

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1489

S.P. 495

In Senate, March 31, 2003

An Act To Update and 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 Insurance and Financial Services 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 LaFOUNTAIN of York.
Cosponsored by Representative O'NEIL of Saco and
Representative: WOODBURY of Yarmouth.

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

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

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

B. A sales representative who is otherwise employed by an issuer and acting for an issuer in effecting transactions in a security exempt by one or more paragraphs of section 10502, subsection 1, except paragraphs E, F, G, H, I and J;

Sec. 2. 32 MRSA §10302, sub-§2, ¶C, as amended by PL 1999, c. 279, §1, is further amended to read:

C. A sales representative who is otherwise employed by an issuer and acting for an issuer effecting offers or sales of securities in transactions exempt by one or more paragraphs of section 10502, subsection 2, except paragraph S;

Sec. 3. 32 MRSA §10302, sub-§2, ¶D, as amended by PL 1991, c. 82, §1, is further amended to read:

D. A sales representative who is otherwise employed by an issuer and acting for an issuer effecting transactions with existing employees, partners, officers or directors of the issuer, a parent or wholly owned subsidiary of the issuer, provided that no commissions or other remuneration are paid or given directly or indirectly to that person for soliciting any employee, partner, officer or director in this State; and

Sec. 4. 32 MRSA §10306, sub-§1, ¶A, as amended by PL 1993, c. 410, Pt. K, §3, is further amended to read:

A. Broker-dealer, \$200 ~~and-for-each-branch-office-in-this State,-\$50;~~

Sec. 5. 32 MRSA §10306, sub-§1, ¶C, as amended by PL 2001, c. 183, Pt. A, §4 and affected by §14, is further amended to read:

C. Investment adviser, \$200; and

Sec. 6. 32 MRSA §10306, sub-§1, ¶D, as enacted by PL 2001, c. 183, Pt. A, §5 and affected by §14, is amended to read:

D. Investment adviser representative, \$40+; and

Sec. 7. 32 MRSA §10306, sub-§1, ¶E is enacted to read:

E. Each branch office in this State, as defined in subsection 3, \$50.

2 **Sec. 8. 32 MRSA §10306, sub-§2, ¶A**, as amended by PL 1993, c.
410, Pt. K, §4, is further amended to read:

4 A. Broker-dealer, \$200 ~~and for each branch office in this~~
6 State, ~~-\$30~~;

8 **Sec. 9. 32 MRSA §10306, sub-§2, ¶C**, as amended by PL 2001, c.
183, Pt. A, §7 and affected by §14, is further amended to read:

10 C. Investment adviser, \$100; and

12 **Sec. 10. 32 MRSA §10306, sub-§2, ¶D**, as enacted by PL 2001, c.
14 183, Pt. A, §8 and affected by §14, is amended to read:

16 D. Investment adviser representative, ~~\$40~~; and

18 **Sec. 11. 32 MRSA §10306, sub-§2, ¶E** is enacted to read:

20 E. Each branch office in this State, as defined in
22 subsection 3, \$30.

24 **Sec. 12. 32 MRSA §10306, sub-§3-A** is enacted to read:

26 3-A. Duplicate branch fees. Notwithstanding subsection 1,
28 paragraph E and subsection 2, paragraph E, only one branch office
30 fee is due if an office is a branch office of both a
32 broker-dealer and an investment adviser affiliated by direct or
34 indirect common control.

36 **Sec. 13. 32 MRSA §10306, sub-§4**, as amended by PL 1989, c.
542, §16, is further amended to read:

38 4. **Fees nonrefundable.** If an application is denied ~~or~~
40 withdrawn or abandoned, or the license is terminated by
42 revocation, cancellation or withdrawal, the administrator shall
44 retain the fee paid.

46 **Sec. 14. 32 MRSA §10308, sub-§1**, as amended by PL 1989, c.
542, §18, is further amended to read:

48 1. **Effective date of license.** Unless a proceeding under
section 10313 ~~has--been~~ is instituted, the license of any
broker-dealer, sales representative ~~or~~, investment adviser or
investment adviser representative becomes effective 30 days after
an application for licensing and the last of any additional
information requested by the administrator or the administrator's
designee has been filed and ~~provided--that~~ as long as all
examination requirements imposed under section 10307 ~~have--been~~

2 are satisfied. The administrator may, by order, authorize an
earlier effective date of licensing.

4 **Sec. 15. 32 MRSA §10311, sub-§2**, as enacted by PL 1985, c.
400, §2, is amended to read:

6 **2. Sales representatives; investment adviser**
8 **representatives.** Licensing of the sales representatives of the
broker-dealer or investment adviser representatives of the
10 investment adviser filing the application under subsection 1
shall-continue continues upon licensing of the successor and no
12 separate filing or fee shall--be is required for the their
continued licensing ~~of the sales representatives.~~

14 **Sec. 16. 32 MRSA §10313, sub-§7** is enacted to read:

16 **7. Abandonment of license application.** A pending license
18 application may be considered abandoned if the administrator has
not received a response to inquiries or deficiency notices for a
20 period of at least 120 days. The administrator shall send an
abandonment notice to the last known address of the applicant.
22 The applicant must respond to the abandonment notice within 30
days to avoid an abandonment determination. The abandonment of
24 an application does not preclude the filing of a subsequent
application for licensure.

26 **Sec. 17. 32 MRSA §10405, sub-§2**, as amended by PL 1993, c.
28 410, Pt. K, §5, is further amended to read:

30 **2. Fees.** A person filing a registration statement must pay
a filing fee of \$500 for each security offered, except that for a
32 registration statement filed under section 10404 for an offering
for which the total amount raised in state and out of state does
34 not exceed \$1,000,000, the filing fee is \$300 for each security
offered. When a registration statement is withdrawn before the
36 effective date or abandoned pursuant to section 10406, subsection
5 or a preeffective stop order is entered under section 10406,
38 the administrator retains the fee.

40 **Sec. 18. 32 MRSA §10406, sub-§5** is enacted to read:

42 **5. Abandonment of filing.** A registration statement that is
pending effectiveness may be considered abandoned if the
44 administrator has not received a response to inquiries or
deficiency notices for a period of at least 120 days. The
46 administrator shall send an abandonment notice to the last known
address of the filer. The filer must respond to the abandonment
48 notice within 30 days to avoid an abandonment determination. The
abandonment of a registration statement does not preclude the
50 filing of a subsequent registration statement.

2 **Sec. 19. 32 MRSA §10502, sub-§§8 and 9** are enacted to read:

4 **8. Abandonment of exemption or notice filing.** An exemption
6 filing or notice filing required pursuant to this section may be
8 considered abandoned if the administrator has not received a
10 response to inquiries or deficiency notices for a period of at
12 least 120 days. The administrator shall send an abandonment
14 notice to the last known address of the filer. The filer must
respond to the abandonment notice within 30 days to avoid an
abandonment determination. The abandonment of a filing does not
preclude the filing of a subsequent exemption filing or notice
filing.

16 **9. Fees nonrefundable.** If an exemption filing or notice
18 filing is withdrawn, abandoned, denied or revoked, the
20 administrator shall retain the fee paid.

22 **Sec. 20. 32 MRSA §10504, sub-§1**, as amended by PL 1999, c.
24 279, §9, is further amended to read:

26 **1. Filing of sales and advertising literature.** The
28 administrator, by rule or order, may require the filing of any a
30 prospectus, pamphlet, circular, form letter, advertisement or
32 other sales literature ~~or~~, advertising communication or business
plan addressed or intended for distribution to prospective
investors, including clients or prospective clients of an
investment adviser, unless the security is a federal covered
security or the security or transaction qualifies for an
exemption under section 10502, subsection 2, paragraphs A to R
for which the filing of a notice with the administrator is not
required.

34 **Sec. 21. 32 MRSA §10505, sub-§4**, as enacted by PL 1997, c.
36 168, §28, is repealed.

38 **Sec. 22. 32 MRSA §10505, sub-§4-A** is enacted to read:

40 **4-A. Fees nonrefundable.** If a notice filing required
42 pursuant to this section is withdrawn, abandoned or the subject
44 of a stop order, the administrator shall retain the fee paid. A
46 notice filing may be considered abandoned if the administrator
48 has not received a response to inquiries or deficiency notices
for a period of at least 120 days. The administrator shall send
an abandonment notice to the last known address of the filer.
The filer must respond to the abandonment notice within 30 days
to avoid an abandonment determination. The abandonment of a
filing does not preclude the filing of a subsequent exemption or
notice filing.

50

2 **Sec. 23. 32 MRSA §10701, sub-§5,** as amended by PL 1989, c.
542, §55, is further amended to read:

4 **5. Disclosure for enforcement purposes.** The administrator
may disclose any information obtained in connection with an
6 investigation pursuant to section 10601 that would otherwise be
nonpublic information to the ~~securities~~ agencies and
8 administrators specified in section 10702, subsection 1, but only
if disclosure is required for the purpose of a civil,
10 administrative or criminal enforcement investigation and the
requesting agency certifies that under applicable law reasonable
12 protections exist to preserve the integrity, confidentiality and
security of the information, comparable to the protections
14 existing under the laws of this State.

16 **Sec. 24. 32 MRSA §10701, sub-§5-A** is enacted to read:

18 **5-A. Public disclosure for enforcement purposes.** The
administrator may disclose any information obtained in connection
20 with an investigation pursuant to section 10601 that would
otherwise be nonpublic information to the public, but only if the
22 administrator determines that disclosure is necessary for the
protection of investors or the public.

24 **Sec. 25. 32 MRSA §10702, sub-§2, ¶H,** as enacted by PL 1985, c.
26 400, §2, is amended to read:

28 H. Issuing and enforcing subpoenas at the request of a
federal or another state securities agency or the United
30 States Commodity Futures Trading Commission, if the
activities constituting an alleged violation for which the
32 information is sought would also be a violation of this Act
if the activities had taken place in this State and ~~provided~~
34 ~~that any person against whom a subpoena may be issued shall~~
~~have an opportunity for hearing before the subpoena is~~
36 ~~issued.~~
issued.

38
40

SUMMARY

The bill does the following:

42
44 1. It clarifies that sales representatives acting for an
46 issuer in effecting any securities transactions are only exempt
from licensing requirements if they are bona fide employees of
the issuer;

48 2. It clarifies existing broker-dealer and investment
adviser branch office fees and specifies that a branch location

2 that is the office of both an affiliated broker-dealer and
investment adviser will not be assessed duplicative fees;

4 3. It clarifies that, with respect to successor firms,
neither sales representatives nor investment adviser
6 representatives will be required to be relicensed;

8 4. It adds abandonment provisions with fee retention for
applications, filings, exemptions and federal covered securities;
10

12 5. It adds business plans to the list of sales and
advertising materials that may be required to be filed with the
Securities Administrator;

14 6. It repeals expired transitional language;

16 7. It adds a provision for the public disclosure of
confidential information for public protection purposes; and
18

20 8. It eliminates the hearing requirement prior to the
issuance of a federal or another states's subpoena when the
22 alleged violation would also be a violation of Maine law.