

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1247

H.P. 867

House of Representatives, March 21, 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 "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CARLETON of Wells.

Cosponsored by Senator BUSTIN of Kennebec, Representative MITCHELL of Vassalboro and Senator BRAUN of Knox.

STATE OF MAINE

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

An Act to Amend Certain Provisions of the Insurance Code Involving the Powers of the Superintendent.

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

2
4 Sec. 1. 24-A MRSA §12-A, sub-§2, ¶A, as enacted by PL 1989, c.
269, §3, is amended to read:

6 A. A cease and desist order shall ~~be~~ is effective upon
7 ~~expiration--of--the--time--allowed--for--appeals--from--the~~
8 ~~superintendent's orders,--regardless--of--whether--an--appeal--is~~
9 ~~taken when issued,~~ unless the order specifies a later
10 effective date or is stayed pursuant to Title 5, section
11 11004.

12 Sec. 2. 24-A MRSA §12-A, sub-§2-A is enacted to read:

14 2-A. Emergency cease and desist. The superintendent may
15 issue an emergency cease and desist order, without prior notice
16 and hearing, if the complaint shows that a person is engaging in
17 unlicensed insurance activities or is engaging in conduct that
18 creates an immediate danger to the public safety or is causing or
19 is reasonably expected to cause significant, imminent and
20 irreparable public injury.

22 A. A request for an emergency cease and desist order must
23 be in writing in the form of a verified complaint.

24 B. An emergency cease and desist order is effective
25 immediately and will continue in force and effect until
26 further order by the superintendent or unless stayed by the
27 superintendent or by a court of competent jurisdiction.

28 C. Upon issuance of an emergency cease and desist order,
29 the superintendent shall serve on the person affected by the
30 order, by registered or certified mail to the person's last
31 known address, an order that contains a statement of the
32 charges and a notice of hearing. The hearing, held in
33 conformance with Title 5, chapter 375, subchapter IV, must
34 be held within 20 days of the effective date of the
35 emergency order, unless a later time is agreed upon by all
36 parties.

37 D. At the hearing, the superintendent shall affirm, modify
38 or set aside, in whole or in part, the emergency cease and
39 desist order and may combine and employ any other
40 enforcement or penalty provisions available to the
41 superintendent to arrive at a final order.

42 E. The superintendent's order after hearing is a final
43 order in all respects and is subject to subsection 2,
44 paragraph A and section 236.

45 Sec. 3. 24-A MRSA §1540, as repealed and replaced by PL 1977,
46 c. 694, §409, is repealed.

2 **Sec. 4. 24-A MRSA §2013, sub-§1**, as amended by PL 1985, c.
3 564, §3, is further amended to read:

4 1. The Notwithstanding Title 5, chapter 375, subchapter VI,
5 the superintendent may file a complaint with the Administrative
6 Court seeking suspension or revocation of , after notice and
7 opportunity for hearing, deny, revoke, suspend or limit the
8 permissible activities under any surplus lines broker's license:

9
10 A. If the broker fails to file the annual statement or to
11 remit the tax as required by section 2017;

12
13 B. If the broker fails to maintain an office in this State,
14 or to keep the records, or to allow the superintendent to
15 examine his those records as required by this law, or if he
16 the broker removes his those records from the State;

17
18 C. If the broker places a surplus lines coverage in an
19 insurer other than as authorized under section 2007;

20
21 D. For any other applicable cause for which a general lines
22 agent's license may be suspended or revoked; or

23
24 E. If the broker assists any person or persons not licensed
25 as surplus lines brokers by serving as a reporting broker
26 for purposes of section 2005, 2015, 2016 or 2017 with
27 respect to insurance coverage not procured by the broker.

28
29 **Sec. 5. 24-A MRSA §2018**, as amended by PL 1979, c. 541, Pt.
30 A, §162, is further amended to read:

31
32 **§2018. Failure to file statement or remit tax; penalty**

33
34 If any broker fails to file his an annual statement, or
35 fails to remit the tax provided by section 2017, prior to the
36 first day of March after the tax is due, ~~and--if--in--the~~
37 ~~superintendent's opinion such failure is without just cause, he~~
38 ~~shall be liable for a fine of~~ the superintendent may, following
39 an adjudicatory hearing, assess a penalty of not less than \$25
40 for each day of delinquency commencing with the first day of
41 March. ~~The tax may be collected by distraint, or the tax and fine~~
42 ~~may be recovered by an action instituted by the superintendent in~~
43 ~~any court of competent jurisdiction.~~ Any fine collected by the
44 superintendent shall must be paid to the Treasurer of State and
45 credited to the Insurance Regulatory Fund.

46
47 **Sec. 6. 24-A MRSA §2101, sub-§3** is enacted to read:

48
49 3. If the superintendent has reason to believe that any
50 insurer or other person is acting in violation of this section or
51 section 404, then the superintendent shall order that person to
52

2 show cause why a cease and desist order should not be issued and
3 shall commence proceedings in accordance with sections 12-A and
4 404. Section 2105 applies to all process, notices and statements
5 of charges to be served on the unauthorized insurer or insurers.

6 Sec. 7. 24-A MRS §2109, as amended by PL 1979, c. 541, Pt.
7 A, §163, is repealed.

8 Sec. 8. 24-A MRS §2110, as amended by PL 1973, c. 585, §12,
9 is repealed.

10 Sec. 9. 24-A MRS §2111, as amended by PL 1977, c. 694, §413,
11 is repealed.

12 Sec. 10. 24-A MRS §2165, as amended by PL 1985, c. 648, §§6
13 and 7, is repealed.

14 Sec. 11. 24-A MRS §2165-A is enacted to read:

15 §2165-A. Cease and desist orders; actions against unenumerated
16 unfair and deceptive practices

17 1. Unfair practices. If the superintendent has reason to
18 believe that any person is engaging in any unfair method of
19 competition or other unfair or deceptive act or practice in
20 connection with the business of insurance in this State, or that
21 any resident of this State is engaging in an unfair or deceptive
22 insurance act or practice in another jurisdiction, the
23 superintendent shall order that person to show cause why a cease
24 and desist order should not be issued, and shall commence
25 further proceedings in accordance with section 12-A.

26 2. Unenumerated unfair practices. If the cited acts are
27 not expressly prohibited by laws enforced by the superintendent,
28 by rule adopted pursuant to this Title or by a lawful order of
29 the superintendent, the notice of hearing must describe in detail
30 the cited acts and the reasons those acts are believed to be
31 unfair or deceptive. The civil penalties set forth in section
32 12-A, subsection 1 may not be imposed for any such unenumerated
33 act or practice if committed before the issuance and service of a
34 valid cease and desist order.

35 Sec. 12. 24-A MRS §2166, as amended by PL 1985, c. 648, §8,
36 is repealed.

37 Sec. 13. 24-A MRS §2167, as amended by PL 1973, c. 585, §12,
38 is repealed and the following enacted in its place:

39 §2167. Service upon unauthorized insurers

40 Provisions of this chapter applicable to insurers apply
41 fully to unauthorized insurers. If an action under this chapter
42

2 is brought against an unauthorized insurer, section 2105 applies
3 to all process, notices and statements of charges.

4 Sec. 14. 24-A MRSA §2167-A is enacted to read:

6 §2167-A. Notice to domiciliary supervisory official

8 Whenever the superintendent has reason to believe that a
9 foreign or alien insurer or licensed insurance professional is
10 acting in violation of this chapter or chapter 21, the
11 superintendent shall notify the insurance supervisory official of
12 that person's domiciliary jurisdiction.

14

15 STATEMENT OF FACT

16

17 Currently, the Maine Insurance Code does not provide a
18 procedure to protect consumers in emergency situations when
19 injury is likely to result or when persons are engaging in
20 unlicensed insurance activity. The Maine Revised Statutes, Title
21 24-A, section 12-A, subsection 2 requires that insurers and
22 agents be given the opportunity for a hearing prior to issuance
23 of a cease and desist order. This bill amends the law to allow
24 the Superintendent of Insurance to issue preliminary cease and
25 desist orders ex parte, upon a showing by the complaining party
26 that a person is engaging in unlicensed practices or is engaging
27 in activity that is likely to cause public injury, with provision
28 for immediate review at a hearing. The bill also makes cease and
29 desist orders effective when issued, unless the superintendent or
30 the court finds cause to delay the effective date, such as when
31 the validity of the order depends on an unsettled question of law
32 and an appeal is pending.

34 Title 24-A, section 1539 now gives the Superintendent of
35 Insurance, rather than the Administrative Court, initial
36 jurisdiction in actions for license suspension. When Title 24-A,
37 section 1539 was amended in 1989, however, Title 24-A, section
38 1540, which provides that the effective date and duration of a
39 license suspension are set by the Administrative Court, was
40 inadvertently left in place. Thus, a law change that was
41 intended to streamline the disciplinary process instead seemingly
42 ordered a bifurcated hearing in 2 different forums in all license
43 suspension actions. This bill makes these other archaic and
44 inconsistent sections consistent with other enforcement
45 provisions of the code and clarifies certain ambiguous language.
46 In addition, the Unauthorized Insurers False Advertising Act,
47 which duplicates a parallel provision in the unfair and deceptive
48 practice laws, is replaced by a provision clarifying the general
49 applicability of the unfair and deceptive practice laws to
50 unauthorized as well as authorized insurers.