

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 981

H.P. 717

House of Representatives, February 11, 1997

An Act to Amend the Revised Maine Securities Act.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative O'NEIL of Saco.
Cosponsored by Senator ABROMSON of Cumberland and
Representatives: BRUNO of Raymond, DESMOND of Mapleton, MORGAN of South
Portland.

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

Sec. 1. 32 MRSA §10301, sub-§2, as enacted by PL 1985, c. 400, §2, is amended to read:

2. Employment of unlicensed persons. It is unlawful for any issuer or broker-dealer licensed under this Act to employ or contract with a person as a sales representative ~~within~~ in this State unless the sales representative is licensed or exempt from licensing under this Act.

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

A. A broker-dealer who is registered as a broker-dealer under the United States Securities Exchange Act of 1934, if the transactions effected by the broker-dealer in this State are exclusively with the following:

(1) The issuer of the securities involved in the transactions;

(2) Other broker-dealers licensed or exempt from licensing under this Act, except when the broker-dealer is acting as a clearing broker-dealer for such other broker-dealers; and

(3) Financial and institutional investors acting for themselves or in a fiduciary capacity;

Sec. 3. 32 MRSA §10302, sub-§2, ¶A, as enacted by PL 1985, c. 400, §2, is amended to read:

A. A sales representative acting for a broker-dealer exempt from licensing under section 10302, subsection 1;

Sec. 4. 32 MRSA §10302, sub-§2, ¶A-1 is enacted to read:

A-1. A sales representative acting for a broker-dealer licensed under section 10301, subsection 1, in effecting in this State transactions described in Section 15(h)(2) of the United States Securities Exchange Act of 1934;

Sec. 5. 32 MRSA §10302, sub-§2, ¶E, as amended by PL 1989, c. 542, §10, is further amended to read:

E. Other sales representatives whom the administrator may exclude, by rule or order, as not required to be ~~registered~~ licensed consistent with the public interest and the protection of investors.

2 **Sec. 6. 32 MRSA §10303, sub-§3**, as enacted by PL 1991, c. 82,
§2, is amended to read:

4
6 **3. Employment of unqualified persons by investment advisers**
subject to licensing requirements in this State. It is unlawful
8 for an investment adviser licensed or required to be licensed
10 under this Act to employ or contract with an individual as a
representative of the investment adviser in this State unless the
12 individual has satisfied all applicable examination requirements
under this Act. For purposes of this subsection,
14 "representative" means an individual who represents an investment
adviser in doing any of the acts that make that person an
investment adviser.

16 **Sec. 7. 32 MRSA §10303, sub-§4** is enacted to read:

18 **4. Employment of unqualified persons by investment advisers**
exempt under section 10304, subsection 2-A. It is unlawful for
20 **an investment adviser exempt from licensing under section 10304,**
subsection 2-A, to employ or contract with an individual who has
22 **a place of business in this State as a representative of the**
investment adviser unless the individual has satisfied all
24 **applicable examination requirements under this Act, or unless the**
investment adviser is otherwise exempt from licensing under this
26 **Act. For purposes of this subsection, "representative" means an**
individual who represents an investment adviser in doing any of
28 **the acts that make that person an investment adviser.**

30 **Sec. 8. 32 MRSA §10304, sub-§1**, as enacted by PL 1985, c. 400,
§2, is repealed.

32 **Sec. 9. 32 MRSA §10304, sub-§2**, as enacted by PL 1985, c. 400,
34 §2, is repealed and the following enacted in its place:

36 **2. No place of business in this State.** An investment
38 **adviser who has no place of business in this State and who,**
during the preceding 12-month period, has had fewer than 6
40 **clients who are residents of this State. For purposes of this**
subsection only, "client" does not include other investment
42 **advisers, broker-dealers or financial and institutional**
investors, whether acting for themselves or acting in a fiduciary
capacity;

44 **Sec. 10. 32 MRSA §10304, sub-§2-A** is enacted to read:

46 **2-A. Registered or excluded under federal law.** An
48 **investment adviser who is registered as an investment adviser**
under Section 203 of the United States Investment Advisers Act of
50 **1940 or excluded from the definition of "investment adviser"**

2 under Section 202(a)(11) of the United States Investment Advisers
3 Act of 1940; and

4 **Sec. 11. 32 MRSA §10305-A** is enacted to read:

6 **§10305-A. Notice filing**

8 An investment adviser who is exempt from licensing under
9 section 10304, subsection 2-A shall file with the administrator,
10 for notice purposes only, such documents filed with the United
11 States Securities and Exchange Commission as the administrator
12 may by rule or otherwise require, together with the fee that
13 would otherwise be applicable pursuant to section 10306 if the
14 adviser were not exempt from licensing under section 10304,
15 subsection 2-A, and a consent to service of process pursuant to
16 section 10704. Until October 11, 1999, an investment adviser who
17 fails or refuses to pay the fee required by this section is
18 required to register under section 10303. The requirements of
19 this section do not apply to an adviser who is also exempt under
20 another provision of this Act other than section 10304,
21 subsection 2-A or an adviser whose only clients in this State are
22 other investment advisers, broker-dealers or financial and
23 institutional investors, whether acting for themselves or acting
24 in a fiduciary capacity. Rules adopted under this section are
25 routine technical rules as defined in Title 5, chapter 375,
26 subchapter II-A.

28 **Sec. 12. 32 MRSA §10307, sub-§1, ¶C**, as amended by PL 1991, c.
29 82, §4, is further amended to read:

30 C. Any class of employees of applicants for licensing as to
31 whom the administrator determines that an examination
32 requirement is necessary for the protection of investors; and

34 **Sec. 13. 32 MRSA §10307, sub-§1, ¶D**, as enacted by PL 1991, c.
35 82, §5, is amended to read:

36 D. Any individual who represents an investment adviser
37 licensed under this Act in doing any of the acts that make
38 that person an investment adviser; and

40 **Sec. 14. 32 MRSA §10307, sub-§1, ¶E** is enacted to read:

41 E. Any individual who has a place of business in this State
42 and who represents an investment adviser exempt from
43 licensing under section 10304, subsection 2-A, in doing any
44 of the acts that make that person an investment adviser.

45 **Sec. 15. 32 MRSA §10310, sub-§1, ¶A**, as enacted by PL 1985, c.
46 400, §2, is amended to read:

2 A. Minimum net capital not to exceed the limitations
3 imposed by Section 15 of the United States Securities
4 Exchange Act of 1934; and

6 **Sec. 16. 32 MRSA §10310, sub-§§2, 3, 4 and 6**, as amended by PL
7 1989, c. 542, §22, are further amended to read:

8
9 **2. Investment adviser net worth requirements.** The
10 administrator may, by rule, require a licensed investment
11 ~~adviser, other than an investment adviser registered under the~~
12 ~~United States Investment Advisers Act of 1940,~~ to maintain a
13 minimum net worth, which may vary with type or class of
14 investment adviser, but may not exceed the limitations imposed by
15 Section 222 of the United States Investment Advisers Act of 1940.

16
17 **3. Notification of financial condition.** If a licensed
18 broker-dealer or investment adviser believes, or has reasonable
19 cause to believe, that any requirement imposed under subsection 1
20 or subsection 2 is not being met, it shall promptly notify the
21 administrator of its current financial condition.

22
23 **4. Fidelity bonds.** The administrator may, by rule, require
24 the furnishing of fidelity bonds from broker-dealers or classes
25 of broker-dealers not to exceed the limitations imposed by
26 Section 15 of the United States Securities Exchange Act of 1934.

27
28 **6. Record keeping.** A licensed broker-dealer, sales
29 representative or investment adviser shall make and maintain
30 records as the administrator determines, by rule, are necessary
31 or appropriate, but these record-keeping requirements may not
32 exceed the limitations imposed by Section 15 of the United States
33 Securities Exchange Act of 1934 in the case of a broker-dealer,
34 or Section 222 of the United States Investment Advisers Act of
35 1940 in the case of an investment adviser.

36
37 **A.** Unless the administrator adopts, by rule, a special
38 record-keeping requirement, compliance with the
39 record-keeping requirements of the United States Securities
40 Exchange Act of 1934 in the case of a broker-dealer, or the
41 United States Investment Advisers Act of 1940 in the case of
42 an investment adviser, ~~shall satisfy~~ satisfies the
43 requirement of this subsection.

44
45 **B.** Required records may be maintained in computer or
46 microform format or any other form of data storage, provided
47 that the records are readily accessible to the administrator.

48

2 C. Required records must be preserved for 6 years unless
the administrator, by rule, specifies either a longer or
shorter period for a particular type or class of records.

4
6 **Sec. 17. 32 MRSA §10312, sub-§2**, as amended by PL 1989, c.
542, §24, is further amended to read:

8 **2. Copies of records.** The administrator may copy records
or require a licensee to copy records and provide the copies to
10 the administrator in a manner reasonable under the circumstances
whether in connection with an on-site inspection or otherwise.

12
14 **Sec. 18. 32 MRSA §10314, sub-§1**, as amended by PL 1989, c.
542, §27, is repealed.

16 **Sec. 19. 32 MRSA §10314, sub-§2**, as amended by PL 1989, c.
542, §27, is further amended to read:

18 **2. Investment advisers licensed under this Act.** If
20 permitted Unless prohibited by rule or order of the
administrator, an investment adviser ~~exempt--from--registration~~
22 ~~under--the--United--States--Investment--Advisers--Act--of--1940--but~~
licensed as an investment adviser under this Act, may take or
24 have custody of securities or funds of a client.

26 **Sec. 20. 32 MRSA §10401**, as enacted by PL 1985, c. 400, §2,
is amended to read:

28 **§10401. Registration requirement**

30 A person may not offer or sell any security in this State
32 unless the security is registered under this Act ~~or~~, the security
or transaction is exempt under this Act or the security is a
34 federal covered security.

36 **Sec. 21. 32 MRSA §10501, sub-§2-A** is enacted to read:

38 **2-A. Federal covered security.** "Federal covered security"
means any security described as a covered security in the United
40 States Securities Act of 1933.

42 **Sec. 22. 32 MRSA §10501, sub-§§17 and 18**, as enacted by PL
1985, c. 400, §2, are amended to read:

44 **17. United States Securities Act of 1933, United States**
46 **Securities Exchange Act of 1934, United States Public Utility**
48 **Holding Company Act of 1935, United States Investment Company Act**
of 1940, United States Investment Advisers Act of 1940, United
States Employee Retirement Income Security Act of 1974 and United
50 States Small Business Investment Act of 1958. "United States

2 Securities Act of 1933," "United States Securities Exchange Act
4 of 1934," "United States Public Utility Holding Company Act of
6 1935," "United States Investment Company Act of 1940," "United
8 States Investment Advisers Act of 1940," "United States Employee
Retirement Income Security Act of 1974" and "United States Small
Business Investment Act of 1958" mean the federal laws of those
names, as amended before or after the effective date of this Act.

10 **18. Security.** "Security" means any note; stock; treasury
12 stock; bond; debenture; evidence of indebtedness; certificate of
14 interest or participation in any profit-sharing agreement; any
16 limited partnership interest; collateral - trust certificate;
18 preorganization certificate or subscription; transferable share;
20 investment contract; voting-trust certificate; certificate of
22 deposit for a security; documents of title to and certificates of
24 interest in an oil, gas or other mineral lease or in payments out
26 of production under such lease, right or royalty; ~~documents of~~
28 ~~title to and certificates of interest in the title to or any~~
30 ~~profits or earnings from land or other property situated outside~~
32 ~~of the State;~~ any put, call, straddle or option entered into a
34 national securities exchange relating to foreign currency; any
put, call, straddle or option on any security, certificate of
deposit or group or index of securities, including any interest
therein or based on the value thereof; or, in general, any
interest or instrument commonly known as a "security," or any
certificate of interest or participation in, temporary or interim
certificate for, receipt for, guarantee of, or warrant or right
to subscribe to or purchase, any of the foregoing. "Security"
does not include any insurance or endowment policy or annuity
contract under which an insurance company promises to pay money
either in a lump sum or periodically for life or some other
specified period or any interest in a contributory or
noncontributory pension or welfare plan subject to the United
States Employee Retirement Income Security Act of 1974.

36 **Sec. 23. 32 MRSA §10502, sub-§2,** as amended by PL 1989, c.
38 542, §42, is further amended by amending the first paragraph to
read:

40 **2. Exempt transactions.** The following transactions are
42 exempted from ~~section~~ sections 10401 and ~~10503~~ 10504:

44 **Sec. 24. 32 MRSA §10502, sub-§2, ¶¶L, N and R,** as amended by PL
1989, c. 542, §42, are further amended to read:

46 L. Any transaction pursuant to an offer to existing
48 security holders of the issuer, including persons who at the
50 time of the transaction are holders of convertible
securities, nontransferable warrants or transferable
warrants exercisable within not more than 90 days of their

2 issuance, ~~if no commission or other remuneration, other than~~
3 ~~a standby commission, is paid or given directly or~~
4 ~~indirectly for soliciting any security holder in this State~~
5 ~~and the issuer first files a notice together with a filing~~
6 ~~fee of \$300 specifying the terms of the offer and the~~
7 ~~administrator does not by order disallow the exemption~~
8 ~~within the next 5 full business days; if:~~

10 (1) No commission or other remuneration, other than a
11 standby commission, is paid or given, directly or
12 indirectly, for soliciting any security holder in this
13 State; or

14 (2) Prior to any offer in this State, a notice,
15 specifying the terms of the offer, is filed with the
16 administrator together with the consent to service of
17 process required by section 10704 and a filing fee of
18 \$300 for each security being offered in this State and
19 the administrator does not by order disallow the
20 exemption within the next 5 full business days;

22 N. Any transaction involving the distribution of the
23 securities of an issuer to the security holders of another
24 person in connection with a merger, consolidation, exchange
25 of securities, sale of assets or other reorganization to
26 which the issuer, or its parent or subsidiary and the other
27 person, or its parent or subsidiary, are parties, ~~if:~~

28 ~~(1) The securities to be distributed are registered~~
29 ~~under the United States Securities Act of 1933 prior to~~
30 ~~the consummation of the transaction; or~~

31 ~~(2) If the transaction is exempt from registration~~
32 ~~under the United State Securities Act of 1933, written~~
33 ~~notice of the transaction, together with a copy of all~~
34 ~~materials, if any, by which approval of the transaction~~
35 ~~will be solicited is given to the administrator at~~
36 ~~least 10 days prior to the consummation of the~~
37 ~~transaction and the administrator does not, by order,~~
38 ~~disallow the exemption within the next 10 days on the~~
39 ~~ground that the disallowance is necessary or~~
40 ~~appropriate for the protection of investors;~~

44 R. Any transaction by an issuer not involving any public
45 offering within the meaning of the United States Securities
46 Act of 1933, as amended, Section 4(2) and the rules
47 promulgated under that Act, including, but not limited to,
48 any transaction exempt from registration with the United
49 States Securities and Exchange Commission under the United
50 States Securities and Exchange Commission, Rule 506, or any

2 successor rule adopted under the United States Securities
Act of 1933, as amended, and any transaction constituting a
4 nonpublic offering under rules adopted by the administrator,
if ~~at least 10 days prior to the~~ no later than 15 days after
6 the first sale in this State of a security in reliance on
the exemption from registration provided in this subsection,
8 the issuer shall file with the administrator a ~~notification~~
~~of exemption, upon such form as the administrator may~~
10 prescribe notice on United States Securities and Exchange
Commission Form D, as amended, and the consent to service of
12 process required by section 10704, and pay a filing fee of
\$300 for each security sold in this State.

14 **Sec. 25. 32 MRSA §10502, sub-§6,** as amended by PL 1989, c.
542, §44, is further amended to read:

16 **6. Waiting period.** For purposes of an exemption notice
18 filed under subsection 2, paragraph L, ~~or N or R,~~ or subsection
3, the administrator may, when the administrator determines that
20 good cause exists, provide in writing for a shorter waiting
period than that which is specified in the paragraph.

22 **Sec. 26. 32 MRSA §10503,** as amended by PL 1989, c. 542, §45,
24 is repealed.

26 **Sec. 27. 32 MRSA §§10504 and 10505** are enacted to read:

28 **§10504. Filing of sales and advertising literature**

30 **1. Filing of sales and advertising literature.** The
32 administrator, by rule or otherwise, may require the filing of
any prospectus, pamphlet, circular, form letter, advertisement or
34 other sales literature or advertising communication addressed or
intended for distribution to prospective investors, including
36 clients or prospective clients of an investment adviser, unless
the security or transaction qualifies for an exemption under
38 section 10502 for which the filing of a notice with the
administrator is not required or the security is a federal
covered security.

40 **2. Federal covered securities.** Notwithstanding subsection
42 1, in conjunction with a notice filing for a federal covered
security, the administrator, by rule or otherwise, may require
44 the filing of any document filed with the United States
Securities and Exchange Commission.

46 **3. Rules.** Rules adopted pursuant to this section are
48 routine technical rules as defined in Title 5, chapter 375,
subchapter II-A.

50

2
3 **§10505. Federal covered securities**

4 **1. Federal covered securities under Section 18(b)(2) of the**
5 **United States Securities Act of 1933.** A federal covered security
6 may not be offered or sold in this State in reliance on Section
7 18(b)(2) of the United States Securities Act of 1933 unless there
8 is on file with the administrator a currently effective notice
9 filing and the consent to service of process required by section
10 10704. The notice filing requirements are as follows.

11
12 **A. Prior to the initial offer of a federal covered security**
13 **in this State in reliance on Section 18(b)(2) of the United**
14 **States Securities Act of 1933, a person authorized to**
15 **register the security under the United States Securities Act**
16 **of 1933 must file with the administrator a notice, upon a**
17 **form prescribed by the administrator, and the consent to**
18 **service of process required by section 10704 signed by the**
19 **issuer of the security, and pay a filing fee of \$500. A**
20 **notice filing under this subsection automatically becomes**
21 **effective when the administrator receives the documents and**
22 **fee required by this subsection, unless the administrator**
23 **receives a request to delay effectiveness, and will expire**
24 **one year from its effective date.**

25
26 **B. To maintain a currently effective notice filing under**
27 **this subsection, a person authorized to register the**
28 **security under the United States Securities Act of 1933**
29 **shall file with the administrator, no later than the**
30 **expiration date of the currently effective notice filing, a**
31 **notice, upon a form prescribed by the administrator, and pay**
32 **a filing fee of \$500.**

33
34 **2. Federal covered securities under Section 18(b)(4)(D) of**
35 **the United States Securities Act of 1933.** The notice filing
36 requirements for federal covered securities offered or sold in
37 this State in reliance on Section 18(b)(4)(D) of the United
38 States Securities Act of 1933 are set forth in section 10502,
39 subsection 2, paragraph R.

40
41 **3. Other federal covered securities.** Unless the
42 administrator provides otherwise by rule, any other federal
43 covered security may be offered and sold in this State in
44 reliance on its being a federal covered security without the
45 filing of a notice or the payment of a fee.

46
47 **4. Nonpayment of fee.** Notwithstanding any other provision
48 of law, until October 11, 1999, a federal covered security for
49 which the fee required under this section has not been promptly
50 paid following a written request by the administrator, unless
otherwise exempt from registration under this Act, is required to

2 be registered and, unless registered or otherwise exempt from
3 registration, its offer or sale in this State constitutes a
4 violation of section 10401.

6 5. Stop order. The administrator may issue a stop order
7 suspending the offer and sale of a federal covered security,
8 except a federal covered security under Section 18(b)(1) of the
9 United States Securities Act of 1933, if the administrator finds
10 that the order is in the public interest and that there has been
11 a failure to comply with any condition established by this
12 section or by any rule adopted under this section.

14 6. Waiver provision. The administrator may, by rule or
15 otherwise, waive any or all of the provisions of this section.

16 7. Rules. Rules adopted pursuant to this section are
17 routine technical rules as defined in Title 5, chapter 375,
18 subchapter II-A.

20 **Sec. 28. 32 MRSA §10602, sub-§1, ¶B,** as enacted by PL 1985, c.
21 400, §2, is amended to read:

22 B. Censure that person if that person is a licensed
23 broker-dealer, sales representative or investment adviser,
24 but in each case only after compliance with section 10708,
25 subsection 6;

26 **Sec. 29. 32 MRSA §10701, sub-§8,** as amended by PL 1989, c.
27 542, §56, is further amended to read:

28 **8. Waiver of fee.** The administrator may, by order, waive
29 the filing fee required to register a security, to perfect a
30 notice filing for a federal covered security or to secure an
31 exemption from registration, upon a written finding that the fee
32 would be unreasonably high in light of the maximum potential
33 proceeds from the sale of the security in the State or that the
34 imposition of the fee would otherwise be unreasonable.

35 **Sec. 30. 32 MRSA §10704, sub-§1,** as amended by PL 1989, c.
36 542, §59, is repealed.

37 **Sec. 31. 32 MRSA §10704, sub-§1-A** is enacted to read:

38 **1-A. Filing requirement.** The following persons shall file
39 with the administrator, on a form prescribed by the
40 administrator, an irrevocable consent appointing the
41 administrator to be that person's attorney to receive service of
42 any lawful process in any noncriminal proceeding against that
43 person, a successor or personal representative, that arises under
44 this Act or any rule or order of the administrator after the

2 consent has been filed, with the same force and validity as if
3 served personally on the person filing the consent:

4 A. Every applicant for licensing under subchapter III;

6 B. Every investment adviser subject to the notice filing
7 requirements of section 10305-A;

8 C. Every issuer that registers one or more classes of its
10 securities under subchapter IV;

12 D. Every issuer that proposes to offer a security in this
14 State through a sales representative; and

16 E. Every issuer subject to the notice filing requirements
17 of section 10505.

18 **Sec. 32. 32 MRSA §10704, sub-§2,** as enacted by PL 1985, c.
20 400, §2, is amended to read:

22 **2. No additional filing required.** A person who has filed
23 the consent required by subsection 1 1-A in connection with a
24 previous registration need not file an additional consent.

26 **Sec. 33. 32 MRSA §10704, sub-§§3 and 4,** as amended by PL 1989,
c. 542, §59, are further amended to read:

28 **3. Prohibited acts deemed consent.** When a person,
29 including a nonresident of this State, engages in conduct
30 prohibited or made actionable by the Act or any rule or order of
31 the administrator and has not filed a consent to service of
32 process under subsection 1 1-A, the engaging in the conduct shall
33 ~~constitute~~ constitutes the appointment of the administrator as
34 the person's attorney to receive service of any lawful process in
35 a noncriminal proceeding against the person, a successor or
36 personal representative which that grows out of that conduct and
37 which is brought under the Act or any rule or order of the
38 administrator with the same force and validity as if served
39 personally.

40 **4. Service.** Service under subsections 1 1-A and 3 may be
41 made by leaving a copy of the process in the office of the
42 administrator, but it is not effective unless:

44 **A.** The plaintiff, who may be the administrator, immediately
45 sends notice of the service and a copy of the process by
46 registered or certified mail, return receipt requested, to
47 the defendant or respondent at the last address known to the
48 administrator; and
49

50

2 B. The plaintiff files an affidavit of compliance with this
4 subsection in the proceeding on or before the return day of
6 the process, if any, or within such further time as the
8 court, or the administrator in a proceeding before the
10 administrator, allows.

12 **Sec. 34. 32 MRSA §10706, sub-§1, ¶¶D and E,** as enacted by PL
14 1985, c. 400, §2, are amended to read:

16 D. All disciplinary and enforcement orders issued and
18 reports of investigation under this Act; and

20 E. All advisory rulings and declaratory rulings rendered;

22 **Sec. 35. 32 MRSA §10706, sub-§1, ¶¶F and G** are enacted to read:

24 F. All notice filings under section 10305-A; and

26 G. All notice filings under section 10505.

28 **Sec. 36. 32 MRSA §10707, sub-§6,** as enacted by PL 1985, c.
30 400, §2, is amended to read:

32 **6. Radio and television programs.** For the purpose of
34 subsection 1, an offer to sell or to purchase is not made in this
36 State when a radio or television program ~~ex-other-electronic~~
38 ~~communication~~ originating outside this State is received in this
40 State.

42 For the purpose of this subsection, a radio or television program
44 ~~ex-other-electronic-communication-shall-be-considered-having~~
46 ~~originated~~ originates from this State if either the broadcast
48 studio or means of transmission is located within this State,
unless:

A. The program ~~ex-communication~~ is syndicated and
distributed from outside this State for redistribution to
the general public in this State;

B. The program ~~ex-communication~~ is supplied by a radio, or
television ~~ex-other-electronic~~ network with the electronic
signal originating from outside this State for
redistribution to the general public in this State;

C. The program ~~ex-communication~~ is an electronic signal
that originates outside this State and is captured for
redistribution to the general public in this State by a
community antenna or cable, radio, or television ~~ex-other~~
electronic system; or

2 D. The program ~~er-communication~~ consists of an electronic
signal ~~which~~ that originates from within this State, but
4 ~~which~~ is not intended for redistribution to the general
public in this State.

6
8 This subsection ~~shall~~ does not apply to any changes, alterations
or additions made locally to a radio or television program ~~or~~
10 ~~ether-electronic-communications~~.

12 SUMMARY

14 The principal purpose of this bill is to incorporate into
the Revised Maine Securities Act, referred to in this summary as
16 the "Act," changes mandated by Congress in the National
Securities Markets Improvement Act of 1996, referred to in this
18 summary as "NSMIA." The NSMIA preempts the states from
exercising regulatory authority over certain aspects of the
20 securities business, but also enhances the state role in
regulating investment advisers. For purposes of promoting
22 uniformity among the states, the bill, to the extent practical,
tracks language recommended by the North American Securities
24 Administrators Association, the organization of state and
Canadian provincial securities regulators.

26
28 With respect to sales representatives of licensed
broker-dealers, NSMIA preempts a state from requiring their
licensing when they engage only in transactions for existing
30 customers who are temporarily in Maine or recently moved here.
The bill implements this change at the state level by creating a
32 licensing exemption for these transactions.

34 In the investment adviser area, the major impact of NSMIA is
to give states the exclusive authority to license investment
36 advisers with less than \$25,000,000 under management and to give
the United States Securities and Exchange Commission exclusive
38 licensing authority over the larger advisers. To implement that
change, the bill amends the Act to create a licensing exemption
40 for the larger advisers. Consistent with NSMIA, the bill imposes
a notice filing and fee requirement on the larger advisers, with
42 the fee being the same as they currently pay for licensing.

44 While preempting the licensing of larger advisers, NSMIA
allows a state to impose qualifications on these advisers'
46 representatives who have a place of business in the State.
Accordingly, the bill amends the Act to allow the securities
48 administrator to continue to impose on these individuals the
currently existing examination requirements.

50

2 NSMIA limits the authority of the states to impose net
capital, record keeping and fidelity bond requirements on
4 broker-dealers and investment advisers, and the bill includes in
the Act references to those limits.

6 Regarding the registration of securities, NSMIA preempts the
states from requiring the registration of what it terms "covered
8 securities," the most significant of which are mutual funds.
NSMIA allows states to receive notice filings for these
10 offerings, and since NSMIA is designed to be revenue neutral, it
also allows for the assessment of filing fees. The bill conforms
12 state law to the dictates of NSMIA by creating the necessary
registration exemptions and, where appropriate, replacing the
14 registration requirement with a notice filing requirement. It
also replaces the registration fees with notice fees of the same
16 amount, and thus, there should be no financial impact either on
securities issuers or on the State.

18 The bill also makes miscellaneous changes unrelated to the
20 enactment of NSMIA.

22 First, the Maine Revised Statutes, Title 32, section 10312,
subsection 2 is amended to allow the administrator to require a
24 licensee to produce documents, whether or not the request is in
connection with an on-site examination.

26 Second, Title 32, section 10501, subsection 18 is amended by
28 eliminating from the definition of "security," "documents of
title to and certificates of interest in the title to or any
30 profits or earnings from land or other property situated outside
of the State." Unlike the securities laws of other states,
32 Maine's statute includes title to or profits or earnings from
land situated outside of the State in the definition of
34 "security."

36 Third, Title 32, section 10502, subsection 2, paragraph L is
amended by eliminating the filing requirement when no commission
38 is paid to solicit security holders in Maine and extending the
exemption to issuers who pay a commission to solicit security
40 holders in Maine. This change conforms Maine's statute to the
securities laws of other states.

42 Fourth, Title 32, section 10502, subsection 2, paragraph N
44 is amended by eliminating the requirement to file a notice with
the administrator.

46 Fifth, the change to Title 32, section 10602, subsection 1,
48 paragraph B allows the administrator to censure a broker dealer,
sales representative or investment advisor for a violation of the
50 Act even if that person is not licensed in Maine.

2 Sixth, Title 32, section 10707, subsection 6 is amended to
4 make clear that the administrator has jurisdiction over
6 securities offered to Maine residents over the Internet, an area
of increasing concern in light of the growth of the electronic
fraud. This change also conforms Maine law to the law of most
other states.