

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**SECOND REGULAR SESSION**

**January 5, 1994 to April 14, 1994**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JULY 14, 1994**

**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**  
**1993**

posed on a first-time offender pursuant to Title 15, section 3314 or section 1312-B, the Secretary of State shall issue a special license or permit to the person if the Secretary of State receives written notice that the person has completed the assessment components of the alcohol and other drug program as set out in Title 5, section 20073-A. First offenders with an aggravated offense as defined in Title 5, section 20071, subsection 4-B are entitled to receive a special license after completion of the evaluation provided by the Office of Substance Abuse. First offenders who have registered for the completion of treatment programs as described in Title 5, section 20072, subsection 2 are entitled to receive a special license after completion of a minimum of 3 treatment sessions provided by a counselor or agency approved by the Office of Substance Abuse. A special license or permit may not be issued under this section to 2nd and subsequent offenders.

See title page for effective date.

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**CHAPTER 632**

**S.P. 690 - L.D. 1876**

**An Act Concerning Municipally Owned and Operated Solid Waste Incinerators**

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

**Sec. 1. 38 MRSA §352, sub-§5-A, in that part designated "TABLE II" related to "Title 38, SECTION 1310-N," paragraph B** is repealed and the following enacted in its place:

B. Incineration facilities

<u>1. New or expanded for the acceptance of municipal or special wastes, or both</u>	<u>3,500</u>	<u>5,000</u>
<u>2. Municipally owned and operated solid waste incinerators with licensed capacity of 10 tons per day or less</u>	<u>3,500</u>	<u>1,000</u>

**Sec. 2. 38 MRSA §352, sub-§5-B, in that part designated "TABLE II" related to "Title 38, SECTION 1304," paragraph I** is enacted to read:

<u>I. Municipally owned and operated solid waste incinerators with licensed capacity of 10 tons per day or less</u>	<u>3,500</u>	<u>1,000</u>
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**Sec. 3. Retroactivity.** This Act takes effect retroactively to July 1, 1993.

See title page for effective date.

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**CHAPTER 633**

**S.P. 693 - L.D. 1879**

**An Act to Enhance the Effectiveness of the Office of the Public Advocate**

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

**Sec. 1. 35-A MRSA §116, sub-§8, ¶C,** as enacted by PL 1991, c. 591, Pt. CC, §2, is repealed.

**Sec. 2. 35-A MRSA §116, sub-§8, ¶C-1** is enacted to read:

C-1. Except as specified in this subsection, funds that are not expended at the end of a fiscal year do not lapse but must be carried forward to be expended for the purposes specified in this section in succeeding fiscal years; but unexpended funds in excess of 10% of the total annual assessment authorized in this section must, at the option of the Public Advocate, either be presented to the Legislature in accordance with paragraph A for reallocation and expenditure or used to reduce the utility assessment in the following fiscal year.

**Sec. 3. Retroactivity.** This Act applies retroactively to June 30, 1994.

See title page for effective date.

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**CHAPTER 634**

**S.P. 701 - L.D. 1899**

**An Act to Require Risk-based Capital Standards and Standard Valuation to Ensure Continued Accreditation for the Bureau of Insurance**

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

## PART A

Sec. A-1. 24-A MRSA c. 79 is enacted to read:

CHAPTER 79RISK-BASED CAPITAL STANDARDS§6451. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Adjusted risk-based capital report.** "Adjusted risk-based capital report" means a risk-based capital report that has been adjusted by the superintendent in accordance with section 6452, subsection 3.

**2. Corrective order.** "Corrective order" means an order issued by the superintendent specifying corrective actions that the superintendent has determined are required.

**3. Domestic insurer.** "Domestic insurer" means any life or health insurance company organized in this State.

**4. Foreign insurer.** "Foreign insurer" means any life or health insurance company that is authorized to do business in this State under section 404 but is not domiciled in this State.

**5. NAIC.** "NAIC" means the National Association of Insurance Commissioners.

**6. Negative trend.** "Negative trend" means a negative trend over a period of time, as determined in accordance with the trend test calculation included in the risk-based capital instructions.

**7. Risk-based capital instructions.** "Risk-based capital instructions" means the risk-based capital instructions adopted by the NAIC, as such risk-based capital instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

**8. Risk-based capital level.** "Risk-based capital level" means an insurer's company action level risk-based capital, regulatory action level risk-based capital, authorized control level risk-based capital or mandatory control level risk-based capital where:

A. "Company action level risk-based capital" means, with respect to any insurer, the product of 2.0 and its authorized control level risk-based capital;

B. "Regulatory action level risk-based capital" means the product of 1.5 and its authorized control level risk-based capital;

C. "Authorized control level risk-based capital" means the number determined under the risk-based capital formula in accordance with the risk-based capital instructions; and

D. "Mandatory control level risk-based capital" means the product of .70 and the authorized control level risk-based capital.

**9. Risk-based capital plan.** "Risk-based capital plan" means a comprehensive financial plan containing the elements specified in section 6453, subsection 2. If the superintendent rejects the risk-based capital plan and it is revised by the insurer, with or without the superintendent's recommendation, the plan is called the revised risk-based capital plan.

**10. Risk-based capital report.** "Risk-based capital report" means the report required in section 6452.

**11. Total adjusted capital.** "Total adjusted capital" means the sum of:

A. An insurer's statutory capital and surplus; and

B. Such other items, if any, as the risk-based capital instructions provide.

§6452. Risk-based capital reports

**1. Duty to file.** A domestic insurer shall, on or before March 15th, submit to the superintendent a report of its risk-based capital levels as of the end of the previous calendar year, in a form and containing such information as is required by the risk-based capital instructions. In addition, a domestic insurer shall file its risk-based capital report:

A. With the NAIC in accordance with the risk-based capital instructions; and

B. With the insurance superintendent in any state in which the insurer is authorized to do business, if the insurance superintendent has notified the insurer of its request for the filing in writing, in which case the insurer shall file its risk-based capital report not later than the later of:

(1) Fifteen days from the receipt of notice to file its risk-based capital report with that state; or

(2) The filing date.

**2. Determination of insurer's risk-based capital.** An insurer's risk-based capital must be determined in accordance with the formula set forth in the risk-based capital instructions. The formula must take into account, and may adjust for the covariance between, the following:

- A. The risk with respect to the insurer's assets;
- B. The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;
- C. The interest rate risk with respect to the insurer's business; and
- D. All other business risks and such other relevant risks as are set forth in the risk-based capital instructions, determined in each case by applying the factors in the manner set forth in the risk-based capital instructions.

**3. Filing of inaccurate report.** If a domestic insurer files a risk-based capital report that in the judgment of the superintendent is inaccurate, then the superintendent shall adjust the risk-based capital report to correct the inaccuracy and notify the insurer of the adjustment. The notice must contain a statement of the reason for the adjustment. A risk-based capital report so adjusted is referred to as an adjusted risk-based capital report.

#### **§6453. Company action level event**

**1. Company action level event; defined.** "Company action level event" means any of the following events:

- A. The filing of a risk-based capital report by an insurer that indicates that:
  - (1) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
  - (2) The insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5 and has a negative trend;
- B. Provided the insurer does not challenge the adjusted risk-based capital report under section 6457, the notification by the superintendent to the insurer of an adjusted risk-based capital report that indicates the event in paragraph A; or
- C. If the insurer, under section 6457, challenges the adjusted risk-based capital report that indi-

cates the event in paragraph A, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

**2. Contents of risk-based capital plan.** When a company action level event occurs, the insurer shall submit to the superintendent a risk-based capital plan that must:

- A. Identify the conditions in the insurer's business that contribute to the company action level event;
- B. Contain proposals of corrective actions that the insurer intends to take and that are expected to result in the elimination of the company action level event;
- C. Provide projections of the insurer's financial results in the current year and at least the 4 succeeding years, with consideration given to the effect of implementing and not implementing the proposed corrective actions, including projections of statutory operating income, net income, capital and surplus. The projections for new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component;
- D. Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and
- E. Identify the quality of, and the problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance in each case, if any.

**3. Submission of risk-based capital plan.** The risk-based capital plan must be submitted:

- A. Within 45 days of the company action level event; or
- B. If the insurer challenges an adjusted risk-based capital report under section 6457, within 45 days after notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

**4. Review by superintendent.** Within 60 days after the submission by an insurer of a risk-based capital plan to the superintendent pursuant to this section, the superintendent shall notify the insurer whether the risk-based capital plan may be implemented or is, in the judgment of the superintendent, unsatisfactory. If the superintendent determines the

risk-based capital plan is unsatisfactory, the notification to the insurer must set forth the reasons for the determination and may set forth proposed revisions that will render the risk-based capital plan satisfactory, in the judgment of the superintendent. Upon notification from the superintendent, the insurer shall prepare a revised risk-based capital plan, which may incorporate by reference any revisions proposed by the superintendent, and shall submit the revised risk-based capital plan to the superintendent:

A. Within 45 days after the notification from the superintendent; or

B. If the insurer challenges the notification from the superintendent under section 6457, within 45 days after a notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

**5. Notification that plan is unsatisfactory.** In the event of a notification by the superintendent to an insurer that the insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory, the superintendent may at the superintendent's discretion, subject to the insurer's right to a hearing under section 6457, specify in the notification that the notification constitutes a regulatory action level event.

**6. Duty to file copies of plan with other states.** A domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the superintendent pursuant to this section shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance superintendent in any state in which the insurer is authorized to do business if:

A. That state has a risk-based capital provision substantially similar to that required by this chapter; and

B. The insurance superintendent of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:

(1) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed under section 6454, subsection 3.

## **§6454. Regulatory action level event**

**1. Regulatory action level event; defined.** "Regulatory action level event" means, with respect to any insurer, any of the following events:

A. The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital;

B. Provided the insurer does not challenge the adjusted risk-based capital report under section 6457, the notification by the superintendent to an insurer of an adjusted risk-based capital report that indicates the event in paragraph A;

C. If the insurer, under section 6457, challenges an adjusted risk-based capital report that indicates the event in paragraph A, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge;

D. The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the superintendent and has cured the failure within 10 days after the filing date;

E. The failure of the insurer to submit a risk-based capital plan to the superintendent within the time period set forth in section 6453, subsection 3;

F. The notification by the superintendent to the insurer that:

(1) The risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the superintendent, unsatisfactory; and

(2) Provided the insurer has not challenged the determination under section 6457, that notification constitutes a regulatory action level event with respect to the insurer;

G. If the insurer, under section 6457, challenges a determination by the superintendent under paragraph F, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected that challenge;

H. Provided the insurer has not challenged the determination under section 6457, the notification by the superintendent to the insurer that the

insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if that failure has a substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the superintendent has so stated in the notification; or

I. If the insurer, under section 6457, challenges a determination by the superintendent under paragraph H, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the challenge unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no substantial adverse effect on the ability of the insurer to eliminate the regulatory action level event with respect to the insurer.

**2. Superintendent duties; regulatory action level event.** When a regulatory action level event occurs, the superintendent shall:

A. Require the insurer to submit a risk-based capital plan or, if applicable, a revised risk-based capital plan;

B. Perform such examination or analysis as the superintendent considers necessary of the assets, liabilities and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan; and

C. Subsequent to the examination or analysis, issue a corrective order specifying corrective actions that the superintendent considers necessary.

**3. Determination of corrective actions.** In determining corrective actions, the superintendent may take into account those factors that the superintendent considers relevant with respect to the insurer based upon the superintendent's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan must be submitted:

A. Within 45 days after the occurrence of the regulatory action level event;

B. If the insurer challenges an adjusted risk-based capital report under section 6457 and the challenge is not, in the judgment of the superintendent, frivolous, within 45 days after the notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge; or

C. If the insurer challenges a revised risk-based capital plan under section 6457, within 45 days after notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

**4. Consultants.** The superintendent may retain actuaries, investment experts and other consultants as may be necessary in the judgment of the superintendent to review the insurer's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities and operations of the insurer; and formulate the corrective order with respect to the insurer. The fees, costs and expenses relating to consultants must be borne by the affected insurer or such other party as directed by the superintendent.

#### **§6455. Authorized control level event**

**1. Authorized control level event; defined.** "Authorized control level event" means any of the following events:

A. The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its mandatory control level risk-based capital but less than its authorized control level risk-based capital;

B. Provided the insurer does not challenge the adjusted risk-based capital report under section 6457, the notification by the superintendent to the insurer of an adjusted risk-based capital report that indicates the event in paragraph A;

C. If the insurer, under section 6457, challenges an adjusted risk-based capital report that indicates the event in paragraph A, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge;

D. Provided the insurer has not challenged the corrective order under section 6457, the failure of the insurer to respond, in a manner satisfactory to the superintendent, to a corrective order; or

E. If the insurer has challenged a corrective order under section 6457 and the superintendent has, after a hearing, rejected the challenge or modified the corrective order, the failure of the insurer to respond, in a manner satisfactory to the superintendent, to the corrective order subsequent to rejection or modification by the superintendent.

**2. Superintendent duties; authorized control level event.** When an authorized control level event occurs, the superintendent shall:

A. Take those actions that are required under section 6454 regarding an insurer with respect to which a regulatory action level event has occurred; or

B. If the superintendent considers it to be in the best interests of the policyholders and creditors of the insurer and of the public, take those actions that are necessary to cause the insurer to be placed under regulatory control under chapter 57. If the commissioner takes those actions, the authorized control level event is deemed sufficient grounds for the superintendent to take action under chapter 57, and the superintendent has the rights, powers and duties with respect to the insurer as are set forth in chapter 57. If the superintendent takes actions under this paragraph pursuant to an adjusted risk-based capital report, the insurer is entitled to those protections that are afforded to insurers under the provisions of chapter 57, subchapter II pertaining to summary proceedings.

#### **§6456. Mandatory control level event**

**1. Mandatory control level event; defined.** "Mandatory control level event" means any of the following events:

A. The filing of a risk-based capital report that indicates that the insurer's total adjusted capital is less than its mandatory control level risk-based capital;

B. Provided the insurer does not challenge the adjusted risk-based capital report under section 6457, the notification by the superintendent to the insurer of an adjusted risk-based capital report that indicates the event in paragraph A; or

C. If the insurer, under section 6457, challenges an adjusted risk-based capital report that indicates the event in paragraph A, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge.

**2. Superintendent duties; mandatory control level event.** When a mandatory control level event occurs, the superintendent shall take those actions that are necessary to cause the insurer to be placed under regulatory control under chapter 57. If the superintendent takes those actions, the mandatory control level event is deemed sufficient grounds for the superintendent to take action under chapter 57, and the superintendent has the rights, powers and duties with respect to the insurer as are set forth in chapter 57. If the superintendent takes actions pursuant to an adjusted risk-based capital report, the insurer is entitled to those protections that are afforded

to insurers under the provisions of chapter 57, subchapter II pertaining to summary proceedings. Notwithstanding any provision of this section to the contrary, the superintendent may forego action for up to 90 days after the mandatory control level event if the superintendent finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

#### **§6457. Hearings**

**1. Right to hearing.** An insurer has the right to a departmental hearing, on record, at which the insurer may challenge any determination or action by the superintendent upon:

A. Notification to an insurer by the superintendent of an adjusted risk-based capital report;

B. Notification to an insurer by the superintendent that:

(1) The insurer's risk-based capital plan or revised risk-based capital plan is unsatisfactory; and

(2) That notification constitutes a regulatory action level event with respect to the insurer;

C. Notification to any insurer by the superintendent that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan and that such failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its risk-based capital plan or revised risk-based capital plan; or

D. Notification to an insurer by the superintendent of a corrective order with respect to the insurer.

The insurer must notify the superintendent of its request for a hearing within 5 days after the notification by the superintendent under paragraph A, B, C or D. Upon receipt of the insurer's request for a hearing, the superintendent shall set a date for the hearing, which may not be less than 10 or more than 30 days after the date of the insurer's request.

#### **§6458. Confidentiality and prohibition on announcements**

**1. Confidentiality.** The following constitute information that might be damaging to the insurer if made available to its competitors and must be kept confidential by the superintendent:



A. Risk-based capital reports, with respect to any domestic insurer or foreign insurer, that are filed with the superintendent, to the extent that the information in the reports is not required to be set forth in a publicly available annual statement schedule; and

B. Risk-based capital plans, with respect to any domestic insurer or foreign insurer, that are filed with the superintendent, including the results or report of any examination or analysis of an insurer performed pursuant to this chapter and any corrective order issued by the superintendent pursuant to the examination or analysis.

The information listed in paragraph A or B may not be made public or be subject to subpoena, other than by the superintendent and then only for the purpose of enforcement actions taken by the superintendent pursuant to this chapter or any other provision of the insurance laws of this State.

**2. Prohibition on dissemination of information regarding risk-based capital levels.** Except as otherwise required under this chapter, making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing an assertion or representation with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation of risk-based capital levels, by any insurer, agent, broker or other person engaged in any manner in the insurance business would be misleading and is prohibited; provided, however, that if any materially false statement with respect to the comparison between an insurer's total adjusted capital to its risk-based capital levels or an inappropriate comparison of any other amount to the insurer's risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the superintendent with substantial proof the falsity of that statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

#### **§6459. Supplemental provisions**

The provisions of this chapter are supplemental to any other provisions of the laws of this State and do not preclude or limit any other powers or duties of the superintendent under those laws, including, but not limited to, sections 417, 3423 and 3424 and chapter 57.

#### **§6460. Foreign insurers**

##### **1. Submission of risk-based capital report.**

Upon the written request of the superintendent, a foreign insurer shall submit to the superintendent a risk-based capital report as of the end of the previous calendar year by the later of:

A. The date a risk-based capital report would be required to be filed by a domestic insurer under this chapter; or

B. Fifteen days after the request is received by the foreign insurer.

At the written request of the superintendent, a foreign insurer shall promptly submit to the superintendent a copy of any risk-based capital plan that is filed with the insurance superintendent of any other state.

##### **2. Company action level event or regulatory action level event.**

When a company action level event or regulatory action level event with respect to a foreign insurer occurs, as determined under laws governing risk-based capital applicable in the state of domicile of the insurer, or, if no such risk-based capital provision is in force in that state, under the provisions of this chapter, if the insurance superintendent of the state of domicile of the foreign insurer fails to require the foreign insurer to file a risk-based capital plan in the manner specified under the laws governing risk-based capital in that state, or, if no such risk-based capital provision is in force in that state, under this chapter, the superintendent may require the foreign insurer to file a risk-based capital plan with the superintendent. In this event, the failure of the foreign insurer to file a risk-based capital plan with the superintendent is grounds to order the insurer to desist from writing new insurance business in this State.

**3. Mandatory control level event.** When a mandatory control level event with respect to any foreign insurer occurs, if a domiciliary receiver has not been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer, the superintendent may make application to the Superior Court under chapter 57 with respect to the liquidation of property of foreign insurers in this State, and the occurrence of the mandatory control level event is considered adequate grounds for the application.

#### **§6461. Notices**

A notice by the superintendent to an insurer that may result in regulatory action under this chapter is effective upon dispatch if transmitted by registered or certified mail or, in the case of any other transmis-

sion, is effective upon the insurer's receipt of the notice.

**Sec. A-2. Transition provision.** Notwithstanding the Maine Revised Statutes, Title 24-A, sections 6453, 6454, 6455 and 6456, for risk-based capital reports required to be filed with respect to calendar year 1993, the following requirements apply.

**1. Company action level event.** When a company action level event occurs with respect to a domestic insurer, the Superintendent of Insurance may not take regulatory action under Title 24-A, chapter 79.

**2. Certain regulatory action level events.** When a regulatory action level event occurs under Title 24-A, section 6454, subsection 1, paragraph A, B or C, the Superintendent of Insurance shall take the actions required under Title 24-A, section 6453.

**3. Authorized control level event; certain regulatory action events.** When a regulatory action level event occurs under Title 24-A, section 6454, subsection 1, paragraph D, E, F, G, H or I or an authorized control level event occurs, the Superintendent of Insurance shall take the actions required under Title 24-A, section 6454 with respect to the insurer.

**4. Mandatory control level events.** When a mandatory control level event occurs with respect to an insurer, the Superintendent of Insurance shall take the actions required under Title 24-A, section 6455 with respect to the insurer.

## PART B

**Sec. B-1. 24-A MRSA §952-A** is enacted to read:

### **§952-A. Actuarial opinion of reserves**

**1. General.** A life insurer doing business in this State shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items of that life insurer held in support of the policies and contracts specified by the superintendent by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this State. The superintendent by rule shall define the specifics of this opinion and add any other items considered necessary to its scope.

**2. Actuarial analysis of reserves and assets supporting those reserves.** A life insurer, except as exempted by or pursuant to rule, shall include in the opinion required by subsection 1 an opinion of the same qualified actuary as to whether the reserves and

related actuarial items held in support of the policies and contracts specified by the superintendent by rule, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, adequately provide for the insurer's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

The superintendent may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may consider necessary in the opinion required by this subsection.

**3. Requirement for opinion under subsection 2.** An opinion required by subsection 2 is governed by the following provisions.

A. A memorandum, in form and substance acceptable to the superintendent as specified by rule, must be prepared to support the actuarial opinion.

B. If the insurer fails to provide a supporting memorandum at the request of the superintendent within a period specified by rule or the superintendent determines that the supporting memorandum provided by the insurer fails to meet the standards prescribed by the rules or is otherwise unacceptable to the superintendent, the superintendent may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare a supporting memorandum as required by the superintendent.

**4. Requirement for all opinions.** An opinion required pursuant to subsection 1 or 2 is governed by the following provisions.

A. The opinion must be submitted with the annual statement reflecting the valuation of reserve liabilities for each year ending on or after December 31, 1995.

B. The opinion must apply to all business in force, including individual and group health insurance plans, in a form and substance acceptable to the superintendent as specified by rule.

C. The opinion must be based on standards adopted by the actuarial standards board and on those additional standards as the superintendent by rule prescribes.

D. In the case of an opinion required to be submitted by a foreign or alien insurer, the superintendent may accept the opinion filed by that

insurer with the insurance supervisory official of another state if the superintendent determines that the opinion reasonably meets the requirements applicable to an insurer domiciled in this State.

E. For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in the rules of the American Academy of Actuaries.

F. Except in cases of fraud or willful misconduct, a qualified actuary is not liable for damages to any person, other than the insurer and the superintendent, for any act, error, omission, decision or conduct with respect to the qualified actuary's opinion.

G. Disciplinary action by the superintendent against the insurer or the qualified actuary must be defined in rules established by the superintendent.

H. Any memorandum in support of the opinion and any other material provided by the insurer to the superintendent in connection with the memorandum must be kept confidential by the superintendent, may not be made public and may not be subject to subpoena other than for the purpose of defending an action seeking damages from any person by reason of an action required by this section or by rules adopted under this section, provided, however, that the memorandum or other material may otherwise be released by the superintendent with the written consent of the insurer, or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the superintendent for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the insurer in its marketing or is cited before any governmental agency other than a state insurance department or is released by the insurer to the news media, all portions of the confidential memorandum are no longer confidential.

**Sec. B-2. 24-A MRSA §955**, as amended by PL 1983, c. 346, §6, is repealed and the following enacted in its place:

**§955. Minimum reserves**

**1. Minimum aggregate reserves for life insurance policies.** An insurer's aggregate reserves for all life insurance policies, excluding disability and

accidental death benefits, that are subject to section 953, subsection 2 may not be less than the aggregate reserves calculated in accordance with the method set forth in sections 954 and 957-A and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for these policies.

**2. Minimum aggregate reserves for all policies.** The aggregate reserves for all policies, contracts and benefits may not be less than the aggregate reserves determined necessary by the qualified actuary in the opinion required by section 952-A.

**Sec. B-3. 24-A MRSA §956**, as amended by PL 1979, c. 453, §6, is repealed and the following enacted in its place:

**§956. Optional reserve calculation**

**1. Reserve calculation.** Reserves for any category of policies, contracts or benefits as established by the superintendent that are subject to section 953, subsection 2, may be calculated at the option of the insurer according to any standards that produce greater aggregate reserves for that category than those calculated according to the minimum standard provided in section 955, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, may not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided.

**2. Lower standard of valuation.** Any insurer that adopts any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in section 955 may adopt, with the approval of the superintendent, any lower standards of valuation, but not lower than the minimum required, provided, however, that for the purposes of this section the holding of additional reserves previously determined necessary by a qualified actuary in the opinion required by section 952-A may not be determined to be the adoption of a higher standard of valuation.

**Sec. B-4. Effective date.** That section of this Part that enacts the Maine Revised Statutes, Title 24-A, section 952-A takes effect December 31, 1995.

**PART C**

**Sec. C-1. 32 MRSA §12228, sub-§10**, as enacted by PL 1987, c. 489, §2, is amended to read:

**10. Experience.** The applicant shall show that ~~he~~ the applicant has had 2 years of experience in the practice of public accountancy or its equivalent, meeting requirements prescribed by the board by rule; or, if the applicant's educational qualifications comprise a baccalaureate degree meeting the requirements

set out in ~~section 12228~~, subsection 3, and a master's degree conferred by a college or university approved by the board and one year of experience, then only one year of experience in that practice or its equivalent is required. To the extent the applicant's experience is as an auditor engaged in the examination of financial statements for the Department of Audit or as a revenue agent or similar position engaged in the examination of personal and corporate income tax returns for the Bureau of Taxation, the applicant ~~shall receive~~ receives credit at the rate of 50% toward the experience required by this subsection. To the extent the applicant's experience is as an examiner engaged in financial examinations for the Bureau of Insurance, the applicant receives credit under this subsection if that experience meets the following standards:

A. Examinations are performed in conformity with the Examiners' Handbook published by the National Association of Insurance Commissioners;

B. Working papers prepared by the examiners are in conformity with generally accepted auditing standards and are subject to a review by a supervisor who must be a certified public accountant;

C. Written reports of examination are prepared in conformity with the Examiners' Handbook published by the National Association of Insurance Commissioners. All examiners working on the examinations must participate in the preparation of the report;

D. Reports of examination are prepared in accordance with statutory accounting principles. All examiners working on the examinations must participate in the preparation of the financial statements and corresponding note disclosures; and

E. All examiners assigned to an examination must participate in the planning of the examination and the planning phase conforms to the Examiners' Handbook and generally accepted auditing standards.

See title page for effective date, unless otherwise indicated.

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## CHAPTER 635

S.P. 705 - L.D. 1902

### An Act Regarding Registration for the Provision of Substance Abuse Counseling Services

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

**Sec. 1. 32 MRSA §6206, sub-§5**, as enacted by PL 1991, c. 456, §11, is amended to read:

**5. Other licensed professionals.** Nothing in this chapter may prevent any other licensed ~~counseling professional person in the field of medicine, psychology, nursing, social work or professional counseling~~ who is qualified to provide substance abuse counseling services by virtue of the requirements for that profession from engaging in or offering substance abuse counseling services if such a person does not profess to be providing the primary service of a substance abuse counselor as the sole professional service rendered by that person. These professionals may not be required to obtain additional certification in order to provide substance abuse counseling services as permitted by this subsection.

See title page for effective date.

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## CHAPTER 636

H.P. 1400 - L.D. 1909

### An Act to Allow for Reciprocal Licensure for Electricians in the State

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

**Whereas**, there are certain electricians living in Maine who are licensed in other states and unable to obtain a Maine license; and

**Whereas**, the inability to obtain a license has created a major financial hardship for these electricians; and

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

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

**Sec. 1. 32 MRSA §1153**, as amended by PL 1987, c. 735, §52, is further amended to read:

#### §1153. Meetings; rules

The board shall hold regular meetings at least twice a year. Additional meetings ~~shall~~ may be held as necessary to conduct the business of the board; and