

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## FIRST REGULAR SESSION - 1989

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Legislative Document

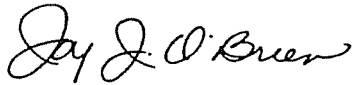
No. 275

S.P. 155

In Senate, February 21, 1989

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 24.

Reference to the Committee on Banking and Insurance suggested and ordered printed.

  
JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator COLLINS of Aroostook.

Cosponsored by Senator BERUBE of Androscoggin, Representative ALLEN of Washington and Representative WEBSTER of Cape Elizabeth.

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STATE OF MAINE

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

---

An Act to Strengthen the Regulation of Insurance.

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

3 **Sec. 1. 24 MRSA §2323**, as repealed and replaced by PL 1979,  
c. 558, §4, is amended to read:

5

7 **§2323. Order**

7

9 The superintendent shall issue his an order or decision  
10 within 30 days after the close of the hearing, or of any  
11 rehearing or reargument or within such other reasonable period as  
12 the superintendent for good cause may require. In his the order  
13 or decision, the superintendent shall either approve or  
14 disapprove the rate filing. If he the superintendent disapproves  
15 the rate filing, the superintendent shall establish the date on  
16 which the filing is no longer effective, specify the filing he  
17 the superintendent would approve and authorize the organization  
to submit a new filing in accordance with the terms of his the  
order or decision.

19

21 **Sec. 2. 24-A MRSA §12**, as repealed and replaced by PL 1969,  
c. 177, §1-A, is repealed.

23

**Sec. 3. 24-A MRSA §12-A** is enacted to read:

25

**§12-A. Civil penalty and enforcement provisions**

27

**1. Civil penalty.** Civil penalties may be assessed against  
any person who:

29

31 **A. Violates any provision of this Title, Title 24 or any**  
**other statute enforced by the superintendent for which a**  
**different civil penalty is not provided;**

33

35 **B. Violates any rule lawfully adopted by the**  
**superintendent; or**

37

39 **C. Violates any lawful order of the superintendent which**  
**has not been stayed by order of the superintendent or the**  
**Superior Court.**

41

43 **The superintendent may assess a civil forfeiture of up to \$500 in**  
**the case of an individual, and a civil penalty of up to \$2,000 in**  
45 **the case of a corporation or entity other than an individual,**  
**following an adjudicatory hearing. The Superior Court may assess**  
**a civil penalty of not less than \$500 and not more than \$5,000**  
47 **for each violation in the case of an individual, and not less**  
**than \$2,000 and not more than \$15,000 in the case of a**  
**corporation or other entity.**

49

51 **2. Cease and desist orders.** The superintendent may issue a  
**cease and desist order following an adjudicatory hearing held in**  
**conformance with Title 5, chapter 375, subchapter IV, if the**

1 superintendent finds that any person has engaged in or is  
3 engaging in any act or practice in violation of any law  
5 administered or enforced by the superintendent, any rules  
7 promulgated under that law or any lawful order of the  
9 superintendent.

11 A. A cease and desist order shall be effective upon  
13 expiration of the time allowed for appeals from the  
15 superintendent's orders, regardless of whether an appeal is  
17 taken, unless stayed pursuant to Title 5, section 11004.

19 B. In the event an appeal is taken, the court shall issue  
21 its own order for compliance to the extent that the  
23 superintendent's order is affirmed.

25 C. Violation of any cease and desist order shall be  
27 punishable as a violation of this Title in accordance with  
29 this section.

31 3. Reprimand or censure. The superintendent may issue a  
33 letter of reprimand or censure to any licensee, but only after  
35 opportunity for hearing has been provided to any and all persons  
37 who are subjects of the reprimand.

39 4. Refunds of overcharges. In the event that any insurer,  
41 nonprofit hospital service plan, nonprofit medical service plan,  
43 nonprofit health care plan, health maintenance organization or  
45 preferred provider organization makes charges to any person which  
47 are not in conformity with a filing which it is required to  
49 submit for approval or disapproval by this Title or Title 24, the  
51 superintendent may order that refunds of any overcharges be made.

5. Election of enforcement options. The superintendent may  
elect to utilize any or all of the enforcement options provided  
by this section, in combination or in sequence, as the  
superintendent deems appropriate. The penalties and provisions  
of this section are in addition to any other penalty provided by  
law.

Sec. 4. 24-A MRSA §212, as amended by PL 1977, c. 694, §386,  
is further amended to read:

§212. Rules and regulations

Subject to the applicable requirements and procedures of the  
Maine Administrative Procedure Act, Title 5, chapter 375,  
subchapter II, the superintendent may make, promulgate, amend and  
rescind reasonable rules and regulations to aid the  
administration or effectuation of any provisions of this Title or  
of any other statute administered or enforced by the  
superintendent. ~~No such rule or regulation shall extend, modify~~  
~~or conflict with any law of this State or the reasonable~~

1 implications thereof.

3 Sec. 5. 24-A MRSA §216, sub-§2, as amended by PL 1973, c. 585,  
5 §12, is further amended to read:

7 2. All records of the bureau shall be subject to public  
9 inspection, except as otherwise expressly provided by law as to  
11 particular matters; and except that records, correspondence and  
13 reports of investigation in connection with actual or claimed  
15 violations of this Title or prosecution or disciplinary action  
17 therefor shall be confidential. The confidential nature of any  
19 such record, correspondence or report shall not limit or affect  
use of the same by the superintendent in any such prosecution or  
action. This subsection shall not preclude participation by the  
superintendent in the establishment of an interstate complaint  
handling system which may involve the sharing of information with  
insurance regulatory officials in other jurisdictions and with  
the National Association of Insurance Commissioners, provided  
that the names of the complainant and insured remain confidential.

21 Sec. 6. 24-A MRSA §231, as amended by PL 1977, c. 694, §§393  
23 to 395, is further amended to read:

25 **§231. Conduct of hearing**

27 1. The superintendent may hold a hearing in Augusta or any  
29 other place of convenience to parties and witnesses, as the  
31 superintendent determines. The superintendent or his the  
superintendent's designee shall preside at the hearing, and shall  
expedite the hearing and all procedures involved therein.  
Adjudicatory hearings shall be governed by the Maine  
Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

33 ~~2. Any party to the hearing shall have the right to appear  
35 in person and by counsel, to be present during the giving of all  
evidence, to have a reasonable opportunity to inspect all  
37 documentary and other evidence and to examine and cross-examine  
witnesses, to present evidence in support of his interest and to  
39 have subpoenas issued by the superintendent to compel attendance  
of witnesses and production of evidence in his behalf. Testimony  
41 may be taken orally or by deposition, and any party shall have  
such right of introducing evidence by interrogatories or  
43 deposition as may obtain in a Superior Court.~~

45 ~~3. Upon timely application, the superintendent shall permit  
any person showing that he is or may be substantially and  
47 directly affected by the proceeding to intervene as a party. The  
superintendent may, by order, allow any other interested person  
49 to intervene and participate as a full or limited party to the  
proceeding.~~

51 ~~4. Formal rules of pleading or of evidence need not be~~

1 observed at any hearing. Evidence shall be admitted if it is the  
2 kind of evidence upon which reasonable persons are accustomed to  
3 rely in the conduct of serious affairs. Irrelevant or unduly  
4 repetitious evidence may be excluded.

5  
6 5. The hearing shall be public, unless the superintendent  
7 or hearing officer determines that a private hearing would be in  
8 the public interest, in which case and only with the consent of  
9 all parties to the hearing, the hearing shall be private, subject  
10 to Title 1, section 405, subsection 6.

11  
12 6. ~~All hearings shall be recorded in a form susceptible to  
13 transcription. The recording shall be transcribed when necessary  
14 for the prosecution of an appeal. The Bureau of Insurance shall  
15 make the recordings available for inspection at the bureau's  
16 offices during normal business hours, and shall make copies of  
17 recordings or transcriptions of recordings available to any  
18 person at actual cost.~~

19  
20 7. The validity of any hearing held in accordance with the  
21 notice thereof, or waiver of notice, shall not be affected by the  
22 failure of any person to attend or remain in attendance.

23  
24 **Sec. 7. 24-A MRSA §232, sub-§1**, as amended by PL 1973, c. 585,  
25 §12, is further amended to read:

26  
27 1. As to the subject of any examination, investigation or  
28 hearing being conducted by him the superintendent, the  
29 superintendent may subpoena witnesses and administer oaths or  
30 affirmations and examine any individual under oath, or take  
31 depositions; and by subpoena duces tecum may require the  
32 production of documentary and other evidence. Any delegation by  
33 the superintendent of power of subpoena shall be in writing. The  
34 procedures of Title 5, section 9060, subsection 1, shall also  
35 apply to the issuance of subpoenas.

36  
37 **Sec. 8. 24-A MRSA §234**, as amended by PL 1973, c. 585, §12,  
38 is repealed and the following enacted in its place:

39  
40 **§234. Witnesses; immunity from prosecution**

41  
42 If any individual asks to be excused from testifying or from  
43 producing evidence of any kind in connection with any  
44 examination, hearing or investigation being conducted by the  
45 superintendent on the ground that the testimony or evidence  
46 required of that individual may incriminate the individual or  
47 subject the individual to a penalty or forfeiture and the  
48 Attorney General directs that individual to give testimony or  
49 produce evidence, the individual must comply with the directive.  
50 No testimony or other evidence so compelled, or any information  
51 directly or indirectly derived from that testimony or other  
evidence, may be used against the offering individual in any

1 criminal, juvenile or civil violation proceeding, except that the  
2 testimony or other evidence may be used in a prosecution for  
3 perjury, false swearing, contempt or otherwise failing to comply  
4 with the directive to testify or produce evidence, or in a  
5 proceeding in which the individual has waived the immunity or  
6 privilege.

7  
8 **Sec. 9. 24-A MRSA §236, sub-§§3 to 8,** as repealed and replaced  
9 by PL 1977, c. 694, §397, are repealed.

11 **Sec. 10. 24-A MRSA §236, sub-§§9 and 10,** as enacted by PL 1977,  
12 c. 694, §397, are repealed.

13 **Sec. 11. 24-A MRSA §1539, sub-§1,** as amended by PL 1977, c.  
14 694, §407, is further amended to read:

17 1. The Notwithstanding Title 5, chapter 375, subchapter VI,  
18 the superintendent may file--a-complaint-with-the-Administrative  
19 Court--seeking--suspension--or--revocation--of, after notice and  
20 opportunity for hearing, deny, revoke, suspend or limit the  
21 permissible activities under any license issued under this  
22 chapter or any surplus lines broker license if the superintendent  
23 has--reason--to--believe finds that, as to the applicant or  
24 licensee, any of the following causes exist:

25  
26 A. For any cause for which issuance of the license could  
27 have been refused had it then existed and been known to the  
28 superintendent.;

29  
30 B. For violation of or noncompliance with any applicable  
31 provision of this Title, or for willful violation of any  
32 lawful rule, regulation, or order of the superintendent.;

33  
34 C. For obtaining or attempting to obtain any such license  
35 through misrepresentation, or for failure to disclose a  
36 material fact required to be disclosed in the application,  
37 or for fraud.;

38  
39 D. For misappropriation or conversion to his the  
40 applicant's or licensee's own use, or illegal withholding,  
41 or illegal failure to remit, moneys belonging to  
42 policyholders, or insurers, or beneficiaries, or others and  
43 received in conduct of business under the license.;

44  
45 E. For material misrepresentation of the terms of any  
46 existing or proposed insurance contract.;

47  
48 F. For willful overinsurance of property located in this  
49 State.;

50  
51 G. For holding at the same time licenses as a resident  
agent or broker in this and any other State, state; or

1  
2 H. If in conduct of his the licensee's affairs under the  
3 license, the licensee has used fraudulent, or coercive, or  
4 dishonest practices, or has been shown himself to be  
5 incompetent, or untrustworthy, or financially irresponsible,  
6 or a source of injury and loss to the public.  
7

8 **Sec. 12. 24-A MRSA §1539, sub-§2,** as repealed and replaced by  
9 PL 1977, c. 694, §408, is amended to read:

10 2. The superintendent may ~~file a complaint with the~~  
11 ~~Administrative Court seeking the suspension or revocation of~~  
12 deny, suspend, revoke or limit the permissible activities under  
13 licenses held or applied for by a firm or corporation for any of  
14 such causes as relate to any individual designated or registered  
15 in the license to exercise its powers.  
16

17 **Sec. 13. 24-A MRSA §1539, sub-§3,** as enacted by PL 1983, c.  
18 419, §9, is amended to read:

19 3. ~~Notwithstanding subsections 1 and 2, the~~ The  
20 superintendent may revoke, suspend or refuse to renew any license  
21 issued under this chapter, pursuant to Title 5, section 10004,  
22 without proceeding in conformity with chapter 3 or Title 5,  
23 chapter 375, subchapter IV or VI, when:  
24

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

34 B. The Maine license has been issued upon the basis of a  
35 reciprocal agreement with another government and the Maine  
36 action is based upon evidence, in the form of a certified  
37 copy, that the authority issuing the license which provided  
38 the basis for reciprocal licensing in this State has revoked  
39 or suspended its license; or  
40

41 C. The health or physical safety of a person or persons is  
42 in immediate jeopardy at the time of the superintendent's  
43 action, and acting in accordance with chapter 3 or Title 5,  
44 chapter 375, subchapter IV or VI, would fail to adequately  
45 respond to a known risk, provided that the revocation,  
46 suspension or refusal to renew shall not continue for more  
47 than 30 days.  
48

49 **Sec. 14. 24-A MRSA §3476, sub-§3,** as amended by PL 1973, c.  
50 585, §12, is further amended to read:



1  
3 3. If the superintendent does not by affirmative action  
5 approve or disapprove the proposed change of control within 30  
7 days after the date such application was so filed with ~~him~~ the  
9 superintendent, the proposed change may be made without such  
11 approval. Except, that if the superintendent gives notice to the  
13 parties of a hearing to be held by ~~him~~ the superintendent with  
15 respect to the proposed change of control, and the hearing is  
17 held within such 30 days or on a date mutually acceptable to the  
19 superintendent and the parties, the superintendent shall have ~~10~~  
21 30 days after the conclusion of the hearing within which to so  
23 approve or disapprove the proposed change; and if not so approved  
25 or disapproved, the change may thereafter be made without the  
27 superintendent's approval.

## 17 STATEMENT OF FACT

19 This bill revises certain procedural and enforcement  
21 provisions of the Maine Insurance Code in order to permit more  
23 effective and efficient regulation. In general, the bill  
25 clarifies inconsistencies and redundancies in certain of the  
27 provisions governing procedures for hearings and investigations  
and modifies the testimonial immunity provision. It also  
provides a range of enforcement options for dealing with  
violations, replacing a general penalty provision which has  
become outdated. A section by section analysis follows.

29 Section 1 conforms the provision for issuance of orders on  
31 rate proceedings held under the Maine Revised Statutes, Title 24,  
33 to the parallel provision of Title 24-A, section 235 by allowing  
extension of the time limits for issuance of a decision in cases  
where rehearing is requested or where other good cause exists.

35 Sections 2 and 3 revise the penalty and enforcement  
37 provisions of the Maine Insurance Code. It eliminates the  
39 general criminal penalties for violations and establishes a  
41 schedule of civil penalties applicable to individuals and  
43 corporations. It authorizes the issuance of cease and desist  
45 orders for violations of law, rule or order of the  
superintendent, the issuance of orders for refunds where charges  
have been made which are in excess of rate filings required by  
law and the issuance of reprimands where appropriate. These  
enforcement provisions are designed to provide more flexibility  
in dealing with violations.

47 Section 4 clarifies the superintendent's general rule-making  
49 authority by referencing its applicability to statutes outside of  
51 the Maine Insurance Code which the superintendent is charged with  
administering. It also eliminates language that reiterates the  
legal standard governing the scope of rulemaking, which has given  
rise to arguments that the superintendent's rule-making authority

1 is less than that of other agency heads.

3 Section 5 of the bill clarifies that the confidential nature  
4 of bureau complaint files does not prohibit the Superintendent of  
5 Insurance from participating in a cooperative, computerized  
6 insurance complaint handling system which is being considered by  
7 several states and the National Association of Insurance  
8 Commissioners.

9  
10 Section 6 cross references the provisions of the Maine  
11 Administrative Procedure Act, Title 5, chapter 375, subchapter  
12 IV, as applicable to adjudicatory proceedings held under the  
13 Maine Insurance Code.

14 Section 6 also repeals procedural provisions which are both  
15 redundant and superseded by the Maine Administrative Procedure  
16 Act, Title 5, chapter 375, subchapter IV. Section 6 cross  
17 references an applicable section of the freedom of access law in  
18 the Maine Insurance Code provision governing private hearings.  
19 Section 6 repeals an additional procedural statute which is  
20 preempted by the Maine Administrative Procedure Act, Title 5,  
21 chapter 375, subchapter IV.

22  
23 Section 7 incorporates the Maine Administrative Procedure  
24 Act procedures in the Maine Insurance Code section governing  
25 issuance of subpoenas.

26  
27 Section 8 replaces the Maine Insurance Code's  
28 "transactional" immunity statute with a general "use" immunity  
29 provision. The Law Court has acknowledged that use immunity does  
30 not violate either the state or federal constitutional protection  
31 against compelled self-incrimination, State v. Hanson, 342 A.2d  
32 300 (Me. 1975). The advantage of use immunity over transactional  
33 immunity is that use immunity immunizes evidence only, where as  
34 transactional immunity immunizes the underlying criminal  
35 conduct. Hence, with use immunity, a witness can be compelled to  
36 testify in exchange for immunity from having the State use that  
37 particular testimony against him in any proceeding, but the  
38 witness can still be prosecuted on independent evidence for the  
39 conduct or transactions described in the testimony. With  
40 transactional immunity, however, the witness cannot even be  
41 prosecuted for any conduct or transactions covered by his  
42 testimony.

43  
44 Sections 9 and 10 repeal provisions governing appeals from  
45 administrative decisions which are virtually verbatim repetitions  
46 of and superseded by the Maine Administrative Procedure Act.

47  
48 Sections 11, 12 and 13 empower the superintendent, after  
49 notice and opportunity for hearing, to deny, revoke or suspend  
50 agent, broker, consultant and adjuster licenses for any reason  
51 for which he could file a complaint in Administrative Court.

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13

Section 14 is a technical change suggested to be necessary by a recent Superior Court decision (Gershuny v. Superintendent of Insurance). Generally, the Maine Insurance Code requires a tender-offeror to submit certain information to the superintendent. Based on that information, the superintendent currently has only 10 days after the conclusion of a hearing to either approve or disapprove the acquisition of a domestic insurer. This limitation of Title 24-A, section 3476, subsection 3, is clearly at odds with the 30-day period noted in Title 24-A, section 222, subsection 7, paragraph A, which also applies to these proceedings. For the sake of consistency, Title 24-A, section 3476, subsection 3, is amended to reflect the relevant authority of Title 24-A, section 222, subsection 7, paragraph A.