

46
47 Part C clarifies the law with respect to charitable annuity
48 agreements.

2 Part D permits an improvement in the state insurance
environment by permitting the State to serve as a port of entry
for alien insurers.

4