

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1089

6 H.P. 839

House of Representatives, March 7, 1983

7 Submitted by the Department of Business Regulation pursuant to Joint
8 Rule 24.

9 On Motion of Representative Brannigan of Portland, referred to the
Committee on Business Legislation. Sent up for concurrence and ordered
printed.

10 Presented by Representative Pouliot of Lewiston. EDWIN H. PERT, Clerk

11 Cosponsors: Representative Racine of Biddeford, Representative Perkins
of Brooksville and Representative Stevens of Bangor.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Amend the Licensing Provisions
18 of the Maine Insurance Code and to Require
19 Filing Fees for Fraternal Benefit
20 Organizations.
21

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

24 Sec. 1. 24-A MRSA §1509, as amended by PL 1973,
25 c. 585, §12, is further amended to read:

26 §1509. "Adjuster" defined

27 An adjuster is any person who ~~for compensation as~~
28 ~~an independent contractor or for fee on behalf of the~~
29 ~~insurer~~ investigates and settles, and reports to his
30 principal relative to, claims arising under insurance
31 contracts or annuity contracts. The definition of ad-
32 adjuster shall not be deemed to include and license as
33 adjuster shall not be required of:

34 1. Attorneys at law admitted to practice in this
35 State; and

1 2. The salaried employee of the insurer, or of
2 the managing general agent representing the insurer,
3 as to whom the employer has filed with the superin-
4 tendent in advance written notice of the employee's
5 name and address and authority to adjust. Licensed
6 agents adjusting the losses of an authorized insurer
7 within the authority granted by the insurer as pro-
8 vided in section 1605.

9 Sec. 2. 24-A MRSA §1512-A is enacted to read:

10 §1512-A. Prohibited activities

11 1. No person whose insurance agent, broker, con-
12 sultant or adjuster license has been revoked, sus-
13 sended, denied for cause or voluntarily surrendered
14 to avoid prosecution may in this State participate in
15 any manner in the conduct of an insurance agency or
16 of an insurance brokerage consulting or adjusting
17 business.

18 2. No person whose insurance agent, broker, con-
19 sultant or adjuster license has been revoked, sus-
20 sended, denied for cause or voluntarily surrendered
21 to avoid prosecution may derive, or continue to
22 derive, any compensation, by whatever name called,
23 except as provided in this section, based on the
24 operation of the insurance agency or other firm in
25 which the person was engaged or employed prior to the
26 revocation, suspension, denial or surrender of li-
27 cence.

28 3. This section shall not prohibit the receipt
29 of compensation by a person for activities that the
30 person engaged in prior to any loss of license
31 referred to in this section, nor shall it prohibit
32 any person from divesting himself from an interest in
33 an insurance company or firm for value.

34 4. Nothing in this section prohibits any rights
35 a person may have to seek relicensure under section
36 1542.

37 5. Any person violating this section shall, upon
38 conviction, be punished by a fine of not less than
39 \$100 or more than \$1,000 or by imprisonment for less
40 than one year, or by both.

1 Sec. 3. 24-A MRSA §1532, as amended by PL 1977,
2 c. 682, §§3 and 4, is repealed.

3 Sec. 4. 24-A MRSA §1532-A is enacted to read:

4 §1532-A. Continuation; expiration of license

5 1. Each broker, resident or nonresident, license
6 issued under this Title shall continue in force until
7 12:01 a.m. on January 1st, of the biennium for which
8 it was issued, unless prior thereto it has been sus-
9 pended, revoked or otherwise terminated.

10 2. Each consultant license issued under this
11 Title shall continue in force until 12:01 a.m. on
12 March 1st, of the biennium for which it was issued,
13 unless prior thereto it has been suspended, revoked
14 or otherwise terminated.

15 3. Each adjuster license issued under this Title
16 shall continue in force until 12:01 a.m. on January
17 1st, of the biennium for which it was issued, unless
18 prior thereto it has been suspended, revoked or
19 otherwise terminated.

20 4. The superintendent shall notify each broker,
21 consultant and adjuster licensee under this Title of
22 the expiration date of the licensee's license and the
23 fee that is required for renewal for a 2-year period.
24 The notice shall be mailed to that person at least 30
25 days in advance of the expiration date of the li-
26 cence.

27 5. Any broker, consultant or adjuster may apply
28 to renew a license issued under this chapter by writ-
29 ten request and payment to the superintendent of the
30 applicable renewal fee as stated in section 601. As
31 a condition of or in connection with the renewal of
32 any broker, consultant or adjuster license, the
33 superintendent may require the licensee to file with
34 him information as for application for the license or
35 as to the use made of the license during the current
36 or next preceding license year.

37 Upon the filing of the information required by this
38 subsection, the superintendent shall issue a renewal
39 license for the ensuing biennium in the absence of

1 any reason or condition which might warrant the
2 refusal of granting a license.

3 6. An initial license as a life agent or a gen-
4 eral lines agent shall be for a term of one year and
5 shall not be subject to renewal, continuation or
6 reissuance. An individual holding such an initial
7 license may represent as many insurers as may appoint
8 that individual, pursuant to this chapter.

9 7. An agent license, other than an initial li-
10 cence, shall continue in force until 12:01 a.m. on
11 April 1st next following issuance, unless prior
12 thereto it has been suspended, revoked or otherwise
13 terminated, while there is in effect as to the li-
14 cence, as shown by the superintendent's records, an
15 appointment or appointments as agent of authorized
16 insurers covering collectively all the kinds of
17 insurance included in the agent's license. Upon
18 termination of all the licensee's agency appoint-
19 ments, as to a particular kind of insurance, and
20 failure to replace those appointments within 60 days
21 thereafter, the license shall thereupon expire and
22 termination as to those kinds of insurance and the
23 licensee shall promptly deliver his license to the
24 superintendent for reissuance, without fee or charge
25 as to these kinds of insurance, if any, covered by
26 the remaining agency appointments. Upon termination
27 of all the licensee's agent appointments, the license
28 shall immediately terminate.

29 8. Each agent license, other than an initial li-
30 cence, issued under this Title which terminates on
31 its expiry date, shall be automatically renewed for a
32 further one-year period, unless, following a hearing,
33 the superintendent determines that there is any
34 reason or condition which would warrant the refusal
35 of granting a license. As a condition of or in con-
36 nection with the renewal of any agent license, the
37 superintendent may require the licensee to file with
38 him information as for application for the license,
39 or as to the use made of the license during the cur-
40 rent or next preceding license year. The superinten-
41 dent shall forward to each licensee, whose agent's
42 license is automatically renewed, a notice of
43 renewal.

1 9. This section does not apply to temporary
2 licenses issued under sections 1536 and 1857.

3 Sec. 5. 24-A MRSA §1539, sub-§§3 and 4 are
4 enacted to read:

5 3. Notwithstanding the provisions of subsections
6 1 and 2, the superintendent may revoke, suspend or
7 refuse to renew any license issued under this chap-
8 ter, pursuant to Title 5, section 10004, without pro-
9 ceeding in conformity with chapter 3 or Title 5,
10 chapter 375, subchapter IV or VI when:

11 A. The decision to take that action is based
12 solely upon a conviction in court of any offense
13 denominated in Title 5, section 5301, subsection
14 2, or a conviction in the courts of any other
15 state or any country of an offense which would be
16 denominated under Title 5, section 5301, had the
17 offense occurred in Maine. Any revocations, sus-
18 pension or denial of license under this paragraph
19 shall be in accordance with the provisions of
20 Title 5, sections 5302 to 5304;

21 B. The Maine license has been issued upon the
22 basis of a reciprocal agreement with another gov-
23 ernment and the Maine action is based upon evi-
24 dence, in the form of a certified copy, that the
25 authority issuing the license which provided the
26 basis for reciprocal licensing in Maine has
27 revoked or suspended its license; or

28 C. The health or physical safety of a person or
29 persons is in immediate jeopardy at the time of
30 the superintendent's action, and acting in accor-
31 dance with chapter 3 or Title 5, subchapter IV or
32 VI would fail to adequately respond to a known
33 risk, provided the revocation, suspension or
34 refusal to renew shall not continue for more than
35 30 days.

36 4. The superintendent may suspend, revoke or
37 refuse to renew licenses held by a firm or corpora-
38 tion for any of such causes as relate to any indi-
39 vidual designated or registered in the license to
40 exercise its power.

1 Sec. 6. 24-A MRSA §1804, sub-§1, as repealed and
2 replaced by PL 1979, c. 341, is amended to read:

3 1. Has had not less than 5 years of actual expe-
4 rience as a ~~licensed agent or broker~~ with respect to
5 the kinds of insurance and contracts to be covered by
6 the license;

7 Sec. 7. 24-A MRSA §1854, sub-§1, as amended by
8 PL 1973, c. 585, §12, is further amended to read:

9 1. Before issuance of an adjuster license, the
10 applicant shall file with the superintendent and
11 thereafter maintain in force while so licensed, a
12 surety bond in favor of the State of Maine executed
13 by an authorized surety insurer, and conditioned on
14 the due accounting and payment by the licensee of
15 funds of others received by him in connection with
16 transactions under the license. No such bond may be
17 required to be filed by an applicant for an adjust-
18 er's license who is a salaried employee or a managing
19 general agent of an insurer, as to whom the insurer
20 has filed with the superintendent written notice of
21 the employee's name and address and authority to ad-
22 just. Any licensed, but unbonded, adjuster who
23 leaves the employ of an insurer shall file a surety
24 bond in accordance with the requirements of this
25 section, before further acting as an adjuster. A li-
26 censed and bonded adjuster who becomes a salaried
27 employee or a managing general agent of an insurer
28 shall not be required to continue a surety bond in
29 force as a condition of his license.

30 Sec. 8. 24-A MRSA §1855, sub-§1, as enacted by
31 PL 1969, c. 132, §1, is amended to read:

32 1. Each adjuster and his employer, if an
33 insurer, shall keep at his business address shown on
34 his the adjuster's license a record of all trans-
35 actions under the license.

36 Sec. 9. 24-A MRSA §1855, sub-§3, as amended by
37 PL 1973, c. 585, §12, is further amended to read:

38 3. The adjuster and his employer, if an insurer,
39 shall make ~~such~~ those records available for examina-
40 tion by the superintendent at all times, and shall
41 retain the records for at least 3 years.

1 Sec. 10. 24-A MRSA §4120, first ¶, as amended by
2 PL 1973, c. 585, §12, is further amended to read:

3 No life benefit certificate ~~shall~~ may be deliv-
4 ered or issued for delivery in this State, unless a
5 copy of the form ~~shall have~~ has been filed with the
6 superintendent and approved by him as conforming to
7 the requirements of this section and not inconsistent
8 with any other provisions of law applicable thereto.
9 For each such form filing, the society shall pay the
10 superintendent a fee which shall be the same as for
11 an insurer, as provided in section 601. A certificate
12 shall be deemed approved unless disapproved by the
13 superintendent within 60 days from the date of ~~such~~
14 that filing.

15 Sec. 11. 24-A MRSA §4121, as amended by PL 1977,
16 c. 694, §430, is further amended to read:

17 §4121. Accident and health insurance and total and
18 permanent disability insurance certificates

19 No society ~~shall~~ may issue or deliver in this
20 State any certificate or other evidence of any con-
21 tract or accident insurance or health insurance or of
22 any total and permanent disability insurance con-
23 tract, unless and until the form thereof, together
24 with the form of application and all riders or
25 endorsements for use in connection therewith, ~~shall~~
26 have been filed with the superintendent and
27 approved by him as conforming to reasonable rules and
28 ~~regulations~~ from time to time made by him and as not
29 inconsistent with any other provisions of law appli-
30 cable thereto. For each such form filing, the
31 society shall pay the superintendent a fee which
32 shall be the same as for an insurer, as provided in
33 section 601. The superintendent shall, within a
34 reasonable time after the filing of any such form,
35 notify the society filing the ~~same~~ form either of his
36 approval or of his disapproval of ~~such~~ that form. The
37 superintendent may approve any such form which in his
38 opinion contains provisions on any one or more of the
39 several requirements made by him which are more
40 favorable to the members than the one or ones so re-
41 quired. The superintendent shall have power, from
42 time to time, to make, alter and supersede reasonable
43 regulations prescribing the required, optional and

1 prohibited provisions in such contracts, and such
2 regulations shall conform, as far as practicable, to
3 chapter 33. Where the superintendent deems inappli-
4 cable, either in part or in their entirety, the
5 provisions of the foregoing sections, he may pre-
6 scribe the portions or summary thereof of the con-
7 tract to be printed on the certificate issued to the
8 member. Any filing made ~~hereunder~~ under this section
9 shall be deemed approved, unless disapproved within
10 60 days from the date of ~~such~~ the filing. The proce-
11 dures governing all rules and ~~regulations~~ promulgated
12 under authority of this section shall conform to the
13 Maine Administrative Procedure Act, Title 5, chapter
14 375, subchapter II.

15 STATEMENT OF FACT

16 Sections 1, 7, 8 and 9 of the bill are intended
17 to expand the scope of the law relating to licensure
18 of insurance adjusters by making it applicable to
19 employees of insurers who function as adjusters.
20 Current law requires only independent adjusters to be
21 licensed.

22 Since both staff and independent adjusters per-
23 form similar tasks, the same licensing standards
24 should be applicable to each. Since staff adjusters
25 are backed by the assets of their employers, the bill
26 exempts those individuals from the bonding require-
27 ments which would otherwise be applicable.

28 Section 2 of the bill is intended to restrict the
29 insurance activity of former licensee's whose
30 licenses have been revoked, suspended, denied for
31 cause or voluntarily surrendered to avoid prose-
32 cution.

33 Under current law, it is possible for such indi-
34 viduals to continue to constitute a source of injury
35 to the public by participating "behind-the-scenes" in
36 the daily conduct of insurance activities.

37 Sections 3 and 4 would repeal and replace the
38 existing law relating to the issuance and renewal of
39 insurance brokers, consultants, adjusters and agents'
40 licenses. Brokers, adjusters and consultants'
41 licenses will be issued for 2-year terms. The Super-

1 intendent of Insurance will be authorized to, follow-
2 ing hearing, reject applications for renewal for any
3 reasons which would warrant the refusal of granting
4 our original license.

5 Insurance agents' licenses would be issued for a
6 one-year term. Renewal of agents' licenses would be
7 automatic, unless, following a hearing, the superin-
8 tendent determines that there is a reason or condi-
9 tion warranting the refusal of a license.

10 Section 5 of the bill is intended to allow the
11 superintendent to revoke, suspend or refuse to renew
12 any insurance broker's, agent, consultant or adjust-
13 er's license in certain limited situations without
14 proceedings in Administrative Court. The bill
15 incorporates by reference the standards of Title 5,
16 section 5301, subsection 2, sections 5302 to 5304 and
17 section 10004, which counsel for the Bureau of Insur-
18 ance advises do not specifically empower the superin-
19 tendent currently.

20 Section 5 of the bill is also intended to provide
21 authority to the superintendent to act with respect
22 to a firm or corporation when he acts pursuant to
23 section 4 or 5 with respect to the license of the
24 person designated or registered to exercise the power
25 of the firm or corporation.

26 Section 6 of the bill removes the condition
27 precedent to licensure as an insurance consultant
28 that the applicant must have been an insurance agent
29 or broker for not less than 5 years. It is possible
30 for individuals to obtain the experience in the busi-
31 ness of insurance necessary to be a consultant in
32 positions other than those of agent or broker.

33 Sections 10 and 11 are intended to correct an
34 inequity in the insurance code which, through over-
35 sight, was created by Public Law 1982, chapter 225,
36 section 4. Form filings of fraternal benefit socie-
37 ties will require the same filing fees as those of
38 commercial insurers.

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