

MAINE STATE LEGISLATURE

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(New Draft of H.P. 839, L.D. 1089)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1654

H.P. 1242

House of Representatives, May 20, 1983

Reported by Representative Murray from the Committee on Business Legislation and printed under Joint Rule 2.

Original bill presented by Representative Pouliot of Lewiston. Cosponsored by Representative Racine of Biddeford, Representative Perkins of Brooksville and Representative Stevens of Bangor.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

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

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

Sec. 1. 24-A MRSa §416, as amended by PL 1977, c. 694, §§399 and 400, is further amended to read:

§416. Petition for suspension or revocation of certificate of authority; mandatory grounds

1. The superintendent shall file a complaint with the Administrative Court, which may be pursuant to Title 4, section 1153, seeking suspension or revocation of an insurer's certificate of authority on any of the following grounds Notwithstanding Title 4, section 1151, and Title 5, section 10051, the super-

1 intendant shall refuse to continue or shall suspend
2 or revoke an insurer's certificate of authority:

3 A. If such action is required by any provision
4 of this Title; ~~or~~

5 B. If a foreign insurer and it no longer meets
6 the requirements for a certificate of authority,
7 on account of deficiency of capital or surplus or
8 otherwise; ~~or~~

9 C. If a domestic insurer and it has failed to
10 cure an impairment of capital or surplus within
11 the time allowed therefor by the superintendent
12 under this Title or is otherwise no longer quali-
13 fied for the certificate of authority; ~~or~~

14 D. If the insurer's certificate of authority to
15 transact insurance therein is suspended or
16 revoked by its state of domicile, or state of
17 entry into the United States, if an alien
18 insurer; or

19 E. For failure of the insurer to pay taxes on
20 its premiums as required by law.

21 2. In all cases in which the superintendent
22 files a complaint seeking suspension or revocation of
23 an insurer's certificate of authority, the Adminis-
24 trative Court proceeding will be held pursuant to
25 Title 4, chapter 25. Except in case of insolvency or
26 impairment of required capital or surplus, or suspen-
27 sion or revocation by another state as referred to in
28 subsection 1, paragraph D, the superintendent shall
29 give the insurer at least 20 days notice in advance
30 of any such refusal, suspension or revocation under
31 this section and of the particulars of the reasons
32 therefor. If the insurer requests a hearing thereon
33 within the 20 days, the request shall automatically
34 stay the superintendent's proposed action until his
35 order is made on that hearing. Hearings held pur-
36 suant to this subsection shall be held in conformity
37 with the Maine Administrative Procedure Act, Title 5,
38 chapter 375, subchapter IV.

39 3. If an action initiated by the superintendent
40 to suspend or revoke an insurer's certificate of

1 authority is based on subsection 1, paragraphs B or
2 C, a sworn statement of financial condition of the
3 insurer signed by an officer of the insurer which
4 indicates that the insurer no longer meets the re-
5 quirements for a certificate of authority shall be
6 prima facie proof that the requirements for a certifi-
7 cate of authority are not met.

8 Sec. 2. 24-A MRSA §417, as amended by PL 1977,
9 c. 694, §§401 to 403, is further amended to read:

10 §417. Suspension or revocation of certificate of
11 authority; discretionary and special grounds

12 1. The Notwithstanding Title 4, section 1151,
13 and Title 5, section 10051, the superintendent may,
14 in his discretion, file a complaint with the Adminis-
15 trative Court seeking suspension or revocation of
16 refuse to continue or may suspend or revoke an
17 insurer's certificate of authority, if he finds,
18 after a hearing thereon or upon waiver of hearing by
19 the insurer, that the insurer has violated or failed
20 to comply with any lawful order of the superinten-
21 dent, or has willfully violated or willfully failed
22 to comply with any lawful regulation rule of the
23 superintendent, or has violated any provision of this
24 Title other than those for violation of which a peti-
25 tion for suspension or revocation is mandatory.

26 2. The superintendent shall, pursuant to Title
27 4, section 1153 or otherwise, file a complaint with
28 the Administrative Court seeking to suspend or revoke
29 an insurer's certificate of authority on any of the
30 following grounds, if a finding is made he finds
31 after a hearing held in conformity with the Maine
32 Administrative Procedure Act, Title 5, chapter 375,
33 subchapter IV, that the insurer:

34 A. Is in unsound condition, or is being fraud-
35 ulently conducted, or is in such condition or
36 using such methods and practices in the conduct
37 of its business as to render its further trans-
38 action of insurance in this State currently or
39 prospectively hazardous or injurious to policy-
40 holders or to the public; or

1 B. With such frequency as to indicate its gener-
2 eral business practice in this State, has without
3 just cause failed to pay, or delayed payment of,
4 claims arising under its policies, whether the
5 claim is in favor of an insured or is in favor of
6 a third person; or, with like frequency, without
7 just cause compels insureds or claimants to ac-
8 cept less than the amount due them or to employ
9 attorneys or to bring suit against the insurer or
10 an insured to secure full payment or settlement
11 of such claims; or

12 C. Refuses to be examined, or if its directors,
13 officers, employees or representatives refuse to
14 submit to examination relative to its affairs, or
15 to produce its accounts, records and files for
16 examination by the superintendent when required,
17 or refuse to perform any legal obligation rela-
18 tive to the examination; or

19 D. Has failed to pay any final judgment rendered
20 against it in this State upon any policy, bond,
21 recognizance or undertaking as issued or guaran-
22 teed by it, within 30 days after the judgment
23 became final or within 30 days after dismissal of
24 an appeal before final determination, whichever
25 date is the later.

26 3. The Notwithstanding Title 4, sections 1151
27 and 1153, and Title 5, section 10051, the superinten-
28 dent may, in his discretion, file with the Adminis-
29 trative Court a complaint seeking immediate revoca-
30 tion or suspension of an insurer's certificate of
31 authority pursuant to Title 4, section 1153, if with-
32 out notice or a hearing thereon, immediately suspend
33 the certificate of authority of any insurer as to
34 which proceedings for receivership, conservatorship,
35 rehabilitation or other delinquency proceedings have
36 been commenced against the insurer in any state by
37 the public official charged with supervising the
38 insurance industry in that state. Upon suspending a
39 certificate of authority under this subsection, the
40 superintendent shall promptly schedule a hearing on
41 the matter, to be held within 30 days of the suspen-
42 sion. The superintendent shall make a determination
43 within 30 days after the conclusion of that hearing.

1 Sec. 3. 24-A MRSA §418, as repealed and replaced
2 by PL 1977, c. 694, §404, is amended to read:

3 §418. Power to amend, modify or refuse to renew cer-
4 tificates of authority

5 Notwithstanding the authority of the Administra-
6 tive Court ~~to order suspension or revocation~~, the
7 superintendent ~~has the authority to~~ may amend, modify
8 or refuse to renew any insurer's certificate of
9 authority for cause pursuant to procedures in con-
10 formity with the Maine Administrative Procedure Act,
11 Title 5, chapter 375, subchapter IV.

12 Sec. 4. 24-A MRSA §418-A is enacted to read:

13 §418-A. Order, notice of suspension or, revocation;
14 publication; effect upon agents' authority

15 1. All suspensions or revocations of, or
16 refusals to continue, an insurer's certificate of
17 authority shall be by the superintendent's order,
18 given to the insurer by personal delivery or by cer-
19 tified or registered mail, addressed to the insurer
20 at its last address of record with the superinten-
21 dent. Notice by mail shall be deemed given when so
22 mailed.

23 2. Upon issuance of the order, the superinten-
24 dent shall forthwith give notice thereof to the
25 insurer's agents in this State of record in the
26 bureau, and shall likewise suspend or revoke the
27 authority of those agents to represent the insurer.

28 Sec. 5. 24-A MRSA §419, as amended by PL 1977,
29 c. 694, §§405 and 406, is further amended to read:

30 §419. Duration of suspension; insurer's obligation
31 during suspension period; reinstatement

32 1. The suspension of an insurer's certificate of
33 authority shall be for such period as determined by
34 the Administrative Court, consistent with Title 4,
35 chapter 25 the superintendent specifies in the order
36 of suspension, but not to exceed one year. During
37 the suspension period, the superintendent may rescind
38 or shorten the suspension period by further order.

1 2. During the suspension period, the insurer
2 shall not solicit or write any new business in this
3 State, but shall file its annual statement, pay fees,
4 licenses and taxes as required under this Title, and
5 may service its business already in force in this
6 State, as if the certificate of authority had contin-
7 ued in full force.

8 3. Upon expiration of the suspension period, if
9 within that period the certificate of authority has
10 not terminated, the insurer's certificate of author-
11 ity shall reinstate unless the ~~procedures of the~~
12 ~~Administrative Court mandate to the contrary.~~ The
13 ~~suspension shall not terminate if the Administrative~~
14 ~~Court~~ the superintendent finds that the causes of the
15 suspension are continuing, or that the insurer is
16 otherwise not in compliance with the requirements of
17 this Title.

18 4. Upon reinstatement of the insurer's certifi-
19 cate of authority, the authority of its agents in
20 this State to represent the insurer shall likewise
21 reinstate. The superintendent shall promptly notify
22 the insurer and its agents in this State, of record
23 in the bureau, of such that reinstatement.

24 Sec. 6. 24-A MRSa §1512-A is enacted to read:

25 1512-A. Prohibited activities

26 1. No person whose license as an insurance
27 agent, broker, consultant or adjuster has been
28 revoked, suspended, denied for cause or voluntarily
29 surrendered to avoid prosecution may in this State
30 participate in any manner in the conduct of an insur-
31 ance agency or insurance brokerage, consulting or ad-
32 justing business.

33 2. No person whose license as an insurance
34 agent, broker, consultant or adjuster has been
35 revoked, suspended, denied for cause or voluntarily
36 surrendered to avoid prosecution may derive, or con-
37 tinue to derive, any compensation, by whatever name
38 called, except as provided in this section, based on
39 the operation of the insurance agency or other firm
40 in which the person was engaged or employed prior to

1 the revocation, suspension, denial or surrender of
2 license.

3 3. This section shall not prohibit the receipt
4 of compensation by a person for activities that the
5 person engaged in prior to any loss of license
6 referred to in this section, nor shall it prohibit
7 any person from divesting himself from an interest in
8 an insurance company or firm for value.

9 4. Nothing in this section prohibits any rights
10 a person may have to seek relicensure under section
11 1542.

12 5. Any person violating this section shall, upon
13 conviction, be punished by a fine of not less than
14 \$100 nor more than \$1,000, or by imprisonment for
15 less than one year, or by both.

16 Sec. 7. 24-A MRSA §1532, as amended by PL 1977,
17 c. 682, §§ 3 and 4, is repealed.

18 Sec. 8. 24-A MRSA §1532-A is enacted to read:

19 §1532-A. Continuation; expiration of license

20 1. Each broker, resident or nonresident, license
21 issued under this Title shall continue in force until
22 12:01 a.m. on January 1st of the biennium for which
23 it was issued, unless prior thereto it has been sus-
24 pended, revoked or otherwise terminated.

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

30 3. Each adjuster license issued under this Title
31 shall continue in force until 12:01 a.m. on January
32 1st of the biennium for which it was issued, unless
33 prior thereto it has been suspended, revoked or
34 otherwise terminated.

35 4. The superintendent shall notify each broker,
36 consultant and adjuster licensed under this Title of
37 the expiration date of the licensee's license and the

1 fee that is required for renewal for a 2-year period.
2 The notice shall be mailed to that person at least 30
3 days in advance of the expiration date of the li-
4 cence.

5 5. Any broker, consultant or adjuster may apply
6 to renew a license issued under this chapter by writ-
7 ten request and payment to the superintendent of the
8 applicable renewal fee as stated in section 601. As
9 a condition of or in connection with the renewal of
10 any broker, consultant or adjuster license, the
11 superintendent may require the licensee to file with
12 him information as for application for the license or
13 as to the use made of the license during the current
14 or next preceding license year.

15 Upon the filing of the information required by this
16 subsection, the superintendent shall issue a renewal
17 license for the ensuing biennium, unless, following
18 a hearing, the superintendent determines that any
19 reason or condition exists which is specified in
20 section 1539 for the suspension or revocation of a
21 license.

22 6. An initial license as a life agent or a gen-
23 eral lines agent shall be for a term of one year and
24 shall not be subject to renewal, continuation or
25 reissuance. An individual holding such an initial
26 license may represent as many insurers as may appoint
27 that individual, pursuant to this chapter.

28 7. An agent license, other than an initial li-
29 cence, shall continue in force until 12:01 a.m. on
30 April 1st next following issuance, unless prior
31 thereto it has been suspended, revoked or otherwise
32 terminated, while there is in effect as to the li-
33 cence, as shown by the superintendent's records, an
34 appointment or appointments as agent of authorized
35 insurers covering collectively all the kinds of
36 insurance included in the agent's license. Upon
37 termination of all the licensee's agency appoint-
38 ments, as to a particular kind of insurance, and
39 failure to replace those appointments within 60 days
40 thereafter, the license shall thereupon expire and
41 terminates as to those kinds of insurance and the
42 licensee shall promptly deliver his license to the
43 superintendent for reissuance, without fee or charge

1 as to these kinds of insurance, if any, covered by
2 the remaining agency appointments. Upon termination
3 of all the licensee's agent appointments, the license
4 shall immediately terminate.

5 8. Each agent license, other than an initial li-
6 cence, issued under this Title which terminates on
7 its expiry date, shall be automatically renewed for a
8 further one-year period, unless, following a hearing,
9 the superintendent determines that any reason or con-
10 dition exists which is specified in section 1539 for
11 the suspension or revocation of a license.

12 As a condition of or in connection with the
13 renewal of any agent license, the superintendent may
14 require the licensee to file with him information as
15 for application for the license, or as to the use
16 made of the license during the current or next pre-
17 ceding license year. The superintendent shall for-
18 ward to each licensee, whose agents license is auto-
19 matically renewed, a notice of renewal.

20 Sec. 9. 24-A MRSA §1539, sub-§§3 and 4 are
21 enacted to read:

22 3. Notwithstanding subsections 1 and 2, the
23 superintendent may revoke, suspend or refuse to renew
24 any license issued under this chapter, pursuant to
25 Title 5, section 10004, without proceeding in con-
26 formity with chapter 3 or Title 5, chapter 375, sub-
27 chapter IV or VI, when:

28 A. The decision to take that action is based
29 solely upon a conviction in court of any offense
30 denominated in Title 5, section 5301, subsection
31 2, or a conviction in the courts of any other
32 state or any country of an offense which would be
33 denominated under Title 5, section 5301, had the
34 offense occurred in this State. Any revocation,
35 suspension or denial of license under this para-
36 graph shall be in accordance with Title 5, sec-
37 tions 5302 to 5304;

38 B. The Maine license has been issued upon the
39 basis of a reciprocal agreement with another gov-
40 ernment and the Maine action is based upon evi-
41 dence, in the form of a certified copy, that the

1 authority issuing the license which provided the
2 basis for reciprocal licensing in this State has
3 revoked or suspended its license; or

4 C. The health or physical safety of a person or
5 persons is in immediate jeopardy at the time of
6 the superintendent's action, and acting in accor-
7 dance with chapter 3 or Title 5, subchapter IV or
8 VI, would fail to adequately respond to a known
9 risk, provided that the revocation, suspension or
10 refusal to renew shall not continue for more than
11 30 days.

12 Sec. 10. 24-A MRSA §1804, sub-§1, as repealed
13 and replaced by PL 1979, c. 341, is amended to read:

14 1. Has had not less than 5 years of actual experi-
15 ence as a ~~licensed agent or broker~~ with respect to
16 the kinds of insurance and contracts to be covered by
17 the license;

18 Sec. 11. 24-A MRSA §4120, first ¶, as amended by
19 PL 1973, c. 585, §12, is further amended to read:

20 No life benefit certificate ~~shall~~ may be deliv-
21 ered or issued for delivery in this State unless a
22 copy of the form shall have been filed with the
23 superintendent and approved by him as conforming to
24 the requirements of this section and not inconsistent
25 with any other provisions of law applicable thereto.
26 For each such form filing, the society shall pay the
27 superintendent a fee which shall be the same as for
28 an insurer, as provided in section 601. A certifi-
29 cate shall be deemed approved unless disapproved by
30 the superintendent within 60 days from the date of
31 such that filing.

32 Sec. 12. 24-A MRSA §4121, as amended by PL 1977,
33 c. 694, §430, is further amended to read:

34 §4121. Accident and health insurance and total and
35 permanent disability insurance certificates

36 No society ~~shall~~ may issue or deliver in this
37 State any certificate or other evidence of any con-
38 tract or accident insurance or health insurance or of
39 any total and permanent disability insurance contract

1 unless and until the form thereof, together with the
2 form of application and all riders or endorsements
3 for use in connection therewith, shall have has been
4 filed with the superintendent and approved by him as
5 conforming to reasonable rules and ~~regulations~~ from
6 time to time made by him and as not inconsistent with
7 any other provisions of law applicable thereto. For
8 each such form filing, the society shall pay the
9 superintendent a fee which shall be the same as for
10 an insurer, as provided in section 601. The superin-
11 tendent shall, within a reasonable time after the
12 filing of any such form, notify the society filing
13 the same form either of his approval or of his disap-
14 approval of such that form. The superintendent may
15 approve any such form which in his opinion contains
16 provisions on any one or more of the several require-
17 ments made by him which are more favorable to the
18 members than the one or ones so required. The super-
19 intendent ~~shall have power, from time to time, to may~~
20 make, alter and supersede reasonable regulations pre-
21 scribing the required, optional and prohibited provi-
22 sions in such contracts, and such regulations shall
23 conform, as far as practicable, to chapter 33. Where
24 the superintendent deems inapplicable, either in part
25 or in their entirety, the provisions of the foregoing
26 sections, he may prescribe the portions or summary
27 thereof of the contract to be printed on the certifi-
28 cate issued to the member. Any filing made ~~hereunder~~
29 under this section shall be deemed approved unless
30 disapproved within 60 days from the date of such
31 filing. The procedures governing all rules and ~~regu-~~
32 ~~lations~~ promulgated under authority of this section
33 shall conform to the Maine Administrative Procedure
34 Act, Title 5, chapter 375, subchapter II.

35 STATEMENT OF FACT

36 This new draft amends provisions of the Maine
37 Insurance Code regarding several unrelated subjects.

38 Sections 1 to 5 empower the Superintendent of
39 Insurance to suspend, revoke or refuse to renew an
40 insurance company's certificate of authority. The
41 superintendent would have the same powers with regard
42 to these matters as he had prior to enactment of the
43 Maine Administrative Procedure Act.

1 Section 6 is intended to restrict the activity of
2 former insurance agents, brokers, consultants and ad-
3 justers whose licenses have been revoked, suspended,
4 denied for cause or voluntarily surrendered to avoid
5 prosecution. It would require both a cessation of
6 conduct formerly engaged in under the license and a
7 financial divestiture from the business.

8 Under current law, it is possible for such indi-
9 viduals, through ownership, management or control of
10 insurance businesses, to continue to effectively par-
11 ticipate in the daily conduct of insurance activities
12 and to constitute a source of injury to the public.

13 Sections 7 and 8 repeal and replace the existing
14 law relating to the issuance and renewal of insurance
15 licenses to brokers, consultants, adjusters and
16 agents. Licenses of brokers, adjusters and consult-
17 ants will be issued for 2-year terms. The Superin-
18 tendent of Insurance is authorized to reject, follow-
19 ing hearing, applications for renewal for any reasons
20 which would warrant the refusal of granting an origi-
21 nal license or suspension or revocation of that li-
22 cense.

23 Insurance agents licenses would be issued for a
24 one-year term. Renewal of agents licenses would be
25 automatic, unless, following a hearing, the superin-
26 tendent determines that there is a reason or condi-
27 tion warranting the refusal of a renewal license.
28 Reasons for nonrenewal are specified in the bill.

29 Section 9 is intended to allow the superintendent
30 to revoke, suspend or refuse to renew any insurance
31 license of a broker, agent, consultant or adjuster in
32 certain limited situations without proceedings in
33 Administrative Court. The bill incorporates by refer-
34 ence the standards of Title 5, section 5301, sub-
35 section 2; sections 5302 to 5304; and section 10004,
36 which, counsel for the Bureau of Insurance advises,
37 do not specifically empower the superintendent cur-
38 rently.

39 Section 10 removes the statutory condition prece-
40 dent to licensure as an insurance consultant that the
41 applicant must have been an insurance agent or broker
42 for not less than 5 years. An experience requirement

1 remains. However, it would be possible for individu-
2 als to obtain the necessary experience to be a con-
3 sultant in positions other than those of agents or
4 brokers.

5 Sections 11 and 12 are intended to correct an
6 inequity in the insurance code which, through over-
7 sight, was created by Public Law 1981, chapter 225,
8 section 4. Form filings of fraternal benefit socie-
9 ties will be required to include the same filing fees
10 as are applicable to commercial insurers.

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