

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

shall not serve as the basis for any civil or criminal fine, penalty or forfeiture.

3. In camera inspection. Upon request by the commission staff, the Public Advocate or intervenor in a matter before the commission or upon the commission's own motion and for good cause shown, the commission may order a public utility to produce for in camera inspection by the commission or hearing examiner the records designated confidential under subsection 1. The employee whose records are the subject of such a request shall be notified by the commission of such a request and shall be given the opportunity to be heard before an order to produce is issued. If the commission or hearing examiner determines after in camera inspection that a record is reasonably relevant to the matter before it and that production of the record is not unjust or unlawful and that the materiality of the record outweighs any harm to the employee from its disclosure, the commission or hearing examiner may order that the record be made a part of the discovery or evident aspects of the proceedings, subject to such terms and conditions as are just, due consideration being given to the privacy interests of the employee involved.

Effective July 16, 1986.

CHAPTER 617

H.P. 1265 - L.D. 1774

AN ACT to Amend the Revised Maine Securities Act.

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

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

B. A broker-dealer who is registered as a broker-dealer under the United States Securities Exchange Act of 1934 and licensed under the securities act of the state in which the broker-dealer maintains its principal place of business and has no place of business in this State, if the broker-dealer offers and sells in this State to persons who are existing customers of the broker-

dealer and who represent that they have no principal place of residence in this State; and

Sec. 2. 32 MRSA §10302, sub-§1, ¶C, as enacted by PL 1985, c. 400, §2, is repealed.

Sec. 3. 32 MRSA §10305, sub-§3, as enacted by PL 1985, c. 400, §2, is repealed.

Sec. 4. 32 MRSA §10307, sub-§1, ¶A, as enacted by PL 1985, c. 400, §2, is amended to read:

A. An applicant applying for licensing under section 10301 or section 10303;

Sec. 5. 32 MRSA §10313, sub-§1, ¶F, as enacted by PL 1985, c. 400, §2, is amended to read:

F. Is the subject of any of the following orders which are currently effective and which were issued within the last 5 years:

(1) An order by the securities agency or administrator of another state, Canadian province or territory or the United States Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending or revoking the applicant's license as a broker-dealer, sales representative or investment adviser, or the substantial equivalent of those terms as defined in this Act;

(2) A suspension or expulsion from membership in or association with a self-regulatory organization registered under the United States Securities and Exchange Act of 1934 or the United States Commodity Exchange Act;

(3) A United States Postal Service fraud order;

(4) A cease and desist order entered after notice and opportunity for hearing by the superintendent or the securities agency or administrator of any other state, Canadian province or territory, the United States Securities and Exchange Commission, or the United States Commodity Futures Trading Commission; ~~er~~

(5) An order entered by the United States Commodity Futures Trading Commission deny-

ing, suspending or revoking registration under the United States Commodity Exchange Act; or

(6) An order entered by a court of competent jurisdiction or entered after notice and opportunity for hearing by a federal or state licensing agency denying, suspending, revoking or restricting the person's license to sell real estate, insurance or any investment other than securities, provided that the order resulted from allegations of misconduct. This subparagraph shall also apply when the denial, suspension, revocation or restriction of the license is pursuant to a consent agreement between the person and the licensing agency, whether or not the agency also issues an order;

Sec. 6. 32 MRS.A §10403, sub-§2, ¶C, as enacted by PL 1985, c. 400, §2, is amended to read:

C. If the superintendent requests, and subject to section 10701, subsection 3 4, paragraph B, any other information or copies of other documents, filed under the United States Securities Act of 1933; and

Sec. 7. 32 MRS.A §10502, sub-§1, as enacted by PL 1985, c. 400, §2, is amended to read:

1. Exempt securities. The following securities are exempted from ~~sections~~ section 10401 and 10503:

A. Any security, including a revenue obligation, issued, insured or guaranteed by the United States, any agency or corporate or other instrumentality of the United States, any international agency or corporate or other instrumentality created jointly by the United States and one or more foreign governments, any state, any political subdivision of a state or any agency or corporate or other instrumentality of one or more states or their political subdivisions; or any certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a non-governmental industrial or commercial enterprise, unless the payments are guaranteed by a person whose securities are exempt from registration by paragraphs F and H paragraph B, C, D, E or F or by a person with at least one security exempt from registration under paragraph H and the guarantee is senior to that security;

B. Any security issued, insured or guaranteed by Canada, any Canadian province or territory, any political subdivision of Canada or any such province or territory, any agency or corporate or other instrumentality of one or more of the foregoing, or any foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer, insurer or guarantor;

C. Any security issued by and representing an interest in or a direct obligation of, or guaranteed by, any depository institution or depository institution holding company, the deposit accounts of which are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or any successor to either agency authorized by federal law or a deposit insurance fund expressly authorized by state law and supervised by a state governmental official or agency;

D. Any security issued by and representing an interest in or a direct obligation of, or guaranteed by, any federal credit union or any credit union organized and supervised under the laws of this State, the share accounts of which are insured by the National Credit Union Share Insurance Fund, or by a deposit insurance fund expressly authorized by state law and supervised by a state governmental official or agency;

E. Any security issued by and representing an interest in or a direct obligation of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this State; but this exemption does not apply to an annuity contract, investment contract or similar security under which the promised payments are not fixed in dollars, but are substantially dependent upon the investment results of a segregated fund or account invested in securities;

F. Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is:

(1) Subject to the jurisdiction of the United States Interstate Commerce Commission;

(2) A registered holding company under the United States Public Utility Holding Company

Act of 1935 or a subsidiary of a registered holding company within the meaning of the Act;

(3) Regulated in respect to its rates and charges by a governmental authority of the United States or any state; or

(4) Regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province or territory;

G. Equipment trust certificates in respect of equipment leased or conditionally sold to a person, if securities issued by that person would be exempt under this subsection;

H. Any security:

(1) Listed for more than 30 days, prior to sale in this State, on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange or upon a finding by the superintendent that the Securities and Exchange Commission has approved the National Association of Securities Dealers corporate governance provisions, the National Association of Securities Dealers Automated Quotation - National Marketing System; or

(2) Listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, a national market system designated by rule of the superintendent or, upon a finding by the superintendent that the Securities and Exchange Commission has approved the National Association of Securities Dealers corporate governance provisions, the National Association of Securities Dealers Automated Quotation - National Marketing System; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved on such an exchange; or any warrant or right to purchase or subscribe to any of the foregoing, provided that there has been filed by the issuer, any dealer or other offeror of the security with the superintendent a notice con-

taining the name and address of the person intending to offer the security and identification of the security, together with a notice filing fee in the amount of \$300;

I. Any option issued by a clearing agency registered as such under the United States Securities Exchange Act of 1934, if the security, currency, commodity or other interest underlying the option is registered under this Act, is exempt under this subsection or is not otherwise required to be registered under this Act; provided that this exemption does not include or extend to any off-exchange futures contract or substantially similar arrangement;

J. Any security issued by:

(1) Any person organized and operated not for private profit, but exclusively for a religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purpose, or as a Chamber of Commerce or trade or professional association; or

(2) To the extent that a person is not described in subparagraph (1), a person exempt from tax or subsequently determined to have been exempt at the time of the sale under the United States Internal Revenue Code of 1954, as amended, Section 501(c), (2), (3), (4), (5), (6), (7), (8), (9), (10), (19), 501(e), 501(f) or 528 or any similar successor provision thereto; provided that no part of the net earnings of the issuer inures to the benefit of any person, private stockholder, member or individual;

K. Any commercial paper which arises out of a current transaction the proceeds of which have been or are to be used for current transactions, and which evidences any obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited or any guarantee of that paper or of any such renewal;

L. Any security issued in connection with an employees' stock purchase, pension, savings, option, profit-sharing or similar employees' benefit plan; and

M. A membership or equity interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the laws of any state when not traded to the public.

Sec. 8. 32 MRSA §10502, sub-§§3 and 4, as enacted by PL 1985, c. 400, §2, is further amended to read:

3. Additional exemptions. The superintendent is authorized by rule to exempt securities or classes of securities or certain transactions, including promulgating a limited offering exemption, which shall further the objectives to compatibility with the exemptions from securities registration authorized by the United States Securities Act of 1933, Section 19(c)(2)(C) and uniformity among the states. In any rule establishing an exemption for which a notice must be filed, the superintendent may provide for a filing fee of \$300.

To keep any rules adopted by the superintendent in harmony with the rules promulgated by the United States Securities and Exchange Commission from time to time pursuant to the United States Securities Act of 1933 and with the rules of administrators in other states, the purposes, policies and provisions of this Act, in adopting, amending and repealing any rules promulgated under this subsection, take into consideration the rules so prescribed by the United States Securities and Exchange Commission and the rules of administrators in other jurisdictions which enact the Uniform Securities Act or the Revised Uniform Securities Act.

4. Denial and revocation of exemptions. Notwithstanding the Maine Administrative Procedure Act, Title 5, chapter 375, the superintendent may by order deny or revoke any exemption specified in subsection 1, paragraph J, L or M, or in subsection 2 or 3, with respect to a specific security or transaction if the superintendent reasonably believes that the action is necessary or appropriate for the protection of investors. Following entry of any such order, the procedures set forth in section 10708 shall be followed. No order under this subsection may operate retroactively.

Sec. 9. 32 MRSA §10502, sub-§6 is enacted to read:

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

Sec. 10. 32 MRSA §10503, as enacted by PL 1985, c. 400, §2, is amended to read:

§10503. Filing of sales and advertising literature

The superintendent, by rule or order, may require the filing of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempt qualifies for an exemption under section 10502 for which the filing of a notice with the superintendent is not required.

Sec. 11. 32 MRSA §10701, sub-§8 is enacted to read:

8. Waiver of fee. The superintendent may, by order, waive the filing fee required to register a security or to secure an exemption from registration, upon a written finding that the fee would be unreasonably high in light of the maximum potential proceeds from the sale of the security in the State or that the imposition of the fee would otherwise be unreasonable.

Sec. 12. 32 MRSA §10708, sub-§2, as enacted by PL 1985, c. 400, §2, is amended to read:

2. Notification of parties. Upon entry of a notice of intent or summary order, the superintendent shall promptly notify in writing all interested parties that the notice or summary order has been entered and the reasons for that notice or order. If the proceeding is pursuant to a notice of intent, the superintendent shall notify all interested parties of the date, time and place set for the hearing in the notice, or if no hearing has been scheduled, the superintendent shall notify all interested parties that they have 30 calendar days from the entry of the notice of intent to file a written request with the superintendent for a hearing. If the proceeding is pursuant to a summary order, the superintendent shall

notify all interested parties that they have 30 calendar days from the entry of the order to file a written request for a hearing on the matter with the superintendent and that the hearing will be scheduled to commence within 15 calendar days after the receipt of the written request.

Notwithstanding anything in this subsection, the superintendent may give notice of the entry of the notice of intent or summary order to such parties as he may determine to be necessary or appropriate.

Effective July 16, 1986.

CHAPTER 618

H.P. 1378 - L.D. 1941

AN ACT to Improve the Effectiveness of the
Consumer Assistance Division of the
Public Utilities Commission and to
make Other Changes in the Statutes.

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

Sec. 1. 2 MRSA §6-A, sub-§3, as amended by PL 1983, c. 729, §1, is further amended to read:

3. Other employees. The salaries of the following employees shall be within salary range 88:

- A. General counsel;
- B. Director of finance;
- C. Administrative Director; and
- D. Director of technical analysis; and
- E. Director of consumer assistance.

Sec. 2. 2 MRSA §6-A, sub-§3-A is enacted to read:

3-A. Other employees; range 80. The salaries of the following employees shall be within salary range 80:

- A. Assistant administrative director; and