

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

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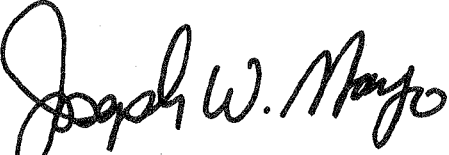
H.P. 1564

House of Representatives, February 6, 1998

An Act to Implement Recommendations of the Joint Standing Committee on Banking and Insurance Relating to the Review of the Bureau of Insurance, the Bureau of Banking and the Securities Division within the Department of Professional and Financial Regulation under the State Government Evaluation Act.

Submitted by the Joint Standing Committee on Banking and Insurance pursuant to the Maine Revised Statutes, Title 3, section 955, subsection 4.

Reference to the Joint Standing Committee on Banking and Insurance suggested and printing ordered.


JOSEPH W. MAYO, Clerk

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

PART A

Sec. A-1. 9-B MRSA §232, as amended by PL 1997, c. 182, Pt. C, §§1 to 7, is further amended by amending the headnote to read:

§232. Removal or prohibition of officer or director

Sec. A-2. 9-B MRSA §232, first ¶, as amended by PL 1997, c. 182, Pt. C, §1, is further amended to read:

The superintendent may remove any officer or director of a financial institution organized pursuant to this Title or any officer of a branch of an out-of-state financial institution authorized to do business in this State or any officer or director of a financial institution holding company, in accordance with the procedures and subject to the conditions and limitations set forth in this section. The superintendent may prohibit an officer or director of a financial institution, financial institution holding company or branch of an out-of-state financial institution from participating in any manner in the conduct of the affairs of a financial institution, financial institution holding company or branch of an out-of-state financial institution if the superintendent determines that such action is necessary for the protection of the public, the financial institution, financial institution holding company or out-of-state financial institution or the interests of the institution's depositors or creditors.

Sec. A-3. 9-B MRSA §232, sub-§1, ¶¶B to D, as amended by PL 1997, c. 182, Pt. C, §2, are further amended to read:

B. By reason of the violation, practice or breach of fiduciary duty described in paragraph A:

(1) The financial institution or financial institution holding company has suffered or will probably suffer financial loss or other damage;

(2) The interests of the financial institution's depositors or creditors or the public have been or could be prejudiced; or

(3) The officer or director has received financial gain or other benefit by reason of the violation, practice or breach of fiduciary duty;

2 C. The violation, practice or breach of fiduciary duty
4 described in paragraph A involves personal dishonesty on the
6 part of the officer or director or demonstrates willful or
continuing disregard by the officer or director for the
safety or soundness of the financial institution or
financial institution holding company; and

8 D. In the opinion of the superintendent, that officer or
10 director has evidenced personal dishonesty and unfitness to
12 continue as an officer or director of the financial
14 institution or financial institution holding company by
conduct with respect to another business entity that
resulted, or is likely to result, in substantial financial
loss or other damage; and

16 Sec. A-4. 9-B MRSA §232, sub-§1, ¶E is enacted to read:

18 E. The officer or director has been removed or prohibited
20 from participation in any manner in the conduct of the
22 affairs of the financial institution by the appropriate
federal banking agency.

24 Sec. A-5. 9-B MRSA §232, sub-§8 is enacted to read:

26 8. Prohibition on participation in banking industry.

28 An officer or director may be prohibited from participating
in the banking industry in accordance with the following.

30 A. Any officer or director who, pursuant to an order issued
32 under this section, has been removed from office in a
34 financial institution, out-of-state financial institution or
36 financial institution holding company or prohibited from
38 participating in the conduct of the affairs of a financial
40 institution, out-of-state financial institution, or
financial institution holding company may not, while such
order is in effect, continue or commence to hold any office,
or participate in any manner in the conduct of the affairs
of any financial institution, out-of-state financial
institution or financial institution holding company.

42 B. If, on or after the date an order is issued under this
44 section that removes from office an officer or director or
46 prohibits an officer or director from participating in the
48 conduct of the affairs of any financial institution,
out-of-state financial institution or financial institution
holding company, the order is modified, terminated or set
aside in accordance with subsection 6, then the prohibition
imposed in paragraph A must be similarly modified,
terminated or set aside.

52 Sec. A-6. 9-B MRSA §468, sub-§1, ¶C is enacted to read:

2 C. "Affiliate" has the same meaning as given in section
3 131, subsection 1-A, except that a subsidiary of a financial
4 institution is not an affiliate of that financial
5 institution.

6 **Sec. A-7. 9-B MRSA §468, sub-§6**, as enacted by PL 1997, c.
7 398, Pt. I, §40, is amended to read:

8
9 **6. Rulemaking.** The superintendent may, by rule or order,
10 define or further define terms used in this section and establish
11 limits, requirements or exceptions to this section other than
12 those specified in this section, if the superintendent determines
13 such action is necessary for the protection of depositors or the
14 public and is consistent with the purposes of this section. For
15 institutions organized pursuant to Part 12, the superintendent
16 may, by rule or order, define or further define the terms used in
17 this section and establish limits, requirements or exceptions to
18 this section other than those specified in this section, if the
19 superintendent determines that such action is consistent with the
20 powers and limitations accorded institutions organized pursuant
21 to Part 12. Rules adopted pursuant to this section are routine
22 technical rules as defined in Title 5, chapter 375, subchapter
23 II-A.

24
25 **Sec. A-8. 9-B MRSA §1224, sub-§6**, as enacted by PL 1997, c.
26 398, Pt. J, §2, is amended to read:

27
28 **6. Provisions inapplicable.** The following provisions of
29 this Title are inapplicable to merchant banks: sections 223,
30 316-A, 439-A, 445, 446-A and 465-A and chapters 33, 37 and 42.
31 The limitations on the holding of equity securities and the
32 purchase of speculative securities, equities and venture capital
33 investments contained in section 419, subsection 1 are also
34 inapplicable to merchant banks.

36 PART B

37
38 **Sec. B-1. 24-A MRSA §228, sub-§2**, as amended by PL 1973, c.
39 585, §12, is further amended to read:

40
41 **2.** Such person examined shall promptly pay to the
42 superintendent the expenses of the examination upon presentation
43 by him the superintendent of a reasonably detailed written
44 statement thereof. Any insurer with total admitted assets as of
45 the end of the preceding calendar year of \$50,000.000 or greater
46 must comply with this section in satisfaction of the examination
47 assessment.

48
49 **Sec. B-2. 24-A MRSA §228, sub-§3**, as amended by PL 1975, c.
50 467, is further amended to read:

2 3. Except that in lieu of payment of examination expense as
3 above required, a domestic insurer shall have with total admitted
4 assets of less than \$50,000,000 has the right, at its option, of
5 making an annual payment to the superintendent of an examination
6 expense allotment in an amount equal to .001 of its total
7 admitted assets as of the end of the preceding calendar year, and
8 which ~~payment shall~~ must be made on March 1st with the filing of
9 the insurer's annual statement with the superintendent; or, if
10 the insurer's admitted assets exceed \$10,000,000, but do not
11 exceed \$50,000,000, the insurer shall have has the right, at its
12 further option, to pay to the superintendent with respect to any
13 examination the lesser of:

14 A. The expense of the examination as determined pursuant to
15 subsections 1 and 2 above; or

16 B. An annual amount equal to .001 of the first \$10,000,000
17 of the insurer's admitted assets plus .0002 of the remainder
18 of such assets, limited, however, to insurers whose admitted
19 assets do not exceed \$25,000,000 as such assets are shown by
20 the insurer's financial statement filed with the
21 superintendent for the year-end next preceding the
22 commencement of the examination, such payment to be made on
23 March 1st with the filing of the insurer's annual statement
24 with the superintendent; or

25 C. If the admitted assets of the insurer exceed
26 \$25,000,000, but do not exceed \$50,000,000, an annual
27 payment of an examination expense allotment ~~of~~ ^{of} an
28 amount equal to .001 of the first \$10,000,000 of the
29 insurer's admitted assets, plus .0002 of the next
30 \$15,000,000 of such assets, plus .000175 of the remainder of
31 such assets as are shown by the insurer's financial
32 statement filed with the superintendent for the preceding
33 calendar year. ~~Such~~ The payment shall must be made on March
34 1st with the filing of the insurer's annual statement with
35 the superintendent.

36 **Sec. B-3. 24-A MRSA §2016, sub-§1**, as amended by PL 1997, c.
37 457, §37, is further amended to read:

38 1. Each ~~broker~~ producer with surplus lines authority shall
39 maintain in the ~~broker's~~ producer's office within the State a
40 monthly report showing the amount of insurance placed for any
41 person or organization, the location of each risk, the gross
42 premium charged, the name of each insurer with which the
43 insurance was placed, the date and term of each insurance
44 contract issued during the preceding month and any other
45 pertinent information required by the superintendent. The report
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2 must show in the same detail each contract cancelled during the
3 month covered by the report and the return premium on it. The
4 monthly report must be made available to the superintendent for
5 examination at the ~~broker's~~ producer's office location in the
6 State at any time or by delivery to the bureau upon 5 days'
7 notice by the superintendent.

8 Within 45 days of the end of each calendar quarter, the ~~broker~~
9 producer shall pay to the ~~Treasurer--of--State~~ Department of
10 Administration and Financial Services, Bureau of Revenue Services
11 3% of the difference between the gross premiums and the return
12 premiums reported for the business transacted during the
13 preceding calendar quarter.

14 **Sec. B-4. 36 MRSA §2513, first ¶,** as amended by PL 1985, c.
15 783, §11, is further amended to read:

16
17 Every insurance company or association which ~~that~~ does
18 business or collects premiums or assessments including annuity
19 considerations in the State, except those mentioned in section
20 2517, including surety companies and companies engaged in the
21 business of credit insurance or title insurance, shall, for the
22 privilege of doing business in this State, and in addition to any
23 other taxes imposed for such privilege pay a tax upon all gross
24 direct premiums including annuity considerations, whether in cash
25 or otherwise, on contracts written on risks located or resident
26 in the State for insurance of life, annuity, fire, casualty and
27 other risks at the rate of 2% a year. Every surplus lines
28 insurer that does business or collects premiums in the State
29 shall, for the privilege of doing business in this State, and in
30 addition to any other taxes imposed for such privilege, pay a tax
31 upon all gross direct premiums, whether in cash or otherwise, on
32 contracts written on risks located or resident in the State at
33 the rate of 3% a year. The tax must be paid by the insurer's
34 licensed producer with surplus lines authority pursuant to Title
35 24-A, section 2016.

36 37 38 PART C

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40 **Sec. C-1. 32 MRSA §10313, sub-§1, ¶B,** as enacted by PL 1985,
41 c. 400, §2, is amended to read:

42
43 B. Has intentionally or knowingly ~~ex-willfully~~ violated or
44 failed to comply with a provision of this Act, a predecessor
45 Act or a rule or order under this Act or a predecessor Act,
46 the United States Securities Act of 1933, the United States
47 Securities Exchange Act of 1934, the United States
48 Investment Advisers Act of 1940, the United States
49 Investment Company Act of 1940 or the United States
50 Commodity Exchange Act, or the securities law of any other

2 state, but only if the acts constituting the violation of
that state's law would constitute a violation of this Act
had the acts taken place in this State;

4
6 **Sec. C-2. 32 MRSA §10502, sub-§5,** as enacted by PL 1985, c.
400, §2, is amended to read:

8 **5. Burden of proof.** In any civil, ~~criminal~~ or
administrative proceeding under this Act, the burden of proving
10 an exemption or any exception from a definition is upon the
person claiming it.

12
14 **Sec. C-3. 32 MRSA §10604, sub-§1,** as amended by PL 1991, c.
548, Pt. D, §8, is repealed and the following enacted in its
place:

16
18 **1. Intentional or knowing violation.** A person is guilty of
the crime of violating the Revised Maine Securities Act if that
person intentionally or knowingly violates:

- 20
22 **A. Any provision of this Act, except section 10204;**
24
B. Any rule or order of the administrator under this Act; or
C. Section 10204, knowing the statement made is false or
26 **misleading in any material respect.**

28 **Sec. C-4. 32 MRSA §10604, sub-§4,** as enacted by PL 1985, c.
400, §2, is repealed.

30
32 **Sec. C-5. 32 MRSA §10604, sub-§§6 to 8** are enacted to read:

34 **6. Class C crime.** A violation of the Revised Maine
Securities Act is a Class C crime.

36
38 **7. Venue.** When a person pursuant to one scheme or course
of conduct, whether upon the same person or several persons,
engages in fraudulent or other prohibited practices under
subchapter II, engages in unlawful transactions of business or
40 other unlawful conduct under subchapter III or engages in
unlawful offers to sell or purchase or unlawful sales or
42 purchases under subchapter IV, the State may opt for a single
Class C count and, in that circumstance, prosecution may be
44 brought in any venue in which one or more of the unlawful acts
were committed.

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48 **8. Affirmative defense.** In any criminal prosecution, an
exemption or any exception from a definition under this Act must
be proved by the defendant by a preponderance of the evidence.

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SUMMARY

4 This bill implements the recommendations of the Joint
Standing Committee on Banking and Insurance's review of the
6 Bureau of Insurance, Bureau of Banking and Securities Division.

8 Part A implements the recommendations relating to the Bureau
of Banking and does the following:

10 1. It authorizes the Bureau of Banking to bar an officer or
12 director removed from a financial institution or holding company
from working for special purpose financial institutions, i.e.
14 merchant banks, nondepository trust companies and uninsured banks.

16 2. It makes technical corrections and changes to the
statutory provisions authorizing the establishment of a merchant
18 bank.

20 Part B implements the recommendations relating to the Bureau
of Insurance and does the following.

22 1. It transfers legal responsibility for the collection of
24 insurance premium taxes on surplus lines insurers from the Bureau
of Insurance to the Department of Administration and Financial
26 Services, Bureau of Revenue Services, formerly the Bureau of
Taxation.

28 2. It clarifies the requirement that Maine domestic
30 insurance companies pay an assessment to the Bureau of Insurance
to reimburse the bureau for the costs associated with financial
32 examination.

34 Part C implements the recommendations relating to the
Department of Professional and Financial Regulation, Bureau of
36 Banking, Securities Division and does the following.

38 1. It updates the criminal penalty provisions of the
Revised Maine Securities Act and brings them in line with the
40 current class system for criminal conduct under the Maine
Criminal Code.

42 2. It provides authority to the Securities Division to
44 bring an action involving multiple violations in any county in
which any violation occurs.

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