

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

SECOND REGULAR SESSION-2000

Legislative Document

No. 2574

S.P. 1007

In Senate, February 18, 2000

An Act to Harmonize State Financial Services Laws with Federal Law.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator LaFOUNTAIN of York. (GOVERNOR'S BILL).
Cosponsored by Representative SAXL of Bangor and
Senator ABROMSON of Cumberland, Representatives: DUDLEY of Portland, GLYNN of
South Portland, MAYO of Bath, PERRY of Bangor, RICHARDSON of Brunswick,
SULLIVAN of Biddeford.

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

2
4 **Sec. 1. 9 MRSA §5007**, as amended by PL 1981, c. 456, Pt. A, §31, is further amended by adding at the end a new paragraph to read:

6 This section does not apply to a national bank, a federal
8 savings bank, a subsidiary of a national bank or federal savings
10 bank or any other financial institution or credit union chartered
12 under the laws of the United States or any state and subject to
 supervision and regulation by a federal financial regulatory
 agency.

14 **Sec. 2. 9 MRSA §5008, sub-§4** is enacted to read:

16 4. Exemption. This section does not apply to a national
18 bank, a federal savings bank, a subsidiary of a national bank or
 federal savings bank or any other financial institution or credit
20 union chartered under the laws of the United States or any state
 and subject to supervision and regulation by a federal financial
 regulatory agency.

22 **Sec. 3. 9 MRSA §5009, sub-§3** is enacted to read:

24 3. Exemption. This section does not apply to a national
26 bank, a federal savings bank, a subsidiary of a national bank or
 federal savings bank or any other financial institution or credit
28 union chartered under the laws of the United States or any state
 and subject to supervision and regulation by a federal financial
30 regulatory agency.

32 **Sec. 4. 9 MRSA §5012**, as amended by PL 1999, c. 221, §3 and
34 c. 386, Pt. A, §18, is further amended by adding at the end a new
 paragraph to read:

36 This section does not apply to a national bank, a federal
38 savings bank, a subsidiary of a national bank or federal savings
 bank or any other financial institution or credit union chartered
40 under the laws of the United States or any state and subject to
 supervision and regulation by a federal financial regulatory
42 agency.

44 **Sec. 5. 24-A MRSA §§3488 to 3490** are enacted to read:

46 §3488. Reorganization of mutual insurer through formation of
 mutual holding company

48 1. Procedure for reorganization as stock insurer. A mutual
50 insurer may be reorganized as a stock insurer within a mutual
 holding company as provided in this section. The mutual insurer

2 shall submit to the superintendent a reasonable reorganization
3 plan, referred to in this section as the "plan," and the
4 procedure for putting the plan into effect. A hearing must be
5 held on the plan. Notice of the hearing must be provided
6 pursuant to section 230 to the insurer, its directors or
7 trustees, its officers, employees and its policyholders, all of
8 whom have the right to appear and be heard at the hearing. The
9 plan may not take effect unless approved by the superintendent.

10 2. Plan requirements. The plan must contain provisions for:

12 A. The reorganizing insurer to become a stock insurer;

14 B. The formation of a mutual holding company;

16 C. The members of the reorganizing insurer to become
17 members of the mutual holding company with membership
18 interests therein and the membership interests in the
19 reorganizing insurer to be extinguished; and

20 D. At least 51% of the voting stock issued and outstanding
21 by the reorganized insurer to be acquired and held, directly
22 or through one or more stock holding companies, by the
23 mutual holding company.

26 3. Number of stock holding companies. The plan may provide
27 for the formation of one or more intermediate stock holding
28 companies.

30 4. Approval of plan. The superintendent may not approve a
31 plan unless:

32 A. The terms and conditions of the plan are fair and
33 equitable;

34 B. The plan is subject to approval by vote of not less than
35 2/3 of the insurer's policyholders voting on the plan in
36 person, by proxy or by mail at a meeting of policyholders
37 called by the insurer for that purpose pursuant to
38 reasonable notice of the meeting and procedures as approved
39 by the superintendent. The plan must specify that only
40 persons who were policyholders both at least one year before
41 the submission of the plan to the superintendent and on a
42 subsequent date before the vote found reasonable by the
43 superintendent are entitled to vote. Each eligible
44 policyholder is entitled to one vote;

45 C. The plan, when completed, would provide paid-in capital
46 stock for the reorganized insurer in an amount not less than
47 the minimum paid-in capital stock required of a new domestic
48 insurer.

2 stock insurer upon initial authorization to transact like
3 kinds of insurance, together with expendable surplus funds
4 in an amount not less than 1/2 of such required capital
5 stock; and

6 D. The superintendent finds that the insurer's management
7 has not, through reduction in volume of new business written
8 or cancellation or any other means, sought to reduce, limit
9 or affect the number or identity of the reorganizing
10 insurer's members to be entitled to participate in the plan
11 or to secure for the individuals comprising management any
12 unfair advantage through the plan.

13 5. Compensation. A director, officer, agent or employee of
14 the reorganizing insurer or any other person may not receive any
15 fee, commission or other valuable consideration whatsoever, other
16 than that person's usual regular salary and compensation, for in
17 any manner aiding, promoting or assisting in the reorganization
18 except as set forth in the plan approved by the superintendent.
19 This provision does not prohibit the payment of reasonable fees
20 and compensation to attorneys, accountants or actuaries for
21 services performed in the independent practice of their
22 professions, even though they also may be directors of the
23 insurer.

24 6. Effective date of plan. The plan becomes effective,
25 after approval by the superintendent and by the policyholders,
26 upon the filing with the superintendent and the Secretary of
27 State of amended and restated articles of incorporation of the
28 reorganized insurer pursuant to section 3310 and articles of
29 incorporation of the mutual holding company and any related stock
30 holding company.

31 7. Consequence of effective plan. The following are the
32 consequences of a plan that becomes effective pursuant to
33 subsection 6.

34 A. The reorganizing insurer immediately becomes a domestic
35 stock insurer.

36 B. The members of the reorganizing insurer on the effective
37 date immediately become members of the mutual holding
38 company with membership interests in that holding company.
39 All membership interests in the reorganizing insurer are
40 extinguished.

41 C. A person becoming a policyholder of the reorganized
42 insurer after the effective date of the plan becomes a
43 member of the mutual holding company immediately upon
44 issuance of the policy or contract.
45

2 D. One hundred percent of the voting stock issued by the
4 reorganized insurer in the reorganization is owned, directly
6 or through one or more stock holding companies, by the
8 mutual holding company. All stock issued by the reorganized
10 insurer in the reorganization is considered duly and validly
12 issued, fully paid and nonassessable.

14 E. The reorganized insurer is a continuation of the
16 reorganizing insurer. The reorganization may not annul,
18 modify or change any of the insurer's existing suits,
20 rights, contracts or liabilities except as provided in the
22 plan.

24 8. Assistance in determining approval of plan. For the
26 purpose of determining whether a plan meets the requirements of
28 this section and any other relevant provisions of this Title, the
30 superintendent may employ staff personnel and outside
32 consultants. All reasonable costs related to the review of a
34 plan, including those attributable to the use of staff personnel,
36 must be borne by the insurer or insurers making the filing.

38 9. Injunctive relief and damages. If the reorganizing
40 insurer complies substantially and in good faith with the
42 requirements of subsection 4, paragraph B with respect to the
44 giving of any required notice to policyholders, the insurer's
46 failure to give notice to a person entitled to notice does not
48 impair the validity of the actions and proceedings taken under
 this section or entitle that person to any injunctive or other
 equitable relief with respect to those actions and proceedings.
 This subsection does not impair any claim for damages that person
 would otherwise have due to failure to give notice.

10. Commencement of challenges. Challenges to the validity
 of or arising out of acts taken or proposed to be taken by a
 mutual insurer under this section must be commenced within 180
 days of the superintendent's approval of the plan.

11. Exclusion of certain insurers. This section does not
 apply to an insurer authorized to transact life and health
 insurance or annuities or an insurer formed pursuant to chapter
 52.

44 **§3489. Requirements applicable to a mutual holding company**

46 1. Definitions. As used in this section, unless the
48 context otherwise indicates, the following terms have the
 following meanings.

2 A. "Mutual holding company" means a mutual holding company
formed pursuant to section 3488.

4 B. "Outside director" means a person who is not an officer,
employee or consultant of the mutual holding company, a
6 related stock holding company, the reorganized insurer or
other subsidiary of the mutual holding company or a related
8 stock holding company.

10 C. "Public offering" means an offer that includes an offer
to individuals that is made by means of public advertising
12 or general solicitation. "Public offering" does not include:

14 (1) Issuance of stock to the mutual holding company or
any related stock holding company; or

16 (2) An offer or sale that is exempt from registration
18 by virtue of Title 32, section 10502, subsection 2,
paragraph I, L, N, O or R.

20 D. "Reorganized insurer" means a mutual insurer reorganized
22 as a stock insurer pursuant to section 3488.

24 E. "Stock holding company" and "related stock holding
company" mean an incorporated entity that holds, directly or
26 indirectly, at least 51% of the voting stock of a
reorganized insurer.

28 F. "Voting stock" means common stock with general voting
30 rights in the election of directors.

32 2. Mutual holding company formed through reorganization.
34 The following provisions apply to a mutual holding company.

36 A. The provisions of Title 13-A that are applicable to a
mutual insurer apply to a mutual holding company as though
it were a mutual insurer.

38 B. A mutual holding company may not dissolve, liquidate or
40 wind up except through proceedings under this Title for the
liquidation or dissolution of the reorganized insurer or as
42 the superintendent may otherwise approve. In the event
proceedings are instituted for the complete liquidation of
44 the reorganized insurer:

46 (1) The mutual holding company automatically becomes a
party to the proceedings;

48 (2) All of the mutual holding company's assets,
50 including its holdings of shares in the reorganized

2 insurer or any stock holding company, are deemed assets
3 of the estate of the reorganized domestic stock insurer
4 to the extent necessary to satisfy claims of persons
5 who have class 1, class 2, class 3 or class 4 claims
6 under section 4379; and

7 (3) Members of the mutual holding company are deemed
8 to hold class 8 claims with respect to the mutual
9 holding company under section 4379.

10 C. The name of a mutual holding company must contain the
11 word "mutual" and may not contain the words "insurance,"
12 "assurance" or "annuity." The mutual holding company's
13 powers may not include doing insurance business. The
14 articles of incorporation of a mutual holding company must
15 contain provisions stating that:

16 (1) It is "a mutual holding company organized under
17 the Maine Revised Statutes, Title 24-A, section 3488";

18 (2) A purpose of the mutual holding company is to
19 hold, directly or through one or more stock holding
20 companies, not less than 51% of the voting stock of a
21 reorganized insurer;

22 (3) It is not authorized to issue voting stock;

23 (4) It is not authorized to conduct any business other
24 than that of a holding company, except for the
25 acquisition, ownership, management and disposition of
26 its assets and all reasonably related actions; and

27 (5) Its members have the rights specified in, and are
28 subject to, sections 3360, 3361, 3362, 3363, 3488, this
29 section, the mutual holding company's articles of
30 incorporation and its bylaws.

31 D. At least a majority of the directors of the mutual
32 holding company and any related stock holding company and
33 any committee of the board of directors of the mutual
34 holding company and of any related stock holding company
35 must be outside directors.

36 E. Each time voting stock of the reorganized insurer or any
37 related stock holding company is offered in a public
38 offering for a price payable in cash, each policyholder of
39 the reorganized insurer must receive, without payment,
40 nontransferable subscription rights to purchase that voting
41 stock at the same price and in accordance with procedures
42 approved by the superintendent as fair and equitable.

2 F. At least 30 days before the issuance of any voting stock
4 or securities convertible into voting stock of the
6 reorganized insurer or any related stock holding company,
8 other than in an underwritten public offering or a bona fide
10 sale to an unrelated 3rd party, the reorganized insurer or
12 related stock holding company shall provide to the
14 superintendent written notice of the proposed price of those
16 securities or the procedure whereby the price will be
18 determined and the terms and conditions of the offering.
20 The superintendent may disapprove the issuance of the stock
22 or securities if the superintendent finds that the price is
24 unfair. The superintendent's failure to make a finding on a
26 transaction subject to this paragraph within 30 days after
28 it has been filed with the superintendent has the effect of
30 an approval unless the superintendent has requested
32 supplemental information or issued a notice of hearing.

34 G. The stock holding company or the reorganized insurer may
36 not award any stock options or stock grants to officers or
38 directors of the mutual holding company, the stock holding
40 company or the reorganized insurer until 6 months after the
42 completion of either a public offering or private placement
44 of voting stock or securities convertible into voting stock
46 of the reorganized insurer or a related stock holding
48 company to any person other than the mutual holding company
50 or the stock holding company.

2 H. The aggregate percentage of voting stock of the
4 reorganized insurer or any related stock holding company
6 directly or indirectly owned or controlled by outside
8 directors may not exceed 18%, unless the reorganized insurer
10 or the related stock holding company has provided at least
12 30 days' prior written notice to the superintendent and the
14 superintendent has not objected to a higher percentage.

16 I. The aggregate percentage of voting stock of the
18 reorganized insurer or any related stock holding company
20 directly or indirectly owned or controlled by directors and
22 officers of the mutual holding company, a related stock
24 holding company or the reorganized insurer who are also
26 employed by any of the foregoing may not exceed 18% of the
28 voting stock of the reorganized insurer or any related
30 stock holding company, unless the reorganized insurer or the
32 related stock holding company has provided 30 days' prior
34 written notice to the superintendent and the superintendent
36 has not objected to a higher percentage.

38 J. A trust established in connection with an employee stock
40 ownership plan or other employee benefit plan established

2 for the benefit of employees of the reorganized insurer, a
4 related stock holding company or the mutual holding company
6 may not directly or indirectly own or control, in the
8 aggregate, more than 10% of the voting stock of the stock
10 holding company or the reorganized insurer, unless the
12 reorganized insurer or the related stock holding company has
provided 30 days' prior written notice to the superintendent
and the superintendent has not objected to a higher
percentage. The holdings of any such employee stock
ownership plan or other employee benefit plan that are
allocated to directors and officers who are employees must
be included in determining compliance with paragraph I.

14 K. A person may not own or control, directly or indirectly,
16 more than 15% of any class of voting stock of the
18 reorganized insurer or any related stock holding company
without the prior approval of the superintendent.

20 L. All voting stock of the reorganized insurer or any
22 related stock holding company acquired by any person in
24 excess of the maximum amount permitted to be acquired by
26 that person pursuant to this subsection is deemed to be
28 nonvoting stock for so long as it is held by any person in
30 excess of those limitations. In addition to any other
32 enforcement powers of the superintendent under this Title, a
34 violation of the limitations of ownership may be enforced or
36 enjoined, as the case may be, by appropriate proceedings
38 commenced by the reorganized insurer or any related stock
holding company, the superintendent, the attorney general,
any member of the mutual holding company or any stockholder
of the reorganized insurer or of any related stock holding
company. The action must be commenced in the Kennebec
County Superior Court or the superior court in the
jurisdiction of which the reorganized insurer has its home
office, and the court may issue any order, injunctive or
otherwise, that it finds necessary to cure the violation or
to prevent the action.

40 M. A mutual holding company and a related stock holding
42 company are each deemed to be a holding company of the
44 reorganized insurer within the meaning of section 222, and
46 all provisions of that section apply to transactions
48 occurring between the mutual holding company, the stock
holding company and the reorganized insurer. Approval of
the plan of reorganization by the superintendent pursuant to
section 3488 is considered approval of the acquisition of
control by a mutual holding company and any related stock
holding company under sections 222 and 3476.

2 For purposes of the limitations on ownership or control of voting
3 stock contained in this subsection, any issued and outstanding
4 securities that represent the right to acquire or that are
5 convertible into voting stock, including warrants, options and
6 rights to purchase voting stock, are deemed to represent the
7 number of shares of voting stock issuable upon conversion or
8 exercise of such securities or rights for purposes of both the
9 number of shares owned or controlled by a person and the total
10 number of shares of voting stock outstanding.

11 This subsection may not be construed to limit the indirect
12 ownership of stock in the reorganized insurer by virtue of having
13 an ownership interest in the mutual holding company.

14 **3. Merger or consolidation by mutual holding company or**
15 **stock holding company. With the written approval of the**
16 **superintendent, a mutual holding company or stock holding company**
17 **may:**

18 **A. Merge or consolidate with or acquire the assets of a**
19 **mutual holding company organized pursuant to this chapter or**
20 **pursuant to the mutual holding company laws of another state;**

21 **B. Either alone or together with one or more of the**
22 **reorganized insurers or stock holding companies or**
23 **subsidiaries of any of them, merge or consolidate with or**
24 **acquire the assets of a mutual insurer; or**

25 **C. Merge or consolidate with any other person.**

26 **4. Merger with another mutual holding company. If a mutual**
27 **holding company merges with a mutual holding company organized**
28 **under the laws of another state or acquires the membership**
29 **interests in a foreign mutual insurer, that merger or acquisition**
30 **must comply with the requirements of Maine law and rules and of**
31 **any other state's law, rule or regulation that is applicable to**
32 **the foreign mutual holding company or mutual insurer. In the**
33 **event of a conflict of state laws, rules or regulations, Maine**
34 **laws and rules apply. A foreign mutual insurer that is merged or**
35 **acquired pursuant to this section may at the same time**
36 **redomesticate to this State by complying with the applicable**
37 **requirements of this State and of the foreign mutual insurer's**
38 **state of domicile.**

39 **5. Acquisition of stock or assets of other persons. A**
40 **mutual holding company may acquire the capital stock or assets of**
41 **other persons.**

42 **6. Membership interest. A membership interest in a mutual**
43 **holding company does not constitute a security under Title 32,**
44

2 section 10501, subsection 18 or any other law of this State and
3 is not transferable.

4 7. Election of directors. Directors of the mutual holding
5 company must be elected by plurality vote of all members voting
6 in that election in person or by proxy. If the mutual holding
7 company takes any action, other than election of its directors,
8 that would require a vote of policyholders if the mutual holding
9 company were a mutual insurer, then that action requires a vote
10 of members of the mutual holding company.

12 **§3490. Conversion of mutual holding company**

14 1. Approval of reorganization plan. A mutual holding
15 company may be reorganized in accordance with a plan of
16 reorganization:

18 A. Approved by the superintendent, if the superintendent
19 finds the plan to be fair and equitable, after a hearing of
20 which notice has been given to the company's members
21 pursuant to section 230; and

22 B. Approved by vote of not less than 2/3 of the company's
23 members voting on the plan in person, by proxy or by mail at
24 a meeting of members called by the company for that
25 purpose. The mutual holding company shall provide
26 reasonable notice to its members and determine the procedure
27 for the meeting, subject to approval by the superintendent.
28 The plan must specify that only persons who were members
29 both at least one year before the submission of the plan and
30 on a subsequent date before the vote found reasonable by the
31 superintendent are entitled to vote. Each member is
32 entitled to one vote.

34 2. Membership interests disposition. A plan of
35 reorganization pursuant to subsection 1 must provide for
36 extinguishment of the membership interests in the mutual holding
37 company and may provide for either:

40 A. The conversion of the mutual holding company into a
41 stock corporation, in which event the consideration, if any,
42 distributed to members of the mutual holding company must be
43 equal to that required under section 3477; or

44 B. The distribution to eligible members of the mutual
45 holding company of consideration consisting of all assets of
46 the mutual holding company, including all stock of the
47 reorganized insurer or any stock holding company owned by
48 the mutual holding company, or other consideration having
49 equivalent aggregate value. The form of the other
50 consideration shall be determined by the superintendent.

2 consideration may be cash, securities, additional
4 insurance or annuity benefits or policy credits, increased
6 dividends or other consideration. All such consideration
8 must be allocated among eligible members of the mutual
10 holding company in a manner that is fair and equitable to
12 the company's members.

10 SUMMARY

12 Sections 1, 2, 3 and 4 of the bill amend the Charitable
14 Solicitations Act to exempt federally and state-chartered
16 financial institutions and credit unions that are subject to
18 supervision and examination by their respective chartering
20 authorities.

22 Section 5 of the bill permits mutual property and casualty
24 insurance companies in Maine to adopt a mutual holding company
26 structure. This bill is necessary because of a provision of the
28 federal Financial Services Modernization Act of 1999. Unless a
30 state's laws authorize mutual insurers to transfer their domicile
to another state and reorganize as a stock insurance company
owned by a mutual holding company, the federal law preempts state
insurance laws for this type of reorganization. Maine law does
not currently authorize that kind of reorganization. By
establishing law to allow mutual property and casualty insurers
to reorganize, this bill ends the federal preemption and
provides flexibility to mutual property and casualty insurers
organized in Maine and does so under terms that fairly protect
the interests of policyholders in those companies.