LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

FIRST REGULAR SESSION

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PUBLIC LAWS

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Sec. 8. 22 MRSA §2383-B is enacted to read:

§2383-B. Authorized possession by individuals; exemptions

1. Lawfully prescribed drugs. A person to whom or for whose use any prescription drug has been prescribed, sold or dispensed by a physician, dentist, podiatrist, pharmacist or other person authorized to do so, and the owner or the person having the custody or control of any animal for which any prescription drug has been prescribed, sold or dispensed by a licensed veterinarian, may lawfully possess the drug, except when in use, only in the container in which it was delivered by the person selling or dispensing the drug.

2. Other lawfully in possession. The following are authorized to possess and have control of prescription drugs:

A. Common carriers or warehousemen while engaged in lawfully transporting or storing prescription drugs, or any of their employees acting within the scope of their employment;

B. Employees or agents of persons lawfully entitled to possession who have temporary, incidental possession; and

C. Persons whose possession is for the purpose of aiding public officers in performing their official duties.

3. Definition. As used in this section, the term "prescription drug" has the same meaning as specified in Title 32, section 13702, subsection 24, and includes so-called "legend drugs."

See title page for effective date.

CHAPTER 385

S.P. 399 - L.D. 1043

An Act to Clarify the Application of Insurance Holding Company Laws to Holding Companies of Domestic Insurers

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

Sec. 1. 24-A MRSA §222, sub-§2, ¶A-1 is enacted to read:

A-1. Beneficial owner. "Beneficial owner" of a voting security, voting insurance policy or guaranty capital share means any person or group of persons acting in concert who, directly or indirectly, through any contract, arrangement, proxy appointment, understanding, relationship or otherwise, has or shares:

(1) Voting power over the security, policy or guaranty capital share, including the power to vote or to direct the voting of the security, policy or share; or

(2) Investment power over the security, policy or share, including the power to dispose or to direct the disposition of the security, policy or share.

The superintendent may determine that persons are acting in concert, either on the superintendent's own initiative or upon application of an interested person, based upon evidence that actions taken by those persons, if consummated, may permit the exercise of common control, directly or indirectly, over the domestic insurer. The absence of a determination by the superintendent that persons are acting in concert shall not be construed to exempt those persons from compliance with the requirements of this section.

Sec. 2. 24-A MRSA §222, sub-§2, ¶B, as repealed and replaced by PL 1975, c. 356, §1, is amended to read:

B. Control

(1) 'Control,' including 'controlling,' 'controlled by' and 'under common control with,' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control shall be presumed to exist if any person, ~~directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing~~ is the beneficial owner of 10% or more of the voting securities, or voting insurance policies in the case of mutual or reciprocal insurers, or guaranty capital shares if a mutual insurer has established a guaranty fund, of any other person. A beneficial owner may rely in determining the amount of voting securities of any person outstanding upon information set forth in that person's most recent quarterly or annual report filed with the Securities and Exchange Commission pursuant to the Exchange Act unless the beneficial owner knows or has reason to believe that the information contained therein is inaccurate. Two or more domestic mutual insurance companies who have restricted their licensed territories to the State ~~of Maine~~ shall not be deemed to be subject ~~of~~ to this section merely because such insurance companies commonly share facilities, incurred expenses, personnel services, or otherwise utilize cost allocations based on generally accepted accounting principles including pro rata sharing of assumed risks.

(2) Notwithstanding the presumption of control contained in subparagraph (1), the superintendent, upon application of the in-

surance company, may determine that the insurer is not controlled by the person presumed to control it. In addition, the superintendent, after notice and an opportunity to be heard, may determine, notwithstanding the absence of the presumption in subparagraph (1), that a person does control an insurance company or companies.

Sec. 3. 24-A MRSA §222, sub-§2, ¶B-1 is enacted to read:

B-1. Exchange Act. "Exchange Act" means the United States Securities Exchange Act of 1934, as amended.

Sec. 4. 24-A MRSA §222, sub-§4, as repealed and replaced by PL 1975, c. 356, §1, is repealed.

Sec. 5. 24-A MRSA §222, sub-§§4-A and 4-B are enacted to read:

4-A. Tender offers. No person may make a tender offer for, or a request or invitation for tenders of, or an agreement to exchange securities for, or otherwise acquire any voting security, or any security convertible into a voting security, of a domestic insurer or of any person controlling a domestic insurer if, as a result of the consummation thereof, the person making the tender offer, request or agreement, would, directly or indirectly, acquire actual control of the insurer or controlling person, and no person may enter into an agreement to merge with or may otherwise acquire control of a domestic insurer or its controlling person, unless:

A. The person has filed with the superintendent and has sent the domestic insurer a statement containing the information required by subsection 4-B;

B. The offer, request, invitation, agreement or acquisition has been approved by the superintendent in the manner prescribed in subsection 7; and

C. Ten days have elapsed from the date of approval by the superintendent and no injunction or other court order precludes consummation of the offer, request, invitation, agreement or acquisition.

The superintendent, by rule or by order, may exempt from paragraphs B and C, any offer, request, invitation or agreement which is subject to regulation as a tender offer under the Exchange Act, provided that the acquisition or other transaction contemplated by the offer, request, invitation or agreement may not be consummated unless that acquisition or other transaction is approved by the superintendent in the manner prescribed in subsection 7. The superintendent, by rule or by order, may in addition exempt from paragraphs B and C any offer, request, invitation, agreement, purchase or transaction on the grounds that the interests of the State in regulating that transaction are minimal relative to the interests of other jurisdictions or are minimal relative to the impact of the transaction as a whole, provided that it does not appear likely that exempting the transaction from the application of this section will be detrimental to the interests of Maine policyholders.

4-B. Application for approval. Each statement required in subsection 4-A shall contain the following information as applicable:

A. The background and identity of all persons by whom or on whose behalf the purchases or the exchange, merger or other acquisition of control are to be effected;

B. The source and amount of the funds or other consideration which have been used or will be used in making the purchases or in effecting the exchange, merger or other acquisition of control and, if any part of these funds or other consideration has been or will be borrowed or otherwise obtained for the purpose of making the purchases or effecting the exchange, merger or other acquisition of control, a description of the transaction and the names and identities of the parties involved;

C. Any plans or proposals which those persons may have to liquidate the insurer, or the controlling person of the insurer, or to sell its assets or merge it with any person or make any other major change in its business or corporate structure or management;

D. The amount of each class of voting securities, or securities which may be converted into voting securities, of the insurer or controlling person, which are beneficially owned, and the amount of each class of voting securities, or securities which may be converted into voting securities, of that insurer or controlling person concerning which there is a right to acquire beneficial ownership, by each person and by each affiliate;

E. Information as to all contracts, arrangements or understandings with any person with respect to any securities of the insurer or the controlling person, including, but not limited to, transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom those contracts, arrangements or understandings have been entered into, and giving the details thereof;

F. A copy of all those agreements, and any amendments thereto, to exchange or otherwise acquire securities or to merge with or otherwise acquire control of the insurer or the controlling person; and

G. Any other information as the superintendent may by rule prescribe as necessary or appropriate in the public interest or for the protection of policyholders.

Sec. 6. 24-A MRSA §222, sub-§5, as enacted by PL 1975, c. 356, §1, is amended to read:

5. Tender offer material. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders of such voting securities for control of a domestic insurer or its controlling person made by or on behalf of any such person shall contain ~~such of the~~ any information specified in subsection ~~4~~ 4-B as the superintendent may prescribe, and shall be filed with the superintendent at ~~least 10 days prior to~~ the time ~~such~~ that material is first published or sent or given to security holders. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain ~~such~~ the information ~~as~~ that the superintendent may prescribe as necessary or appropriate in the public interest or for the protection of policyholders ~~and stockholders~~, and shall be filed with the superintendent at ~~least 10 days prior to~~ the time copies of ~~such~~ that material are first published or sent or given to security holders.

Sec. 7. 24-A MRSA §222, sub-§7, ¶A, as amended by PL 1983, c. 394, §1, is further amended to read:

A. ~~In the absence of approval by the superintendent, the purchase, exchange, merger of a controlling person of an insurer or other acquisition of control referred to in subsection 4, may be made unless the superintendent, after a hearing is held~~ The superintendent shall hold a hearing in accordance with the procedures set forth in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, ~~disapproves the purchases, exchanges, merger of a controlling person of an insurer, or other acquisitions of control. Any such hearing shall be held~~ within 30 days after the statement required by subsection ~~4~~ 4-A has been filed with the superintendent. The superintendent shall make a determination within 30 days after the conclusion of that hearing. The superintendent ~~may disapprove any such transaction if he finds that~~ shall approve any purchase, exchange, merger or other acquisition of control referred to in subsection 4-A unless the superintendent finds that:

(1) After the change of control, the domestic insurer could not satisfy the requirements for the issuance of a certificate of authority according to requirements in force at the time of the issuance, or last renewal or continuation of its certificate of authority to do the insurance business which it intends to transact in this State;

(2) The effect of the purchases, exchanges, merger of a controlling person of the insurer, or other acquisitions of control may be substantially to lessen competition in insurance in this State or tend to create a monopoly therein; or would violate the laws of this State or of the United States relating to monopolies or restraints of trade;

(3) The financial condition of an acquiring person is such as would jeopardize the financial stability of the insurer or prejudice the interest of its policyholders ~~or, in the case of an acquisition of control, the interest of any remaining stockholders who are unaffiliated with the acquiring person~~;

(4) The plans or proposals which the acquiring person has to liquidate the insurer, to sell its assets or to merge it with any person, or to make any other major change in its business or corporate structure or management, are unfair or prejudicial to policyholders;

(5) The competence, experience and integrity of those persons who would control the operation of the insurer indicate that it would not be in the interest of policyholders~~, stockholders~~ or the public to permit them to do so; ~~or~~

(6) Any party to an agreement to merge with a domestic insurer is not itself an insurer; or

(7) The acquisition of control would tend to affect adversely the contractual obligations of the domestic insurer or its ability and tendency to render service in the future to its policyholders and the public.

Sec. 8. 24-A MRSA §222, sub-§7, ¶B, as enacted by PL 1975, c. 356, §1, is amended to read:

B. Subparagraphs (3) to ~~(6)~~ (7) do not apply to any change of control if and to the extent that the superintendent, by rule ~~or regulation~~ or by order, ~~shall exempt~~ exempts the same from the provisions of ~~such~~ those subparagraphs as not comprehended within the purpose of this subsection~~;~~.

Sec. 9. 24-A MRSA §222, sub-§13, as enacted by PL 1975, c. 356, §1, is amended to read:

13. Confidential communications. Any registration statement, tender offer, or request or invitation for tenders, advertisement making a tender offer or requesting or inviting tenders of voting securities, option to purchase, agreement to merge or consolidate, or contract to manage filed pursuant to this section including any duly authenticated copy thereof in the possession of any person subject to this section shall be a confidential communication, shall not be subject to a subpoena and shall not be made public by the superintendent without prior written consent of the insurer, unless the superintendent determines that the interests of policyholders~~, stockholders~~ or the public will be served by the publication thereof, in which event ~~he~~ the superintendent may make a public record or publish all or any part thereof in such manner as ~~he~~ the superintendent may deem appropriate. The distribution of reports on examination referred to in section 227 shall not be regarded as confidential

communications and shall be excepted from the confidential requirements of this subsection.

See title page for effective date.

CHAPTER 386

S.P. 382 - L.D. 1018

An Act to Provide a Special Adjustment for Hospitals Having Unusually Low Financial Requirements per Case

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the financial requirements determined by the Maine Health Care Finance Commission for certain Maine hospitals result in noncapital financial requirements per case that are markedly less than the median for hospitals of comparable size; and

Whereas, some of those hospitals have expended substantially more than they are authorized to recover through charges to patients and require an increase in revenues in order to continue operating at current levels of expenditure; and

Whereas, it may, under some circumstances, serve the public interest to allow such an increase in revenues, if the hospital's financial requirements per case would still be substantially below the median; and

Whereas, current law does not allow the Maine Health Care Finance Commission to adjust financial requirements in recognition of the circumstances described above; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §396-D, sub-§9-B is enacted to read:

9-B. Special relief. In determining financial requirements for payment years beginning or deemed to begin on or after October 1, 1988, and before October 1, 1990, the commission may elect to make a special adjustment to provide relief to hospitals with unusually low noncapital financial requirements per case-mix adjusted admission, in accordance with the following provisions.

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

(1) "Final 3rd-year financial requirements" means a hospital's financial requirements at year end as determined by the commission for purposes of compliance and settlement determinations under section 396-I for the payment year commencing during the 3rd payment year cycle.

(2) "Financial requirements per case" means the inpatient portion of a hospital's final 3rd-year financial requirements, exclusive of capital allowances, hospital-based physician remuneration, base-year subsidies, and medical education costs, divided by the hospital's case-mix adjusted admissions for that year.

(3) "Third payment year cycle" means the period from October 1, 1986, through September 19, 1987.

(4) "Base-year subsidies" means that part of financial requirements resulting from the addition to base-year financial requirements, by commission rule, of elements designed to compensate hospitals for losses associated with operations, the costs of which are not otherwise included in financial requirements.

B. A hospital may receive an adjustment only if its financial requirements per case are less than 83% of the median financial requirements per case for hospitals of comparable size.

C. Any adjustment shall be limited to the lesser of:

(1) An amount calculated by first subtracting the hospital's financial requirements per case from 83% of the median financial requirements per case for hospitals of comparable size; multiplying that difference by the sum of the hospital's case-mix adjusted admissions and outpatient equivalent admissions for the payment year commencing in the 3rd-payment year cycle; and adjusting that product for inflation between the payment year commencing in the 3rd-payment year cycle and the payment year for which the adjustment is requested; or

(2) An increase in the hospital's financial requirements that will, in conjunction with any other adjustments to financial requirements that the hospital is entitled to receive for the same payment year, cause its noncapital financial requirements to equal its reasonably budgeted, noncapital operating expenses for the payment year.

D. The commission shall make an adjustment for all or part of the maximum amount permitted under paragraphs B and C, to the extent that the commission finds that relief is necessary to avoid significant