

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1547

H.P. 1100

House of Representatives, May 24, 1995

An Act to Provide Administrative Clarification within the Maine Insurance Code.

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative LUMBRA of Bangor. (GOVERNOR'S BILL)

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

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

6 **§7. "State" defined**

8 When in context signifying other than this State, "state"
10 means any state, district, territory, commonwealth or possession
of the United States of America, ~~and the Panama Canal Zone.~~

12 **Sec. 2. 24-A MRSA §706**, as enacted by PL 1969, c. 132, §1, is
14 amended to read:

16 **§706. "Bonds" defined**

18 ~~Surety insurance~~ The definition of "bonds" includes:

20 1. Fidelity insurance, which is insurance guaranteeing the
fidelity honesty of persons holding positions of public or
private trust;

22 2. ~~Insurance~~ Surety insurance guaranteeing the performance
24 of contracts, other than insurance policies, and guaranteeing and
executing bonds, undertakings and contracts of suretyship; and

26 3. Insurance indemnifying banks, bankers, brokers,
28 financial or moneyed corporations or associations against loss,
resulting from any cause, of bills of exchange, notes, bonds,
30 securities, evidences of debt, deeds, mortgages, warehouse
receipts or other valuable papers, documents, money, precious
32 metals and articles made therefrom, jewelry, watches, gems,
precious and semiprecious stones, including any loss while the
34 same are being transported in armored motor vehicles, or by
messenger, but not including any other risks of transportation or
36 navigation; also insurance against loss or damage to such an
insured's premises or to his furnishings, fixtures, equipment,
38 safes and vaults therein, caused by burglary, robbery, theft,
vandalism or malicious mischief, or any attempt thereat.

40 **Sec. 3. 24-A MRSA §742, sub-§4, ¶B**, as enacted by PL 1991, c.
42 828, §20, is amended to read:

44 B. If the applicant is an individual and if the application
is not submitted simultaneously with an application for an
46 agent or broker license pursuant to chapter 17, the
application must include full answers to questions
48 reasonably necessary to determine the following: the
applicant's identity; age; residence; present occupation and
50 occupations over the 5 years preceding the date of the

2 application; financial responsibility; insurance experience;
and education in insurance and insurance laws of this State
the applicant has had or expects to receive. The
4 ~~application--must--be--accompanied--by--an--imprint--of--the~~
~~applicant's--fingerprints--and--a--recent--photograph--of--the~~
6 ~~applicant.~~ The application must include full answers to
questions necessary to understand the purpose for which the
8 license is to be used, whether the applicant will devote all
or part of the applicant's efforts to transactions under the
10 license and, if part only, how much time the applicant will
devote to transactions and in what other business or
12 businesses the applicant is or will be engaged or employed.
The application must contain any other facts as the
14 superintendent may require relative to the applicant's
qualifications for the license as those qualifications are
16 stated in this subchapter.

18 **Sec. 4. 24-A MRSA §764, sub-§2**, as enacted by PL 1993, c. 603,
is amended to read:

20
22 **2. Payment of premium.** Payment of the next premium to the
assuming company after notice is received is determined to
indicate the policyholder's acceptance of the transfer to the
24 assuming insurer and a novation is determined to have been
effected if the premium notice clearly states that payment of the
26 premium to the assuming insurer constitutes acceptance of the
transfer. The premium notice must also provide a method for the
28 policyholder to pay the premium while reserving the right to
reject the transfer. With respect to a home service business or
30 any other business not using premium notices, the disclosures and
procedural requirements of this subsection are to be set forth in
32 the notice of transfer required by section 763, subsection 1,
paragraph A and in the assumption certificate.

34
36 **Sec. 5. 24-A MRSA §1503, first ¶**, as enacted by PL 1969, c.
132, §1, is amended to read:

38 A general lines agent is any person authorized or appointed
by an insurer to solicit applications for insurance contracts or
40 to negotiate for such contracts in its behalf and, if authorized
~~to do so~~ by the insurer, to effectuate ~~and countersign~~ insurance
42 contracts for one or more kinds of insurance as follows:

44 **Sec. 6. 24-A MRSA §1509-A**, as enacted by PL 1989, c. 168,
§5, is amended to read:

46 **§1509-A. "Adjuster trainee" defined**

48
50 An adjuster trainee is any person with less than ~~2-years~~ one
year total experience handling loss claims under insurance

2 contracts or the workers' compensation laws. An adjuster trainee
3 must be employed by and subject to the immediate personal
4 supervision of an adjuster who is licensed in this State and who
5 has been established in the business of adjusting for 3 years or
6 more. An adjuster trainee is exempt from the licensure
requirement.

8 **Sec. 7. 24-A MRSA §1514-A, sub-§2,** as amended by PL 1993, c.
9 322, §3, is further amended to read:

10 **2. Prohibition on licensing.** A financial institution,
11 financial institution holding company or the subsidiary of either
12 or an officer, employee, agent or representative of a financial
13 institution, financial institution holding company or the
14 subsidiary of either may not be licensed as an insurance agent,
15 broker or consultant in this State or may not act as an insurance
16 agent, broker or consultant in this State. Nothing in this
17 section limits the activity of these organizations with respect
18 to credit life and credit health insurance to the extent
19 authorized by chapter 37, group health insurance to the extent
20 authorized by chapter 35 and group life insurance to the extent
21 authorized by chapter 31. Nothing in this section prohibits a
22 financial institution, credit union, financial institution
23 holding company or a subsidiary or employee of any such entity
24 from selling annuities, arranging for the sale of annuities or
25 sharing commissions in connection with the sale of annuities to
26 the extent authorized by Title 9-B, section 443, subsection 11,
27 provided that such entity has been licensed pursuant to section
28 1531, subsection 1, paragraph F and if that activity includes the
29 sale of variable annuity contracts, the National Association of
30 Securities Dealers registration form has been submitted to the
31 superintendent as required by the provisions of section 1520,
32 subsection 3. ~~In the event that a financial institution, credit
33 union or financial institution holding company or subsidiary of a
34 financial institution, credit union or financial institution
35 holding company contracts for the sale of annuity products
36 through a licensed 3rd party agent who is also licensed to sell
37 other insurance products, if the agent sells any insurance
38 product other than annuities, in each instance the agent shall
39 provide a written disclosure to the party purchasing the
40 insurance product. The disclosure must state that in making the
41 sale the agent is acting as an independently licensed insurance
42 agent and not as an agent of the financial institution, credit
43 union, financial institution holding company or subsidiary of a
44 financial institution, credit union or financial institution
45 holding company.~~

48 **Sec. 8. 24-A MRSA §1517, sub-§2,** as amended by PL 1973, c.
49 585, §12, is repealed.

2 **Sec. 9. 24-A MRSA §1517, sub-§4-A**, as enacted by PL 1979, c.
301, is amended to read:

4 **4-A.** All the licensees shall ~~be~~ are subject to the same
5 restrictions with regard to deceptively similar names as applied
6 to insurers under section 408, sub-~~§-1~~ subsections 1 and 4.

8 **Sec. 10. 24-A MRSA §1517, sub-§6**, as enacted by PL 1993, c.
322, §5, is amended to read:

10 **6.** A financial institution, credit union, financial
11 institution holding company or a subsidiary of any such entity
12 may be licensed as an insurance agent for the limited purpose of
13 selling annuities as provided in section 1531, subsection 1,
14 paragraph F or for the purpose of sharing commissions in the
15 connection with the sale of annuities as provided in this Title.
16 ~~An entity that is authorized to sell annuities or to share in~~
17 ~~commissions from the sale of annuities pursuant to Title 9-B,~~
18 ~~section 443, subsection 11 is not required to comply with the~~
19 ~~requirements of subsection 2.~~

22 **Sec. 11. 24-A MRSA §1519, sub-§2**, as amended by PL 1993, c.
637, §19, is further amended to read:

24 **2.** As to applicants not ~~to~~ licensed under this Title or
25 licensed as insurance agent, broker or adjuster in this State
26 under laws now in force, the superintendent shall secure, as soon
27 as is reasonably possible after filing of the application, a
28 ~~credit or investigation report relative to the applicant from a~~
29 ~~recognized and established independent investigation and~~
30 ~~reporting agency~~ appropriate background information with which to
31 ascertain the applicant's character. ~~The cost, if any, of such~~
32 ~~report, in a reasonable uniform flat amount as from time to time~~
33 ~~fixed by the superintendent, must be paid by or on behalf of the~~
34 ~~applicant, and must be deposited with the superintendent at the~~
35 ~~time of filing the application. The superintendent shall promptly~~
36 ~~deposit the payment with the Treasurer of State to the credit of~~
37 ~~the Insurance Regulatory Fund. The superintendent shall keep~~
38 ~~confidential the contents of any such report and shall destroy~~
39 ~~the report after the application has been approved.~~

42 **Sec. 12. 24-A MRSA §1525, sub-§2**, as amended by PL 1989, c.
168, §13, is further amended to read:

44 **2.** Each board shall ~~consist~~ consists of 5 members, to be
45 appointed by the superintendent for terms of 3 years each, on a
46 staggered term system so as to prevent the terms of more than 2
47 members from expiring in any one year. Except as otherwise
48 provided, no person may be eligible for appointment to such a
49 board unless that person is active on a full-time basis in the
50 general lines insurance business, as to the general ~~lines~~

2 ~~advisory-board~~ General Lines Advisory Board, or in the life or
3 health insurance business, as to the ~~life-advisory-board~~ Life and
4 Health Advisory Board, and is a resident of this State. Except
5 as otherwise provided, no person may be eligible for appointment
6 to the Adjuster License Advisory Board unless active as an
7 adjuster on a full-time basis and a resident of this State. The
8 superintendent so far as practicable shall appoint persons with
9 prior experience in the education and training of agents or
10 prospective agents and, so far as practicable, shall constitute
11 the boards to include at least one licensed agent and one
12 representative of a domestic insurer. No person may be
reappointed to a board for more than one 3-year term.

14 **Sec. 13. 24-A MRSA §1525, sub-§§3 and 4**, as amended by PL 1973,
15 c. 585, §12, are repealed.

16 **Sec. 14. 24-A MRSA §1526, sub-§1**, as amended by PL 1989, c.
17 168, §15, is further amended to read:

20 1. Each respective advisory board shall meet with the
21 superintendent ~~twice-during-each-calendar-year~~ as often as is
22 necessary at times and places to be designated by the
23 superintendent, and on other occasions as its members ~~deem~~
24 consider appropriate. The superintendent shall furnish to each
25 board information, not otherwise designated by law as
26 confidential, as its members may reasonably require with respect
27 to the conduct, scope and results of examinations with which it
28 is concerned.

30 **Sec. 15. 24-A MRSA §1535, sub-§1, ¶A**, as enacted by PL 1991,
31 c. 112, §1, is amended to read:

32 A. The agent is subject to suspension or revocation of
33 license under section 1539, Title 19, section 305,
34 subsections 6 and 7 or Title 36, section 175;

36 **Sec. 16. 24-A MRSA §1606, sub-§1**, as amended by PL 1973, c.
37 585, §12, is further amended to read:

40 1. Every applicant for a broker's license shall file with
41 the superintendent with the application and shall thereafter
42 maintain in force while so licensed, a bond in favor of the State
43 of Maine executed by an authorized surety insurer. The bond
44 shall must be conditioned upon full accounting and due payment to
45 the person entitled thereto, of funds coming into the broker's
46 possession through insurance transactions under the license. The
47 bond may be continuous in form and aggregate liability on the
48 bond shall ~~be~~ is limited to payment of not less than \$2,500
49 \$10,000 per line of authority.

50

2 **Sec. 17. 24-A MRSA §1680, sub-§4**, as amended by PL 1993, c.
221, §26, is further amended to read:

4 **4.** Any nonresident agent or broker licensed under this
6 section, or any other individual currently licensed as a resident
agent or broker in another state, who becomes a resident and
8 applies for licensing status as a resident is subject to the
state-specific portion of the license examination.

10 **Sec. 18. 24-A MRSA §1853, sub-§3**, as amended by PL 1989, c.
12 168, §27, is further amended to read:

14 **3.** Must pass any written examination required for the
license under this chapter, except that with respect to adjusters
16 employed by insurers and persons acting as public adjusters in
this State as of September 1, 1989, this subsection will not
18 apply until July 1, 1991; and

20 **Sec. 19. 24-A MRSA §1853, sub-§4**, as amended by PL 1993, c.
221, §28, is further amended to read:

22 **4.** Must have been employed as an adjuster trainee as
24 defined in section 1509-A for a period of no less than one year
or must have had special training in handling of loss claims
26 under insurance contracts. Special training means successfully
completing courses of instruction that may be reasonably required
28 and approved by the superintendent. Courses of instruction may
be completed successfully by attendance at an educational
30 institution or by correspondence with or under the supervision
and direction of an educational institution or insurer. This
32 subsection does not apply as to persons holding subsisting
licenses as adjuster in this State immediately prior to January
34 1, 1970; and.

36 **Sec. 20. 24-A MRSA §1853, sub-§5**, as amended by PL 1969, c.
177, §28, is repealed.

38 **Sec. 21. 24-A MRSA §1854**, as amended by PL 1993, c. 637, §§31
and 32, is repealed.

40 **Sec. 22. 24-A MRSA §1876**, as enacted by PL 1989, c. 31, §4,
42 is amended to read:

44 **§1876. Continuing Education Advisory Committee**

46 The Continuing Education Advisory Committee is established
and ~~shall consist~~ consists of 6 members to be appointed by the
48 superintendent for terms of 3 years each, on a staggered term
system to prevent the terms of more than 2 members from expiring
50 in any one year. A person may not be reappointed to a board for

2 more than one 3-year term. No person is eligible for appointment
3 to the committee unless that person is an active, full-time
4 insurance agent, broker or consultant. Board members are
5 eligible for reimbursement of expenses consistent with section
6 1526, subsection 6.

7 **Sec. 23. 24-A MRSA §1904, sub-§1,** as amended by PL 1993, c.
8 171, Pt. A, §1, is further amended to read:

10 **1.** Every applicant for an administrator's license shall
11 file with the application, and shall maintain in force while
12 licensed, a fidelity bond, and at the superintendent's
13 discretion, a surety bond, in favor of the Treasurer of State,
14 for the benefit of covered persons or plan sponsors as their
15 interest may appear, executed by a surety company authorized to
16 do business in this State and payable to any party injured under
17 the terms of the bond. The bond must be continuous in form and
18 in one of the following amounts:

20 A. For an administrator that maintains an ATF but does not
21 maintain a CASA, the greater of \$50,000 or 5% of
22 contributions and premiums projected to be received or
23 collected in the ATF for the following plan year from
24 residents of the State, but not to exceed \$1,000,000;

26 B. For an administrator that maintains a CASA but does not
27 maintain an ATF, the greater of \$50,000 or 5% of the claims
28 and claim expenses projected to be held in the CASA for the
29 following year to pay claims and claim expenses for
30 residents of the State, but not to exceed \$1,000,000; or

32 C. For an administrator that maintains an ATF and a CASA,
33 the greater of \$50,000 or 5% of contributions and premiums
34 projected to be received or collected in the ATF for the
35 following plan year from residents of the State plus 5% of
36 the claims and claim expenses projected to be held in the
37 CASA accounts for the following year to pay claims and claim
38 expenses for residents of the State, but not to exceed
39 \$1,000,000.

40 This subsection applies to an administrator who is required to
41 maintain funds in a fiduciary capacity as set forth in section
42 1909.

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

48 A. If the broker fails to ~~file the annual statement or to~~
49 remit the tax as required by section ~~2017~~ 2016;

2 **Sec. 25. 24-A MRSA §2013, sub-§1, ¶E,** as enacted by PL 1985,
 3 c. 564, §3, is amended to read:

4 E. If the broker assists any person or persons not licensed
 5 as surplus lines brokers by serving as a reporting broker
 6 for purposes of section 2005, 2015, or 2016 ~~or~~ 2017 with
 7 respect to insurance coverage not procured by the broker.

8 **Sec. 26. 24-A MRSA §2017,** as repealed and replaced by PL
 9 1991, c. 674, §1, is repealed.

10 **Sec. 27. 24-A MRSA §2020, sub-§1,** as enacted by PL 1993, c.
 11 153, §17, is amended to read:

12 1. Every applicant for a surplus lines broker's license
 13 shall file with the superintendent evidence of a bond in favor of
 14 the State executed by an authorized surety insurer. The bond is
 15 conditioned upon full accounting and due payment to the person
 16 entitled to the bond of funds coming into the surplus lines
 17 broker's possession through insurance transactions under the
 18 license. The bond may be continuous in force and aggregate
 19 liability on the bond is limited to payment of not less than
 20 ~~\$2,500~~ \$50,000.

24
 25
 26 **STATEMENT OF FACT**

27 This bill amends the Maine Insurance Code by doing the
 28 following:

29 1. It eliminates the requirement that licensed surplus
 30 lines brokers file annual reports with the Superintendent of
 31 Insurance. It will leave in the law the requirements for monthly
 32 reporting and quarterly reporting and the requirement for payment
 33 of taxes on a quarterly basis;

34 2. It removes an obsolete reference to the Panama Canal
 35 Zone as a state;

36 3. It proposes a 4-word amendment to the assumption
 37 reinsurance law enacted this year, reflecting a last-minute
 38 change to the NAIC Model Act upon which the State's law was
 39 based. The change is consistent with the current law and simply
 40 accommodates the needs of insurers who do not invoice, instead
 41 collecting premiums through automatic credit card debits; and

42 4. It removes inconsistent language from the Maine
 43 Insurance Code. This language was taken from an early version of
 44 a legislative draft and is not consistent with the final
 45 statutory language.

2 Additionally, this bill amends the regulatory standards
4 contained in the Maine Insurance Code to further streamline
6 current processes to provide better service to the industry and
8 the public. Among the changes are the following:

10 1. It accords to the superintendent authority to require a
12 surety bond of 3rd-party administrators;

14 2. It eliminates fingerprint, photograph and privately
16 contracted background checks from the application process for
18 licensure;

20 3. It eliminates the countersignature requirement for
22 business placed by a holder of a nonresident license;

24 4. It requires prospective applicants for licensure to pass
26 the required examination prior to making application;

28 5. It creates consistency between the General Lines
30 Advisory Board and the Life and Health Advisory Board;

32 6. It exempts experienced agents seeking resident status in
34 this State from the requirement of taking any part of the
licensing examination, except that which is specific to this
State;

 7. It provides for expense reimbursement for members of the
Continuing Education Advisory Committee;

 8. It accords to the superintendent the authority to
require a surety bond of 3rd-party administrators; and

 9. It increases the minimum bond limit required for surplus
lines brokers from \$2,500 to \$50,000.