

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

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
1995

TAX ASSESSMENT

\$12,073,570

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

Effective June 26, 1995.

CHAPTER 329

H.P. 1100 - L.D. 1547

An Act to Provide Administrative Clarification within the Maine Insurance Code

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

Sec. 1. 9-A MRSA §2-501, sub-§2, ¶B, as enacted by PL 1973, c. 762, §1, is amended to read:

B. With respect to consumer credit insurance providing life, accident or health coverage or involuntary unemployment coverage, if the insurance coverage is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives ~~his~~ specific affirmative written indication of ~~his~~ the desire to do so after written disclosure to ~~him~~ the consumer of the cost ~~thereof~~ of the insurance.

Sec. 2. 9-A MRSA §8-105, sub-§2, as amended by PL 1987, c. 129, §71, is further amended to read:

2. Charges or premiums for credit life, accident or health insurance or involuntary unemployment insurance written in connection with any consumer credit transaction ~~shall~~ must be included in the finance charge unless:

A. The coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

B. In order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended ~~shall~~ must give specific affirmative written indication of ~~his~~ the desire to do so after written disclosure to ~~him~~ the person of the cost ~~thereof~~ of the insurance.

Sec. 3. 24-A MRSA §7, as enacted by PL 1969, c. 132, §1, is amended to read:

§7. "State" defined

When in context signifying other than this State, "state" means any state, district, territory, commonwealth or possession of the United States of America; ~~and the Panama Canal Zone.~~

Sec. 4. 24-A MRSA §706, as enacted by PL 1969, c. 132, §1, is amended to read:

§706. "Bonds" defined

~~Surety insurance~~ The definition of "bonds" includes:

1. Fidelity insurance, which is insurance guaranteeing the ~~fidelity~~ honesty of persons holding positions of public or private trust;

2. ~~Insurance~~ Surety insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings and contracts of suretyship; and

3. Insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, gems, precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes and vaults therein, caused by burglary, robbery, theft, vandalism or malicious mischief, or any attempt thereat.

Sec. 5. 24-A MRSA §742, sub-§4, ¶B, as enacted by PL 1991, c. 828, §20, is amended to read:

B. If the applicant is an individual and if the application is not submitted simultaneously with an application for an agent or broker license pursuant to chapter 17, the application must include full answers to questions reasonably necessary to determine the following: the applicant's identity; age; residence; present occupation and occupations over the 5 years preceding the date of the application; financial responsibility; insurance experience; and education in insurance and insurance laws of this State the applicant has had or expects to receive. ~~The application must be accompanied by an imprint of the applicant's fingerprints and a recent photograph of the ap-~~

~~licant.~~ The application must include full answers to questions necessary to understand the purpose for which the license is to be used, whether the applicant will devote all or part of the applicant's efforts to transactions under the license and, if part only, how much time the applicant will devote to transactions and in what other business or businesses the applicant is or will be engaged or employed. The application must contain any other facts as the superintendent may require relative to the applicant's qualifications for the license as those qualifications are stated in this subchapter.

Sec. 6. 24-A MRSA §764, sub-§2, as enacted by PL 1993, c. 603, is amended to read:

2. Payment of premium. Payment of the next premium to the assuming company after notice is received is determined to indicate the policyholder's acceptance of the transfer to the assuming insurer and a novation is determined to have been effected if the premium notice clearly states that payment of the premium to the assuming insurer constitutes acceptance of the transfer. The premium notice must also provide a method for the policyholder to pay the premium while reserving the right to reject the transfer. With respect to a home service business or any other business not using premium notices, the disclosures and procedural requirements of this subsection are to be set forth in the notice of transfer required by section 763, subsection 1, paragraph A and in the assumption certificate.

Sec. 7. 24-A MRSA §1503, first ¶, as enacted by PL 1969, c. 132, §1, is amended to read:

A general lines agent is any person authorized or appointed by an insurer to solicit applications for insurance contracts or to negotiate for such contracts in its behalf and, if authorized to do so by the insurer, to effectuate and countersign insurance contracts for one or more kinds of insurance as follows:

Sec. 8. 24-A MRSA §1509-A, as enacted by PL 1989, c. 168, §5, is amended to read:

§1509-A. "Adjuster trainee" defined

An adjuster trainee is any person with less than 2 years one year total experience handling loss claims under insurance contracts or the workers' compensation laws. An adjuster trainee must be employed by and subject to the immediate personal supervision of an adjuster who is licensed in this State and who has been established in the business of adjusting for 3 years or more. An adjuster trainee is exempt from the licensure requirement.

Sec. 9. 24-A MRSA §1511, sub-§1, as enacted by PL 1969, c. 132, §1, is amended to read:

1. For the purposes of this chapter a "resident" is an individual whose domicile or principal place of business is located in this State, or an organization ~~with an established~~ either incorporated in this State or having its principal place of business in this State.

Sec. 10. 24-A MRSA §1514-A, sub-§2, as amended by PL 1993, c. 322, §3, is further amended to read:

2. Prohibition on licensing. A financial institution, financial institution holding company or the subsidiary of either or an officer, employee, agent or representative of a financial institution, financial institution holding company or the subsidiary of either may not be licensed as an insurance agent, broker or consultant in this State or may not act as an insurance agent, broker or consultant in this State. Nothing in this section limits the activity of these organizations with respect to credit life and credit health insurance to the extent authorized by chapter 37, group health insurance to the extent authorized by chapter 35 and group life insurance to the extent authorized by chapter 31. Nothing in this section prohibits a financial institution, credit union, financial institution holding company or a subsidiary or employee of any such entity from selling annuities, arranging for the sale of annuities or sharing commissions in connection with the sale of annuities to the extent authorized by Title 9-B, section 443, subsection 11, provided that such entity has been licensed pursuant to section 1531, subsection 1, paragraph F and if that activity includes the sale of variable annuity contracts, the National Association of Securities Dealers registration form has been submitted to the superintendent as required by the provisions of section 1520, subsection 3. ~~In the event that a financial institution, credit union or financial institution holding company or subsidiary of a financial institution, credit union or financial institution holding company contracts for the sale of annuity products through a licensed 3rd party agent who is also licensed to sell other insurance products, if the agent sells any insurance product other than annuities, in each instance the agent shall provide a written disclosure to the party purchasing the insurance product. The disclosure must state that in making the sale the agent is acting as an independently licensed insurance agent and not as an agent of the financial institution, credit union, financial institution holding company or subsidiary of a financial institution, credit union or financial institution holding company.~~

Sec. 11. 24-A MRSA §1517, sub-§2, as amended by PL 1973, c. 585, §12, is repealed.

Sec. 12. 24-A MRSA §1517, sub-§3, as enacted by PL 1969, c. 132, §1, is repealed and the following enacted in its place:

3. A nonresident organization establishing a place of business in this State shall procure an organization license for each location in this State and shall staff each location with at least one resident broker or agent. A nonresident organization may register either nonresident or resident individual licensees to act in the name of the organization. Licensure of a nonresident organization does not depend upon the organization maintaining an organization license in another state. A resident organization may register either resident or nonresident licensees to act in the name of the organization.

Sec. 13. 24-A MRSA §1517, sub-§4-A, as enacted by PL 1979, c. 301, is amended to read:

4-A. All the licensees ~~shall be~~ are subject to the same restrictions with regard to deceptively similar names as applied to insurers under section 408, ~~sub-§1 subsections 1 and 4.~~

Sec. 14. 24-A MRSA §1517, sub-§6, as enacted by PL 1993, c. 322, §5, is amended to read:

6. A financial institution, credit union, financial institution holding company or a subsidiary of any such entity may be licensed as an insurance agent for the limited purpose of selling annuities as provided in section 1531, subsection 1, paragraph F or for the purpose of sharing commissions in the connection with the sale of annuities as provided in this Title. ~~An entity that is authorized to sell annuities or to share in commissions from the sale of annuities pursuant to Title 9-B, section 443, subsection 11 is not required to comply with the requirements of subsection 2.~~

Sec. 15. 24-A MRSA §1519, sub-§2, as amended by PL 1993, c. 637, §19, is further amended to read:

2. As to applicants not ~~†~~ licensed under this Title or licensed as insurance agent, broker or adjuster in this State under laws now in force, the superintendent shall secure, as soon as is reasonably possible after filing of the application, ~~a credit or investigation report relative to the applicant from a recognized and established independent investigation and reporting agency appropriate background information with which to ascertain the applicant's character. The cost, if any, of such report, in a reasonable uniform flat amount as from time to time fixed by the superintendent, must be paid by or on behalf of the applicant, and must be deposited with the superintendent at the time of filing the application. The superintendent shall promptly deposit the payment with the Treasurer of State to the credit of the Insurance Regulatory Fund. The superintendent shall keep confidential the contents of any such report and shall destroy the report after the application has been approved.~~

Sec. 16. 24-A MRSA §1525, sub-§2, as amended by PL 1989, c. 168, §13, is further amended to read:

2. Each board ~~shall consist~~ consists of 5 members, to be appointed by the superintendent for terms of 3 years each, on a staggered term system so as to prevent the terms of more than 2 members from expiring in any one year. Except as otherwise provided, no person may be eligible for appointment to such a board unless that person is active on a full-time basis in the general lines insurance business, as to the ~~general lines advisory board~~ General Lines Advisory Board, or in the life or health insurance business, as to the ~~life advisory board~~ Life and Health Advisory Board, and is a resident of this State. Except as otherwise provided, no person may be eligible for appointment to the Adjuster License Advisory Board unless active as an adjuster on a full-time basis and a resident of this State. The superintendent so far as practicable shall appoint persons with prior experience in the education and training of agents or prospective agents and, so far as practicable, shall constitute the boards to include at least one licensed agent and one representative of a domestic insurer. No person may be reappointed to a board for more than one 3-year term.

Sec. 17. 24-A MRSA §1525, sub-§§3 and 4, as amended by PL 1973, c. 585, §12, are repealed.

Sec. 18. 24-A MRSA §1526, sub-§1, as amended by PL 1989, c. 168, §15, is further amended to read:

1. Each respective advisory board shall meet with the superintendent ~~twice during each calendar year~~ as often as is necessary at times and places to be designated by the superintendent, and on other occasions as its members ~~deem~~ consider appropriate. The superintendent shall furnish to each board information, not otherwise designated by law as confidential, as its members may reasonably require with respect to the conduct, scope and results of examinations with which it is concerned.

Sec. 19. 24-A MRSA §1535, sub-§1, ¶A, as enacted by PL 1991, c. 112, §1, is amended to read:

A. The agent is subject to suspension or revocation of license under section 1539, Title 19, section 305, subsections 6 and 7 or Title 36, section 175;

Sec. 20. 24-A MRSA §1606, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

1. Every applicant for a broker's license shall file with the superintendent with the application and shall thereafter maintain in force while so licensed; a

bond in favor of the State of Maine executed by an authorized surety insurer. The bond ~~shall~~ must be conditioned upon full accounting and due payment to the person entitled thereto, of funds coming into the broker's possession through insurance transactions under the license. The bond may be continuous in form and aggregate liability on the bond ~~shall be~~ is limited to payment of not less than ~~\$2,500~~ \$10,000 per line of authority.

Sec. 21. 24-A MRSA §1680, sub-§4, as amended by PL 1993, c. 221, §26, is further amended to read:

4. Any nonresident agent or broker licensed under this section, or any other individual currently licensed as a resident agent or broker in another state, who becomes a resident and applies for licensing status as a resident is subject to the state-specific portion of the license examination.

Sec. 22. 24-A MRSA §1853, sub-§3, as amended by PL 1989, c. 168, §27, is further amended to read:

3. Must pass any written examination required for the license under this chapter, except that with respect to adjusters employed by insurers and persons acting as public adjusters in this State as of September 1, 1989, this subsection will not apply until July 1, 1991; and

Sec. 23. 24-A MRSA §1853, sub-§4, as amended by PL 1993, c. 221, §28, is further amended to read:

4. Must have been employed as an adjuster trainee as defined in section 1509-A for a period of no less than one year or must have had special training in handling of loss claims under insurance contracts. Special training means successfully completing courses of instruction that may be reasonably required and approved by the superintendent. Courses of instruction may be completed successfully by attendance at an educational institution or by correspondence with or under the supervision and direction of an educational institution or insurer. This subsection does not apply as to persons holding subsisting licenses as adjuster in this State immediately prior to January 1, 1970; and

Sec. 24. 24-A MRSA §1853, sub-§5, as amended by PL 1969, c. 177, §28, is repealed.

Sec. 25. 24-A MRSA §1854, as amended by PL 1993, c. 637, §§31 and 32, is repealed.

Sec. 26. 24-A MRSA §1876, as enacted by PL 1989, c. 31, §4, is amended to read:

§1876. Continuing Education Advisory Committee

The Continuing Education Advisory Committee is established and ~~shall consist~~ consists of 6 members to be appointed by the superintendent for terms of 3 years each, on a staggered term system to prevent the terms of more than 2 members from expiring in any one year. A person may not be reappointed to a board for more than one 3-year term. No person is eligible for appointment to the committee unless that person is an active, full-time insurance agent, broker or consultant. Board members are eligible for reimbursement of expenses consistent with section 1526, subsection 6.

Sec. 27. 24-A MRSA §1904, sub-§1, as amended by PL 1993, c. 171, Pt. A, §1, is further amended to read:

1. Every applicant for an administrator's license shall file with the application, and shall maintain in force while licensed, a fidelity bond, and at the superintendent's discretion, a surety bond, in favor of the Treasurer of State, for the benefit of covered persons or plan sponsors as their interest may appear, executed by a surety company authorized to do business in this State and payable to any party injured under the terms of the bond. The bond must be continuous in form and in one of the following amounts:

A. For an administrator that maintains an ATF but does not maintain a CASA, the greater of \$50,000 or 5% of contributions and premiums projected to be received or collected in the ATF for the following plan year from residents of the State, but not to exceed \$1,000,000;

B. For an administrator that maintains a CASA but does not maintain an ATF, the greater of \$50,000 or 5% of the claims and claim expenses projected to be held in the CASA for the following year to pay claims and claim expenses for residents of the State, but not to exceed \$1,000,000; or

C. For an administrator that maintains an ATF and a CASA, the greater of \$50,000 or 5% of contributions and premiums projected to be received or collected in the ATF for the following plan year from residents of the State plus 5% of the claims and claim expenses projected to be held in the CASA accounts for the following year to pay claims and claim expenses for residents of the State, but not to exceed \$1,000,000.

This subsection applies to an administrator who is required to maintain funds in a fiduciary capacity as set forth in section 1909.

Sec. 28. 24-A MRSA §2013, sub-§1, ¶A, as amended by PL 1985, c. 564, §3, is further amended to read:

A. If the broker fails to ~~file the annual statement or to~~ remit the tax as required by section ~~2017~~ 2016;

Sec. 29. 24-A MRSA §2013, sub-§1, ¶E, as enacted by PL 1985, c. 564, §3, is amended to read:

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, or 2016 ~~or 2017~~ with respect to insurance coverage not procured by the broker.

Sec. 30. 24-A MRSA §2017, as repealed and replaced by PL 1991, c. 674, §1, is repealed.

Sec. 31. 24-A MRSA §2020, sub-§1, as enacted by PL 1993, c. 153, §17, is amended to read:

1. Every applicant for a surplus lines broker's license shall file with the superintendent evidence of a bond in favor of the State executed by an authorized surety insurer. The bond is conditioned upon full accounting and due payment to the person entitled to the bond of funds coming into the surplus lines broker's possession through insurance transactions under the license. The bond may be continuous in force and aggregate liability on the bond is limited to payment of not less than ~~\$2,500~~ \$20,000.

Sec. 32. 24-A MRSA §2308, sub-§2, as enacted by PL 1987, c. 337, is amended to read:

2. To promote the availability of coverage in lines of insurance when coverage is difficult to obtain or unavailable, a form more restrictive than that provided by filings otherwise applicable may be used on any specific risk, provided that the following requirements are satisfied.

A. The restrictive form and applicable rates are filed with the bureau.

B. A disclosure statement detailing the nature of the restriction or restrictions contained in the form and the manner in which the provisions of the restrictive form differ from an otherwise applicable filing is provided to and acknowledged by the applicant for insurance.

C. A copy of the disclosure statement and the written application for insurance submitted by the applicant are submitted to the bureau.

D. The superintendent does not disapprove the use of the restrictive form in the specific case.

~~The period during which a restrictive form may be employed, consistent with this subsection, is for the maximum period of one year. At any subsequent policy renewal, the provisions of this subsection must again be satisfied.~~

Sec. 33. 24-A MRSA §2308, sub-§§3 and 4 are enacted to read:

3. At any subsequent policy renewal in which additional or different restrictive policy forms or excess rates are employed, the provisions of this section must again be satisfied.

4. Notification to the superintendent of cancellation or nonrenewal of a policy containing restrictive forms or employing excess rates is required within 30 days following cancellation or nonrenewal of the policy.

See title page for effective date.

CHAPTER 330

S.P. 572 - L.D. 1552

An Act Concerning the Sites for Western Aroostook District Court

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

Sec. 1. 4 MRSA §153, sub-§3, as amended by PL 1993, c. 675, Pt. B, §1, is further amended to read:

3. Western Aroostook. Western Aroostook consists of the municipalities and unorganized territory known as Hamlin Plt., Cyr Plt., T17 R3, T17 R4, T16 R5, T15 R6, Winterville Plt., T15 R8, T15 R9, T14 R10, T14 R11, T14 R12, T14 R13, T14 R14, T14 R15, T14 R16, and all municipalities and unorganized territory in Aroostook County lying to the west and north of these. The District Court for Western Aroostook must be held at Madawaska, and Fort Kent ~~and Van Buren~~. The Chief Judge shall determine the level of service at each location.

See title page for effective date.

CHAPTER 331

H.P. 794 - L.D. 1111

An Act to Enable Small Farm Owners to Process and Sell Foods They Produce

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

Sec. 1. 22 MRSA §2152, sub-§4-A, as amended by PL 1991, c. 784, §13, is repealed and the following enacted in its place: