

MAINE STATE LEGISLATURE

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DATE: May 4, 1999

(Filing No. S-197)

BANKING AND INSURANCE

Reported by:

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A " to S.P. 140, L.D. 376, Bill, "An Act to Require Disclosure to Insurance Consumers That Long-term Care Insurance Policies Meet the Standards for the Deductibility of Premiums"

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

'An Act to Amend the Laws Relating to Long-term Care Insurance and to Require Disclosure to Insurance Consumers that Long-term Care Insurance Policies are Tax-qualified for Purposes of Federal and State Income Tax'

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

'Sec. 1. 24-A MRSA §5057 is enacted to read:

§5057. Applicability

This chapter applies only to policies and certificates issued before January 1, 2000.

Sec. 2. 24-A MRSA c. 68-A is enacted to read:

CHAPTER 68-A

LONG-TERM CARE INSURANCE

§5071. Scope

This chapter applies to long-term care insurance policies or certificates delivered or issued for delivery in this State on or

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after January 1, 2000, except it does not apply to certificates issued under policies issued in other states to employer groups as described in section 2804 and labor union groups as described in section 2805. This chapter is not intended to supersede the obligations of entities subject to this chapter to comply with the substance of other applicable insurance laws to the extent that these laws are not inconsistent with the requirements of this chapter, except that laws and rules designed and intended to apply to Medicare supplement insurance may not be applied to long-term care insurance. Notwithstanding this chapter, any product advertised, marketed or offered as long-term care insurance is subject to this chapter.

§5072. Definitions

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

1. Applicant. "Applicant" means:

A. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; or

B. In the case of a group long-term care insurance policy, the proposed certificate holder.

2. Certificate. "Certificate" means any certificate issued under a group long-term care insurance policy.

3. Group long-term care insurance policy. "Group long-term care insurance policy" means a long-term care insurance policy that is delivered or issued for delivery in this State to an employer group, private purchasing alliance, labor union group, association group, trustee group, credit union group or other group as described in chapter 35.

4. Long-term care insurance policy. "Long-term care insurance policy" means any individual or group insurance policy or rider offered by a life or health insurer, fraternal benefit society, nonprofit hospital and medical service organization, nonprofit health care service organization, prepaid health plan organization, health maintenance organization or other similar organization authorized to issue life or health insurance that is advertised, marketed, offered or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense-incurred basis, indemnity basis, prepaid or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services provided in a setting other than an acute care unit

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2 of a hospital. "Long-term care insurance policy" includes
3 individual and group annuities and life insurance policies or
4 riders that directly provide or that supplement coverage for
5 long-term care insurance and a policy or rider that provides for
6 payment of benefits based upon cognitive impairment or the loss
7 of functional capacity. "Long-term care insurance policy" does
8 not include:

9
10 A. An insurance policy or contract described as Medicare
11 supplement insurance under chapter 67:

12 B. An insurance policy or contract offered primarily to
13 provide basic hospital expense coverage, basic medical
14 surgical expense coverage, hospital confinement indemnity
15 coverage, major medical expense coverage, disability income
16 or related asset-protection coverage, accident only
17 coverage, specified disease or specified accident coverage
18 or limited benefit health coverage; and

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20 C. With regard to life insurance, an insurance policy or
21 contract that accelerates the death benefit specifically for
22 one or more of the qualifying events of terminal illness,
23 medical conditions requiring extraordinary medical
24 intervention or permanent institutional confinement and that
25 provides the option of a lump sum payment for those benefits
26 and does not condition the benefits or the eligibility for
27 those benefits upon the receipt of long-term care.

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29 **§5073. Extraterritorial jurisdiction; group long-term care**
30 **insurance**

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32 1. Groups other than employer, union, trustee and
33 association groups. A group long-term care insurance policy may
34 not be offered to a resident of this State under a group policy
35 issued in another state to a group other than an employer group
36 as described in section 2804, a labor union group as described in
37 section 2805, a trustee group as described in section 2806 or an
38 association group as described in section 2805-A unless the
39 superintendent has made a determination that the requirements of
40 this chapter have been met.

41
42 2. Trustee groups. Group long-term care insurance may not
43 be offered to an employee of an employer covered under a group
44 policy issued in another state to a trustee group as described in
45 section 2806 if a plurality of the employer's employees are based
46 in this State unless the superintendent has made a determination
47 that the requirements of this chapter have been met.

48
49 3. Association groups. The following applies to group
50 long-term care insurance coverage issued to association groups.

2 A. Group long-term care insurance coverage may not be
4 offered to a resident of this State under a group policy
6 issued in another state to an association group as described
 in section 2805-A, other than an association of employers,
 unless the superintendent has made a determination that the
 requirements of this chapter have been met.

8
10 B. Group long-term care insurance may not be offered to an
12 employee of an employer covered under a group policy issued
14 in another state to an association of employers if a
 plurality of the employer's employees are based in this
 State unless the superintendent has made a determination
 that the requirements of this chapter have been met.

16 §5074. Disclosure standards for long-term care insurance

18 The following standards apply to disclosures relating to
20 long-term care insurance.

22 1. Disclosures. The superintendent may adopt rules that
24 include standards for full and fair disclosure setting forth the
26 manner, content and required disclosures for the sale of
28 long-term care insurance policies and certificates; terms of
30 renewability; initial and subsequent conditions of eligibility;
32 nonduplication of coverage provisions; coverage of dependents;
 preexisting conditions; termination of insurance; continuation or
 conversion; probationary periods; limitations, exceptions and
 reductions; elimination periods; requirements for replacement;
 recurrent conditions; and definitions of terms. Rules adopted
 pursuant to this section are routine technical rules as defined
 in Title 5, chapter 375, subchapter II-A.

34 2. Outline of coverage. An outline of coverage must be
36 delivered to a prospective applicant for long-term care insurance
38 at the time of initial solicitation through means that
40 prominently direct the attention of the recipient to the document
42 and its purpose. In the case of producer solicitations, an
44 insurance producer shall deliver the outline of coverage prior to
46 the presentation of an application or enrollment form. In the
48 case of direct response solicitations, the outline of coverage
50 must be presented in conjunction with any application or
 enrollment form. In the case of a policy issued to an employer
 group as described in section 2804, a labor union group as
 described in section 2805 or a trustee group as described in
 section 2806, an outline of coverage is not required to be
 provided if the information described in this subsection is
 contained in other materials relating to enrollment that have
 been filed with and approved by the superintendent. The outline
 of coverage must be in a standard format, including style,

arrangement, overall appearance and content, prescribed by the superintendent and must include the following information:

A. A description of the principal benefits and coverage provided in the policy or certificate;

B. A statement of the principal exclusions, reductions and limitations contained in the policy or certificate;

C. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage must be specifically described;

D. A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

E. A description of the terms under which the policy or certificate may be returned and premium refunded;

F. A statement as to whether the policy or certificate is intended to be qualified for purposes of federal and state individual income taxes; and

G. A brief description of the relationship of cost of care and benefits.

3. Qualification for purposes of federal and state individual income taxes. The face page of all long-term care insurance policies and certificates must contain a prominent statement as to whether the policy or certificate is intended to be qualified for purposes of federal and state individual income taxes.

4. Individual life insurance policy that provides long-term care benefits. At the time of policy or certificate delivery, a policy summary must be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request but, regardless of a request, the insurer shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary also must include:

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A. An explanation of how the long-term care benefits interact with other components of the policy, including deductions from death benefits;

B. An illustration of the amount of benefits, the length of benefits and the guaranteed lifetime benefits, if any, for each covered person;

C. Any exclusions, reductions and limitations on benefits of long-term care;

D. A statement indicating whether any long-term care inflation protection option required by law is available under this policy; and

E. If applicable to the policy or certificate type, the summary must also include:

(1) A disclosure of the effects of exercising other rights under the policy;

(2) A disclosure of guarantees related to long-term care costs of insurance charges; and

(3) Current and projected maximum lifetime benefits.

The provisions of the policy or certificate summary listed in this subsection may be incorporated into a basic illustration required to be delivered in accordance with the life insurance policy summary that is required to be delivered in accordance with this Title governing life insurance policy summaries or with comparable statutory requirements in any other state.

5. Certificates of group long-term care insurance. A certificate issued pursuant to a group long-term care insurance policy that is delivered or issued for delivery in this State must include:

A. A description of the principal benefits and coverage provided in the policy;

B. A statement of the principal exclusions, reductions and limitations contained in the policy; and

C. A statement that the group master policy determines governing contractual provisions and that the policy is available for viewing in the offices of the policyholder and will be copied for the certificate holder upon request at no cost.

§5075. Required provisions; prohibitions; loss ratio standards for long-term care insurance

1. Prohibitions. A long-term care insurance policy or certificate may not:

A. Be canceled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual;

B. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

C. Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than for lower levels of care.

2. Preexisting condition. A long-term care insurance policy or certificate must provide coverage for preexisting conditions in accordance with the following.

A. A policy or certificate may not define "preexisting condition" in a manner that is more restrictive than the following: "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person.

B. A policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless such loss or confinement begins within 6 months following the effective date of coverage of an insured person.

C. The definition of "preexisting condition" in paragraph A does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph B expires. A long-term care insurance policy or certificate may not exclude, or use waivers or riders of any kind to exclude, limit or reduce,

coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph B.

D. The superintendent may extend the limitation periods set forth in paragraphs A and B with regard to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

3. Prior hospitalization or institutionalization. A long-term care insurance policy or certificate that contains provisions regarding prior hospitalization or institutionalization must comply with the following requirements.

A. A long-term care insurance policy or certificate may not be delivered or issued for delivery in this State if the policy:

(1) Conditions eligibility for any benefits on a prior hospitalization requirement;

(2) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care or recuperative benefits on a prior institutionalization requirement.

B. A long-term care insurance policy or certificate containing post-confinement, post-acute care or recuperative benefits must clearly label such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits."

C. A long-term care insurance policy, certificate or rider that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than 30 days.

D. The superintendent may adopt rules further restricting the use of prior institutionalization requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

4. Free-look provision. Applicants for long-term care insurance have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded

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2 if, after examination of the policy or certificate, the applicant
3 is not satisfied for any reason. A long-term care insurance
4 policy or certificate must have a notice prominently printed on
5 the first page or attached to the policy or certificate stating
6 in substance that the applicant has the right to return the
7 policy or certificate within 30 days of its delivery and to have
8 the premium refunded if, after examination of the policy or
9 certificate, the applicant is not satisfied for any reason.

10 5. Benefit payment status report on long-term care
11 benefits. Any time a long-term care benefit that is funded
12 through a life insurance policy or certificate by the
13 acceleration of the death benefit is in benefit payment status, a
14 monthly report must be provided to the policyholder or
15 certificate holder. The report must include:

- 16 A. Any long-term care benefits paid out during the month;
- 17
- 18 B. An explanation of any changes in the policy, including
19 changes in death benefits or cash values, due to long-term
20 care benefits being paid out; and
- 21
- 22 C. The amount of long-term care benefits existing or
23 remaining.
- 24

25 6. Loss ratios. The superintendent may adopt rules
26 establishing loss ratio standards for long-term care insurance
27 policies if a specific reference to long-term care insurance
28 policies or certificates is contained in the rules. Any loss
29 ratio standards for employer groups as described in section 2804
30 and labor union groups as described in section 2805 apply to the
31 group policy and not to certificates. Rules adopted pursuant to
32 this subsection are routine technical rules as defined in Title
33 5, chapter 375, subchapter II-A.

34 7. Marketing as long-term care or nursing home insurance.
35 This chapter applies to any policy, certificate or rider
36 advertised, marketed or offered as long-term care or nursing home
37 insurance.

38 **§5076. Incontestability period**

39 1. Policies or certificates in effect for less than 6
40 months. For a policy or certificate that has been in effect for
41 less than 6 months, an insurer may rescind a long-term care
42 insurance policy or certificate or deny an otherwise valid
43 long-term care insurance claim upon a showing of
44 misrepresentation that was material to the acceptance for
45 coverage.

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2 2. Policies or certificates in effect for more than 6
3 months but less than 2 years. For a policy or certificate that
4 has been in effect for at least 6 months but less than 2 years,
5 an insurer may rescind a long-term care insurance policy or
6 certificate or deny an otherwise valid long-term care insurance
7 claim upon a showing of misrepresentation that was both material
8 to the acceptance for coverage and that pertains to the condition
9 for which benefits are sought.

10 3. Policies or certificates in effect for 2 years or more.
11 After a policy or certificate has been in effect for at least 2
12 years, the policy or certificate may not be contested upon the
13 grounds of misrepresentation alone. The policy or certificate
14 may be contested only upon a showing that the insured knowingly
15 and intentionally misrepresented relevant facts relating to the
16 insured's health.

17 4. Field-issued policies or certificates. A long-term care
18 insurance policy or certificate may not be field-issued based on
19 medical or health status. For the purposes of this subsection,
20 "field-issued" means a policy or certificate issued by an agent
21 or a 3rd-party administrator pursuant to the underwriting
22 authority granted to the agent or 3rd-party administrator by an
23 insurer.

24 5. Recovery of benefit payments by the insurer. If an
25 insurer has paid benefits under the long-term care insurance
26 policy or certificate, the benefit payments may not be recovered
27 by the insurer if the policy or certificate is rescinded.

28 6. Death of the insured. Upon the death of the insured,
29 this section does not apply to the remaining death benefit of a
30 life insurance policy that accelerates benefits for long-term
31 care and the remaining death benefits under these policies are
32 governed by sections 2507 and 2615 relating to the
33 incontestability requirements for individual and group life
34 insurance. In all other events, this section applies to life
35 insurance policies that accelerate benefits for long-term care.

36 **§5077. Nonforfeiture benefits**

37 1. Offer required. Except as provided in subsection 2, a
38 long-term care insurance policy or certificate may not be
39 delivered or issued for delivery in this State unless the
40 policyholder or certificate holder has been offered the option of
41 purchasing a policy or certificate that includes a nonforfeiture
42 benefit. The offer of a nonforfeiture benefit may be in the form
43 of a rider that is attached to the policy. If the policyholder
44 or certificate holder declines the nonforfeiture benefit, the
45 insurer shall provide a contingent benefit upon lapse that must

1 be made available for a specified period of time following a
2 substantial increase in premium rates.

4 2. Group policyholders. When a group long-term care
5 insurance policy is issued, the offer required in subsection 1
6 must be made to the group policyholder. If the group long-term
7 care insurance policy is issued to a group described in section
8 2808 other than to a continuing care retirement community or
9 other similar entity, the offer must be made to each proposed
10 certificate holder.

12 3. Rules. The superintendent shall adopt rules specifying
13 the type or types of nonforfeiture benefits to be offered as part
14 of long-term care insurance policies and certificates, the
15 standards for nonforfeiture benefits and the standards regarding
16 contingent benefit upon lapse, including a determination of the
17 specified period of time during which a contingent benefit upon
18 lapse is available and the substantial premium rate increase that
19 triggers a contingent benefit upon lapse as described in
20 subsection 1. Rules adopted pursuant to this subsection are
21 routine technical rules as defined in Title 5, chapter 375,
22 subchapter II-A.

24 **§5078. Rulemaking**

26 The superintendent shall adopt rules to promote premium
27 adequacy, to protect a policyholder and a certificate holder in
28 the event of substantial rate increases and to establish minimum
29 standards for marketing practices, insurance producer
30 compensation, insurance producer testing, penalties and reporting
31 practices for long-term care insurance. Rules adopted pursuant to
32 this section are routine technical rules as defined in Title 5,
33 chapter 375, subchapter II-A.

34 **§5079. Penalties**

36 In addition to any other penalties provided by this Title or
37 the laws of this State, an insurer or insurance producer that
38 violates any requirement of this chapter or rule adopted pursuant
39 to this chapter relating to the regulation of long-term care
40 insurance or the marketing of such insurance is subject to a fine
41 of up to the greater of 3 times the amount of commissions paid
42 for each policy involved in the violation or \$10,000.

44 **§5080. Applicability**

46 This chapter applies to long-term care policies and
47 certificates issued or delivered in this State on or after
48 January 1, 2000. Policies and certificates issued prior to
49 January 1, 2000 and remaining in effect on that date are subject
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2 to the requirements of chapter 68. Those policies and any
3 certificates issued pursuant to those policies prior to January
4 1, 2000 continue in effect subsequent to the enactment of this
5 chapter.

6 All certificates of coverage issued or delivered to
7 residents of this State after January 1, 2000 must meet the
8 requirements of this chapter and any rules adopted pursuant to
9 this chapter, except that long-term care policies or certificates
10 issued pursuant to a provision included in a policy approved in
11 accordance with chapter 68 giving a policyholder or certificate
12 holder a right to purchase or increase coverage at a later date
13 may be issued with benefits consistent with chapter 68 after
14 January 1, 2000.'

15
16 Further amend the bill by inserting at the end before the
17 summary the following:
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21 **FISCAL NOTE**

22
23 The Department of Professional and Financial Regulation will
24 incur some minor additional costs to adopt rules and administer
25 the new provisions governing long-term care insurance policies or
26 certificates issued on or after January 1, 2000. These costs can
27 be absorbed within the department's existing budgeted resources.
28

29 This bill may increase the number of civil violations filed
30 in the court system. The additional workload and administrative
31 costs associated with the minimal number of new cases filed can
32 be absorbed within the budgeted resources of the Judicial
33 Department. The collection of additional fines may also increase
34 General Fund revenue by minor amounts.'

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37 **SUMMARY**

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39 This amendment replaces the bill and changes the title. The
40 amendment enacts a new chapter of the Maine Insurance Code, the
41 Maine Revised Statutes, chapter 68-A to govern individual and
42 group long-term care insurance policies or certificates issued on
43 or after January 1, 2000. The amendment is based on a model law
44 of the National Association of Insurance Commissioners.
45 Long-term care insurance policies or certificates issued before
46 January 1, 2000 will continue to be governed by the provisions of
47 chapter 68 of the Maine Insurance Code.
48

49 The amendment requires that certain disclosures relating to
50 long-term care insurance be made to applicants, policyholders and

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2 certificate holders, including a specific disclosure as to
whether the policy or certificate is intended to be qualified for
4 purposes of federal and state individual income taxes. It
contains provisions regulating the coverage of preexisting
6 conditions under long-term care insurance policies and
certificates and prescribes standards for policy provisions
relating to prior hospitalization or institutionalization.

8
The amendment also contains provisions governing
10 nonforfeiture of benefits and the incontestability of long-term
care insurance policies and certificates. Applicants for
12 long-term care insurance are also given the right to return a
long-term care insurance policy within 30 days and to receive a
14 premium refund if the applicant is not satisfied with the policy
for any reason.

16
The Superintendent of Insurance is required to adopt rules
18 relating to premium adequacy, premium rates and minimum standards
for marketing, insurance producer compensation and testing,
20 penalties and reporting practices. The superintendent is also
given authority to adopt any necessary rules to implement various
22 provisions, including standards for disclosure and loss ratios.
These rules are designated routine technical rules and are not
24 subject to legislative review before final adoption.

26
The amendment makes insurers and insurance producers that
violate any provision of chapter 68-A subject to a fine of up to
28 the greater of 3 times the amount of the commission paid on each
policy involved in the violation or \$10,000.

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The amendment also adds a fiscal note to the bill.

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