

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1075

S.P. 361

In Senate, March 30, 1993

An Act to Clarify Ambiguous Language and Correct Errors in Licensing Procedures and Requirements for Licensees Regulated by the Superintendent of Insurance.

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 HARRIMAN of Cumberland.
Cosponsored by Senator: BALDACCI of Penobscot, Representative: JOSEPH of Waterville.

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

2
3 Sec. 1. 24-A MRSA §601, sub-§9, as amended by PL 1991, c. 334,
4 §5, is repealed.

6 Sec. 2. 24-A MRSA §601, sub-§9-A is enacted to read:

8 9-A. Application. Application for license fees are:

10 A. Application filing fee, other than
11 consultants \$15; and

12 B. Consultant application filing fee \$25.

14
15 Sec. 3. 24-A MRSA §601, sub-§11, as amended by PL 1991, c.
16 334, §5, is further amended to read:

18 11. Rating organizations and advisory organizations.
19 Rating organizations and advisory organizations fees are:

20 License fee \$100 \$200; and

22 Biennial continuation of license \$200.

24
25 Sec. 4. 24-A MRSA §601, sub-§22 is enacted to read:

26
27 22. Managing general agents. Managing general agents fees
28 are:

30 A. Original registration fee \$100; and

32 B. Annual continuation of registration fee \$100.

34 Sec. 5. 24-A MRSA §1512, sub-§3, as enacted by PL 1969, c.
35 132, §1, is amended to read:

36
37 3. Except as provided in section 1677-~~(excess or rejected~~
38 ~~risks)~~ 1615, no an agent shall may not place any insurance with
40 any an insurer as to for which he the agent does not then hold a
license and appointment as agent under this Title.

42 Sec. 6. 24-A MRSA §1518, sub-§1, as amended by PL 1973, c.
43 585, §12, is further amended to read:

44
45 1. Written application for an agent, broker, consultant or
46 adjuster license shall must be made to the superintendent by the
47 applicant, and accompanied by the applicable license application
48 and--examination--application fees shown in section 601 (fee
50 schedule), the cost of examination, if applicable, referred to in
section 1520 and the investigation cost, if applicable, referred

2 to in section 1519. The application fee is earned when paid and
3 is not subject to refund. The application shall ~~must~~ be signed
4 and duly sworn to by the applicant. An individual who applies
5 for more than one category of license, as defined in section
6 1528, shall pay a separate application fee for each license
7 requested.

8 **Sec. 7. 24-A MRSA §1520, sub-§4,** as enacted by PL 1969, c.
9 132, §1, is amended to read:

10
11 4. An applicant for license as both a life agent or broker
12 and a general lines agent or broker shall ~~must~~ be separately
13 examined ~~as--to~~ for life insurance and ~~as--to--such~~ for general
14 lines, and shall pay a separate examination ~~applicatien~~ fee ~~as--to~~
15 for each of ~~such~~ the 2 examinations.

16
17 **Sec. 8. 24-A MRSA §1520, sub-§6,** as amended by PL 1973, c.
18 585, §12, is repealed.

19
20 **Sec. 9. 24-A MRSA §1533, sub-§1,** as amended by PL 1973, c.
21 585, §12, is further amended to read:

22
23 1. Each insurer appointing an agent in this State shall
24 file with the superintendent the appointment in writing,
25 specifying the kinds of insurance or annuity business to be
26 transacted by the agent for the insurer, and pay the appointment
27 fee, at the rate specified in section 601 (~~fee--schedule~~). The
28 insurer shall pay the full appointment fee if the agent's
29 appointment precedes the sponsoring insurer's biennial
30 continuation date by a period of more than one year. If the
31 agent's appointment precedes the sponsoring insurer's biennial
32 continuation date by a period less than one year, 1/2 the
33 applicable appointment fee is charged. An agent ~~required~~ who
34 qualifies to take--a be licensed to sell variable annuity
35 ~~examination~~ contracts pursuant to section 1520 shall ~~must~~ be
36 separately appointed as to variable annuities and the insurer
37 shall pay a separate appointment fee ~~therefor~~ for the appointment.

38
39 **Sec. 10. 24-A MRSA §1533, last ¶,** as enacted by PL 1975, c.
40 767, §18, is repealed.

41
42 **Sec. 11. 24-A MRSA §1534, sub-§2,** as repealed and replaced by
43 PL 1975, c. 767, §19, is amended to read:

44
45 2. The superintendent shall notify every insurer of the
46 expiration date of ~~its~~ the insurer's agents' appointments and the
47 fees that are required for continuation of an agent's appointment
48 for a 2-year period. The notice shall ~~shall~~ must be mailed to the
49 insurer at least 30 days in advance of the expiration date of ~~its~~
50 the insurer's agents' appointments. At least 15 days before ~~such~~

2 the expiration date, the insurer shall file with the
superintendent an alphabetical list of the names and addresses of
4 all ~~its~~ the insurer's agents in this State whose appointments are
to remain in effect ~~as to~~ for the kinds of insurance or annuity
6 business for which the respective agents are ~~se~~ appointed,
accompanied by payment of the biennial continuation of
8 appointment fee, as specified in section 601, ~~fee-schedule~~. Fees
submitted with the alphabetical list are earned when paid and are
10 not subject to refund. If an insurer's continuation of
appointment is not accompanied by payment of the required fee,
12 the appointment is considered expired at midnight on the
insurer's biennial continuation date. At the same time, the
insurer shall also file with the superintendent an alphabetical
14 list of the names and addresses of all ~~its~~ the insurer's agents
whose appointments in this State are not to remain in effect. An
16 appointment not so continued and not otherwise expressly
terminated ~~shall be deemed to have~~ is considered expired at
18 midnight on the insurer's biennial continuation date.

20 **Sec. 12. 24-A MRSA §1535, sub-§1,** as repealed and replaced by
PL 1991, c. 112, §1, is amended to read:

22 1. Subject to the general lines agent's contract
24 obligations and rights, if any, an insurer or agent may terminate
an agency appointment at any time. If the appointment is by
26 written agreement and the insurer intends to terminate the
written agreement with the agent or modify the agreement to
28 delete that agent's authority to represent the insurer for any
line of business, the insurer shall provide 90 days advance
30 written notice of the termination or modification to the agent.
A notice is not required when:

32 A. The agent is subject to suspension or revocation of
34 license under section 1539;

36 B. The agency fails to pay money due the company;

38 C. There is a sale or a merging of the agency;

40 D. There is an insolvency or bankruptcy of the agency;

42 E. The agent holds a limited license under section 1531,
subsection 1; or

44 F. The agent is an employee of an insurer or the agent by
46 contractual agreement represents only one insurer or group
of affiliated insurers, if the property rights in the
48 renewal are owned by the insurer or group of affiliated
insurers. Cancellation or termination of the agent's

2 contract under this paragraph may not result in the
cancellation or nonrenewal of the policies.

4 ~~The list of appointments not being continued under section 1534~~
5 ~~constitutes notice to the superintendent of the terminations~~
6 ~~listed. The superintendent may require of the insurer reasonable~~
7 ~~proof that the insurer has given notice to the agent.~~

8
9 **Sec. 13. 24-A MRSA §1535, sub-§2,** as amended by PL 1973, c.
10 585, §12, is further amended to read:

12 2. Notice of cancellation of an agent's appointment must be
13 given to the superintendent in writing at the same time notice is
14 given to the agent. The list of appointments not being continued
15 under section 1534 constitutes notice to the superintendent of an
16 agent's termination only if the termination takes effect on the
17 agent's renewal date. The superintendent may require of the
18 insurer reasonable proof that the insurer has given notice to the
19 agent pursuant to this section. Accompanying the notice of
20 termination given the superintendent, the insurer shall file with
21 him the superintendent a statement of the cause, if any, for
22 termination. Any information, document, record or statement so
23 disclosed or furnished to the superintendent shall be deemed is
24 considered an absolutely privileged communication and shall is
25 not be admissible as evidence in any action or proceeding.

26
27 **Sec. 14. 24-A MRSA §§1544 to 1548** are enacted to read:

28 **§1544. Change of address**

29
30 Every licensed agent, broker, adjuster, consultant and
31 organization shall promptly notify the superintendent in writing
32 of every change of principal place of business or change of
33 residence.

34
35 **§1545. Authority of agent; limitation as to surety bonds**

36
37 1. A licensed agent resident in this State of an authorized
38 insurer may:

39
40 A. Solicit, sell and make binding insurance contracts
41 throughout this State within the authority granted the agent
42 by the insurer and the scope of the agent's license; and

43
44 B. Adjust the losses of the insurer within the authority
45 granted the agent by the insurer.

46
47 2. An agent who is also a judge of probate, register of
48 probate or an employee in the office of either may not write
49 surety bonds or share in the commissions on surety bonds.
50

2 3. A licensed resident or a nonresident agent may not place
3 or seek to place insurance coverage, other than in an authorized
4 insurer, except as provided in chapter 19. An agent may place or
5 seek to place insurance coverage, other than with an insurer for
6 which the agent holds an appointment or in accordance with
7 chapter 19, to the extent permitted by section 1615.

8
9 **§1546. Broker's authority; commissions**

10 1. A person licensed as a resident or nonresident broker
11 may negotiate insurance contracts within the scope of that
12 person's license and related to risks resident, located or to be
13 performed in this State, with any authorized insurer. A broker
14 may seek the placement of coverage with other than an authorized
15 insurer only through a licensed surplus lines broker as provided
16 for in chapter 19.

17 2. A broker as such is not an agent or other representative
18 of an insurer and does not have power by the broker's own acts to
19 obligate the insurer upon any risk or with reference to any
20 insurance transaction.

21 3. An insurer or agent has the right to pay to a broker
22 licensed under this chapter the customary commissions upon
23 insurance placed through the broker.

24
25 **§1547. Place of business**

26 Every resident agent and broker shall have and maintain in
27 this State a place of business accessible to the public where the
28 licensee principally conducts transactions under the license.
29 Nothing in this section prohibits maintenance of such a place in
30 the licensee's residence in this State.

31 **§1548. Records**

32 1. The agent or broker shall keep at the agent's or
33 broker's place of business complete records of transactions under
34 the license. The records must show, as to each insurance policy
35 or contract placed through or sold by the licensee, not less than:

36 A. The names of the insurer and insured;

37 B. The number and expiration date of the policy or contract;

38 C. The premium payable as to the policy or contract;

39 D. The date, time, insurer, insured and coverage of every
40 binder made by the agent; and

2 E. Such other information as the superintendent may
4 reasonably require.

6 2. The records must be kept available for inspection by the
8 superintendent for a period of at least 3 years after completion
10 of the respective transactions.

12 **Sec. 15. 24-A MRSA §1605**, as amended by PL 1985, c. 564, §1,
14 is repealed.

16 **Sec. 16. 24-A MRSA §1607**, as amended by PL 1985, c. 564, §2,
18 is repealed.

20 **Sec. 17. 24-A MRSA §§1609 and 1610**, as amended by PL 1973, c.
22 585, §12, are repealed.

24 **Sec. 18. 24-A MRSA §§1671 and 1672**, as enacted by PL 1969, c.
26 132, §1, are amended to read:

28 **§1671. Short title**

30 This subchapter may be ~~referred to~~ known and cited as the
32 "Life and Health Agent and Broker Law."

34 **§1672. Applicability of Life and Health Agent and Broker Law**

36 1. This subchapter applies only as to:

38 A. Life agents as defined in section 1504.;

40 B. Life brokers as defined in section 1506.;

42 C. Health agents as defined in section 1505.

44 2. As used in this subchapter, "agent" means life or health
46 agent, and "broker" means life broker.

48 **Sec. 19. 24-A MRSA §1673**, as amended by PL 1973, c. 585, §12,
50 is further amended to read:

§1673. Qualifications for life agent, health agent and life
 broker licenses

 For the protection of the people of this State, the
superintendent shall may not issue, continue or permit to exist
any agent or broker license except in compliance with this
chapter, or as to any individual unless qualified ~~therefor~~ for
the license as follows.:

1. **Age.** Must The individual must be 18 years or more of age or older.

2. **Residence.** If the individual is to be licensed as a resident agent or resident broker, the individual must be a resident of this State or have his the individual's principal place of business located in this State and may not be licensed as a resident agent or resident broker of another state.

3. **Competence.** Must The individual must be competent, trustworthy, financially responsible, and of good personal and business reputation.

4. **Examination.** Must The individual must have passed any written examination required for the license under this chapter.

5. **Purpose.** Must The individual may not seek or use the license for the purpose of writing controlled business, as referred to in section 1514.

6. **Appointment.** If for an agent's license, the individual must have been appointed an agent by an authorized insurer as to for the kinds of insurance to be covered by the license, subject to issuance of the license.

7. **Experience.** If for a broker's license, the individual must have had experience as a life agent or broker, or managing general agent, or other special experience, education or training in the life insurance business, all of sufficient content and duration as deemed determined by the superintendent reasonably necessary for competence in fulfilling the responsibilities of a broker.

Sec. 20. 24-A MRSA §1675, sub-§1, as enacted by PL 1969, c. 132, §1, is amended to read:

1. Section 1606 (broker's bond); and

Sec. 21. 24-A MRSA §1675, sub-§2, as enacted by PL 1969, c. 132, §1, is repealed.

Sec. 22. 24-A MRSA §1676, as enacted by PL 1969, c. 132, §1, is amended to read:

§1676. Commissions: life agents, life brokers and health agents

1. No An insurer, life agent or broker shall or health agent may not pay directly or indirectly any commission, brokerage or other valuable consideration to any person for services as a life agent or life broker within or health agent

2 in this State, unless such the person held at the time such the
4 services were performed a valid license to act as a life agent
6 or, life broker or health agent as required by the laws of this
8 State and, if an agent, was duly appointed as an agent of the
10 insurer as provided in section 1533; nor shall may any person,
12 other than a person duly licensed as a life agent or, life broker
14 or health agent by this State at the time such the services were
16 performed, accept any such commission, brokerage or other
18 valuable consideration. This provision does not apply to
20 business placed pursuant to section 1677-A.

22 2. This section shall does not prevent payment or receipt
24 of renewal or other deferred commissions to or by any person
26 entitled thereto to the commission under subsection 1, even
28 though at the time of such the payment or receipt such the person
30 had ceased to hold a license as life agent or, life broker or
32 health agent.

34 **Sec. 23. 24-A MRSA §1677,** as enacted by PL 1969, c. 132, §1,
36 is repealed.

38 **Sec. 24. 24-A MRSA §1677-A** is enacted to read:

40 **§1677-A. Shared commissions**

42 Section 1615 applies to life agents, life brokers and health
44 agents.

46 **Sec. 25. 24-A MRSA §1678,** as enacted by PL 1969, c. 132, §1,
48 is amended to read:

50 **§1678. Fiduciary responsibility: life agents, life brokers and**
52 **health agents**

54 Section 1613 shall likewise apply as applies to life agents
56 and, life brokers and health agents.

58 **Sec. 26. 24-A MRSA §1680,** as amended by PL 1989, c. 168, §25,
60 is further amended to read:

62 **§1680. Nonresident life agents, health agents and life brokers;**
64 **service of process**

66 1. An individual not resident in this State may be licensed
68 as a life agent, health agent or life broker if the state or
70 Canadian province of his the individual's domicile will accord
72 accords the same privilege to a resident of this State.

74 2. The superintendent is authorized to enter into
76 reciprocal agreements with the appropriate official of any other

2 state or Canadian province waiving the written examination of an
applicant resident in such that other state or province, if:

4 A. A written examination is required of applicants for a
life agent's, health agent's or life broker's license in
6 such that other state or province;

8 B. The appropriate official of such that other state or
province certifies that the applicant holds a currently
10 valid license as a life agent, health agent or life broker,
as the case may be, in such that other state or province and
12 either passed such the written examination or was the holder
of such a license prior to the time such the written
14 examination was required;

16 C. The applicant has no place of business ~~within~~ in this
State, and is not an officer, director, stockholder or
18 partner in any corporation or firm doing business in this
State as a life or health insurance agency or broker; and
20

22 D. In such that other state or province, a resident of this
State is privileged to procure a life agent's, health
agent's or life broker's license, as the case may be, upon
24 the foregoing conditions and without discrimination as to
fees or otherwise in favor of the residents of such that
26 other state or province.

28 3. Section 1617 (service of process) ~~shall also apply as~~
applies to nonresidents licensed under this section.
30

32 4. Any nonresident agent or broker licensed under this
section who becomes a resident and applies for licensing status
as a resident is subject to the State-specific state-specific
34 portion of the license examination.

36 **Sec. 27. 24-A MRSA §1681**, as amended by PL 1973, c. 585, §12,
is repealed.
38

40 **Sec. 28. 24-A MRSA §1853, sub-§4**, as amended by PL 1973, c.
625, §140, is further amended to read:

42 4. Must have had ~~at least 2 years' experience, been~~
employed as an adjuster trainee as defined in section 1509-A for
44 a period of no less than one year or must have had special
training ~~with respect to~~ in handling of loss claims under
46 insurance contracts, ~~of sufficient duration and scope reasonably~~
~~to make him competent to fulfill the responsibilities of an~~
48 ~~adjuster, or, in lieu of such experience or training, is to be~~
~~employed by and subject to the immediate personal supervision of~~
50 ~~a licensed adjuster in this State who has been so established in~~

business--for--not--less--than--3--years--next--preceding--date--of
2 application--for--the--license. Special training means successfully
3 completing courses of instruction that may be reasonably required
4 and approved by the superintendent. Courses of instruction may
5 be completed successfully by attendance at an educational
6 institution or by correspondence with or under the supervision
7 and direction of an educational institution or insurer. This
8 subsection shall does not apply as to persons holding subsisting
9 licenses as adjuster in this State immediately prior to January
10 1, 1970+; and

12 **Sec. 29. 24-A MRSA §1883, sub-§5**, as enacted by PL 1991, c.
13 828, §23, is amended to read:

14 **5. Application.** Each managing general agent shall file
15 with the superintendent an application for registration as a
16 managing general agent, accompanied by the applicable
17 registration fee shown in section 601.

20 A. The superintendent shall prescribe, consistent with the
21 applicable requirements of this subchapter, and furnish
22 forms required under this subchapter in connection with
23 application for and issuance of registration certificates
24 and for notification of termination of contracts pursuant to
25 section 1885.

26 B. The application for registration must include the name
27 and address of the insurer with whom the agent has an
28 appointment pursuant to section 1533 and with whom the agent
29 has a written contract pursuant to section 1884, a statement
30 of the duties that the agent is expected to perform on
31 behalf of the insurer, the lines of insurance for which the
32 agent is to be authorized to act, and any other information
33 the superintendent may request.

36 C. If the superintendent finds that the application is
37 complete, the superintendent shall promptly issue a
38 certificate of registration to the agent; otherwise, the
39 superintendent shall refuse to issue the registration and
40 promptly notify the agent and the insurer of the refusal,
41 stating the grounds for refusal. The agent may request a
42 hearing on the superintendent's denial pursuant to section
43 229.

44 **Sec. 30. 24-A MRSA §6098, sub-§1**, as enacted by PL 1987, c.
45 481, §3, is amended to read:

48 **1. Notice.** A purchasing group which that intends to do
49 business in this State shall, prior to doing business, pay the
50 appropriate fee at the rate specified in section 601 and furnish
notice to the superintendent who shall to:

- 2 A. Identify the state in which the group is domiciled;
- 4 B. Specify the lines and classifications of liability
6 insurance which that the purchasing group intends to
purchase;
- 8 C. Identify the insurance company from which the group
10 intends to purchase its insurance and the domicile of that
company;
- 12 D. Specify the method by which, and the person or persons,
14 if any, through whom insurance will be offered to its
members whose risks are resident or located in this State;
- 16 E. Identify the principal place of business of the group;
18 and
- 20 F. Provide such other information as may be required by the
22 superintendent to verify that the purchasing group is
qualified under section 6093, subsection 11.

24

STATEMENT OF FACT

26

28 Several omissions and inconsistencies related to licensing
30 fees or qualifications for licensure exist and cause confusion in
32 implementing the law. Various sections in the Maine Insurance
34 Code related to licensure of agents, brokers, consultants and
36 adjusters are misplaced and this bill rearranges the language to
38 provide for consistency among categories of licensees and the
40 treatment of those licensees for the purposes of regulation. In
addition, the bill amends the Maine Revised Statutes, Title 24-A,
section 601 to add certain fees for services that are authorized
statutorily but that were inadvertently omitted from the fee
schedule and corrects terminology so that it is consistent with
the underlying statutory authority. Finally, the bill modifies
language to clarify that life agents need not take a variable
annuity examination in addition to a life examination and
clarifies the licensure qualifications for an adjuster.

42