

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

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Augusta, Maine
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authorized purposes of the authority, including real and personal property or rights in the property already devoted to public use. As used in the subsection, the term "public service corporation" includes a public utility as defined in Title 35-A, section 102, subsection 13 and a corporation referred to in Title 13-A.

§8119. Exemption from taxes

Because the accomplishment by the authority of the authorized purpose stated in this chapter is for the benefit of the people of the State and for the improvement of their commerce and prosperity and is the performance of essential governmental functions, the authority may not be required to pay any taxes or assessment on any property acquired or used by it for the purposes provided in this chapter; except that service facilities leased or rented by the authority to business entities are subject to taxation and assessments must be made against the tenant in possession based upon the value of the leasehold interest, both real and personal. The authority may not be required to pay any tax upon its income except as may be required by the laws of the United States.

Sec. 4. Transfer of funds from the State's Department of Transportation to the Northern New England Passenger Rail Authority.

The State's Department of Transportation is authorized to transfer up to \$3,000,000 allocated to railroad and airport improvements by Private and Special Law 1991, chapter 113, Part B, section 6 to the Northern New England Passenger Rail Authority.

Sec. 5. Authority expenditures. Before July 1, 1996, the Northern New England Passenger Rail Authority may make expenditures only upon the review by and approval of the Commissioner of Transportation.

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

Effective June 29, 1995.

CHAPTER 375

S.P. 561 - L.D. 1528

An Act Concerning Reports of Material Transactions and Other Provisions of the Maine Insurance Code

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

PART A

Sec. A-1. 24-A MRSA §423-C is enacted to read:

§423-C. Reports of material transactions

1. Report required. Every domestic insurer must file a report with the superintendent, on or before the 15th day of each month, if it has engaged in a material investment or reinsurance transaction during the preceding month that has not already been separately reported to the superintendent or submitted to the superintendent for prior review.

2. Material transactions defined. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Material investment transaction" means an acquisition or disposition of an asset or the aggregate of a series of related acquisitions or related dispositions during a 30-day period that is nonrecurring, not in the ordinary course of business and involving more than 5% of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the superintendent. Asset acquisitions and dispositions include without limitation a purchase, sale, lease, exchange, merger, consolidation, succession, mortgage, hypothecation, assignment, whether for the benefit of creditors or otherwise, abandonment or destruction. Asset acquisition does not include the construction or development of real property for the use of the reporting insurer or the acquisition of materials for such construction or development.

B. "Material reinsurance transaction" means:

(1) A transaction involving property and casualty business, including accident and health business written by a property and casualty insurer, that involves more than 50% of either the insurer's total ceded written premium or the insurer's total ceded indemnity and loss adjustment reserves;

(2) A transaction involving life, annuity or accident and health business that causes a change, either positive or negative, in the current total reserve credit taken for all life, annuity and accident and health business of more than 50% from the total reserve credit taken for such business in the insurer's most recent annual statement. "Total reserve credit" includes reserve credit taken for unearned premiums, reserve credit taken other than for unearned premiums and amounts recoverable on paid and unpaid losses for all reinsurance ceded;

(3) Any transaction in which either:

(a) An authorized reinsurer representing more than 10% of the insurer's total reserve credit for business ceded is replaced by one or more unauthorized reinsurers; or

(b) Previously established collateral requirements have been reduced or waived for one or more unauthorized reinsurers representing collectively more than 10% of the insurer's total reserve credit for business ceded; or

(4) Transactions otherwise falling within the scope of this paragraph do not need to be reported if:

(a) In the case of a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than 10% of its total written premium for direct and assumed business;

(b) In the case of a life, annuity and accident and health insurer, the total reserve credit taken for business ceded represents, on an annualized basis, less than 10% of the statutory reserve requirement before any cession; or

(c) The transaction falls within the scope of a previously reported reinsurance agreement.

3. Reporting procedures. Reports for material investment transactions and material reinsurance transactions must follow the following procedures.

A. A report of a material investment transaction must include the following information:

- (1) Date of the transaction;
- (2) Manner of acquisition or disposition;
- (3) Description of the assets involved;
- (4) Nature and amount of the consideration given or received;
- (5) Purpose of or reason for the transaction;
- (6) Manner by which the amount of consideration was determined;
- (7) Gain or loss recognized or realized as a result of the transaction; and

(8) Name of the person from whom the assets were acquired or to whom they were disposed.

B. A report of a material reinsurance transaction must include the following information:

(1) Effective date of the nonrenewal, cancellation or revision of the reinsurance agreement affected by the transaction;

(2) The description of the transaction with an identification of the initiator of the transaction;

(3) Purpose of or reason for the transaction; and

(4) If applicable, the identity of the replacement reinsurers.

C. Material transactions must be reported on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement of 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves, and the insurer has ceded substantially all of its direct and assumed business to the pool. An insurer is considered to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct and assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than 5% of the insurer's capital and surplus.

4. Confidentiality. All reports obtained by or disclosed to the superintendent pursuant to this section are confidential, are not subject to subpoena and may not be made public by the superintendent, the National Association of Insurance Commissioners or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains. If the superintendent, after giving the insurer that would be affected notice and an opportunity for hearing, determines that publication is in the interest of policyholders, shareholders or the public, the superintendent may publish all or any part of a report in the manner the superintendent determines to be appropriate.

PART B

Sec. B-1. 24-A MRSA §216, sub-§5 is enacted to read:

5. In order to assist the superintendent in the regulation of insurers in this State, it is the duty of the superintendent to maintain as confidential a document

or information received from the National Association of Insurance Commissioners or insurance departments of other states, if the document or the information has been provided to the superintendent with notice that it is confidential under the laws of the jurisdiction that is the source of the document or information. The superintendent may share information, including otherwise confidential information, with the National Association of Insurance Commissioners, insurance departments of other states or other state agencies, if the other jurisdiction or agency agrees to maintain the same level of confidentiality as is available under Maine law. This subsection does not alter prohibitions or restrictions applicable to ex parte contacts in the course of an adjudicatory proceeding in which a state agency is a party. For purposes of this subsection, "other state agencies" includes bureau personnel and consultants designated as serving in an advocacy capacity.

PART C

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

§3. "Insurance" defined

"Insurance" is a contract ~~whereby~~ under which one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, or to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies, or to act as surety. A charitable gift annuity agreement, as defined in section 703-A, is not considered insurance.

Sec. C-2. 24-A MRSA §703, as enacted by PL 1969, c. 132, §1, is amended to read:

§703. "Annuity" defined

For the purposes of this Title, an "annuity" is a contract under which obligations are assumed with respect to periodic payments for a specific term or terms or where the making or continuance of all or of some of ~~such~~ the payments, or the amount of ~~any such~~ a payment, is dependent upon the continuance of human life, except payments made pursuant to optional modes of settlement under the authority of section 702 (~~"life insurance" defined~~). ~~Such a~~ A contract ~~which that~~ includes extra benefits of the kinds ~~set forth defined~~ in sections 702 (~~life insurance defined~~) and 704 (~~health insurance defined~~) ~~shall nevertheless be~~ is deemed to be an annuity, if ~~such the~~ extra benefits constitute a subsidiary or incidental part of the entire contract. A charitable gift annuity agreement, as defined in section 703-A, is not insurance.

Sec. C-3. 24-A MRSA §703-A is enacted to read:

§703-A. Charitable gift annuity agreement

1. Charitable gift annuity agreement defined.

For the purposes of this Title, a "charitable gift annuity agreement" is a written contract in which a qualified organization receives money or other property conditioned upon the organization's agreement to pay an annuity to one or more individuals; as long as, with respect to the organization, the annuity meets the requirements for exclusion from the definition of "acquisition indebtedness" under the Internal Revenue Code, Section 514(c)(5) or a successor provision.

2. Qualified organization defined. For the purposes of this Title, a "qualified organization" is an organization that is privately and specially established as an instrumentality of the State for a nonprofit purpose or an organization that meets the following requirements.

A. The organization is a nonprofit organization that is either:

(1) An organization to which the Maine Nonprofit Corporation Act applies; or

(2) Organized under the laws of a jurisdiction within the United States and qualified as a foreign corporation pursuant to Title 13-B, chapter 12.

B. The organization qualifies as a tax-exempt organization under the Internal Revenue Code, Section 501(c)(3) or a successor provision.

C. The organization:

(1) Has been operating continuously for 5 or more years;

(2) Is a parent or subsidiary of a qualified organization; or

(3) Is the successor to an organization that meets the requirements of paragraphs A and B and both organizations together have operated continuously for 5 or more years.

Sec. C-4. 24-A MRSA §707, sub-§3, as enacted by PL 1991, c. 385, §7, is amended to read:

3. An insurer other than a casualty insurer may transact employee benefit excess insurance only if that insurer is authorized to insure the class of risk assumed by the underlying benefit plan. Employee benefit excess insurance, even if written by a life or health insurer, is not subject to chapters 29 and 31 to 37, except to the extent that particular provisions are made expressly applicable by rule or law. The superintendent may by rule set standards distinguishing excess insurance from basic insurance.

Sec. C-5. 24-A MRSA §2501, as amended by PL 1977, c. 261, §1, is further amended to read:

§2501. Scope of chapter

This chapter applies only to contracts of life insurance and annuities, other than reinsurance, group life insurance and group annuities, except that section 2537 (separate accounts) ~~shall also apply~~ applies as to group life insurance and group annuity contracts. ~~No provision of this chapter shall apply to annuity agreements executed under chapter 30.~~

Sec. C-6. 24-A MRSA c. 30, as amended, is repealed.

PART D

Sec. D-1. 24-A MRSA §413-A is enacted to read:

§413-A. Alien insurer; port of entry

1. Port of entry. An alien insurer that has been authorized by the superintendent to use the State as its port of entry for the transaction of business in the United States is considered a domestic insurer to the extent provided in this section.

2. Rules. The superintendent shall adopt rules establishing the terms and conditions of port of entry authorization, which include without limitation:

A. The requirements an alien insurer must satisfy to qualify for port of entry authorization. These requirements must include, at a minimum:

(1) Agreement to adhere to all laws applicable to domestic insurers;

(2) Maintenance of appropriate trust surplus or other adequate security within the State;

(3) Maintenance of records of all United States operations within the State; and

(4) Maintenance of a separate financial reporting system for United States operations;

B. The procedures for obtaining, maintaining and terminating port of entry authorization; and

C. Modifications of the provisions of this Title, and of the rules adopted by the superintendent that apply to domestic insurers, as the superintendent determines necessary for the appropriate regulation of alien insurers with port of entry authorization.

See title page for effective date.

CHAPTER 376

H.P. 1118 - L.D. 1562

**An Act to Implement the
Recommendations of the Governor's
Task Force on Motor Carrier
Safety Laws**

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

Sec. 1. 5 MRSA §12004-G, sub-§33-C is enacted to read:

<u>33-C. Motor</u>	<u>Expenses Only</u>	<u>29-A</u>
<u>Carrier Transportation</u>		<u>MRSA</u>
<u>Review Board</u>		<u>§562</u>

Sec. 2. 29-A MRSA §558, sub-§1, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

1. Violation. A person commits a Class E crime if that person violates or knowingly permits a violation of this subchapter or a rule adopted pursuant to this subchapter. Notwithstanding Title 17-A, section 1301, the minimum fine for a violation of a state rule that adopts by reference the federal regulations found in 49 Code of Federal Regulations, Parts 395.3, 395.8e and 395.8k is \$250.

Sec. 3. 29-A MRSA §562 is enacted to read:

§562. Motor Carrier Review Board

1. Establishment. The Motor Carrier Review Board, as established by Title 5, section 12004-G, subsection 33-C and referred to in this section as the "board," is created to review motor carriers whose Bureau of Motor Vehicle records indicate significant and repeated motor carrier violations.

2. Members. The board consists of 7 members appointed by the Governor to serve 3-year terms as follows:

A. One member who is a representative of the Maine Motor Transport Association;

B. One member who is a representative of a motor carrier that owns fewer than 10 commercial motor vehicles;

C. One member who is a representative of a motor carrier that owns 10 or more commercial motor vehicles;

D. One member who is a representative of the Maine Forest Products Council;