

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.

J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

3. Expansion of facilities. The department may license an expansion of a commercial solid waste or bio-medical waste disposal facility after September 30, 1989 if:

A. The department has previously licensed the facility prior to October 6, 1989;

B. The department determines that the proposed expansion is contiguous with the existing facility and is located on property owned by the licensee on September 30, 1989; and

C. For a commercial solid waste disposal facility and prior to the adoption of the state plan and siting criteria under chapter 24, the department determines that the proposed expansion is consistent with the provisions of section 1310-R, subsection 3, paragraph A-1 or, after the adoption of the state plan and siting criteria under chapter 24, the agency determines that the provisions of section 2157 are met.

Sec. 2. Application. A commercial biomedical waste disposal facility with a valid air emissions license issued prior to October 6, 1989, by the Department of Environmental Protection for the incineration of wastes categorized by the department as pathogenic or infectious is eligible for relicensing or expansion under this Act.

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

Effective June 17, 1991.

CHAPTER 298

H.P. 867 - L.D. 1247

An Act to Amend Certain Provisions of the Insurance Code Involving the Powers of the Superintendent

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

Sec. 1. 24-A MRSA §12-A, sub-§2, ¶A, as enacted by PL 1989, c. 269, §3, is amended to read:

A. A cease and desist order shall be is effective upon expiration of the time allowed for appeals from the superintendent's orders, regardless of whether an appeal is taken when issued, unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004.

Sec. 2. 24-A MRSA §12-A, sub-§2-A is enacted to read:

2-A. Emergency cease and desist. The superintendent may issue an emergency cease and desist order, without prior notice and hearing, if the complaint shows that a person is engaging in unlicensed insurance activities or is engaging in conduct that creates an immediate danger to the public safety or is causing or is reasonably expected to cause significant, imminent and irreparable public injury.

A. A request for an emergency cease and desist order must be in writing in the form of a verified complaint.

B. An emergency cease and desist order is effective immediately and will continue in force and effect until further order by the superintendent or unless stayed by the superintendent or by a court of competent jurisdiction.

C. Upon issuance of an emergency cease and desist order, the superintendent shall serve on the person affected by the order, by registered or certified mail to the person's last known address, an order that contains a statement of the charges and a notice of hearing. The hearing, held in conformance with Title 5, chapter 375, subchapter IV, must be held within 10 days of the effective date of the emergency order, unless a later time is agreed upon by all parties.

D. At the hearing, the superintendent shall affirm, modify or set aside, in whole or in part, the emergency cease and desist order and may combine and employ any other enforcement or penalty provisions available to the superintendent to arrive at a final order.

E. The superintendent's order after hearing is a final order in all respects and is subject to subsection 2, paragraph A and section 236.

Sec. 3. 24-A MRSA §1540, as repealed and replaced by PL 1977, c. 694, §409, is repealed.

Sec. 4. 24-A MRSA §2013, sub-§1, as amended by PL 1985, c. 564, §3, is further amended to read:

1. ~~The Notwithstanding Title 5, chapter 375, subchapter VI, the superintendent may file a complaint with the Administrative Court seeking suspension or revocation of~~, after notice and opportunity for hearing, deny, revoke, suspend or limit the permissible activities under any surplus lines broker's license:

A. If the broker fails to file the annual statement or to remit the tax as required by section 2017;

B. If the broker fails to maintain an office in this State, or to keep the records, or to allow the superintendent to examine his those records as required by this law, or if ~~he~~ the broker removes his those records from the State;

C. If the broker places a surplus lines coverage in an insurer other than as authorized under section 2007;

D. For any other applicable cause for which a general lines agent's license may be suspended or revoked; or

E. If the broker assists any person or persons not licensed as surplus lines brokers by serving as a reporting broker for purposes of section 2005, 2015, 2016 or 2017 with respect to insurance coverage not procured by the broker.

Sec. 5. 24-A MRSA §2018, as amended by PL 1979, c. 541, Pt. A, §162, is further amended to read:

§2018. Failure to file statement or remit tax; penalty

If any broker fails to file ~~his an~~ annual statement, or fails to remit the tax provided by section 2017, prior to the first day of March after the tax is due, ~~and if in the superintendent's opinion such failure is without just cause, he shall be liable for a fine of the superintendent may, following an adjudicatory hearing, assess a penalty of not less than \$25 for each day of delinquency commencing with the first day of March. The tax may be collected by distraint, or the tax and fine may be recovered by an action instituted by the superintendent in any court of competent jurisdiction.~~ Any fine collected by the superintendent ~~shall~~ must be paid to the Treasurer of State and credited to the Insurance Regulatory Fund.

Sec. 6. 24-A MRSA §2101, sub-§3 is enacted to read:

3. If the superintendent has reason to believe that any insurer or other person is acting in violation of this section or section 404, the superintendent shall commence proceedings in accordance with sections 12-A and 404. Section 2105 applies to all process, notices and statements of charges to be served on the unauthorized insurer or insurers.

Sec. 7. 24-A MRSA §2102, as amended by PL 1973, c. 625, §142, is further amended to read:

§2102. Purposes as related to Unauthorized Insurers

The purpose of section 12-A and sections 2102 to 2108 (Unauthorized Insurers Process Act) ~~and sections 2109 to 2111 (Unauthorized Insurers False Advertising Process Act)~~ is to subject certain insurers to the jurisdiction of the superintendent and the courts of this State in suits and disciplinary proceedings as provided therein, by or on behalf of insureds or beneficiaries under insurance contracts or the superintendent. The Legislature declares its concern that many Maine residents hold insurance policies delivered in this State by unauthorized insurers, other than as to surplus lines coverages written pursuant to chapter 19, thus presenting to such resi-

dents the often insuperable obstacle of resort to distant courts for the assertion of legal rights under their policies; and that such insurers may induce residents to purchase insurance through false advertising sent into this State. In furtherance of such state interest, the Legislature herein provides a method of substituted service of process upon such insurers, declares that in so doing it exercises its power to protect Maine residents, to define, for the purposes of this chapter, what constitutes doing business in this State, and also exercises powers and privileges available to the State under Public Law 15, 79th Congress of the United States, chapter 20, 1st Session, S. 340, as amended, which declares that the business of insurance and every person engaged therein ~~shall be~~ are subject to the laws of the several states.

Sec. 8. 24-A MRSA §2109, as amended by PL 1979, c. 541, Pt. A, §163, is repealed.

Sec. 9. 24-A MRSA §2110, as amended by PL 1973, c. 585, §12, is repealed.

Sec. 10. 24-A MRSA §2111, as amended by PL 1977, c. 694, §413, is repealed.

Sec. 11. 24-A MRSA §2165, as amended by PL 1985, c. 648, §§6 and 7, is repealed.

Sec. 12. 24-A MRSA §2165-A is enacted to read:

§2165-A. Cease and desist orders; actions against defined and undefined unfair and deceptive practices

1. Emergency cease and desist orders issued pursuant to section 12-A, subsection 2-A may not be imposed for violations under this section.

2. The superintendent may issue a cease and desist order pursuant to section 12-A, subsection 2 if, after a hearing, the superintendent finds that any person in this State has engaged or is engaging in any act or practice defined or prohibited under this chapter or rules adopted pursuant to this chapter or that a resident of this State has so engaged or is so engaging in another state.

3. The superintendent may issue a cease and desist order pursuant to section 12-A, subsection 2 if, after a hearing, the superintendent finds that any person in the State has engaged or is engaging, or that a resident of the State has engaged or is engaging in another state, in an unfair or deceptive practice not defined in this chapter or in rules adopted pursuant to this chapter. For any undefined practice, the civil penalties set forth in section 12-A, subsection 1 may not be imposed for practice engaged in prior to the issuance and service of a valid cease and desist order.

Sec. 13. 24-A MRSA §2166, as amended by PL 1985, c. 648, §8, is repealed.

Sec. 14. 24-A MRSA §2167, as amended by PL 1973, c. 585, §12, is repealed and the following enacted in its place:

§2167. Service upon unauthorized insurers

Provisions of this chapter applicable to insurers apply fully to unauthorized insurers. If an action under this chapter is brought against an unauthorized insurer, section 2105 applies to all process, notices and statements of charges.

Sec. 15. 24-A MRSA §2167-A is enacted to read:

§2167-A. Notice to domiciliary supervisory official

Whenever the superintendent has reason to believe that a foreign or alien insurer or licensed insurance professional is acting in violation of this chapter or chapter 21, the superintendent shall notify the insurance supervisory official of that person's domiciliary jurisdiction.

See title page for effective date.

CHAPTER 299

S.P. 117 - L.D. 216

An Act to Amend the Unclaimed Property Act

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

33 MRSA §1860, as enacted by PL 1987, c. 691, §4, is amended to read:

§1860. Action to establish claim

A person aggrieved by a decision of the administrator or whose claim has not been acted upon within 90 days after its filing may bring an action to establish the claim in a court of appropriate jurisdiction, naming the administrator as a defendant. The action must be brought within 90 days after the decision of the administrator or within 180 days after the filing of the claim if the administrator has failed to act on it.

~~If the aggrieved person establishes the claim in an action against the administrator, the court shall award that person costs and reasonable attorney fees.~~

See title page for effective date.

CHAPTER 300

H.P. 1248 - L.D. 1815

An Act to Authorize Employees of a Participating Local District to Participate in a Qualified Alternative Pension Plan

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

Sec. 1. 5 MRSA §18801, sub-§§1 and 2, as enacted by PL 1989, c. 811, §3, are amended to read:

1. Plan content. Benefits provided by the plan must be selected from benefits included in chapter 423, chapter 425 or this chapter and must include, but are not limited to:

A. Service retirement benefits, including:

(1) Several plans, with levels of benefits to meet the needs of various classes of employees and employers; and

(2) Portability of benefits when a member changes plans or employers;

B. Death benefits;

C. Disability retirement benefits;

D. ~~Compulsory and optional membership requirements; and except:~~

(1) Optional membership for those employees permitted optional membership under chapter 425; and

(2) Optional membership for those employees who are not subject to the municipal public employees labor relations laws contained in Title 26, chapter 9-A; and

E. A defined contribution plan consistent with the United States Internal Revenue Code.

2. Amendments. Any benefit provision selected from chapter 423, chapter 425 or this chapter to be included in the plan that is subsequently amended is not considered to have been amended for purposes of the plan until the rule that established the plan is amended to include the amended version of the benefit provision.

Sec. 2. 5 MRSA §18806, sub-§3 is enacted to read:

3. Ancillary benefits. The plan must include disability benefits and death benefits for those employees who choose not to be members under section 18801, subsection 1, paragraph D and who participate in the defined contribution plan.

See title page for effective date.