

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 332

H.P. 266

House of Representatives, January 23, 2007

**An Act To Update References to Federal Laws in the Maine
Uniform Securities Act and To Make Other Technical Corrections
to the Act**

(EMERGENCY)

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.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BRAUTIGAM of Falmouth.
Cosponsored by Senator BARTLETT of Cumberland.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the Maine Uniform Securities Act incorporates various federal laws by
4 reference, which laws are from time to time amended, and conforming the Maine
5 Uniform Securities Act to federal laws would be delayed by waiting for the 90-day period
6 to expire; and

7 **Whereas,** the regulation of securities is performed on both the federal and state
8 level, and the conformity of federal and state laws increases regulatory effectiveness and
9 reduces regulatory burden; and

10 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
11 the meaning of the Constitution of Maine and require the following legislation as
12 immediately necessary for the preservation of the public peace, health and safety; now,
13 therefore,

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

15 **Sec. 1. 32 MRSA §16103,** as enacted by PL 2005, c. 65, Pt. A, §2, is amended to
16 read:

17 **§16103. References to federal statutes**

18 Securities Act of 1933, 15 United States Code, Section 77a et seq., Securities
19 Exchange Act of 1934, 15 United States Code, Section 78a et seq., Public Utility Holding
20 Company Act of 1935, 15 United States Code, Section 79 et seq., Investment Company
21 Act of 1940, 15 United States Code, Section 80a-1 et seq., Investment Advisers Act of
22 1940, 15 United States Code, Section 80b-1 et seq., Employee Retirement Income
23 Security Act of 1974, 29 United States Code, Section 1001 et seq., National Housing Act,
24 12 United States Code, Section 1701 et seq., Commodity Exchange Act, 7 United States
25 Code, Section 1 et seq., Internal Revenue Code, 26 United States Code, Section 1 et seq.,
26 Securities Investor Protection Act of 1970, 15 United States Code, Section 78aaa et seq.,
27 Securities Litigation Uniform Standards Act of 1998, 112 Stat. 3227, Small Business
28 Investment Act of 1958, 15 United States Code, Section 661 et seq. and Electronic
29 Signatures in Global and National Commerce Act, 15 United States Code, Section 7001
30 et seq. mean those federal laws of those names, those statutes and the rules and
31 regulations adopted under those laws and statutes, as amended, as of December 31, 2006.

32 **Sec. 2. 32 MRSA §16202, sub-§14,** as enacted by PL 2005, c. 65, Pt. A, §2, is
33 amended to read:

34 **14. Limited private offering transactions, any issuer.** A sale or an offer to sell
35 securities by or on behalf of an issuer, if the transaction is part of a single issue in which:

36 A. Not more than 10 purchasers are present in this State during any 12 consecutive
37 months, other than those designated in subsection 13;

1 B. A general solicitation or general advertising is not made in connection with the
2 offer to sell or sale of the securities;

3 C. A commission or other remuneration is not paid or given, directly or indirectly, to
4 a person other than a broker-dealer licensed under this chapter or an agent licensed
5 under this chapter for soliciting a prospective purchaser in this State; and

6 D. The issuer reasonably believes that all the purchasers in this State, other than
7 those designated in subsection 13, are purchasing for investment;

8 **Sec. 3. 32 MRSA §16202, sub-§15**, as enacted by PL 2005, c. 65, Pt. A, §2, is
9 amended to read:

10 **15. Limited private offering transactions, Maine issuer.** A sale or an offer to sell
11 securities of a corporation, limited partnership or limited liability company organized
12 under the laws of this State or any issuer determined by the administrator by order to have
13 its principal place of business in this State, if the sale or offer is by or on behalf of the
14 issuer and if the transaction is part of a single issue in which:

15 A. Not more than 25 purchasers are present in this State during any 12 consecutive
16 months, other than those designated in subsection 13;

17 B. A general solicitation or general advertising is not made in connection with the
18 offer to sell or sale of the securities;

19 C. A commission or other remuneration is not paid or given, directly or indirectly, to
20 a person other than a broker-dealer licensed under this chapter or an agent licensed
21 under this chapter for soliciting a prospective purchaser in this State;

22 D. The issuer reasonably believes that all the purchasers in this State, other than
23 those designated in subsection 13, are purchasing for investment;

24 E. The issuer files with the administrator a notification for exemption that must be in
25 such form as may be prescribed by the administrator by order or by routine technical
26 rule, as defined in Title 5, chapter 375, subchapter 2-A; and

27 F. The issuer provides a copy of the notification of exemption to each offeree of
28 securities sold in reliance on this exemption, which must contain such legends as the
29 administrator prescribes, notifying the offeree that the securities have not been
30 registered with the administrator, that they may be considered restricted securities
31 and that the issuer is under an obligation to make a reasonable finding that the
32 securities are a suitable investment for the offeree;

33 **Sec. 4. 32 MRSA §16306, sub-§7** is enacted to read:

34 **7. Appointment of presiding officer.** For purposes of any hearing conducted
35 pursuant to this section, the administrator may appoint a qualified person to preside at the
36 hearing and to make proposed findings of fact and conclusions of law. The responsibility
37 for the entry of the final findings of fact and conclusions of law and for the issuance of
38 any final order remains with the administrator.

39 **Sec. 5. 32 MRSA §16412, sub-§1**, as enacted by PL 2005, c. 65, Pt. A, §2, is
40 amended to read:

1 **1. Disciplinary conditions, applicants.** If the administrator finds that the order is in
2 the public interest and subsection 4 authorizes the action, an order issued under this
3 chapter may deny an application, or may condition or limit licensing, of an applicant to
4 be a broker-dealer, agent, investment adviser or investment adviser representative ~~and, if
5 the applicant is a broker-dealer or investment adviser, of a partner, officer, director or
6 person having a similar status or performing similar functions, or a person directly or
7 indirectly in control, of the broker-dealer or investment adviser.~~

8 **Sec. 6. 32 MRSA §16412, sub-§2,** as enacted by PL 2005, c. 65, Pt. A, §2, is
9 amended to read:

10 **2. Disciplinary conditions, licensees.** If the administrator finds that the order is in
11 the public interest and subsection 4 authorizes the action, an order issued under this
12 chapter may revoke, suspend, condition or limit the license of a licensee ~~and, if the
13 licensee is a broker-dealer or investment adviser, the license of a partner, officer, director
14 or person having a similar status or performing similar functions, or a person directly or
15 indirectly in control, of the broker-dealer or investment adviser.~~ Notwithstanding this
16 subsection, the administrator may not:

17 A. Institute a revocation or suspension proceeding under this subsection based on an
18 order issued under a law of another state that is reported to the administrator or a
19 designee of the administrator more than one year after that state's order is reported; or

20 B. Under subsection 4, paragraph E, subparagraph (1) or (2), issue an order on the
21 basis of an order issued under the securities act of another state unless the other state's
22 order was based on conduct for which subsection 4 would authorize the action had
23 the conduct occurred in this State.

24 **Sec. 7. 32 MRSA §16412, sub-§3,** as enacted by PL 2005, c. 65, Pt. A, §2, is
25 amended to read:

26 **3. Disciplinary penalties, licensees.** If the administrator finds that the order is in the
27 public interest and subsection 4, ~~paragraphs~~ paragraph A to, B, C, D, E, F, H, I and, J or
28 paragraphs, L and or M authorize ~~authorizes~~ the action, an order under this chapter may
29 censure, impose a bar on or impose a civil ~~penalty~~ fine in an amount not to exceed a
30 maximum of \$5,000 per violation on a licensee ~~and, if the licensee is a broker-dealer or
31 investment adviser, any partner, officer, director or person having a similar status or
32 performing similar functions, or any person directly or indirectly in control, of the broker-
33 dealer or investment adviser.~~

34 **Sec. 8. 32 MRSA §16412, sub-§4,** as enacted by PL 2005, c. 65, Pt. A, §2, is
35 amended to read:

36 **4. Grounds for discipline.** A person may be disciplined under subsections 1 to 3 if
37 the person or, in the case of a broker-dealer or investment adviser, the broker-dealer or
38 investment adviser, a partner, officer or director of the broker-dealer or investment
39 adviser, a person occupying a similar status or performing similar functions or a person
40 directly or indirectly controlling the broker-dealer or investment adviser:

- 1 A. Has filed an application for licensing in this State under this chapter or the
2 predecessor act within the previous 10 years that, as of the effective date of licensing
3 or as of any date after filing in the case of an order denying effectiveness, was
4 incomplete in any material respect or contained a statement that, in light of the
5 circumstances under which it was made, was false or misleading with respect to a
6 material fact;
- 7 B. Intentionally or knowingly violated or intentionally or knowingly failed to comply
8 with this chapter or the predecessor act or a rule adopted or order issued under this
9 chapter or the predecessor act within the previous 10 years;
- 10 C. Has pleaded guilty or nolo contendere to or been convicted of murder or a Class
11 A, B or C crime or a felony or within the previous 10 years has pleaded guilty or nolo
12 contendere to or been convicted of a Class D or E crime or a misdemeanor involving
13 a security, a commodity future or option contract or an aspect of a business involving
14 securities, commodities, investments, franchises, insurance, banking or finance or any
15 crime indicating a lack of fitness to engage in the securities business;
- 16 D. Is enjoined or restrained by a court of competent jurisdiction in any action from
17 engaging in or continuing an act, practice or course of business involving an aspect of
18 a business involving securities, commodities, investments, franchises, insurance,
19 banking or finance;
- 20 E. Is the subject of an order, issued after notice and opportunity for hearing by:
- 21 (1) The securities or other financial services regulator of a state or by the
22 Securities and Exchange Commission, a self-regulatory organization or other
23 federal agency denying, revoking, barring or suspending registration or licensing
24 as a broker-dealer, agent, investment adviser, investment adviser representative
25 or federal covered investment adviser;
- 26 (2) The securities regulator of a state or the Securities and Exchange Commission
27 against a broker-dealer, agent, investment adviser, investment adviser
28 representative or federal covered investment adviser;
- 29 (3) The Securities and Exchange Commission or a self-regulatory organization
30 suspending or expelling the registrant or licensee from membership in the self-
31 regulatory organization;
- 32 (4) A court adjudicating a United States Postal Service fraud order;
- 33 (5) The insurance regulator of a state denying, suspending or revoking
34 registration or licensing as an insurance producer or its equivalent;
- 35 (6) A depository institution or financial services regulator suspending or barring
36 the person from the depository institution or other financial services business; or
- 37 (7) The United States Commodity Futures Trading Commission denying,
38 suspending or revoking registration under the federal Commodity Exchange Act;
- 39 F. Is the subject of an adjudication or determination, after notice and opportunity for
40 hearing, by the Securities and Exchange Commission, the United States Commodity
41 Futures Trading Commission, the Federal Trade Commission, a federal depository
42 institution regulator or a depository institution, insurance or other financial services

1 regulator of a state that the person intentionally or knowingly violated the federal
2 Securities Act of 1933, the federal Securities Exchange Act of 1934, the federal
3 Investment Advisers Act of 1940, the federal Investment Company Act of 1940, the
4 federal Commodity Exchange Act, the securities or commodities law of a state or a
5 federal or state law under which a business involving investments, franchises,
6 insurance, banking or finance is regulated;

7 G. Is insolvent, either because the person's liabilities exceed the person's assets or
8 because the person can not meet the person's obligations as they mature. The
9 administrator may not enter an order against an applicant or licensee under this
10 paragraph without a finding of insolvency as to the applicant or licensee;

11 H. Refuses to allow or otherwise impedes the administrator from conducting an
12 audit or inspection under section 16411, subsection 4 or refuses access to a licensee's
13 office to conduct an audit or inspection under section 16411, subsection 4;

14 I. Has failed to reasonably supervise an agent, investment adviser representative or
15 other individual if the agent, investment adviser representative or other individual
16 was subject to the person's supervision and committed a violation of this chapter or
17 the predecessor act or a rule adopted or order issued under this chapter or the
18 predecessor act or engaged in conduct that would be grounds for discipline under this
19 subsection within the previous 10 years;

20 J. Is subject to an order entered by a court of competent jurisdiction or entered after
21 notice and opportunity for hearing by a federal or state licensing agency denying,
22 suspending, revoking or restricting the person's license to sell real estate, insurance or
23 any investment other than securities, provided that the order resulted from allegations
24 of misconduct. This paragraph also applies when the denial, suspension, revocation
25 or restriction of the license is pursuant to a consent agreement between the person
26 and the licensing agency, whether or not the agency also issues an order;

27 K. After notice and opportunity for a hearing, has been found within the previous 10
28 years:

29 (1) By a court of competent jurisdiction to have intentionally and knowingly
30 violated the laws of a foreign jurisdiction under which the business of securities,
31 commodities, investment, franchises, insurance, banking or finance is regulated;

32 (2) To have been the subject of an order of a securities regulator of a foreign
33 jurisdiction denying, revoking or suspending the right to engage in the business
34 of securities as a broker-dealer, agent, investment adviser, investment adviser
35 representative or similar person; or

36 (3) To have been suspended or expelled from membership by or participation in a
37 securities exchange or securities association operating under the securities laws
38 of a foreign jurisdiction;

39 L. Is the subject of a cease and desist order issued by the Securities and Exchange
40 Commission or issued under the securities, commodities, investment, franchise,
41 banking, finance or insurance laws of a state;

1 M. Has engaged in unlawful, dishonest or unethical practices in the securities,
2 commodities, investment, franchise, banking, finance or insurance business within
3 the previous 10 years; or

4 N. Is not qualified on the basis of factors such as training, experience and knowledge
5 of the securities business; except that, in the case of an application by an agent for a
6 broker-dealer that is a member of a self-regulatory organization or by an individual
7 for licensing as an investment adviser representative, a denial order may not be based
8 on this paragraph if the individual has successfully completed all examinations
9 required by subsection 5. The administrator may require an applicant for licensing
10 under section 16402 or 16404 who has not been registered or licensed in a state
11 within the 2 years preceding the filing of an application in this State to successfully
12 complete an examination.

13 **Sec. 9. 32 MRSA §16412, sub-§7**, as enacted by PL 2005, c. 65, Pt. A, §2, is
14 amended to read:

15 **7. Procedural requirements.** An order ~~issued~~ may not be issued under this section,
16 except under subsection 6, without:

17 A. Appropriate notice to the applicant or licensee;

18 B. Opportunity for hearing; and

19 C. Findings of fact and conclusions of law in a record in accordance with Title 5,
20 chapter 375.

21 **Sec. 10. 32 MRSA §16412, sub-§10** is enacted to read:

22 **10. Appointment of presiding officer.** For purposes of a hearing conducted
23 pursuant to this section, the administrator may appoint a qualified person to preside at the
24 hearing and to make proposed findings of fact and conclusions of law. The responsibility
25 for the entry of the final findings of fact and conclusions of law and for the issuance of
26 any final order remains with the administrator.

27 **Sec. 11. 32 MRSA §16603, sub-§1**, as enacted by PL 2005, c. 65, Pt. A, §2, is
28 amended to read:

29 **1. Civil action instituted by administrator.** If the administrator believes that a
30 person has engaged, is engaging or is about to engage in an act, practice or course of
31 business constituting a violation of this chapter or a rule adopted or order issued under
32 this chapter or that a person has engaged, is engaging or is about to engage in an act,
33 practice or course of business that materially aids a violation of this chapter or a rule
34 adopted or order issued under this chapter, the administrator may request that the
35 Attorney General bring an action in the Superior Court of the county in which the person
36 resides or has the principal place of business or in the Superior Court of Kennebec
37 County to enjoin the act, practice or course of business and to enforce compliance with
38 this chapter or a rule adopted or order issued under this chapter.

39 **Sec. 12. 32 MRSA §16604, sub-§2**, as enacted by PL 2005, c. 65, Pt. A, §2, is
40 amended to read:

