

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1774

6
7 H.P. 1265 House of Representatives, January 6, 1986
8 Submitted by the Department of Business, Occupational and Professional
9 Regulation pursuant to Joint Rule 24.

10 Received by the Clerk of the House on January 6, 1986. Referred to the
Committee on Business and Commerce and 1,600 ordered printed pursuant to
Joint Rule 14.

EDWIN H. PERT, Clerk

Presented by Representative Murray of Bangor.

11 Cosponsored by Representative Aliberti of Lewiston, Representative
Rydell of Brunswick and Representative Martin of Van Buren.

12 STATE OF MAINE
13

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

17 AN ACT to Amend the Revised Maine Securities
18 Act.
19

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

22 Sec. 1. 32 MRSA §10302, sub-§1, ¶B, as enacted
23 by PL 1985, c. 400, §2, is amended to read:

24 B. A broker-dealer who is registered as a bro-
25 ker-dealer under the United States Securities Ex-
26 change Act of 1934 and licensed under the securi-
27 ties act of the state in which the broker-dealer
28 maintains its principal place of business and has
29 no place of business in this State, if the bro-
30 ker-dealer offers and sells in this State to per-
31 sons who are existing customers of the broker-
32 dealer and who represent that they have no prin-
33 cipal place of residence in this State; and

34 Sec. 2. 32 MRSA §10302, sub-§1, ¶C, as enacted
35 by PL 1985, c. 400, §2, is repealed.

1 Sec. 3. 32 MRSA §10305, sub-§3, as enacted by PL
2 1985, c. 400, §2, is repealed.

3 Sec. 4. 32 MRSA §10307, sub-§1, ¶A, as enacted
4 by PL 1985, c. 400, §2, is amended to read:

5 A. An applicant applying for licensing under
6 section 10301 or section 10303;

7 Sec. 5. 32 MRSA §10313, sub-§1, ¶G, as enacted
8 by PL 1985, c. 400, §2, is amended to read:

9 G. Has engaged in any unlawful, unethical or
10 dishonest conduct or practice in the securities,
11 real estate or insurance business or in any other
12 business involving the sale of investments or
13 business opportunities;

14 Sec. 6. 32 MRSA §10403, sub-§2, ¶C, as enacted
15 by PL 1985, c. 400, §2, is amended to read:

16 C. If the superintendent requests, and subject
17 to section 10701, subsection 3 4, ~~paragraph B~~,
18 any other information or copies of other docu-
19 ments, filed under the United States Securities
20 Act of 1933; and

21 Sec. 7. 32 MRSA §10502, sub-§1, ¶A, as enacted
22 by PL 1985, c. 400, §2, is amended to read:

23 A. Any security, including a revenue obligation,
24 issued, insured or guaranteed by the United
25 States, any agency or corporate or other instru-
26 mentality of the United States, any international
27 agency or corporate or other instrumentality cre-
28 ated jointly by the United States and one or more
29 foreign governments, any state, any political
30 subdivision of a state or any agency or corporate
31 or other instrumentality of one or more states or
32 their political subdivisions; or any certificate
33 of deposit for any of the foregoing, but this ex-
34 emption does not include any security payable
35 solely from revenues to be received from a non-
36 governmental industrial or commercial enterprise,

1 unless the payments are guaranteed by a person
2 whose securities are exempt from registration by
3 paragraphs F and H paragraph B, C, D, E or F or
4 by a person with at least one security exempt
5 from registration under paragraph H and the guar-
6 antee is senior to that security;

7 Sec. 8. 32 MRSA §10503, as enacted by PL 1985,
8 c. 400, §2, is amended to read:

9 §10503. Filing of sales and advertising literature

10 The superintendent, by rule or order, may require
11 the filing of any prospectus, pamphlet, circular,
12 form letter, advertisement or other sales literature
13 or advertising communication addressed or intended
14 for distribution to prospective investors, including
15 clients or prospective clients of an investment ad-
16 viser, unless the security or transaction is exempt
17 qualifies for an exemption under section 10502 for
18 which the filing of a notice with the superintendent
19 is not required.

20 Sec. 9. 32 MRSA §10708, sub-§2, as enacted by PL
21 1985, c. 400, §2, is amended to read:

22 2. Notification of parties. Upon entry of a no-
23 tice of intent or summary order, the superintendent
24 shall promptly notify in writing all interested par-
25 ties that the notice or summary order has been en-
26 tered and the reasons for that notice or order. If
27 the proceeding is pursuant to a notice of intent, the
28 superintendent shall notify all interested parties of
29 the date, time and place set for the hearing in the
30 notice, or if no hearing has been scheduled, the su-
31 perintendent shall notify all interested parties that
32 they have 30 calendar days from the entry of the no-
33 notice of intent to file a written request with the su-
34 perintendent for a hearing. If the proceeding is pur-
35 suant to a summary order, the superintendent shall
36 notify all interested parties that they have 30 cal-
37 endar days from the entry of the order to file a
38 written request for a hearing on the matter with the
39 superintendent and that the hearing will be scheduled
40 to commence within 15 calendar days after the receipt
41 of the written request.

1 Notwithstanding anything in this subsection, the su-
2 perintendent may give notice of the entry of the no-
3 tice of intent or summary order to such parties as he
4 may determine to be necessary or appropriate.

5 STATEMENT OF FACT

6 Section 2 of the bill repeals an exemption from
7 broker-dealer licensing for out-of-state broker-deal-
8 ers who do not direct more than 15 offers to sell or
9 purchase to this State within a period of a year. The
10 exemption is extremely ambiguous in that it gives no
11 indication of how many, if any, actual purchases or
12 sales the broker-dealer can make in the State without
13 losing the exempt status. The exemption could make
14 it very difficult to reach certain nonresident indi-
15 viduals selling questionable securities. Assuming
16 that there may be occasional situations in which an
17 out-of-state broker-dealer having only limited con-
18 tacts with the State should be exempt. This can be
19 accomplished through the existing power of the super-
20 intendent to grant exemptions, by rule or order, when
21 the action is consistent with the public interest and
22 the protection of investors.

23 Section 3 repeals the language which provides
24 that the licensing of a broker-dealer automatically
25 constitutes the licensing as a sales representative
26 of any partner, officer, director or person occupying
27 a similar status or performing similar functions.
28 Simply stated, this exemption is so broad that it
29 could potentially swallow the whole licensing scheme.
30 A firm could evade the licensing requirement for any
31 sales representative merely by making that individual
32 a general partner or a vice-president. The Maine Re-
33 vised Statutes, Title 32, section 10305, subsection
34 3, makes it unclear whether the superintendent can
35 deny a license to an officer without denying a li-
36 cense to the entire firm or suspend a license of an
37 officer without suspending the license of the entire
38 firm. It would seem to automatically license a sales
39 representative who becomes an officer even if that
40 individual had previously had his license suspended
41 or revoked in the State.

1 Section 4 makes it clear that the superintendent
2 may require an examination for investment advisers as
3 well as for sales representatives.

4 Section 5 allows the superintendent to deny, sus-
5 pend or revoke a license as a result of misconduct in
6 a business similar to the securities business.

7 Section 6 corrects an erroneous cross reference.

8 Section 7 broadens the exemption from registra-
9 tion for government revenue obligations by making the
10 exemption applicable when the payments are guaranteed
11 by a person whose securities would otherwise be ex-
12 empt from registration. This eliminates what seems to
13 be an anomaly in the securities law.

14 Section 8 extends the superintendent's authority
15 to require the filing of sales literature to
16 offerings, such as private placements, which are ex-
17 empt from registration but for which a filing must be
18 made with the superintendent to qualify for the ex-
19 emption. The primary purpose of the bill is to allow
20 the superintendent to obtain the offering or place-
21 ment memorandum which is prepared to give prospective
22 investors a detailed description of the offering.
23 Without access to this document, it is impossible to
24 conduct even a cursory review of private placements
25 and certain offerings of a similar nature. The bill
26 will not necessitate that a securities issuer prepare
27 any additional documents. It merely enables the su-
28 perintendent to require the filing of copies of a
29 document or documents which already exist.

30 Section 9 eliminates the apparent requirement
31 that, when issuing a notice of intent, the superin-
32 tendent must schedule a hearing even if none of the
33 interested parties desires such a proceeding. The
34 bill allows the superintendent not to schedule a
35 hearing when none is requested.

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