

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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

9. Sanctions. A person who violates this chapter commits a civil violation for which a forfeiture not to exceed \$100 per day of violation may be adjudged.

See title page for effective date.

CHAPTER 659

S.P. 797 - L.D. 2155

An Act to Encourage Hospitality Industry Development in the State

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

Sec. 1. 28-A M.R.S.A. §707-A is enacted to read:

§707-A. Exceptions to indebtedness or operations limitations

1. Certain financial interests permitted. Notwithstanding section 707, if the requirements of subsection 2 are met, section 707 does not prohibit:

A. A person that owns or has a financial interest in a holder of a retail license issued in conjunction with and as part of the operations of a hotel from owning or having a financial interest in a certificate of approval holder; or

B. A person that owns or has a financial interest in a certificate of approval holder from owning or having a financial interest in the holder of a retail license issued in conjunction with and as part of the operations of a hotel.

2. Requirements. The exceptions to section 707 set out in subsection 1 apply only if each of the following requirements is met.

A. The hotel must have at least 100 adequate sleeping rooms and the relationship between the occupants of those rooms and the owner or operator of the establishment is that of guest and innkeeper.

B. The hotel may not purchase any malt liquor and wine products sold by the certificate of compliance holder to Maine wholesale licensees, nor may the certificate of compliance holder require any brand of liquor product to be purchased or sold by the hotel.

C. Neither the certificate of approval holder nor the retail licensee may directly or indirectly own or have any interest in a Maine wholesale licensee.

D. The certificate of compliance holder and the retail licensees must be separate entities and may not have any common directors.

3. Construction. The exceptions to section 707 set out in subsection 1 must be construed narrowly and be limited to the express terms contained in subsection 1. The exceptions contained in subsection 1 may not be construed to undermine the general prohibition against tied interests contained in section 707.

See title page for effective date.

CHAPTER 660

H.P. 1564 - L.D. 2197

An Act to Implement Recommendations of the Joint Standing Committee on Banking and Insurance Relating to the Review of the Bureau of Insurance, the Bureau of Banking and the Securities Division within the Department of Professional and Financial Regulation under the State Government Evaluation Act

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

PART A

Sec. A-1. 9-B M.R.S.A. §232, as amended by PL 1997, c. 182, Pt. C, §§1 to 7, is further amended by amending the headnote to read:

§232. Removal or prohibition of officer or director

Sec. A-2. 9-B M.R.S.A. §232, first ¶, as amended by PL 1997, c. 182, Pt. C, §1, is further amended to read:

The superintendent may remove any officer or director of a financial institution organized pursuant to this Title or any officer of a branch of an out-of-state financial institution authorized to do business in this State or any officer or director of a financial institution holding company, in accordance with the procedures and subject to the conditions and limitations set forth in this section. The superintendent may prohibit an officer or director of a financial institution, financial institution holding company or branch of an out-of-state financial institution from participating in any manner in the conduct of the affairs of a financial institution, financial institution holding company or branch of an out-of-state financial institution if the superintendent determines that such action is necessary for the protection of the public, the financial institution, financial institution holding company or

out-of-state financial institution or the interests of the institution's depositors or creditors.

Sec. A-3. 9-B MRSA §232, sub-§1, ¶¶B to D, as amended by PL 1997, c. 182, Pt. C, §2, are further amended to read:

B. By reason of the violation, practice or breach of fiduciary duty described in paragraph A:

- (1) The financial institution or financial institution holding company has suffered or will probably suffer financial loss or other damage;
- (2) The interests of the financial institution's depositors or creditors or the public have been or could be prejudiced; or
- (3) The officer or director has received financial gain or other benefit by reason of the violation, practice or breach of fiduciary duty;

C. The violation, practice or breach of fiduciary duty described in paragraph A involves personal dishonesty on the part of the officer or director or demonstrates willful or continuing disregard by the officer or director for the safety or soundness of the financial institution or financial institution holding company; ~~and~~

D. In the opinion of the superintendent, that officer or director has evidenced personal dishonesty and unfitness to continue as an officer or director of the financial institution or financial institution holding company by conduct with respect to another business entity that resulted, or is likely to result, in substantial financial loss or other damage.; and

Sec. A-4. 9-B MRSA §232, sub-§1, ¶E is enacted to read:

E. The officer or director has been removed or prohibited from participation in any manner in the conduct of the affairs of the financial institution by the appropriate federal banking agency.

Sec. A-5. 9-B MRSA §232, sub-§8 is enacted to read:

8. Prohibition on participation in banking industry. An officer or director may be prohibited from participating in the banking industry in accordance with the following.

A. Any officer or director who, pursuant to an order issued under this section, has been removed from office in a financial institution, out-of-state financial institution or financial institution holding company or prohibited from

participating in the conduct of the affairs of a financial institution, out-of-state financial institution, or financial institution holding company may not, while such order is in effect, continue or commence to hold any office, or participate in any manner in the conduct of the affairs of any financial institution, out-of-state financial institution or financial institution holding company.

B. If, on or after the date an order is issued under this section that removes from office an officer or director or prohibits an officer or director from participating in the conduct of the affairs of any financial institution, out-of-state financial institution or financial institution holding company, the order is modified, terminated or set aside in accordance with subsection 6, then the prohibition imposed in paragraph A must be similarly modified, terminated or set aside.

Sec. A-6. 9-B MRSA §468, sub-§1, ¶C is enacted to read:

C. "Affiliate" has the same meaning as given in section 131, subsection 1-A, except that a subsidiary of a financial institution is not an affiliate of that financial institution.

Sec. A-7. 9-B MRSA §468, sub-§6, as enacted by PL 1997, c. 398, Pt. I, §40, is amended to read:

6. Rulemaking. The superintendent may, by rule or order, define or further define terms used in this section and establish limits, requirements or exceptions to this section other than those specified in this section, if the superintendent determines such action is necessary for the protection of depositors or the public and is consistent with the purposes of this section. For institutions organized pursuant to Part 12, the superintendent may, by rule or order, define or further define the terms used in this section and establish limits, requirements or exceptions to this section other than those specified in this section, if the superintendent determines that such action is consistent with the powers and limitations accorded institutions organized pursuant to Part 12. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. A-8. 9-B MRSA §1224, sub-§6, as enacted by PL 1997, c. 398, Pt. J, §2, is amended to read:

6. Provisions inapplicable. The following provisions of this Title are inapplicable to merchant banks: sections 223, 316-A, 439-A, 445, 446-A and 465-A and chapters 33, 37 and 42. The limitations on the holding of equity securities and the purchase of speculative securities, equities and venture capital

investments contained in section 419, subsection 1 are also inapplicable to merchant banks.

PART B

Sec. B-1. 24-A MRSA §228, sub-§2, as amended by PL 1973, c. 585, §12, is further amended to read:

2. Such person examined shall promptly pay to the superintendent the expenses of the examination upon presentation by ~~him~~ the superintendent of a reasonably detailed written statement thereof. Any insurer with total admitted assets as of the end of the preceding calendar year of \$50,000,000 or greater must comply with this section in satisfaction of the examination assessment.

Sec. B-2. 24-A MRSA §228, sub-§3, as amended by PL 1975, c. 467, is further amended to read:

3. Except that in lieu of payment of examination expense as above required, a domestic insurer ~~shall have with total admitted assets of less than \$50,000,000~~ has the right, at its option, of making an annual payment to the superintendent of an examination expense allotment in an amount equal to .001 of its total admitted assets as of the end of the preceding calendar year, ~~and which payment shall must be made on March 1st with the filing of the insurer's annual statement with the superintendent; or, if the insurer's admitted assets exceed \$10,000,000, but do not exceed \$50,000,000, the insurer shall have~~ has the right, at its further option, to pay to the superintendent with respect to any examination the lesser of:

A. The expense of the examination as determined pursuant to subsections 1 and 2 above; or

B. An annual amount equal to .001 of the first \$10,000,000 of the insurer's admitted assets plus .0002 of the remainder of such assets, limited, however, to insurers whose admitted assets do not exceed \$25,000,000 as such assets are shown by the insurer's financial statement filed with the superintendent for the year-end next preceding the commencement of the examination, such payment to be made on March 1st with the filing of the insurer's annual statement with the superintendent; or

C. If the admitted assets of the insurer exceed \$25,000,000, ~~but do not exceed \$50,000,000,~~ an annual payment of an examination expense allotment ~~of 1/5~~ of an amount equal to .001 of the first \$10,000,000 of the insurer's admitted assets, plus .0002 of the next \$15,000,000 of such assets, plus .000175 of the remainder of such assets as are shown by the insurer's financial statement filed with the superintendent for the preceding

calendar year. ~~Such~~ The payment shall must be made on March 1st with the filing of the insurer's annual statement with the superintendent.

Sec. B-3. 24-A MRSA §2016, sub-§1, as amended by PL 1997, c. 592, §62, is further amended to read:

1. Each producer with surplus lines authority shall maintain in the producer's office within the State a monthly report 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 producer'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 producer 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. B-4. 36 MRSA §2513, first ¶, as amended by PL 1985, c. 783, §11, is further amended to read:

Every insurance company or association ~~which~~ that does business or collects premiums or assessments including annuity considerations in the State, except those mentioned in section 2517, including surety companies and companies engaged in the business of credit insurance or title insurance, shall, for the privilege of doing business in this State, and in addition to any other taxes imposed for such privilege pay a tax upon all gross direct premiums including annuity considerations, whether in cash or otherwise, on contracts written on risks located or resident in the State for insurance of life, annuity, fire, casualty and other risks at the rate of 2% a year. Every surplus lines insurer that does business or collects premiums in the State shall, for the privilege of doing business in this State, and in addition to any other taxes imposed for such privilege, pay a tax upon all gross direct premiums, whether in cash or otherwise, on contracts written on risks located or resident in the State at the rate of 3% a year. The tax must be paid by the insurer's licensed producer with surplus lines authority pursuant to Title 24-A, section 2016.

PART C

Sec. C-1. 32 MRSA §10313, sub-§1, ¶B, as enacted by PL 1985, c. 400, §2, is amended to read:

B. Has intentionally or knowingly ~~or willfully~~ violated or failed to comply with a provision of this Act, a predecessor Act or a rule or order under this Act or a predecessor Act, the United States Securities Act of 1933, the United States Securities Exchange Act of 1934, the United States Investment Advisers Act of 1940, the United States Investment Company Act of 1940 or the United States Commodity Exchange Act, or the securities law of any other state, but only if the acts constituting the violation of that state's law would constitute a violation of this Act had the acts taken place in this State;

Sec. C-2. 32 MRSA §10502, sub-§5, as enacted by PL 1985, c. 400, §2, is amended to read:

5. Burden of proof. In any civil, ~~criminal~~ or administrative proceeding under this Act, the burden of proving an exemption or any exception from a definition is upon the person claiming it.

Sec. C-3. 32 MRSA §10604, sub-§1, as amended by PL 1991, c. 548, Pt. D, §8, is repealed and the following enacted in its place:

1. Intentional or knowing violation. A person is guilty of the crime of violating the Revised Maine Securities Act if that person intentionally or knowingly violates:

A. Any provision of this Act, except section 10204;

B. Any rule or order of the administrator under this Act; or

C. Section 10204, knowing the statement made is false or misleading in any material respect.

Sec. C-4. 32 MRSA §10604, sub-§4, as enacted by PL 1985, c. 400, §2, is repealed.

Sec. C-5. 32 MRSA §10604, sub-§§6 to 8 are enacted to read:

6. Class C crime. A violation of the Revised Maine Securities Act is a Class C crime.

7. Venue. When a person pursuant to one scheme or course of conduct, whether upon the same person or several persons, engages in fraudulent or other prohibited practices under subchapter II, engages in unlawful transactions of business or other unlawful conduct under subchapter III or engages in unlawful offers to sell or purchase or unlawful sales or purchases under subchapter IV, the State may opt for a

single Class C count and, in that circumstance, prosecution may be brought in any venue in which one or more of the unlawful acts were committed.

8. Affirmative defense. In any criminal prosecution, an exemption or any exception from a definition under this Act must be proved by the defendant by a preponderance of the evidence.

PART D

Sec. D-1. 9-A MRSA §8-303, sub-§7, ¶B, as amended by PL 1991, c. 755, §1, is further amended to read:

B. The name and state of the financial institution underwriting the debt must appear ~~in at least 10-point type on the face of~~ on the credit card.

Sec. D-2. 9-B MRSA §241, sub-§7, as amended by PL 1991, c. 755, §2, is repealed and the following enacted in its place:

7. Restrictions on use of names of Maine financial institutions on credit cards. A credit card may be titled and may have the name of a financial institution authorized to do business in this State on the card if:

A. The terms of the credit card contract comply with the laws applicable to that financial institution; or

B. The name and state of the financial institution underwriting the debt appears on the credit card.

See title page for effective date.

CHAPTER 661

H.P. 1593 - L.D. 2222

**An Act to Revise and Update the
Charter of the Maine Employers'
Mutual Insurance Company in
Furtherance of its Mission**

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

Sec. 1. 24-A MRSA §3701, as amended by PL 1991, c. 885, Pt. C, §1, is further amended to read:

§3701. Purpose

The Maine Employers' Mutual Insurance Company is established for the purposes of providing workers' compensation insurance and employers' liability insurance incidental to and written in connection with workers' compensation coverage to employers of this State at the highest level of service and