

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
OCTOBER 9, 1991

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

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J.S. McCarthy Company  
Augusta, Maine  
1991

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**

**1991**

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the land unless expressly prohibited by municipal ordinance;

G. Burning on site for the disposal of materials generated from the clearing of any land or by the erection, modification, maintenance, demolition or construction of any highway, railroad, power line, communication line, pipeline, building or development;

H. Burning for hazard reduction purposes such as, but not limited to, the burning of grass fields;

I. Burning for the containment or control of spills of gasoline, kerosene, heating oil or similar petroleum products; and

J. The burning of brush and demolition debris at municipal solid waste disposal facilities.

2. Permissible open burning without permit. When not prohibited by state rule, local ordinance or water utility regulation, the following types of burning are permissible without a permit if no nuisance is created:

A. Recreational campfires kindled when the ground is covered by snow or on frozen bodies of water;

B. Residential use of outdoor grills and fireplaces for recreational purposes such as preparing food; and

C. Use of outdoor grills and fireplaces for recreational purposes such as preparing food at commercial campgrounds in organized towns as long as the commercial campgrounds are licensed by the health engineering division of the Department of Human Services.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 23, 1991.

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## CHAPTER 37

### S.P. 71 - L.D. 127

#### An Act to Revise the Law Respecting Insurers' Dividend Distributions

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

**Sec. 1.** 24-A MRSA §222, sub-§2, ¶A-2 is enacted to read:

A-2. "Continuing director" means:

(1) Any member of a domestic insurer's board of directors, while that person is a member of the

board of directors, who was a member of that board of directors prior to the time that any person acquires control of the domestic insurer or any person controlling the insurer; and

(2) Any successor of a continuing director, while the successor is a member of the board of directors, who is recommended or elected to succeed a continuing director by a number of continuing directors equal to a majority of continuing directors in office immediately preceding the acquisition of control.

**Sec. 2.** 24-A MRSA §222, sub-§11, as enacted by PL 1975, c. 356, §1, is amended to read:

**11. Dividends and distributions.** ~~No An~~ insurer subject to registration under this section ~~shall~~ may not pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until 60 days after the superintendent has received notice of the declaration thereof, and has not within ~~such~~ that period disapproved ~~such~~ the payment, or until the superintendent ~~shall have approved~~ such approves that payment within ~~such~~ the 60-day period. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distributions made within the preceding 12 months, exceeds the greater of 10% of the insurer's surplus to policyholders as of December 31st of the immediate preceding 12 months or the net gain from operations of the insurer if the insurer is a life insurer or the net investment income if the insurer is not a life insurer, for the 12-month period ending December 31st of the year immediately preceding, but shall not include pro rata distributions of any class of the insurer's own securities. A pro rata distribution of any class of the insurer's own securities is not considered an extraordinary dividend or distribution for purposes of this section. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution ~~which~~ that is conditional upon the superintendent's approval thereof, and such a declaration ~~shall~~ does not confer ~~no~~ any rights upon stockholders until the superintendent has approved the payment of the dividend or distribution or the superintendent has not disapproved ~~such~~ the payment within the period referred to ~~above~~ in this subsection. The insurer's surplus following any dividends or distributions to shareholder affiliates ~~shall~~ must be reasonable in relation to the insurer's outstanding liabilities and ~~shall be~~ is adequate to meet its financial needs. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution that:

A. Exceeds the greater of:

(1) Ten percent of the insurer's surplus to policyholders as of December 31st of the preceding year; or

(2) The net gain from operations of the insurer for the 12-month period ending December 31st

of the preceding year when taken together with all other dividends or distributions paid after December 31st of the preceding year;

B. Is declared at any time when the insurer has recorded or realized a net operating loss for the period subsequent to December 31st of the preceding year that is equal to or greater than 20% of the insurer's surplus to policyholders as of that preceding December 31st;

C. Is declared at any time when the insurer has realized an aggregate net operating loss over the immediately preceding 12 calendar quarters;

D. Is declared at any time when the insurer has realized a net operating loss in any 8 of the immediately preceding 12 calendar quarters;

E. Is declared at any time when the insurer has, in any one of the previous 3 years, paid a dividend that exceeded the operating gain for the calendar year that preceded the payment; or

F. Is declared at any time within 5 years following any acquisition of control of a domestic insurer or any person controlling such insurer unless the dividend or distribution is approved by a number of continuing directors equal to a majority of the continuing directors in office immediately preceding such acquisition of control.

An extraordinary dividend or distribution that is permissible under statutory terms and conditions in the insurer's state of domicile is deemed to meet the requirements of this subsection if the value of the dividend or distribution does not materially exceed that which would be permissible under this subsection.

See title page for effective date.

## CHAPTER 38

H.P. 255 - L.D. 346

### An Act to Amend Qualifying Standards Applicable to Reinsurance Transactions

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

24-A MRSA §731-B, sub-§1, ¶C, as enacted by PL 1989, c. 846, Pt. E, §2 and as affected by §4, is amended to read:

C. Maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest.

(1) The assuming insurer shall report annually to the superintendent information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the superintendent to determine the sufficiency of the trust fund.

(2) In the case of a single assuming insurer, the trust must consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, include a trustee surplus of at least \$20,000,000.

(3) In the case of a group of incorporated insurers under common administration that is under the supervision of the Department of Trade and Industry of the United Kingdom, the group must have aggregate policyholders' surplus of \$10,000,000,000 and the trust must be in an amount equal to the group's several liabilities attributable to business written in the United States. In addition, the group shall maintain a joint trustee surplus of which \$100,000,000 is held jointly for the benefit of the United States ceding insurers of any member of the group. Each member of the group shall make available to the superintendent an annual certification of the member's solvency by that member's domiciliary regulator and the member's independent public accountant. Each group member shall comply with the filing requirements of subparagraph 1, submit to the State's authority to examine the member's books and records, and bear the expense of the examination.

~~(3)~~ (4) In the case of a group of individuals that constitutes a syndicate of unincorporated alien underwriters, the trust must consist of a trustee account representing the group's liabilities attributable to business written in the United States and, in addition, include a trustee surplus of at least \$100,000,000, which must be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the superintendent an annual certification by the group's domiciliary regulator and ~~is~~ the independent public accountants of the solvency of each underwriter.

~~(4)~~ (5) The trust must be established in a form approved by the superintendent. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest. The trust and the