

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

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NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

negligence, misconduct or incompetence in the performance of duties. After being certified by the commissioner under this paragraph, a plumbing inspector may serve civil process on persons who violate the plumbing and subsurface wastewater disposal rules of the department. The municipal officers may also authorize the inspector to represent the municipality in District Court under section 4452.

Sec. 21. Authority to report out bill. The Joint Standing Committee on Agriculture, Conservation and Forestry is authorized to report out a bill making revisions to the animal welfare laws during the Second Regular Session of the 118th Legislature. In developing the bill, the committee shall consider each of the provisions proposed in Legislative Document 1362 as originally printed in the First Regular Session of the 118th Legislature.

See title page for effective date.

CHAPTER 457

S.P. 535 - L.D. 1640

An Act to Streamline Licensing and Reporting Requirements and Reduce Regulatory Burdens for Licensed Insurance Professionals and Insurers

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

Whereas, insurers and the Bureau of Insurance will avoid considerable expense and delay by enacting immediately certain provisions contemplated by this legislation; and

Whereas, current provisions of the law result in significant inefficiencies within the Bureau of Insurance that may otherwise be streamlined with this legislation; and

Whereas, to implement certain provisions immediately requires that this legislation be enacted as emergency legislation; 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. 5 MRSA §12004-I, sub-§70-A, as enacted by PL 1989, c. 31, §1, is amended to read:

70-A.	Continuing	Expenses	24-A
Occupations:	Education	Only	MRSA
Insurance	Advisory		@1876
	Committee		§1481

Sec. 2. 5 MRSA §12004-I, sub-§71, as enacted by PL 1987, c. 786, §5, is repealed.

Sec. 3. 9-B MRSA §443, sub-§11, as enacted by PL 1993, c. 322, §1, is amended to read:

11. Annuities. A financial institution, credit union or financial institution holding company, or a subsidiary or employee of such an entity, authorized to do business in the State may sell, or arrange for the sale of, through a licensed 3rd-party, annuities purchased from a licensed insurance company and may share commissions in connection with the sale of annuities pursuant to the provisions of Title 24-A. A financial institution, a credit union or a financial institution holding company or an employee or subsidiary of such an entity must be licensed in accordance with Title 24-A, section ~~1531, subsection 1, paragraph F 1416~~ before engaging in any of the activities concerning the sale of annuities authorized by this subsection. ~~If annuities are sold pursuant to the authorization under this subsection through an arrangement with a licensed 3rd party agent, that 3rd party agent may not be licensed to sell general lines insurance or life and health insurance. As used in this subsection, the words "sell annuities" and "arrange for the sale of annuities" do not include the underwriting of those products.~~

A financial institution, credit union or financial institution holding company that sells or arranges for the sale of annuities on the premises of that entity:

A. Shall post conspicuously a notice that is clearly visible to all customers that may purchase annuities. The notice must state in clearly understandable language that the annuities are not insured by the Federal Deposit Insurance Corporation;

B. Shall orally inform a prospective purchaser of annuities that the annuities are not insured by the Federal Deposit Insurance Corporation; and

C. Before a sale of annuities is completed, ~~must~~ shall obtain a written statement signed by the purchaser of the annuities stating that the purchaser received the oral notice required by paragraph B.

Sec. 4. 24 MRSA §2312, as amended by PL 1973, c. 585, §12, is repealed.

Sec. 5. 24 MRSA §2313, as amended by PL 1977, c. 682, §2, is repealed.

Sec. 6. 24 MRSA §2332, sub-§10 is enacted to read:

10. Filing fees. The superintendent may require nonprofit hospital or medical service organizations and nonprofit health care plans to pay filing fees for form and rate approval on a quarterly, biennial or annual basis.

Sec. 7. 24-A MRSA §3, as amended by PL 1995, c. 375, Pt. C, §1, is further amended to read:

§3. "Insurance" defined

"Insurance" is a contract under which one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies, or to act as surety. A charitable gift annuity agreement, as defined in section 703-A, is not considered insurance. A road or tourist service contract, other than a contract issued by a licensed insurer, related to the repair, operation and care of automobiles or to the protection and assistance of automobile owners or drivers is not considered insurance.

Sec. 8. 24-A MRSA §10, sub-§2, as enacted by PL 1969, c. 132, §1, is amended to read:

2. Fraternal benefit societies, except as stated in chapter 55; or

Sec. 9. 24-A MRSA §10, sub-§3, as enacted by PL 1969, c. 132, §1, is repealed.

Sec. 10. 24-A MRSA §421, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

1. Before the superintendent ~~shall authorize~~ authorizes it to transact insurance in this State, each insurer shall appoint ~~the superintendent, and his successors in office, as its agent~~ a resident attorney as its agent to receive service of legal process issued against the insurer in this State. The insurer shall file with the superintendent a copy of the appointment shall be made on a form as designated and furnished by the superintendent, and shall. The notice to the superintendent must be accompanied by a copy of a resolution of the board of directors or like governing body of the insurer, if an incorporated insurer, showing that those officers who executed the appointment were duly authorized to do so on behalf of the insurer.

Sec. 11. 24-A MRSA §421, sub-§1-A is enacted to read:

1-A. Insurers currently authorized to transact insurance in this State must comply with this section within 6 months of the effective date of this subsection. This subsection is repealed 6 months from the effective date of this subsection.

Sec. 12. 24-A MRSA §421, sub-§2, as enacted by PL 1969, c. 132, §1, is repealed.

Sec. 13. 24-A MRSA §421, sub-§3, as amended by PL 1973, c. 585, §12, is further amended to read:

3. Service of ~~such~~ process against a foreign or alien insurer ~~shall~~ may be made only by service thereof upon the ~~superintendent~~ attorney appointed by the insurer.

Sec. 14. 24-A MRSA §421, sub-§5, as amended by PL 1973, c. 585, §12, is further amended to read:

5. At the time of application for a certificate of authority the insurer shall file the appointment with the superintendent, together with designation of the person to whom process against it served upon the ~~superintendent~~ appointed attorney is to be forwarded. The insurer may change such designation by a new filing.

Sec. 15. 24-A MRSA §422, as amended by PL 1973, c. 585, §12, is repealed.

Sec. 16. 24-A MRSA §425-A is enacted to read:

§425-A. Contract to participate in finance program

An authorized insurer may enter into a contract or arrangement with a financial institution for the purpose of participating in a finance program with the financial institution. In this case, the financial institution need not be licensed as a producer, as long as the purpose of the arrangement is to authorize an insurer to direct or refer insureds, prospective insureds or other customers to the financial institution for loans, or for the purpose of authorizing an insurer to facilitate arrangements for leases, loans or credit applications with the financial institution. This section does not exempt persons from otherwise complying with applicable state or federal laws relating to entering into such contracts.

Sec. 17. 24-A MRSA §601, sub-§2, as amended by PL 1991, c. 334, §5, is further amended to read:

2. Charter documents, other than those filed with application for certificate of authority. The fee: for filing by an insurer for a reservation of a name; in addition to any other fee, a late filing of any

information required to be filed by a licensee; registration of a branch location; Filing amendments and filing any amendment to certificate of organization, articles or certificate of incorporation, charter, bylaws, power of attorney, as to reciprocal insurers, and other constituent documents of the insurer, each document is \$25;

Sec. 18. 24-A MRSA §601, sub-§5, as amended by PL 1993, c. 637, §4, is further amended to read:

5. Producers. ~~Agents' licenses and appointments~~ Producers' license and appointment fees are:

- A. Issuance fee for original resident ~~agent~~ producer license, including limited license \$30;
- B. Appointment of resident ~~agent~~ producer, each insurer \$30;
- Biennial continuation of appointment \$30;
- C. Temporary license issuance fee \$50;
- ~~D. Limited license issuance fee (section 1531)~~\$30;
- E. Issuance fee for original nonresident ~~agent~~ producer license \$70;
- Appointment of such ~~agent~~ producer, each insurer \$70;
- Biennial continuation of appointment, each ~~agent~~ insurer \$70;
- F. Issuance fee for resident ~~agent-organization~~ agency license \$30;
- Biennial ~~renewal fee~~ continuation \$30; ~~and~~
- G. Issuance fee for nonresident ~~agent-organization~~ agency license \$70;
- Biennial ~~renewal fee~~ continuation \$70; ~~and~~
- H. Issuance fee for resident independent producer authority \$70;
- Biennial continuation \$70;
- Issuance fee for nonresident, independent producer authority \$150;
- Biennial continuation \$150.

Sec. 19. 24-A MRSA §601, sub-§6, as amended by PL 1993, c. 637, §5, is repealed.

Sec. 20. 24-A MRSA §601, sub-§12, as amended by PL 1993, c. 637, §11, is repealed.

Sec. 21. 24-A MRSA §601, sub-§21, ¶B, as repealed and replaced by PL 1993, c. 637, §14, is amended to read:

- B. ~~Biennial~~ Annual continuation \$50.

Sec. 22. 24-A MRSA §604, sub-§2, ¶C, as amended by PL 1985, c. 446, §3, is repealed.

Sec. 23. 24-A MRSA c. 16 is enacted to read:

CHAPTER 16

PRODUCERS, ADJUSTERS, CONSULTANTS AND AGENCIES

SUBCHAPTER I

SCOPE OF CHAPTER AND DEFINITIONS

§1401. Scope of chapter

1. Producers, consultants and adjusters. This chapter governs the qualifications, licensing and general requirements for producers, consultants and adjusters as to any and all kinds of insurance and types of insurers, nonprofit hospital or medical service organizations, health maintenance organizations and fraternal benefit societies, except reinsurers.

2. Agents and brokers. This chapter governs the qualifications, licensing and general requirements for agents and brokers as to any and all kinds of insurance and types of insurers, nonprofit hospital or medical service organizations, health maintenance organizations and fraternal benefit societies, except reinsurers. Wherever the context warrants in this Title, the term "agent" or the term "broker" is replaced with the term "producer." Reference to insurance agent or insurance broker is the same as reference to insurance producer.

This subsection is repealed July 1, 1998.

§1402. Definitions

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

1. Adjuster. "Adjuster" means any person who, as an independent contractor or as an employee of an independent contractor, or as an employee of another organization, for fee, commission or other compensation, investigates for, settles on behalf of and reports to an insurer, fraternal benefit society, workers' compensation self-insurer or insured relative to claims arising under the workers' compensation laws or other types of insurance contracts. "Adjuster" does not include:

A. Attorneys admitted to practice in this State;

B. Employees of insurers;

C. Licensed producers authorized by contract to settle and pay claims within a specified limit established by the insurer or fraternal benefit society not to exceed \$5,000;

D. Persons excepted from licensure as adjusters pursuant to Title 5, section 1727-A and persons acting as adjusters solely on behalf of the State or counties, cities and towns;

E. Persons adjusting only life and health insurance claims; or

F. Adjuster trainees.

2. Adjuster trainee. "Adjuster trainee" means any person with less than one year total experience handling loss claims under insurance contracts or the workers' compensation laws. An "adjuster trainee" must be employed by and subject to the immediate personal supervision of an adjuster who is licensed in this State and who has been established in the business of adjusting for 3 years or more.

3. Agency. "Agency" means any corporation, association, limited liability company, partnership, limited partnership or other legal entity that operates as an insurance producer, consultant or adjuster under a license issued pursuant to this chapter. An agency includes a sole proprietorship where more than one licensed individual is employed by or works under the name of the agency or where the individual licensee uses a name for the agency other than the individual licensee's own name.

4. Consultant. "Consultant" means any person who, for a fee, advises or offers to advise any person insured or seeking insurance or named or to be named as beneficiary, or having or to have any interest in or insured under any property and casualty or life and health insurance contract or annuity contract, existing or proposed.

A. "To advise" means to provide information relative to coverage, rights or interests under insurance or annuity contracts, or relative to the retention, exchange, surrender, exercise of rights or other disposition of insurance or annuity contracts.

B. "Consultant" includes a person who collects a fee from the insured or potential insured for advice on financial planning and as part of that planning sells or plans to sell insurance policies under an insurance producer license on which the producer will collect commissions.

C. "Consultant" includes a person who collects a fee from the insured or potential insured for advice on estate planning or for the sale of a trust package and as part of the estate planning sells or plans to sell insurance policies under an insurance producer license on which the producer will collect commissions.

D. "Consultant" does not include:

(1) An attorney licensed to practice who is actively practicing law in this State;

(2) An insurance actuary and member or associate of the Society of Actuaries or American Academy of Actuaries;

(3) A public accountant certified under Title 32, chapter 113 or a certified public accountant who is certified under Title 32, chapter 113 and in active public practice; or

(4) A licensed insurance producer who receives a fee in lieu of a commission pursuant to section 1450 if the insurance producer receives a fee for the insurance transaction and not for other services provided; or

(5) A financial institution or a financial institution holding company if the insurance advice is given as part of its trust department rendering insurance advice in a fiduciary capacity.

5. Insurance producer. "Insurance producer" means a person who engages in insurance producer activities. Unless the person receives commission for the service, this definition does not include: a person whose insurance producer activities are limited to taking applications for certificates under group insurance contracts issued pursuant to sections 2603, 2605-A, 2606-A, 2804, 2805, and 2806; a person whose insurance producer activities are limited to taking applications for certificates of insurance under approved group contracts where underwriting is not required and where certificates are issued to members of the group without contribution from the members; or a person whose activities relate to enrolling participants in a credit life and health insurance policy to the extent authorized under chapter 37, a group life insurance policy to the extent authorized under chapter 31, a group health insurance policy to the extent authorized under chapter 35 or a group credit involuntary unemployment insurance policy.

A. For the purposes of this Title, a person currently licensed as an agent or broker is deemed to be an insurance producer.

This paragraph is repealed on July 1, 1998.

6. Insurance producer activities. "Insurance producer activities" means, with respect to insurance risks residing, located or to be performed in this State, to solicit, take application for, negotiate, effect, procure, deliver, renew, bind or receive commissions for policies of insurance issued by insurers, certificates of insurance under approved group policies, automobile mechanical breakdown contracts if the contracts are issued or backed by an insurer; or certificates or policies issued by health maintenance organizations or nonprofit hospital or medical service organizations.

7. License. "License" means a document issued by the superintendent authorizing a person to act as an insurance producer for classes of insurance specified in the document as authorized in this chapter. The license itself does not create any authority, actual, apparent or inherent, in the licensee to represent or commit any particular insurer.

8. Life and health consultant. "Life and health consultant" means a person licensed as a consultant to advise on life contracts, annuity contracts and health insurance contracts.

9. Limited insurance producer license. "Limited insurance producer license" means a license issued by the superintendent authorizing a person to act as an insurance producer limited to insurance producer activities involving any one of the following:

A. Certificates under group insurance contracts only.

This paragraph takes effect on July 1, 1997;

B. Automobile insurance contracts only;

C. Travel accident and baggage insurance contracts only;

D. Credit life and credit health insurance contracts only;

E. Title insurance contracts only;

F. Annuities contracts only; or

G. Automobile mechanical break-down contracts only.

10. Nonresident. "Nonresident" means a person other than a resident of this State.

11. Property and casualty consultant. "Property and casualty consultant" means a person licensed as a consultant to advise on any one or more of the following kinds of insurance:

A. Casualty insurance;

B. Property insurance;

C. Surety insurance;

D. Marine and transportation insurance;

E. Title insurance; or

F. Legal services insurance.

12. Resident. "Resident" means any of the following:

A. An individual who is domiciled in this State and who is not licensed elsewhere as a resident producer, consultant or adjuster;

B. An individual whose principal place of business is located in this State and who is not licensed elsewhere as a resident producer, consultant or adjuster; or

C. An agency either incorporated in this State or having its principal place of business in this State that is not licensed as a resident agency elsewhere.

13. Service representative. "Service representative" means either of the following:

A. An individual regularly employed on salary by a property and casualty insurer, group of insurers or managing general agent to work in the field with licensed producers in soliciting, negotiating and effectuating insurance in the property and casualty insurer, group of insurers or insurers represented by the managing general agent; or

B. An officer and salaried nonresident traveling representative of property and casualty insurers not in general using resident producers for the solicitation of business, who inspects risks or solicits insurance in this State and receives no commissions for those activities.'

SUBCHAPTER II

GENERAL LICENSING REQUIREMENTS FOR PRODUCERS, ADJUSTERS, CONSULTANTS AND AGENCIES

§1411. License required

1. Producer. A person may not act as or purport to be an insurance producer or limited insurance producer or engage in producer activities with respect to insurance risks resident, located or to be performed in this State or elsewhere for any kind or kinds of insurance unless licensed for such a kind or kinds in accordance with this chapter.

2. Consultant; adjuster. A person may not act as or purport to be a consultant with respect to insurance risks resident, located or to be performed in this State or elsewhere unless licensed as a consultant under this chapter. A person may not act as or purport to be an adjuster unless licensed as an adjuster under this chapter, except as provided in section 1475.

3. Insurance business. A person may not for a fee or commission engage in the business of offering any advice, counsel, opinion or similar service with respect to the benefits, advantages or disadvantages under any policy of insurance that is issued in this State unless that person is:

A. Engaged or employed as an attorney licensed in this State to practice law;

B. A licensed insurance producer offering advice concerning a kind of insurance for which the insurance producer is licensed to transact business and does not receive a separate fee for rendering such advice other than commissions or fees for the sale of an insurance or annuity policy;

C. An actuary or a certified public accountant engaged or employed in a consulting capacity, performing duties incidental to that position;

D. A licensed adjuster acting within the scope of the license; or

E. A licensed insurance consultant acting within the scope of the license.

4. Liability. A licensee is personally liable under any insurance contract made by or through the licensee that is outside the scope of the license authority. An insurance contract issued on an application solicited, received or forwarded by an unlicensed person and otherwise valid is not thereby rendered invalid.

§1412. Prohibited activities

1. License revocation. A person whose license as an insurance producer, consultant or adjuster has been revoked, suspended, denied for cause or voluntarily surrendered to avoid prosecution in this State may not participate in any manner in the conduct of an insurance agency or insurance brokerage, consulting or adjusting business.

2. Compensation. A person whose license as an insurance producer, consultant or adjuster has been revoked, suspended, denied for cause or voluntarily surrendered to avoid prosecution may not derive any compensation, by whatever name called, based on the operation of the insurance agency or other firm in which the person was engaged or employed prior to

the revocation, suspension, denial or surrender of license. This subsection does not prohibit a person from receiving compensation for activities that the person engaged in prior to any loss of license referred to in this section, nor does it prohibit any person from divesting an interest in an insurance company or agency for value.

3. Relicensure. Nothing in this section prohibits any rights a person may have to seek relicensure under section 1418.

4. Violations. Any person violating this section is guilty of a Class E crime and may be punished upon conviction, by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not more than 6 months, or by both.

§1413. License requirement for agencies

1. License required. An agency, whether it has a location in this State or not, must be licensed as an insurance producer, adjuster or consultant agency in order to engage in insurance producer, adjuster or consultant activities or in order to use the name of the agency in insurance-related advertising in the State. Licensure of a nonresident agency does not depend upon the agency maintaining an agency license in another state. Agency licensees are subject to the standards of section 407, subsection 2, where applicable, and section 408, subsections 1 and 4. Agency licensees may advertise only in the names under which they are licensed. An agency may not be licensed with the word "company" in its name after the effective date of this subsection.

2. Officers; directors; members; partners. An agency shall notify the superintendent of its members, directors, officers or partners within 14 days of a request for such information by the superintendent.

3. Responsible person. Each officer or director of a corporation, each officer and member of a limited liability company and each partner of a partnership who is acting as an insurance producer, adjuster or consultant shall obtain an insurance producer, adjuster, or consultant license. Officers, members and partners do not have to be individually licensed if they are not engaging in producer activities, are not acting as consultants or adjusters and are not being compensated based upon the volume of insurance business transacted. At least one officer, member or partner must be licensed and designated responsible for the organization's compliance with the insurance laws and rules of this State. The responsible person shall ensure that every individual acting in the name of the agency does not act beyond the scope of that individual's license. The designated responsible person for each agency shall maintain a list of all current home addresses and home telephone numbers for each individual designated to act in the name of

the agency. The agency shall notify the superintendent, within 14 days of every change of the designated licensed person responsible for the organization's compliance with laws and rules of this State. The designated responsible person is responsible for all correspondence with the agency from the superintendent. If the responsible person in an agency loses that person's license, the agency license terminates if a new person is not designated as responsible for the agency within 14 days. If another officer, member or partner is not licensed as an insurance producer at the time the designated responsible person leaves the agency, the agency may designate another licensed person to be the responsible person for a period of 90 days or until another officer, member or partner becomes licensed, whichever is less. The superintendent may extend this time period for good cause.

4. Authority. Whenever an agency changes the individuals designated to act in the name of the agency, the agency shall notify the superintendent within 30 days of those changes.

5. Resident branch offices. A resident branch office is any office location other than the location of the licensed agency that regularly conducts insurance business or that is advertised as a location where the public may contact the agency or its employees concerning insurance services. An office location that meets this definition that is itself a separate legal entity from the licensed agency must obtain a separate agency license and can not be registered as a branch office. A place of residence need not be registered as a branch office so long as that address is filed with the superintendent. The licensed person designated as responsible for the agency is responsible for all branch locations.

6. Nonresident branch locations. A nonresident agency establishing a place of business in this State shall procure an agency license for its principal location and a branch office registration for each location within the State. At least one branch location within the State must be staffed with a resident insurance producer, adjuster or consultant. The licensed person designated as responsible for the agency is responsible for all such branch locations.

7. Applications. The superintendent shall convert broker and agent agency licenses to producer agency licenses and accept applications for insurance agency licenses beginning on the effective date of this subsection. Applications for organization licenses may not be accepted after July 1, 1997.

This subsection is repealed January 1, 1998.

§1414. Trade names

An agency or person may conduct business under a trade name, if the license is issued under the

trade name. If an agency is licensed with a trade name, that name must be used by the agency and its employees in all insurance-related advertising. The superintendent may refuse to issue a license under a specific trade name if the name is determined as misleading, deceptive or likely to result in confusion with other existing businesses.

§1415. License categories

1. Producer categories. A resident or nonresident insurance producer may receive the following authorities under the license:

- A. Property and casualty;
- B. Life and health;
- C. Variable contract; or
- D. Independent producer.

2. Consultant categories. A resident or nonresident consultant may receive the following authorities under the license:

- A. Property and casualty; or
- B. Life and health.

§1416. Limited insurance licenses

1. Limited license. The superintendent may issue to an applicant qualified under this chapter a limited insurance producer license as defined in section 1402.

2. Fee. The fee for a limited insurance producer license is specified in section 601.

§1417. Suspension; revocation; refusal of license

1. Suspension. Notwithstanding Title 5, chapter 375, subchapter VI, the superintendent may, after notice and opportunity for hearing, deny, revoke, suspend or limit the permissible activities under any license issued under this chapter, including agency licenses, or any surplus lines broker license if the superintendent finds that, as to the applicant or licensee, any of the following causes exist:

- A. For any cause for which issuance of the license could have been refused had it then existed and been known to the superintendent;
- B. For a violation or noncompliance with any applicable provision of this Title or for willful violation of any rule or order of the superintendent;
- C. For obtaining or attempting to obtain any license through misrepresentation, failure to dis-

close a material fact required to be disclosed in the application or fraud;

D. For misappropriation or conversion of money belonging to others to the applicant's or licensee's own use or for illegal withholding of money or failure under the license to remit money received in the conduct of business belonging to policyholders, insurers, beneficiaries or others;

E. For material misrepresentation of the terms of any existing or proposed insurance contract;

F. For willful over insurance of property located in this State;

G. For holding at the same time licenses as a resident insurance producer in this State and any other state; or

H. If in the conduct of the licensee's affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has been shown to be incompetent, untrustworthy, financially irresponsible or a source of injury and loss to the public.

2. Agency suspension. The superintendent may deny, suspend, revoke or limit the permissible activities under an agency license if cause exists to deny, suspend, revoke or limit the permissible activities under a person's license who is affiliated to the agency.

3. Voluntary surrender. The superintendent may, after notice and opportunity for a hearing under this section, deem the license suspended or revoked of a previously licensed person who voluntarily surrendered an insurance license.

4. Exceptional circumstances. The superintendent may revoke or suspend any license issued under this chapter, pursuant to Title 5, section 10004, without proceeding in conformity with chapter 3 or Title 5, chapter 375, subchapter IV or VI, when:

A. The decision to take that action is based solely upon a conviction in court of any offense under Title 5, section 5301, subsection 2, or a conviction in the courts of any other state or country of an offense under Title 5, section 5301, had the offense occurred in this State. Any revocation, suspension or denial of license under this paragraph must be in accordance with Title 5, sections 5302 to 5304;

B. The license has been issued upon the basis of a reciprocal agreement with another government and the action in this State is based upon evidence, in the form of a certified copy, that the authority issuing the license which provided the

basis for reciprocal licensing in this State has revoked or suspended the licensee's license; or

C. The health or physical safety of a person or persons is in immediate jeopardy at the time of the superintendent's action, and acting in accordance with chapter 3 or Title 5, chapter 375, subchapter IV or VI the superintendent would fail to adequately respond to a known risk, provided that the revocation, suspension or refusal to renew does not continue for more than 30 days.

§1418. Relicensing after revocation; refusal of license

1. Relicensing. The superintendent may not issue a license under this Title to a person whose license has been revoked until at least one year has expired from the effective date of that revocation. If the licensee pursues an appeal from the superintendent's decision, the superintendent may not consider issuance of a new license until at least one year from the date of a final court order affirming that revocation. The license applicant shall reestablish qualification for the license in accordance with the applicable provisions of this Title. The superintendent may refuse any such new license applications unless the applicant shows good cause why the prior revocation should not be deemed a bar to the issuance of a new license.

2. Ineligibility for relicensing. A person whose license has been revoked twice pursuant to section 1417 may not again be eligible for any license under this Title.

3. Agency relicensing. If the license of an agency is suspended or revoked pursuant to section 1417, an officer, director or member of that agency may not be licensed as an insurance producer, adjuster or consultant during the period of that suspension or revocation unless the superintendent determines that member, officer or director was not personally at fault and did not acquiesce in the matter for which the license was suspended or revoked.

§1419. Duty to notify of changes

Any change of business address, business telephone number, name or other material change in the conditions or qualifications set forth in the original application must be reported to the superintendent no later than 30 days after the change. This requirement includes any conviction of a crime other than a traffic violation or any disciplinary action brought by an insurance regulatory official of any other jurisdiction. If notice of the change is received after 30 days, the licensee shall pay the late fee for filing as prescribed in section 601. The levying of this late fee by the superintendent may be appealed pursuant to section 236. In the event the late fee charge is appealed, it becomes a final agency action and the superintendent

shall issue an order. If the late fee charge is not appealed, the payment of the fee is not considered a final agency action and is not considered a disciplinary action. Every previous consent order or agreement issued by the superintendent for failure to notify the superintendent of address change may be considered payment of a late fee and not considered a disciplinary action upon request by the licensee. This section does not negate the superintendent's authority to bring an action under section 12-A or section 1417.

SUBCHAPTER III

APPLICATION PROCEDURE FOR PRODUCERS, ADJUSTERS, CONSULTANTS AND AGENCIES

§1421. Licensing forms

The superintendent shall prescribe, consistent with the applicable requirements of this chapter, and furnish all forms required under this chapter in connection with applications for and issuance of licenses. The superintendent or an independent testing service designated by the superintendent shall prescribe and furnish all forms required in connection with examinations for licenses.

§1422. License to be issued only on compliance

The superintendent may not issue or permit any license of an insurance producer, consultant or adjuster who is not in compliance with or who has not established qualifications in accordance with the applicable provisions of this chapter.

§1423. Application for examination

1. Written examination. Unless exempt, prior to filing an application for a license with the superintendent, an individual applying for a resident insurance producer, adjuster or consultant license must pass a written examination. The examination must test the knowledge of the person concerning the kinds of insurance for which the application is made, the duties and responsibilities of an insurance producer, adjuster or consultant and the insurance laws and rules of this State.

2. Outside testing service. The superintendent may make arrangements, including contracting with an outside testing service, for administering examinations. The applicant shall pay any fees for the services of any independent testing service designated by the superintendent. A person who fails to appear for the examination as scheduled shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

3. Education requirements. An applicant for examination for a full life and health or full property

and casualty producer license must have completed the education requirements prescribed by either paragraph A or B within 2 years prior to the date the application for license is filed with the superintendent.

A. The applicant must have completed successfully such courses of instruction in insurance as the superintendent may reasonably require and approve. Such courses may be either in attendance at or under the supervision and direction of or by correspondence with an educational institution or insurer, as approved by the superintendent.

B. The applicant must have had not less than 6 months of responsible duties and experience as a substantially full-time employee of an insurance producer or insurer.

4. Experience required. An applicant for examination for a consultant license must have had not less than 5 years of actual experience with respect to the kinds of insurance and contracts to be covered by the license.

5. Examination subjects. Within 30 days after the examination, the superintendent or any independent testing service designated by the superintendent must inform the person whether or not the person has passed. The test may be a 2-part test. One part of the test must test the applicant's knowledge as to insurance industry practices and one part must test the applicant's knowledge of state insurance law. A person who fails all or one part of the examination must remit the required fees before being rescheduled for either one part or all of another examination. A person who does not apply for a license within 2 years after passing one part or all of an examination must register and pay the fee for a subsequent examination.

6. Separate examination for each category. An applicant for more than one kind of license must be separately examined for each category of license and shall pay a separate examination fee for each examination. Nothing in this section prohibits the giving of all required examinations to a particular applicant on the same day.

7. Variable contract license. An applicant for a variable contract license, in addition to passing an examination required for a life and health producer's license, must have successfully completed the minimum requirements of a national association of securities dealers for the sale of variable contracts.

§1424. Application for license

1. Application. Application for an insurance producer, consultant, adjuster or agency license must be made to the superintendent by the applicant and accompanied by the applicable license application fees

under section 601. The application fee is not subject to refund. The application must be signed by the applicant as determined necessary by the superintendent. Upon filing the application, the applicant automatically agrees to participation in an electronic interstate licensing system which may involve the sharing of information, including social security numbers, with insurance regulatory officials in other jurisdictions, with the National Association of Insurance Commissioners, and with insurers, nonprofit hospital or medical service organizations, health maintenance organizations, fraternal benefit societies and other licensees authorized to do business in the State. An applicant's social security number is not otherwise public information. Use of this information by any person other than licensees and regulatory officials of other states and provinces and for any purpose other than to verify licensure in this State is prohibited. Any person who violates this subsection is subject to criminal penalties under section 214.

2. Form of application. The application form for resident and nonresident licenses must require full answers to questions reasonably necessary to determine the applicant's identity, age, residence and qualification for licensure. The application form may require information essential to determine present occupation and occupations record and business record over the 5 years prior to the date of the application, financial responsibility, insurance experience and other facts as the superintendent may require relative to the applicant's qualifications for the license. The application form may require the applicant to provide a confidential password for the purpose of sharing information with insurers.

3. Reciprocal agreements. A nonresident applicant must hold a license in good standing with a state or province that has substantially similar insurance laws to those in this State. The superintendent may enter into reciprocal licensing agreements with officials of other states or Canadian provinces.

4. Designation of authorized agent. An agency shall designate in its application all licensed persons who have the authority to act in the name of the agency. An agency may register either nonresident or resident individual licensees to act in the name of the agency.

5. Previous licensure. Resident and nonresident applications must show if the applicant ever had an insurance license issued in this State or another state; whether any such license was ever refused, suspended, revoked or had renewal or continuance refused; and whether the applicant was ever convicted of a crime other than a traffic violation.

6. Willful misrepresentation. No applicant for license under this chapter may willfully misrepresent

or withhold any fact or information required in or in connection with the application form.

7. Public records. Except as provided in subsection 1, the superintendent shall withhold from public inspection information of a personal nature concerning applicants for license. The name, business address, business telephone number, licensing history and complaint record of an applicant are public records.

8. Temporary resident licensees. Any nonresident licensee who becomes or plans to become a resident and applies for licensing status as a resident is subject to the state-specific portion of the license examination. If the nonresident applies for examination and passes the state-specific portion of the examination and if the superintendent determines that the licensee's nonresident license is in good standing, the superintendent may issue a temporary resident license to the licensee. A temporary license remains valid for 60 days pending receipt of evidence that the licensee is no longer licensed in the licensee's former state of residency.

§1425. Investigation of license applicants

When an application for license under this chapter is submitted, the superintendent may investigate the applicant's character, financial responsibility, experience, background and fitness for the license applied for.

§1426. Issuance; refusal of license; refunds of fees

1. Issuance. If the superintendent finds that the application is complete, the applicant has passed any required examination and that the applicant is otherwise qualified for the license applied for, the superintendent shall promptly issue the license; otherwise, the superintendent may not issue the license and shall promptly notify the applicant of such refusal stating the grounds for denial.

2. Refund of fees. If the license is refused, fees for application for an insurance producer, consultant or adjuster license are not refundable.

§1427. Exemption from examination requirement

1. Exemption. Section 1423 does not apply to and an examination is not required of:

A. An applicant for license covering the same kind or kinds of insurance for which the applicant was licensed under a similar license in this State within the past 2 years, other than a temporary license issued pursuant to section 1428. This exemption applies only to persons who have met the applicable continuing education requirements during the 2-year period and who

continue to be fully qualified for the license. A person whose previous license was revoked or suspended may not become relicensed pursuant to this paragraph;

B. An applicant for a limited insurance producer who solicits or sells travel and baggage insurance; or

C. An applicant for a license as a resident title insurance producer who is an attorney at law duly licensed to practice law in this State.

§1428. Temporary license as insurance producer

1. Temporary license. The superintendent, in the superintendent's discretion, may issue a temporary license as insurance producer without requiring the person to take an examination in the following cases:

A. To the surviving spouse or next of kin or to the administrator or executor or employee of a licensed insurance producer who has died, or to the spouse, next of kin, employee or legal guardian or employee of a licensed producer who has become disabled because of sickness, insanity or injury, if in either case the superintendent determines that a temporary license is necessary for the winding up or continuation of the producer's business;

B. To an officer, member or employee of an agency upon the death or disablement of a person affiliated with the agency if no other licensee is affiliated with the agency; or

C. To the designee of a licensee entering active service in the Armed Forces of the United States of America.

2. Term. A temporary license issued under this section must be for a term of not more than 6 months and may not be renewed unless for good cause shown.

§1429. Insurance vending machines

1. Vending machines. A licensed resident insurance producer may solicit and issue personal travel accident insurance policies by means of mechanical vending machines supervised by the insurance producer and placed at airports and similar places of convenience to the traveling public if the superintendent finds:

A. That the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through vending machines and that use of such a machine in a proposed location would be of convenience to the public;

B. That the type of vending machine proposed to be used is reasonably suitable for the purpose;

C. That reasonable means are provided for informing prospective purchasers of policy coverages and restrictions; and

D. That reasonable means are provided for refund of money inserted in defective machines when no insurance or a lesser amount than that paid for is actually received.

2. Special license. For each machine to be used, the superintendent may issue to the insurance producer a special vending machine license. The license must specify the name and address of the insurer, health maintenance organization, fraternal benefit society, or nonprofit hospital or medical service organization and insurance producer, the name of the policy to be sold, the serial number of the machine and the place where the machine is to be in operation. The license is subject to termination, suspension or revocation coincidentally with the license of the insurance producer. The superintendent shall also revoke the license for any machine for which the superintendent finds that the license qualifications no longer exist. The license fee for each respective vending machine is established in section 601. Proof of the existence of a license must be displayed on or about each machine in use in the manner that the superintendent reasonably requires.

§1430. License continuation or termination

1. Resident agency license. Each resident agency license issued under this Title continues in force until 12:01 a.m. on October 1st of even-numbered years, unless prior to that date the license was suspended, revoked or otherwise terminated.

2. Nonresident agency license. Each nonresident agency license issued under this Title continues in force until 12:01 a.m. on February 1st of odd-numbered years, unless prior to that date the license was suspended, revoked or otherwise terminated.

3. Renewal. An agency license is automatically renewed and the agency will be billed a fee by the superintendent unless the superintendent is notified by the responsible person for the agency that the agency does not seek a renewal or unless, following a hearing, the superintendent determines that any reason or condition exists for the suspension or revocation of a license.

4. Information. As a condition of or in connection with the continuation of a license or with the maintenance of a license, the superintendent may require the licensee to file with the superintendent information regarding application for the license or the use made of the license during the prior license year.

5. Termination. Each agent or broker license currently issued under this Title terminates on June 30, 1997. If the agent or broker is in compliance with the continuing education requirements under subchapter VII, a perpetual insurance producer license must be reissued without application or fee. All agent or broker applications received after July 1, 1997 are considered producer applications.

This subsection is repealed on January 1, 1998.

§1431. Appointment of insurance producers or agencies

1. Appointment. Each insurer appointing an insurance producer or agency in this State shall appoint the producer or agency in writing, specifying the kinds of insurance or annuity business to be transacted by the insurance producer or agency for the insurer and pay the appointment fee at the rate specified in section 601. The insurer may forward new appointment fees to the superintendent on a quarterly basis. The insurer need not file the appointments with the superintendent, but shall maintain the appointments in the insurer's office. Upon request of the superintendent, the insurer shall provide copies of appointments to the superintendent within 14 days, unless the request is part of an examination pursuant to section 221. The insurer shall designate and maintain a list of each insurance producer within an appointed agency that represents the insurer. The fee for designation of an insurance producer within an agency is the same as for an appointment. The insurer shall pay the full appointment fee without regard to the effective date of the appointment. An insurance producer who qualifies to be licensed to sell variable annuity contracts pursuant to section 1411 must be separately appointed as to variable annuities and the insurer shall pay a separate appointment fee for the appointment.

§1432. Termination of producer or agency appointment

1. Termination. Subject to the producer's or agency's contract obligations and rights, if any, an insurer, agency or producer may terminate a producer's or agency's appointment at any time. If the insurer intends to terminate the producer's or agency's authority to represent the insurer for any kind of business, the insurer shall provide 90 days advance written notice of the termination or modification to the producer or agency. A notice is not required when:

- A. The producer or agency is subject to suspension or revocation of license under section 1417;
- B. The agency or producer fails to pay money due the insurer;
- C. There is a sale or merger of the agency;

D. There is an insolvency or bankruptcy of the agency;

E. The producer or agency holds a limited license;

F. The producer or agency is an employee of an insurer or when the producer or agency by contractual agreement represents only one insurer or group of affiliated insurers and the property rights in the renewals are owned by the insurer or group of affiliated insurers. An insurer may not cancel or renew policies as a result of the termination of the producer's or agency's contract under this paragraph;

G. The producer has died or been adjudicated as incompetent if the producer is a natural person;

H. The agency or producer has dissolved if the agency or producer is a corporation;

I. A date mutually agreed upon by an insurer and the agency or producer has been reached;

J. An insurer and agency or producer have mutually agreed upon other terms; or

K. All insurers' licenses or appointments terminate or expire.

2. Notice. Notice of cancellation of an appointment must be maintained in the insurer's office and must be forwarded to the superintendent within 5 days of a request from the superintendent.

3. Rights of insureds. The termination of an appointment under this section does not affect the rights of insureds.

SUBCHAPTER IV

PRODUCERS

§1441. Applicability

1. Licensed resident producers. This subchapter applies to licensed resident producers with respect to the following kinds of insurance:

- A. Annuities;
- B. Casualty;
- C. Health;
- D. Life;
- E. Property; and
- F. Surety.

§1442. Authority of insurance producer

1. Licensed insurance producer. A licensed insurance producer in this State may:

A. Engage in insurance producer activities throughout this State within the authority granted the insurance producer by the insurer, health maintenance organization, fraternal benefit society, or nonprofit hospital or medical service organization and the scope of the producer's license;

B. Adjust the losses of the insurer or fraternal benefit society within the authority granted the insurance producer by the insurer or fraternal benefit society;

C. Not place or seek to place insurance coverage, other than with an insurer, health maintenance organization, fraternal benefit society or nonprofit hospital association for which the insurance producer holds an appointment, except as provided under section 1450, subsection 2. A licensed resident or a nonresident insurance producer may not place or seek to place insurance coverage other than in an authorized insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization, except as provided in chapter 19; and

D. Enter into a contract or arrangement with a financial institution for the purpose of participating in a finance program with the financial institution. In this case, the financial institution need not be licensed as a producer, as long as the purpose of the arrangement is to authorize an insurance producer to facilitate, direct or refer insureds, prospective insureds or other customers to the financial institution for loans or for the purpose of authorizing an insurance producer to facilitate arrangements for leases, loans or credit applications with the financial institution.

§1443. Exceptions to licensing requirement

1. License not required. A license as an insurance producer is not required of the following persons:

A. Any regularly salaried officer or employee of an insurance company who is engaged in the performance of usual and customary executive, administrative or clerical duties that do not include insurance producer activities;

B. Any salaried employee in the office of an insurance producer who performs only clerical or administrative services, subject to the following:

(1) The unlicensed employee may not engage in producer activities;

(2) The unlicensed employee may not receive any commissions or other compensation directly dependent upon the amount of business obtained. Employees may participate in profit-sharing arrangements, pension plans and bonuses offered by the insurer or agency;

(3) The unlicensed employee may occasionally take information incidental to insurance coverage for applications. Unlicensed personnel who take incidental information from a customer shall give the proposed insured the name of the licensed insurance producer who is responsible for obtaining the coverage and shall refer any information the unlicensed person receives to the licensed insurance producer;

(4) The unlicensed employee may occasionally take full applications for insurance, but may not do so on a routine basis; and

(5) The primary contact must be between a prospective insured and an insurance producer;

C. An employer, officer, employee or a trustee of any employee trust plan, to the extent that the employer, officer, employee or trustee is engaged in the administration or operation of any program of employee benefits for the employer's own employees or the employees of the agency's subsidiaries or affiliates. This exemption applies only to an employer program that involves the use of insurance issued by an insurance company and only as long as the employer, officer, employee or trustee does not receive any commissions directly dependent upon the amount of the business obtained;

D. A person whose activities relate to enrolling participants in a credit life and health insurance policy to the extent authorized under chapter 37, group life insurance policy to the extent authorized under chapter 31, group health insurance policy to the extent authorized under chapter 35 or a group credit involuntary unemployment insurance policy provided that person does not receive a commission directly dependent upon the amount of business obtained;

E. Any regularly salaried officer or employee of an authorized insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization rendering assistance to a licensed insurance producer if the officer or employee devotes substantially all of that person's time to activities other than insurance producer activities and receives no

commission or other compensation directly dependent upon the amount of business obtained;

F. Any organization that is not required to be licensed as an insurance producer pursuant to section 1443-A;

G. Salaried employees of an authorized insurer or of life producers who do not engage in producer activity for life insurance; or

H. Service representatives.

§1443-A. Licensing of financial institutions and related parties

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

A. "Affiliate" means any of the following entities:

(1) A subsidiary of a financial institution or credit union authorized to do business in this State or of a financial institution holding company;

(2) An employee, an officer other than a director, or licensed 3rd-party producer of a financial institution or credit union authorized to do business in this State, a financial institution holding company or any institution listed in subparagraph (1);

(3) A person or entity possessing 5% or more of the ownership interests of a financial institution or credit union authorized to do business in this State, or of a financial institution holding company or of any institution listed in subparagraph (1); or

(4) An insurer or insurance producer or consultant utilizing space in the retail area of a financial institution or credit union authorized to do business in this State or of a financial institution holding company or an institution listed in subparagraph (1) in order to engage in the transaction of insurance when payments for use of the space are made to the that institution pursuant to a space-sharing agreement based directly or indirectly upon a percentage of the volume of business conducted by the insurer, insurance agent, broker or consultant.

B. "Credit union authorized to do business in this State" or "credit union" has the same meaning as defined in Title 9-B, section 131, subsection 12-A.

C. "Financial institution authorized to do business in this State" or "financial institution" has the same meaning as defined in Title 9-B, section 131, subsection 17-A.

D. "Financial institution holding company" has the same meaning as defined in Title 9-B, section 1011 and includes a mutual holding company as defined in Title 9-B, section 1052.

E. "Licensed 3rd-party producer" means a licensed insurance producer or consultant who engages in authorized insurance activities related to insurance products directly on behalf of a specified licensed insurance entity through an independent contractor relationship.

F. "Ownership interest" includes general partnership shares, limited partnership shares and shares of stock that possess any voting rights.

G. "Subsidiary" means any corporation, partnership, association or other business entity in which either:

(1) One or more financial institutions or credit unions authorized to do business in this State, financial institution holding companies or any officers, employees, agents or representatives of the financial institutions or credit unions authorized to do business in this State or financial institution holding companies possess directly or indirectly, singly or in the aggregate, an ownership interest of at least 25%; or

(2) It is determined by the superintendent after notice and opportunity for hearing that one or more financial institutions or credit unions authorized to do business in this State, financial institution holding companies or any officers, employees, agents or representatives of financial institutions or credit unions authorized to do business in this State or financial institution holding companies, singly or in the aggregate, exercise a controlling influence over the management and policies of the entity.

2. Licensing. A financial institution or credit union authorized to do business in this State, financial institution holding company or the subsidiary or affiliate of any of those entities or an officer, employee, agent or representative of a financial institution, credit union, financial institution holding company or the subsidiary of any of those entities may be licensed as an insurance producer or consultant in this State or may act as an insurance producer or consultant in this State. These organizations are not required to become licensed as insurance producers or consultants with respect to: credit life and credit health

insurance to the extent authorized by chapter 37 when the insured is enrolled in the policy; group health insurance to the extent authorized by chapter 35 when the insured is enrolled in the policy; and group life insurance to the extent authorized by chapter 31 when the insured is enrolled in the policy; credit property insurance; credit involuntary unemployment insurance; forced placed property insurance; a vendor's single interest policy; and any other insurance product as determined by the superintendent. In addition, a financial institution, credit union, financial institution holding company or a subsidiary or employee of any such entity may sell annuities, arrange for the sale of annuities or share commissions in connection with the sale of annuities to the extent authorized by Title 9-B, section 443, subsection 11, if the entity has been licensed pursuant to this chapter and if that activity includes the sale of variable annuity contracts, a national association of securities dealers registration form must be submitted to the superintendent as required by the provisions of section 1423, subsection 7.

3. Rulemaking. The superintendent, the Superintendent of Banking and the Director of the Office of Consumer Credit Regulation may, pursuant to this subsection, Title 9-A, section 4-407 and Title 9-B, section 448, subsection 5, undertake joint rulemaking to carry out the purpose of this section, including issues regarding signs, the physical location of sales of insurance and identification of producers affiliated with financial institutions, credit unions, financial institution holding companies or supervised lenders. In adopting rules pursuant to this section, the superintendent, the Superintendent of Banking and the Director of Consumer Credit Regulation shall consider the possibility of confusion and perception of coercion among the insurance-consuming public, the need for cost-effective delivery of insurance products to insurance consumers and the importance of parity among producers affiliated with federally chartered and state-chartered financial institutions and credit unions. Any rule adopted may not interfere significantly with the ability of a producer to solicit or negotiate the sale of an insurance product, whether or not that producer is affiliated with a financial institution, credit union, financial institution holding company or supervised lender, except when no other reasonable alternative exists to protect the insurance-consuming public. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Nothing in this section is intended to restrict or interfere with the ability of the bureau, the Bureau of Banking or the Office of Consumer Credit Regulation to adopt rules with respect to areas in which the respective agencies have independent jurisdiction.

§1444. Appointment required; report and fees required

A person acting in the capacity of an insurance producer may not place business with an insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization unless there is in force a valid appointment with an authorized insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization. This provision does not apply to business placed pursuant to section 1450, subsection 2 or pursuant to any assigned risk plan. The superintendent shall forward every licensed insurer, health maintenance organization, fraternal benefit society and nonprofit hospital or medical service organization a form for reporting and paying fees for its appointed producers. Two years from the last payment of renewal appointment fees and every 2 years thereafter, every licensed insurer, health maintenance organization, fraternal benefit society and nonprofit hospital or medical service organization shall report the number of producers with which it has appointments to the superintendent and pay the fee established in section 601 for each producer appointment. The superintendent shall prescribe and provide the form to be used for filing and may accept filings in compatible electronic form. Fees are earned when paid and are not refundable. If an insurer does not pay the required fees, the insurer is subject to penalties pursuant to section 12-A.

§1445. Responsibility of insurer, health maintenance organization, fraternal benefit society, or nonprofit hospital or medical service organization; prohibited activities

1. Responsibilities for training and supervision. In addition to any other applicable provisions of law, the insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization:

- A. Shall ensure adequate training for its appointed producers;
- B. Shall provide supervision of its appointed producers who sell insurance on its behalf;
- C. Is responsible for injuries to consumers resulting from the actions of its appointed producers to the extent of restitution, reimbursement of money or payment of interest to the consumer; and
- D. Is accountable and may be penalized by the superintendent, as provided for in this Title, for the actions of its producers.

2. Prohibited activities. A licensed insurance producer in this State may not:

A. Use knowledge gained as a result of the producer's insurance relationship with the insurance consumer for the producer's own personal gain, other than the receipt of commissions allowed under section 1450, or use knowledge gained as a result of the relationship for the purpose of investing the insurance consumer's money in property or assets in which the insurance producer or the producer's relatives have or will have a personal ownership interest unless that activity is otherwise authorized under insurance, banking or securities laws or rules; or

B. Receive a fee for rendering advice on financial or estate planning or for selling trust packages, if the producer also recommends the purchase of an insurance policy upon which the producer will receive commissions, unless the producer is licensed as a consultant acting in compliance with consultant licensing laws.

3. Common law principles. Nothing in this chapter abrogates the common law principles of apparent or implied authority as available remedies or defenses.

§1446. Place of business

Every resident insurance producer shall have and maintain in this State or in a contiguous state or province a place of business accessible to the public where the licensee principally conducts transactions under the license. Nothing in this section prohibits maintenance of a place of business in the licensee's residence in this or any contiguous state or province.

§1447. Records

1. Records. The insurance producer or agency shall keep or make accessible at the producer's or agency's place of business a copy of the written appointment or designation from each insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization with which the insurance producer or agency has an appointment. The insurance producer shall keep at the producer's place of business complete records of transactions under the license. For the purpose of examination or investigation by the superintendent, records may be maintained in electronic form. As to each insurance policy or contract placed through or sold by the licensee, the records must show:

A. The names of the insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization;

B. The number and expiration date of the policy or contract;

C. The premium payable as to the policy or contract;

D. The name and address of the insured;

E. The date and time of every binder made by the insurance producer; and

F. Such other information as the superintendent may reasonably require.

2. Retention. The records must be kept available for inspection by the superintendent for a period of at least 3 years after completion of the respective transactions.

§1448. Qualifications for insurance producer license

1. License. The superintendent may not issue, continue or permit to exist any insurance producer license except in compliance with this chapter, or unless the person meets the requirements of subsection 2.

2. Qualifications. In order to be licensed as an insurer producer, a person:

A. May be at least 18 years of age;

B. May not be licensed as a resident of another state if to be licensed as a resident;

C. Must be competent, trustworthy, financially responsible and of good personal and business reputation;

D. Must have fulfilled the requisite prelicensing requirements; and

E. Must have passed any required examination.

§1449. Reporting and accounting for premiums

All premiums and return premiums received by an insurance producer are trust funds received by the licensee in a fiduciary capacity. The licensee shall account for and pay the premiums to the insured or apply the premiums to outstanding balances of any insured within 10 days from the date of receipt. The date of receipt is the date the money is actually received or the date the credit is posted by the insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization to the licensee's account. The licensee shall promptly account for and pay premiums to the insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization in accordance with the contract between

the insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization and the licensee.

§1450. Commissions; payment; acceptance

1. Commissions. An insurer, health maintenance organization, fraternal benefit society or nonprofit hospital or medical service organization may not pay to any unlicensed person, either directly or indirectly, any commission on a sale of a contract of insurance issued on a risk located or to be performed within this State unless at the time of the taking of the application for the insurance the person was duly licensed by this State as an insurance producer as to the kind or kinds of insurance involved. An unlicensed person or agency may not receive or accept any commission or compensation for insurance unless licensed pursuant to this chapter.

2. Shared commissions. If an insurance producer does not have an appointment with an insurer, the insurance producer may place with that insurer, through a duly licensed and appointed producer of such insurer, an insurance coverage necessary for the adequate protection of a subject of insurance and share in the commission on that insurance, if each producer is licensed as to the kinds of insurance involved. If an insurance producer does not have an appointment with an insurer, the insurance producer may place an insurance coverage with that insurer without placing through an agent of the insurer, and accept or share in the commission as long as:

- A. The producer represents the insured and does not represent the insurer;
- B. The producer has the authority under the license to act as an independent producer;
- C. The producer does not, on a regular basis, normally place business with that insurer;
- D. The producer does not also receive a fee from the insured for the service; and
- E. The producer is licensed as to the kinds of insurance involved.

3. Rules. With respect to the sale of property and casualty insurance sold to large commercial insurance risks, producers may be compensated by fees paid by or on behalf of the insured, by commissions paid by an insurer or by a combination of both. The superintendent may adopt rules to establish standards for determining large commercial insurance risks. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

SUBCHAPTER V

CONSULTANTS

§1461. Scope of subchapter

1. Scope. This subchapter applies to consultants as defined in section 1402.

2. Definition. Unless the context otherwise requires, "consultant," as used in this subchapter, means both property and casualty consultants and life and health consultants as defined in section 1402.

§1462. License required

A person may not act as a consultant in this State without first obtaining a license from the superintendent in accordance with this subchapter.

§1463. Qualifications for license

A license may not be issued pursuant to this subchapter unless the applicant has satisfactorily passed a written examination administered by the superintendent and has filed a bond as required by section 1464.

§1464. Consultant's bond

1. Bond. Every applicant for license as a consultant shall file with the license application and maintain in effect while licensed a bond issued by an authorized surety insurer in this State, continuous in form and providing for aggregate liability of \$20,000.

2. Indemnification. The bond must indemnify any person damaged by any fraudulent act or conduct of the licensee in transactions under the license, and must likewise be conditioned upon faithful accounting and application of all money coming into the licensee's possession in connection with activities as such a licensee.

3. Release. The bond remains in force until released by the superintendent or until canceled by the surety. Without prejudice to any liability previously incurred, the surety may cancel the bond upon 30 days advance written notice to the licensee and the superintendent. Upon cancellation by the surety and failure to procure a satisfactory replacement bond prior to cancellation, the consultant's license terminates.

§1465. Consulting contract required

A licensee may not act in any further capacity for which a license is required without having first entered into a written contract with a client. The contract must include, without limitation, the amount and basis of any consulting fee and the duration of employment and must be in a form approved by the superintendent.

§1466. Commissions and fees

1. Property and casualty consultant. A property and casualty consultant and any person in which the consultant has an interest may not, directly or indirectly, charge a consultant fee and receive or share in any commission for the sale of insurance as a producer on any policy or certificate of insurance unless the advice given by the producer for the insurance occurs at least 12 months before or after the period of employment as a consultant as specified in the contract required by section 1465. This subsection does not prevent a licensed property and casualty insurance producer from receiving a fee rather than commission on the sale of property and casualty insurance in accordance with section 1450 and rules adopted by the superintendent.

2. Life and health consultant. A life and health consultant may charge a consulting fee and receive commissions for the sale of insurance as an insurance producer if both the consulting fee and the insurance commissions are provided for in a written agreement, in a form approved by the superintendent, signed by the client and the consultant. A life consultant shall offset fees against first-year commissions received as an insurance producer on the sale of insurance.

§1467. Obligation to serve interest of client

A consultant is obligated, under the license, to serve with objectivity and complete loyalty the interests of the client and to render to the client such information, counsel and service that, within the knowledge, understanding and opinion in good faith of the consultant, best serves the client's insurance or annuity needs and interests. A consultant may not use knowledge gained as a result of the consultant's insurance relationship with the client for the consultant's own personal gain, other than the receipt of fees or commissions allowed under section 1450, or use knowledge gained as a result of the relationship for the purpose of investing the client's money in property or assets in which the consultant, or any person in which the consultant has a pecuniary interest or a familial relationship, has or will have a personal ownership interest unless such activity is otherwise specifically authorized under insurance, banking, or securities laws.

§1468. Records

The consultant shall keep at the consultant's place of business all contracts with clients for a period of 3 years from the termination of the contracts. For the purpose of investigation or examination by the superintendent, contracts may be maintained in electronic form.

SUBCHAPTER VI**ADJUSTERS****§1471. Scope of this subchapter**

This subchapter applies only to insurance adjusters as defined in section 1402.

§1472. Qualifications for adjuster license

1. Issuance of license. The superintendent may not issue, continue or permit to exist any license as an adjuster, except in compliance with this chapter or unless the person meets the requirements of subsection 2.

2. Qualifications. In order to be licensed as an insurance adjuster, a person:

A. Must be at least 18 years of age;

B. Must be competent, trustworthy, financially responsible, and of good personal and business reputation; and

C. Must pass any written examination required for the license under this subchapter.

§1473. Adoption of rules

The superintendent may adopt rules to establish the standards for performance of the duties of the adjuster. In addition to the causes set forth in section 1417, the superintendent may suspend, revoke or refuse a license of an adjuster for failure to perform the duties of the adjuster in accordance with the standards in this subchapter and in accordance with the standards adopted by rules. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§1474. Records

1. Record of each transaction. Each adjuster shall keep at the adjuster's business address shown on the license a record of all transactions under the license. For the purpose of investigation or examination by the superintendent, records may be maintained in electronic form.

2. Information. The record must include:

A. A copy of all investigations or adjustments undertaken or consummated; and

B. A statement of any fee, commission or other compensation received or to be received by the adjuster on account of the investigation or adjustment.

3. Retention. The adjuster shall make records available for examination by the superintendent at all times and shall retain the records for at least 3 years.

§1475. Catastrophe investigations and adjustments

An adjuster license is not required for an adjuster sent into this State on behalf of an authorized insurer or fraternal benefit society for the investigation or adjustment of a particularly unusual or extraordinary loss or of a series of losses resulting from a catastrophe common to all such losses.

SUBCHAPTER VII

CONTINUING EDUCATION

§1481. Continuing education advisory committee

The Continuing Education Advisory Committee is established and consists of 6 members appointed by the superintendent for terms of 3 years each, on a staggered-term basis to prevent the terms of more than 2 members from expiring in any one year. A person may not be reappointed to the committee for more than one 3-year term. A person is ineligible for appointment to the committee unless that person is an active, full-time insurance producer or consultant. Committee members are eligible for reimbursement of expenses.

§1482. Educational requirements

As a prerequisite to maintaining a license, resident licensees must complete 30 hours of continuing education every 2 years in programs or courses approved by the superintendent. The superintendent may, for good cause shown, grant an extension of time to any person to allow that person to comply with this subchapter.

§1483. Application for approval of program

1. Application. Each application for approval of a continuing education program must be submitted according to the guidelines prescribed by the superintendent accompanied by the appropriate fee in section 601. The fee is nonrefundable. A fee is required only for original course submissions. Subsequent or renewal filings of approved courses are not considered original if modified in any manner.

2. Review. Courses and programs must be approved or disapproved by the superintendent, subject to prior review and nonbinding recommendations of the Continuing Education Advisory Committee or another 3rd-party selected by the superintendent. After review and approval or disapproval, the submissions need not be maintained by the superintendent and may be destroyed. The superintendent may, by rule, establish criteria for the review and approval of courses and for the determination of the

number of continuing education hours to be credited for completion of each course or program. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§1484. Penalty

The license of any insurance producer or consultant who fails to comply with this subchapter terminates upon the biennial expiration date. The insurance producer may have the license reinstated if the insurance producer complies with continuing education requirements within 60 days from the date the license terminates.

§1485. Rule-making authority

The superintendent may establish by rule reasonable procedures and standards to fulfill the purposes of this subchapter and may contract with third parties for the purpose of fulfilling responsibilities under this subchapter. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 24. 24-A MRSA §1508, as amended by PL 1983, c. 801, §§6 and 7, is repealed and the following enacted in its place:

§1508. "Consultant" defined

1. Consultant. "Consultant" means any person who, for a fee, advises or offers to advise any person insured or seeking insurance or named or to be named as beneficiary, or having or to have any interest in or insured under any property and casualty or life and health insurance contract or annuity contract, existing or proposed.

A. "To advise" means to provide information relative to coverage, rights or interests under insurance or annuity contracts or relative to the retention, exchange, surrender, exercise of rights or other disposition of insurance or annuity contracts.

B. "Consultant" includes a person who collects a fee from the insured or potential insured for advice on financial planning and as part of that planning sells or plans to sell insurance policies under an insurance agent or broker license on which the agent or broker will collect commissions.

C. "Consultant" includes a person who collects a fee from the insured or potential insured for advice on estate planning or for the sale of a trust package and as part of the estate planning sells or plans to sell insurance policies under an insur-

ance agent or broker license on which the agent or broker will collect commissions.

D. "Consultant" does not include:

(1) An attorney licensed to practice who is actively practicing law in this State;

(2) An insurance actuary who is a member or associate of the Society of Actuaries or Academy of Actuaries;

(3) A public accountant certified under Title 32, chapter 113 or a certified public accountant who is certified under Title 32, chapter 113 and in active public practice;

(4) A licensed insurance agent or broker who receives a fee in lieu of commission pursuant to section 1450 if the insurance agent or broker receives the fee for the insurance transaction and not for other services provided; or

(5) A financial institution or a financial institution holding company if the insurance advice is given as part of its trust department rendering insurance advice in a fiduciary capacity.

2. Life and health consultant. "Life and health consultant" means a person licensed as a consultant to advise on life contracts, annuity contracts or health insurance contracts.

3. Property and casualty consultant. "Property and casualty consultant" means a person licensed as a consultant for one or more of the following kinds of insurance:

A. Casualty insurance;

B. Property insurance;

C. Surety insurance;

D. Marine and transportation insurance;

E. Title insurance; or

F. Legal services insurance.

Sec. 25. 24-A MRSA §1512-A, sub-§6 is enacted to read:

6. Exceptions. A licensed insurance agent or broker in this State may not:

A. Use knowledge gained as a result of the agent or broker's relationship with the insurance consumer for the agent's or the broker's own personal gain, other than the receipt of commissions allowed under sections 1614 and 1676, or use

knowledge gained as a result of the relationship for the purpose of investing the insurance consumer's money in property or assets in which the insurance agent or broker or the agent's or broker's relatives have or will have a personal ownership interest unless such use is otherwise authorized under insurance, banking or securities laws or rules; or

B. Receive a fee for rendering advice on financial planning or estate planning or for selling trust packages, if the agent or broker also recommends purchase of an insurance policy upon which the agent or broker will receive a commission, unless the agent or broker is licensed as a consultant acting in compliance with consultant licensing laws.

Sec. 26. 24-A MRSA §1809, as repealed and replaced by PL 1979, c. 341, is repealed and the following enacted in its place:

§1809. Obligation to serve interest of client

A consultant is obligated, under a license, to serve with objectivity and complete loyalty the interests of the consultant's client and to render to the client such information, counsel and service as within the knowledge, understanding and opinion in good faith of the consultant will best serve the client's insurance or annuity needs and interests. A consultant may not use knowledge gained as a result of the consultant's insurance relationship with the client for the consultant's own personal gain, other than the receipt of fees or commissions allowed under section 1808, or use knowledge gained as a result of the relationship for the purpose of investing the client's money in property or assets in which the consultant, or any person with whom the consultant has pecuniary interest or a familial relationship, has or will have a personal ownership interest unless such use is otherwise specifically authorized under insurance, banking or securities laws.

Sec. 27. 24-A MRSA c. 17, as amended, is repealed.

Sec. 28. 24-A MRSA §1901, sub-§1, ¶K, as enacted by PL 1989, c. 846, Pt. D, §2 and affected by Pt. E, §4, is amended to read:

K. A financial institution as defined in section 4514-A or a mortgage lender that collects and remits premiums to licensed insurance agents or authorized insurers concurrently or in connection with mortgage loan payments;

Sec. 29. 24-A MRSA §1905, sub-§3, as enacted by PL 1989, c. 846, Pt. D, §2 and affected by Pt. E, §4, is amended to read:

3. Sections ~~1539 to 1542~~ 1417 and 1418 apply to licenses issued under this chapter.

Sec. 30. 24-A MRSA §1906, sub-§§10 and 11 are enacted to read:

10. When acting as an administrator, the acts of an insurance administrator are deemed to be the acts of the plan sponsor, health care service plan, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization or insurer.

11. In addition to any other applicable provisions of law, the plan sponsor, health care service plan, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization or insurer is accountable and may be penalized by the superintendent, as provided for in this Title, for the actions of its administrators.

Sec. 31. 24-A MRSA §1907, sub-§1, as enacted by PL 1989, c. 846, Pt. D, §2 and affected by Pt. E, §4, is amended to read:

1. For any of the grounds for suspension or revocation of a license set forth in section ~~1539~~ 1417; or

Sec. 32. 24-A MRSA §1955, sub-§2, as enacted by PL 1995, c. 673, Pt. A, §3, is amended to read:

2. **Licensing.** A person who solicits applications for insurance, negotiates insurance contracts or takes applications for insurance from enrollees on behalf of an alliance or on behalf of insurance carriers or health maintenance organizations that have contracted with the alliance must be licensed with the bureau in compliance with chapter ~~47 16~~.

Sec. 33. 24-A MRSA §2012, sub-§4, as enacted by PL 1969, c. 132, §1, is amended to read:

4. The license and licensee ~~shall be~~ are subject to the applicable provisions of chapter ~~47 16~~ (agents, brokers, consultants and adjusters).

Sec. 34. 24-A MRSA §2012, sub-§5 is enacted to read:

5. A nonresident producer who is considered by the superintendent to be competent and trustworthy with respect to the handling of surplus lines may apply for licensure as a surplus lines broker under the following circumstances:

A. If the nonresident maintains a business location within this State and maintains all records of surplus lines transactions within this State; or

B. If the nonresident transacts only liability insurance business and only on behalf of a purchasing group registered with the superintendent and the nonresident agrees to produce surplus lines records in this State within 14 days from a request of the superintendent.

Sec. 35. 24-A MRSA §2013, sub-§2, as enacted by PL 1969, c. 132, §1, is amended to read:

2. The procedures provided by chapter ~~47 16~~ for suspension or revocation of licenses ~~shall~~ apply to suspension or revocation of a surplus lines broker's license.

Sec. 36. 24-A MRSA §2015, sub-§2, as amended by PL 1973, c. 585, §12, is further amended to read:

2. The record ~~shall~~ may not be removed from this State, except in the case of a nonresident licensed as a surplus lines broker for the purpose of transacting liability insurance business on behalf of a registered purchasing group, and shall must be open to examination by the superintendent at all times within 5 years after issuance of the coverage to which it relates. For the purpose of investigation or examination by the superintendent, records may be maintained in electronic form.

Sec. 37. 24-A MRSA §2016, sub-§1, as enacted by PL 1991, c. 674, §1, is amended to read:

1. Each broker shall ~~file on or before the 15th day of each month~~ maintain in the broker's office within the State a monthly report with the superintendent showing the amount of insurance placed for any person or organization, the location of each risk, the gross premium charged, the name of each insurer with which the insurance was placed, the date and term of each insurance contract issued during the preceding month and any other pertinent information required by the superintendent. The report must show in the same detail each contract cancelled during the month covered by the report and the return premium on it. The monthly report must be made available to the superintendent for examination at the broker's office location in the State at any time or by delivery to the bureau upon 5 days' notice by the superintendent.

Within 45 days of the end of each calendar quarter, the broker shall pay to the Treasurer of State 3% of the difference between the gross premiums and the return premiums reported for the business transacted during the preceding calendar quarter.

Sec. 38. 24-A MRSA §2160, as enacted by PL 1969, c. 132, §1, is repealed and the following enacted in its place:

§2160. Rebates -- life, health and annuity contracts

1. Limitation. Except as otherwise provided by law, no person may:

A. Knowingly permit or offer to make or make any contract of life insurance, life annuity or health insurance or agreement concerning that contract that is not plainly expressed in the contract issued;

B. Pay or allow or give or offer to pay, allow or give directly or indirectly as inducement to life or health insurance or life annuity:

(1) Any rebate of premiums payable on the contract;

(2) Any special favor or advantage in the dividends or other benefits;

(3) Any paid employment or contract for services of any kind; or

(4) Any valuable consideration or inducements not specified in the contract; or

C. Directly or indirectly give or sell or purchase or offer or agree to give, sell, purchase or allow as inducement to life or health insurance or life annuity or in connection with the insurance or annuity or any agreement, whether or not specified in the policy or contract, of any form or nature promising:

(1) Returns or profits;

(2) Any stocks, bonds or other securities;

(3) Interest present in or contingent on or measured by the agreement of any insurer or other corporation, association or partnership; or

(4) Any dividends or profits accrued or to accrue on an agreement.

2. Benefit not associated with indemnification or loss. Unless otherwise provided by law, a provision may not be included within an insurance policy if the sole intent of the provision is to give to the insured a benefit that is not associated with indemnification or loss.

Sec. 39. 24-A MRSA §2162, sub-§1, ¶¶A and B are enacted to read:

A. Unless otherwise provided by law, a provision may not be included within an insurance policy if the sole intent of the provision is to give to the insured a benefit that is not associated with indemnification or loss.

B. Notwithstanding any other provision of law, the superintendent may approve filings allowing reductions in premium associated with savings in issuance and administrative expenses except that, if a filing affecting surety bonds for construction projects financed in whole or in part with public funds allows for any reduction in premium to be given, paid, allowed or offered after execution of the bond, including, without limitation, any rebate, discount, consideration or inducement of any kind, the filing must ensure that the entire amount of the reduction will be paid directly to the governmental department or agency administering the public funds for the project. In the case of a project financed only in part with public funds, the governmental department or agency may be paid a percentage of the reduction equal to the percentage of the project that is financed with public funds.

Sec. 40. 24-A MRSA §2163, as enacted by PL 1969, c. 132, §1, is repealed and the following enacted in its place:

§2163. Receipt of rebate, illegal inducement prohibited

1. Limitations. No person may knowingly receive or accept, directly or indirectly:

A. Any rebate of premium or part of a premium;

B. Any producer's commission on a premium or part of a premium payable on any policy of insurance or annuity contract;

C. Any special favor or advantage in the dividend or other benefits to accrue; or

D. Anything of value as inducement to any policy of insurance or annuity contract or in connection with any policy of insurance or annuity contract that is not specified, promised or provided for in the policy or contract, except as otherwise provided by law.

Sec. 41. 24-A MRSA §2163-A is enacted to read:

§2163-A. Permitted activities

Notwithstanding any other provision in sections 2160 to 2163, an insurer, employee of an insurer or producer may offer to give gifts in connection with marketing for the sale or retention of contracts of insurance provided the cost does not exceed \$20 per year per policy or quote, and conduct raffles or drawings, so long as there is no participation costs to entrants, in which case prizes may be valued in excess of \$20. Nothing in sections 2160 to 2163 may be construed to prohibit an insurance producer from

receiving a fee rather than commission on the sale of property and casualty insurance in accordance with section 1450 and rules adopted by the superintendent.

Sec. 42. 24-A MRSA §2411-A is enacted to read:

§2411-A. Payment of fees for filings

The superintendent may require insurers to pay filing fees for form and rate approval on a quarterly, biannual or annual basis.

Sec. 43. 24-A MRSA §2434, first ¶, as enacted by PL 1969, c. 132, §1, is amended to read:

Any person having a claim against any foreign insurer may bring a trustee action or any other appropriate action therefor in the courts of this State. Service of process upon such an insurer ~~shall~~ must be made as provided in ~~sections~~ section 421 ~~and 422~~.

Sec. 44. 24-A MRSA §3354, sub-§5, as amended by PL 1973, c. 585, §12, is further amended to read:

5. Solicitation for such qualifying applications for insurance ~~shall~~ must be by licensed agents producers of the corporation, and the superintendent shall, upon the corporation's application therefor, issue temporary ~~agent's producer's~~ licenses expiring on the date specified pursuant to subsection 3, paragraph C to individuals qualified as for a resident ~~agent's producer's~~ license except as to the taking or passing of an examination. The superintendent may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agents producers in general under chapter 47 16.

Sec. 45. 24-A MRSA §3628, first ¶, as enacted by PL 1969, c. 132, §1, is amended to read:

All agents of insurers subject to this chapter ~~shall~~ be are subject to the applicable requirements of chapter 47 16 (~~agents, brokers, consultants, adjusters~~), except that:

Sec. 46. 24-A MRSA §3629, sub-§9, as enacted by PL 1969, c. 132, §1, is amended to read:

9. Chapter 47 16 (~~agents, brokers, consultants, adjusters~~);

Sec. 47. 24-A MRSA §3863, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

1. Legal process ~~shall~~ must be served upon a domestic reciprocal insurer by serving the insurer's attorney at ~~his~~ that attorney's principal offices ~~or by~~

~~serving the superintendent as the insurer's process agent under sections 421 and 422.~~

Sec. 48. 24-A MRSA §4128, first ¶, as repealed and replaced by PL 1977, c. 446, §1, is amended to read:

Agents Insurance producers of societies ~~shall~~ must be licensed in accordance with chapter 47 16 provided the examination requirements of chapter 47 ~~shall~~ 16 are not be applicable to any agent insurance producer who was in the service of a society on January 1, 1978, and provided that no insurance ~~agent's producer's~~ license ~~shall~~ is required of the following:

Sec. 49. 24-A MRSA §4129, as amended by PL 1973, c. 585, §12, is further amended to read:

§4129. Service of process

Every society authorized to do business in this State shall appoint in writing ~~the superintendent and each successor in office to be a licensed attorney located in the State to act as~~ its true and lawful attorney upon whom all lawful process in any action or proceeding against it ~~shall~~ is served; and shall agree in ~~such~~ writing that any lawful process against it which is served on ~~said~~ the attorney ~~shall~~ is of the same legal force and validity as if served upon the society; and that the authority ~~shall~~ continue continues in force so long as any liability remains outstanding in this State. Copies of such appointment; certified by the ~~superintendent, shall~~ be appointed attorney are deemed sufficient evidence ~~thereof~~ of the appointment and ~~shall~~ may be admitted in evidence with the same force and effect as the original ~~thereof~~ might be admitted.

Service ~~shall~~ may only be made upon the ~~superintendent~~ appointed attorney, or if absent, upon the person in charge of ~~his~~ office. It ~~shall~~ must be made in duplicate and ~~shall~~ constitute constitutes sufficient service upon the society. When legal process against a society is served upon the ~~superintendent~~ appointed attorney, ~~he~~ the appointed attorney shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. Legal process ~~shall~~ may not be served upon a society except ~~in the manner herein~~ is provided in this section. ~~At the time of serving any process upon the superintendent, the plaintiff or complainant in the action shall pay to the superintendent a fee of \$5.~~

Sec. 50. 24-A MRSA §4222-B, sub-§7, as enacted by PL 1995, c. 332, Pt. O, §8, is amended to read:

7. The requirements of ~~sections~~ section 421 ~~and 422~~ apply to health maintenance organizations.

Sec. 51. 24-A MRSA §4361, first ¶, as amended by PL 1973, c. 585, §12, is further amended to read:

A certified copy of any order to show cause issued under section 4360, and a copy of the petition upon which the same is made, ~~shall~~ must be served upon the insurer by delivering the same to its president, vice-president, secretary, treasurer, director or to its managing agent or attorney in fact, if a reciprocal insurer; or if no such officer or functionary can readily be found in this State, then such process may be served upon the insurer by service thereof upon the superintendent pursuant to ~~sections~~ section 421 ~~and~~ 422.

Sec. 52. 24-A MRSA c. 63, as amended, is repealed.

Sec. 53. 24-A MRSA §6402, sub-§7, as enacted by PL 1991, c. 828, §33, is amended to read:

7. Producer. "Producer" means an insurance ~~agent or broker~~ producer licensed pursuant to chapter ~~17~~ 16.

Sec. 54. 39-A MRSA §403, sub-§12, as amended by PL 1995, c. 594, §5, is further amended to read:

12. Qualifications for claims personnel. Persons who investigate, settle or negotiate the settlement of claims on behalf of self-insurers or employees of self-insurers are required to be licensed as insurance adjusters pursuant to Title 24-A, ~~chapter~~ chapter 17, ~~subchapters I and V~~ chapter 16.

Sec. 55. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 5, section 12004-I, subsection 70-A; Title 24-A, section 601, subsection 5; section 1905, subsection 3; section 1907, subsection 1; section 1955, subsection 2; section 2012, subsection 4; section 2013, subsection 2; section 3354, subsection 5; section 3628, first paragraph; section 3629, subsection 9; section 4128, first paragraph; and section 6402, subsection 7 take effect October 1, 1997. Those sections of this Act that repeal Title 5, section 12004-I, subsection 71; Title 24, section 2312; section 2313 and Title 24-A, section 601, subsection 6; and chapter 17 take effect October 1, 1997. That section of this Act that enacts Title 24-A, chapter 16 takes effect October 1, 1997.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved unless indicated otherwise.

Effective June 11, 1997, unless otherwise indicated.

CHAPTER 458

H.P. 1150 - L.D. 1615

An Act to Modernize Maine's Cigarette Tax Laws

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

Sec. 1. 36 MRSA §4361, as amended by PL 1983, c. 828, §12, is further amended to read:

§4361. Definitions

~~Whenever~~ As used in this chapter, unless the context ~~shall~~ otherwise ~~require~~ indicates, the following ~~words and phrases shall~~ terms have the following meanings.

1. Dealer. "Dealer" means any person other than a distributor, who is engaged in this State in the business of selling cigarettes.

1-A. Cigarette. "Cigarette" means a cigarette, as defined in the ~~United States Internal Revenue Code of 1954, Chapter 52 A, as amended~~ Section 5702 of the Code.

2. Distributor. "Distributor" means any person engaged in this State in the business of producing or manufacturing cigarettes ~~or in this State, importing~~ cigarettes into the this State or making wholesale purchases or sales of cigarettes at least 75% of which are purchased directly from the manufacturers thereof in this State on which the tax imposed by this chapter has not been paid.

4. Licensed distributor. "Licensed distributor" means a distributor licensed under this chapter.

~~4-A. Licensed wholesale dealer.~~ "Licensed wholesaler dealer" means a sub-jobber licensed under this chapter.

~~5. Person.~~ "Person" means any individual, firm, fiduciary, partnership, corporation, trust or association, however formed.

6. Sale or sell. "Sale" or "sell" includes or ~~apply~~ applies to gifts, exchanges and barter.

~~7. Sub-jobber.~~ "Sub-jobber" means a wholesale dealer who does not qualify as a distributor.

~~9. Unclassified importer.~~ "Unclassified importer" means any person, firm, corporation or association within the State, other than a licensed distributor, or licensed wholesale dealer who shall import, receive or acquire from without the State, cigarettes for use or consumption within the State.