

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

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J.S. McCarthy Company
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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
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ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

38 MRSA §1367, sub-§3, as enacted by PL 1983, c. 569, §1, is amended to read:

3. Act or omission. An act or omission of a 3rd party who is not ~~his~~ that person's employee or agent. A person seeking relief from liability for the acts or omissions of a 3rd party shall also demonstrate by a preponderance of the evidence that ~~he~~ that person exercised due care with respect to the hazardous substance and uncontrolled site concerned, taking into consideration the characteristics of that substance and site, in light of all relevant facts and circumstances and that ~~he~~ that person took precautions against foreseeable acts or omissions of any such 3rd party and the consequences that could foreseeably result from such acts or omissions; ~~or.~~

A. For purposes of this subsection, a person may demonstrate the exercise of due care with respect to any uncontrolled site that that person has acquired after hazardous substances were located on that uncontrolled site, if that person shows that at the time that person acquired the uncontrolled site the person did not know and had no reason to know that any hazardous substance that is the subject of the release or threatened release was disposed on, in or at the uncontrolled site.

B. To establish that a person meets the criteria of paragraph A, a person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this paragraph, the court shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination of the property, and the ability to detect that contamination by appropriate inspection; or

See title page for effective date.

CHAPTER 82

S.P. 297 - L.D. 795

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-§2, ¶D, as enacted by PL 1985, c. 400, §2, is amended to read:

D. A sales representative 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. 2. 32 MRSA §10303, sub-§3 is enacted to read:

3. Employment of unqualified persons. It is unlawful for an investment adviser licensed under this Act to employ or contract with an individual as a representative of the investment adviser in this State unless the individual has satisfied all applicable examination requirements under this Act. For purposes of this subsection, "representative" means an individual who represents an investment adviser in doing any of the acts that make that person an investment adviser.

Sec. 3. 32 MRSA §10307, sub-§1, ¶B, as enacted by PL 1985, c. 400, §2, is amended to read:

B. Any class of applicants; ~~and~~

Sec. 4. 32 MRSA §10307, sub-§1, ¶C, as amended by PL 1989, c. 542, §17, is further amended to read:

C. Any class of employees of applicants for licensing as to whom the administrator ~~shall determine~~ determines that an examination requirement is necessary for the protection of investors; ~~and~~

Sec. 5. 32 MRSA §10307, sub-§1, ¶D is enacted to read:

D. Any individual who represents an investment adviser licensed under this Act in doing any of the acts that make that person an investment adviser.

Sec. 6. 32 MRSA §10308, sub-§2, as enacted by PL 1985, c. 400, §2, is repealed and the following enacted in its place:

2. License effective until end of calendar year. Unless terminated earlier by revocation, cancellation or withdrawal, the license of a broker-dealer, sales representative or investment adviser expires at the end of the calendar year. Prior to the end of the calendar year, or at a later date established by the administrator, the license may be renewed pursuant to procedures established by the administrator. Unless terminated earlier by revocation, cancellation or withdrawal, a renewed license remains in effect until the end of the next calendar year, at which time it may be renewed again pursuant to the procedures established by the administrator.

Sec. 7. 32 MRSA §10313, sub-§2, ¶C, as amended by PL 1989, c. 542, §26, is further amended to read:

C. The administrator may not enter an order solely on the basis of lack of experience if the applicant or licensee is qualified by training or knowledge or both. ~~The possession of a currently effective license under this Act or the compliance with the examination requirements of this Act shall establish qualification.~~

Sec. 8. 32 MRSA §10502, sub-§3, as amended by PL 1989, c. 542, §43, is repealed and the following enacted in its place:

3. Additional exemptions. The administrator is authorized to adopt rules exempting from section 10401 securities or classes of securities or certain transactions, including by adopting a limited offering exemption, if the administrator finds that the establishment of the exemption is consistent with the public interest and the protection of investors. For purposes of promoting uniformity, the administrator, in adopting, amending and repealing any rules pursuant to this subsection, shall take into consideration any relevant rules promulgated by the United States Securities and Exchange Commission and by administrators in other jurisdictions. In any rule establishing an exemption for which a filing is required, the administrator may provide for a filing fee of \$300.

Sec. 9. 32 MRSA §10602, sub-§3 is enacted to read:

3. Liability of control persons. In a civil action brought by the Attorney General for a violation of any provision of this Act or any rule or order adopted or issued by the administrator pursuant to this Act, every person who directly or indirectly controls another person liable for the violation, every partner, officer or director of that other person, every person occupying a similar status or performing similar functions, every employee of that other person who materially aids in the act or transaction constituting the violation and every broker-dealer or sales representative who materially aids in the act or transaction constituting the violation is liable to the same extent as that other person, unless the person otherwise secondarily liable under this Act proves that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. Any of the remedies authorized by section 10603, subsections 1 and 2 may be granted with respect to a person secondarily liable under this subsection. This subsection is not intended to abrogate any right to contribution that may exist at common law with respect to an award of restitution.

See title page for effective date.

CHAPTER 83

H.P. 224 - L.D. 315

An Act to Amend the Election Laws Dealing with Local Elections

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

Sec. 1. 30-A MRSA §2528, sub-§4, ¶B, as amended by PL 1989, c. 104, Pt. A, §18 and Pt. C, §§8 and 10, is further amended to read:

B. At the end of the list of candidates for each office, there shall must be left as many blank spaces as there

are vacancies to be filled in which a voter may write in the name and, if residence in the municipality is not a requirement to hold office, municipality of residence of any person for whom the voter desires to vote. A sticker may not be used to vote for a write-in candidate in any municipal election other than a primary election.

Sec. 2. 30-A MRSA §2528, sub-§6, ¶B, as amended by PL 1989, c. 104, Pt. A, §20 and Pt. C, §§8 and 10, is further amended to read:

B. At the end of the list of candidates for each office, there shall must be left as many blank spaces as there are vacancies to be filled in which a voter may write in the name and, if residence in the municipality is not a requirement to hold office, municipality of residence of any person for whom the voter desires to vote. A sticker may not be used to vote for a write-in candidate in any municipal election other than a primary election.

See title page for effective date.

CHAPTER 84

H.P. 550 - L.D. 787

An Act to Clarify Certain Provisions of the Hospital Care Financing System and Provide for Systematic Consideration of Consumer Viewpoints by the Maine Health Care Finance Commission

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

Sec. 1. 5 MRSA §12004-I, sub-§44-A is enacted to read:

| | | | |
|------------------|------------------|-------------------|----------------|
| <u>44-A.</u> | <u>Consumer</u> | <u>Not</u> | <u>22 MRSA</u> |
| <u>Human</u> | <u>Advisory</u> | <u>Authorized</u> | <u>§396-P</u> |
| <u>Services:</u> | <u>Committee</u> | | |
| <u>Hospitals</u> | | | |

Sec. 2. 22 MRSA §396-D, sub-§12, ¶B, as enacted by PL 1989, c. 588, Pt. A, §29, is amended to read:

B. A request that ~~meets the requirements of paragraph A, but that would result in a positive adjustment equal to less~~ is not supported by proof of major reasonable increases in expenses, net of offsetting expense changes, that are equal to or greater than 1.5% of a hospital's financial requirements for the previous year or \$1,000,000, whichever is less, shall may not be granted, unless the applicant establishes either of the following:

- (1) That the applicant's failure to receive the adjustment will immediately, seriously and irreparably impair its financial capacity to continue providing hospital services and that no alternative means of providing those services is available; or