

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

September 1, 1967
Banks and Banking Insurance

David Garceau, Commissioner
Harold E. Trahey, Acting Commissioner

Insurance

Regulation relating to overcharges of insurance premiums in conjunction with small loans.

FACTS:

A request has been made to the Bank Commissioner and/or the Acting Insurance Commissioner to promulgate a regulation which would set forth the manner of handling small amounts of inadvertent overcharges of insurance premiums in respect to insurance coverages in connection with small loans.

QUESTION:

May the Bank Commissioner and/or the Acting Insurance Commissioner promulgate such a regulation?

ANSWER:

No.

OPINION:

9 M.R.S.A. § 3082 was amended by P. L. 1967, c. 473, § 4 to read in pertinent part as follows:

“ . . . If interest or charges in excess of those permitted by this section and section 3081, including insurance premiums and filing fees, shall be charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever. Upon a finding by the District or Superior Court that interest or charges in excess of those permitted by this section and section 3081 have been charged, contracted for or received, the licensee shall forfeit to the borrower the amount of all payments made as principal and interest payments, and he shall mark and return the note and other papers as provided in section 3083, subsection 3. Reasonable attorneys' fees and costs shall be awarded to the borrower if he is the prevailing party in such action. Each licensee shall annually report to the Commissioner of Banks and Banking the amount of insurance sold, premiums charged therefor, and claims paid on a form prescribed by the commissioner and a summary of these reports will be included in the annual report of the commissioner.”

The language of 9 M.R.S.A. § 3082 as amended clearly prohibits overcharges of insurance premiums. The statute makes no distinction between intentional and inadvertent overcharges. It also places upon our Judicial System the responsibility of making a finding as to overcharges and the voiding of payments. For either the Bank Commissioner or the Acting Insurance Commissioner to promulgate a regulation dealing with insurance premium overcharges in conjunction with small loans would be in clear contradiction to the statute. The promulgation of such a regulation is clearly outside the

authority of the Bank Commissioner or the Acting Insurance Commissioner and if promulgated, would have no legal effect.

JEROME S. MATUS
Assistant Attorney General

September 1, 1967
Banks and Banking Insurance

Philip Gingrow, Director
Harold Trahey, Acting Commissioner

Insurance

Interpretation of Accident and Health Insurance Provision of an Act Revising Laws Relating to Licensed Small Loan Agencies.

FACTS:

The 103rd Legislature enacted P. L. 1967, c. 473, An Act Revising Laws Relating to Small Loan Agencies. The Act amended 9 M.R.S.A. § 3082 by including the following prohibition in relation to the sale of accident and health policies in conjunction with small loans:

“No accident and health insurance shall be sold unless there is a waiting period of 30 days or more, a minimum payment of \$40 per month and the loan must be for at least 18 months.”

QUESTION:

May an accident and health insurance policy sold in conjunction with a small loan be written with a 30-day waiting period under a retroactive plan?

ANSWER:

No.

OPINION:

An accident and health insurance policy with a 30-day waiting period without a retroactive plan would provide for payments for accident or sickness from the 31st day of the accident or sickness.

An accident and health policy with a 30-day waiting period and a retroactive plan (for purposes of illustration a 30-day retroactive plan) would provide for payments of indemnification for accident or sickness from the initial day of the accident or sickness provided the accident or sickness was over 30 days in duration. Under both plans (the 30-day waiting period without the retroactive plan and the 30-day waiting period with the retroactive plan), there would be no indemnification payments if the accident or sickness was 30 days or less in duration.

If the reference language amending 9 M.R.S.A. § 3082 amended a section of Title 24 of the Maine Revised Statutes Annotated (the insurance title) rather than 9 M.R.S.A. (the banking title), we might conclude that a 30-day waiting period with a retroactive plan could be written. Under present State of Maine insurance regulations waiting periods with retroactive plans are permitted. However, in interpreting the language of the