

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 795

S.P. 297

In Senate, February 26, 1991

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.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

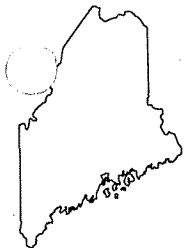
Presented by Senator COLLINS of Aroostook
Cosponsored by Senator THERIAULT of Aroostook, Representative STEVENS of Bangor
and Representative HASTINGS of Fryeburg.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Amend the Revised Maine Securities Act.

Amended 4/18
Signed 5/7



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

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

6 D. A sales representative acting for an issuer effecting
8 transactions with existing employees, partners, officers or
10 directors of the issuer, a parent or wholly owned subsidiary
12 of the issuer, provided that no commissions or other
remuneration are paid or given directly or indirectly to
that person for soliciting any employee, partner, officer or
director in this State; and

14 **Sec. 2.** 32 MRSA §10303, sub-§3 is enacted to read:

16 **3. Employment of unqualified persons.** It is unlawful for
18 an investment adviser licensed under this Act to employ or
contract with an individual as a representative of the investment
adviser in this State unless the individual has satisfied all
20 applicable examination requirements under this Act. For purposes
of this subsection, "representative" means an individual who
22 represents an investment adviser in doing any of the acts that
make that person an investment adviser.

24 **Sec. 3.** 32 MRSA §10307, sub-§1, ¶B, as enacted by PL 1985, c.
26 400, §2, is amended to read:

28 B. Any class of applicants; and

30 **Sec. 4.** 32 MRSA §10307, sub-§1, ¶C, as amended by PL 1989, c.
32 542, §17, is further amended to read:

34 C. Any class of employees of applicants for licensing as to
whom the administrator ~~shall-determine~~ determines that an
36 examination requirement is necessary for the protection of
investors; and

38 **Sec. 5.** 32 MRSA §10307, sub-§1, ¶D is enacted to read:

40 D. Any individual who represents an investment adviser
42 licensed under this Act in doing any of the acts that make
that person an investment adviser.

44 **Sec. 6.** 32 MRSA §10308, sub-§2, as enacted by PL 1985, c. 400,
46 §2, is repealed and the following enacted in its place:

48 2. License effective until end of calendar year. Unless
terminated earlier by revocation, cancellation or withdrawal, the
50 license of a broker-dealer, sales representative or investment
adviser expires at the end of the calendar year. Prior to the
52 end of the calendar year, or at a later date established by the
administrator, the license may be renewed pursuant to procedures

2 established by the administrator. Unless terminated earlier by
4 revocation, cancellation or withdrawal, a renewed license remains
6 in effect until the end of the next calendar year, at which time
8 it may be renewed again pursuant to the procedures established by
10 the administrator.

12 **Sec. 7. 32 MRSA §10313, sub-§2, ¶C,** as amended by PL 1989, c.
14 542, §26, is further amended to read:

16 C. The administrator may not enter an order solely on the
18 basis of lack of experience if the applicant or licensee is
20 qualified by training or knowledge or both. ~~The possession~~
22 ~~of a currently effective license under this Act or the~~
24 ~~compliance with the examination requirements of this Act~~
26 ~~shall establish qualification.~~

28 **Sec. 8. 32 MRSA §10502, sub-§3,** as amended by PL 1989, c. 542,
30 §43, is repealed and the following enacted in its place:

32 **3. Additional exemptions.** The administrator is authorized
34 to adopt rules exempting from section 10401 securities or classes
36 of securities or certain transactions, including by adopting a
38 limited offering exemption, if the administrator finds that the
40 establishment of the exemption is consistent with the public
42 interest and the protection of investors. For purposes of
44 promoting uniformity, the administrator, in adopting, amending
46 and repealing any rules pursuant to this subsection, shall take
48 into consideration any relevant rules promulgated by the United
50 States Securities and Exchange Commission and by administrators
in other jurisdictions. In any rule establishing an exemption
for which a filing is required, the administrator may provide for
a filing fee of \$300.

Sec. 9. 32 MRSA §10602, sub-§3 is enacted to read:

3. Liability of control persons. In a civil action brought
by the Attorney General for a violation of any provision of this
Act or any rule or order adopted or issued by the administrator
pursuant to this Act, every person who directly or indirectly
controls another person liable for the violation, every partner,
officer or director of that other person, every person occupying
a similar status or performing similar functions, every employee
of that other person who materially aids in the act or
transaction constituting the violation and every broker-dealer or
sales representative who materially aids in the act or
transaction constituting the violation is liable to the same
extent as that other person, unless the person otherwise
secondarily liable under this Act proves that the person did not
know, and in the exercise of reasonable care could not have
known, of the existence of the facts by reason of which the
liability is alleged to exist. Any of the remedies authorized by

2 section 10603, subsections 1 and 2 may be granted with respect to
3 a person secondarily liable under this subsection.

4
6 **STATEMENT OF FACT**

8 This bill accomplishes the following.

10 1. The bill extends the sales representative licensing
12 exemption to a person who, acting on behalf of a company, sells
14 securities issued by the company to one of its officers. It
16 corrects what the Bureau of Banking, Securities Division believes
was an inadvertent omission when the Revised Maine Securities Act
was enacted in 1985.

18 2. The bill makes it unlawful for an investment adviser
20 licensed in this State to render advice through employees who
have not satisfied the applicable testing requirements.

22 3. The bill makes explicit the securities administrator's
24 authority to require competency tests for persons giving
26 investment advice, or performing other advisory functions, on
behalf of a licensed investment adviser and clarifies that the
license of an investment adviser may be suspended or revoked for
employing persons who have not taken those tests.

28 4. The bill provides that, unless renewed, securities
30 licenses expire at the end of the calendar year rather than
32 remaining in effect until revoked or cancelled by the State.
34 This change would eliminate serious administrative problems
caused by a conflict between state law and the practices of the
Central Registration Depository, the nationwide computer system
on which all states keep their licensing records.

36 5. The bill clarifies some confusing language with respect
38 to the administrator's authority to create additional exemptions
to the securities registration requirement. It is not intended
40 to make any substantive changes in that authority.

42 6. The bill makes it explicit that in a civil action
44 brought by the Attorney General under the Revised Maine
46 Securities Act, a person in control of a brokerage firm could be
48 liable for the wrongful acts of the firm unless the person proved
50 that the person did not know, and could not reasonably have
52 known, of those acts. This would prevent the owners of a firm
from attempting to evade responsibility and possibly deprive
investors of restitution by simply closing down the firm, a
problem that has occurred in several penny stock enforcement
cases. The same language already exists for actions brought
under the Act by private parties.