

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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
1997

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

Sec. 1. 12 MRSA §6462-A, sub-§2, as enacted by PL 1997, c. 208, §3, is amended to read:

2. Term. ~~Members~~ The term for a member who represents a lobster management policy council is coterminous with that person's term on that policy council. All other members serve for terms of 3 years, except that a vacancy must be filled by the commissioner for the unexpired portion of the term. A vacancy for a member representing a lobster management policy council must be appointed by that policy council using procedures defined in subsection 1. Members continue to serve until their successors are appointed.

Sec. 2. 12 MRSA §6702, sub-§2, as enacted by PL 1983, c. 663, §2, is amended to read:

2. Licensed activity. A boat licensed under this section may be used for dragging for scallops and to possess, ship, sell or transport scallops taken under the license. The license ~~shall also authorize~~ authorizes the captain and crew members aboard the licensed boat when engaged in dragging for scallops to undertake these activities.

See title page for effective date.

CHAPTER 573

H.P. 1458 - L.D. 2049

An Act to Restore the Managing General Agents Act

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

Whereas, the Managing General Agents Act was erroneously repealed from Maine law during the last legislative session; and

Whereas, the enactment of substantively similar law is required in order for the Bureau of Insurance to maintain accreditation with the National Association of Insurance Commissioners (NAIC); and

Whereas, in order for the Bureau of Insurance to maintain that accreditation it is necessary to enact this law on a retroactive basis; 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 preserva-

tion of the public peace, health and safety; now, therefore,

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

Sec. 1. 24-A MRSA c. 16, sub-c. VIII is enacted to read:

SUBCHAPTER VIII

MANAGING GENERAL AGENTS

§1491. Short title

This subchapter may be known and cited as the "Managing General Agents Act."

§1492. Definitions

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

1. Actuary. "Actuary" means a person who is a member in good standing of the American Academy of Actuaries.

2. Insurer. "Insurer" means a person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance who holds an existing certificate of authority to transact insurance in this State pursuant to section 404.

3. Managing general agent or MGA. "Managing general agent" or "MGA" means a person who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as a producer for the insurer, whether known as a managing general agent, manager or other similar term; and who, with or without the authority, either separately or together with affiliates, directly or indirectly, produces and underwrites an amount of gross direct written premium equal to or more than 5% of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter of the year following the last annual statement and adjusts or pays claims in excess of an amount determined by the superintendent or negotiates reinsurance on behalf of the insurer, or both. The term does not include:

A. An employee of the insurer;

B. A manager of a branch of an alien insurer that is located in the United States;

C. An underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control

with the insurer, subject to section 222 and whose compensation is not based on the volume of premiums written; and

D. The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

4. Underwrite. "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

§1493. License and registration requirement

1. In-state risks. A person may not act in the capacity of an MGA with respect to risks located in this State for an insurer licensed in this State unless that person holds a valid Maine producer license and appointment authorizing the producer to sell the applicable kinds of insurance and unless registered with the superintendent as a managing general agent pursuant to subsection 5.

2. Out-of-state risks. A person may not act in the capacity of an MGA representing an insurer domiciled in this State with respect to risks located outside this State unless that person holds a valid Maine producer license and appointment in this State and unless registered with the superintendent as a managing general agent pursuant to subsection 5.

3. Bond. The superintendent may require a bond in an amount acceptable to the superintendent for the protection of the insurer.

4. Errors and omissions policy. The superintendent may require the MGA to maintain an errors and omissions policy.

5. Application. Each managing general agent shall file with the superintendent an application for registration as a managing general agent and shall pay the fee in section 601.

A. The superintendent shall prescribe, consistent with the applicable requirements of this subchapter, and furnish forms required under this subchapter in connection with application for an issuance of registration certificates and for notification of termination of contracts pursuant to section 1495.

B. The application for registration must include the name and address of the insurer with whom the producer has an appointment pursuant to section 1431 and with whom the producer has a written contract pursuant to section 1494, a statement of the duties that the producer is expected to perform on behalf of the insurer, the lines of insurance for which the producer is to be

authorized to act and any other information the superintendent requests.

C. If the superintendent finds that the application is complete, the superintendent shall promptly issue a certificate of registration to the producer; otherwise, the superintendent shall refuse to issue the registration and promptly notify the producer and the insurer of the refusal, stating the grounds for refusal. The producer may request a hearing on the superintendent's denial pursuant to section 229.

6. Duration. Unless notification of termination of contract is received pursuant to section 1495, the certificate of registration remains in effect as long as the registrant continues to hold a valid Maine producer license and as long as the registrant complies with the provisions of this subchapter. A certificate of registration expires upon receipt by the superintendent of notification of termination of contract pursuant to section 1495 or upon notification of termination of the producer's license and the registrant shall promptly deliver the certificate of registration to the superintendent.

§1494. Required contract provisions

A person acting in the capacity of an MGA may not place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies the division of those responsibilities. The contract must contain the following minimum provisions.

1. Termination. The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination. However, the suspension of an MGA does not relieve the MGA of the responsibility to service business in existence at the time of the suspension.

2. Accounting. The MGA shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.

3. Bank as fiduciary. All funds collected for the account of an insurer must be held by the MGA in a fiduciary capacity in a bank that is a member of the Federal Reserve System. This account must be used for all payments on behalf of the insurer. The MGA may retain no more than 3 months' estimated claims payments and allocated loss adjustment expenses.

4. Records. Separate records of business written by the MGA must be maintained. The insurer

must have access and may copy all accounts and records related to its business in a form usable by the insurer. The superintendent must have access to all books, bank accounts and records of the MGA in a form usable to the superintendent. These records must be retained according to section 3408.

5. Nonassignable. The contract may not be assigned in whole or part by the MGA.

6. Guidelines. The contract must include appropriate underwriting guidelines including:

- A. The maximum annual premium volume;
- B. The basis of the rates to be charged;
- C. The types of risks that may be written;
- D. Maximum limits of liability;
- E. Applicable exclusions;
- F. Territorial limitations;
- G. Policy cancellation provisions; and
- H. The maximum policy period.

The insurer has the right to cancel or not to renew any policy of insurance subject to all applicable laws and rules regarding the cancellation and nonrenewal of insurance policies.

7. Settlement authority. If the contract permits the MGA to settle claims on behalf of the insurer:

- A. All claims must be reported to the insurer in a timely manner;
- B. A copy of the claim file must be sent to the insurer at its request or as soon as it becomes known that the claim:

 - (1) Has the potential to exceed an amount determined by the superintendent or exceeds the limit set by the insurer, whichever is less;
 - (2) Involves a coverage dispute;
 - (3) May exceed the MGA's claims settlement authority;
 - (4) Is open for more than 6 months; or
 - (5) Is closed by payment of an amount awarded as a result of a judicial proceeding or an amount set by the insurer, whichever is less;
- C. All claim files must be the joint property of the insurer and MGA; except that, upon an order

of liquidation of the insurer, the files become the sole property of the insurer or its estate. The MGA must have reasonable access to and may copy the files on a timely basis; and

D. Any settlement authority granted to the MGA may be terminated for cause upon written notice by the insurer to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination. Upon termination of the MGA's authority to settle claims, the MGA shall desist from any draw on funds of the insurer and shall immediately forward to the insurer all claims files with the MGA's immediate possession and any claims received thereafter. The MGA shall promptly transfer to the insurer any funds owed to the insurer or to any policyholder and shall transfer to the insurer any property of the insurer that is within the MGA's actual or constructive possession.

8. Transmission. When electronic claims files are in existence, the contract must address the timely transmission of the data.

9. Interim profits. If the contract provides for a sharing of interim profits by the MGA and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments or in any other manner, interim profits may not be paid to the MGA until one year after they are earned for property insurance business and 5 years after they are earned on casualty business and not until the profits have been verified pursuant to section 1495.

10. Prohibitions. The MGA may not:

- A. Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for reinsurance both assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;
- B. Commit the insurer to participate in insurance or reinsurance syndicates;
- C. Make use of any producer without ensuring that the producer is lawfully licensed in this State to transact the kind of insurance for which the producer is used;
- D. Without prior approval of the insurer, pay or commit the insurer to pay a claim over an

amount specified by the insurer, net of reinsurance, which may not exceed 1% of the insurer's policyholder surplus as of December 31st of the preceding year;

E. Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

F. Make use of any producer who serves on the insurer's board of directors;

G. Jointly employ an individual who is employed with the insurer; or

H. Assign specific duties under a contract with an insurer to other parties.

§1495. Duties of insurers

1. Records for each MGA. The insurer shall require and maintain on file an independent financial examination of current origin prepared on the basis of statutory accounting prescribed or permitted by the superintendent respecting each MGA with which the insurer has done business.

2. Actuarial review. If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary or actuaries who specialize in the type of insurance under consideration, attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This requirement is in addition to any other required loss reserve certification.

3. On-site review. The insurer shall periodically and at least semiannually conduct an on-site review of the underwriting and claims processing operations of the MGA.

4. Binding authority. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates rests with an officer of the insurer, who may not be affiliated with the MGA.

5. Notice of termination. Within 30 days of termination of a contract with an MGA, the insurer shall provide written notification of that termination to the superintendent.

6. Quarterly review. An insurer shall review its books and records each quarter to determine if any producer has become, by operation of section 1492, subsection 3, an MGA as defined in that section. If the insurer determines that its producer has become an MGA, the insurer shall promptly notify the producer and the superintendent of that determination and the insurer and producer must fully comply with the provisions of this subchapter within 30 days.

7. Board member qualifications. An insurer may not appoint to its board of directors an officer, director, employee, producer or controlling shareholder of its managing general agents. This subsection does not apply to relationships governed by section 222 or chapter 77 to the extent that control of an insurer is permissible under section 222 or chapter 77.

§1496. Acts of MGA considered acts of insurer; examination authority

The acts of the MGA are deemed to be the acts of the insurer on whose behalf it is acting. An MGA may be examined as if it were the insurer.

§1497. Penalties and liabilities

1. Penalties. If the superintendent finds after a hearing conducted in accordance with section 229 that any person has violated any provision of this subchapter, the superintendent may order:

A. For each separate violation, any penalty provided for by section 12-A;

B. Revocation or suspension of the producer's license or the insurer's certificate of authority; and

C. The MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this subchapter committed by the MGA.

2. Effect of order. The decision, determination or order of the superintendent pursuant to subsection 1 is subject to judicial review as provided by section 236.

3. Penalties. Nothing contained in this section affects the right of the superintendent to impose any other penalties provided for in this Title.

4. Rights of others. Nothing contained in this subchapter limits or restricts the rights of policyholders, claimants and auditors.

§1498. Rules

The superintendent may adopt reasonable rules for the implementation and administration of this subchapter. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 2. Retroactivity. This Act applies retroactively to October 1, 1997.

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

Effective February 25, 1998

CHAPTER 574

S.P. 743 - L.D. 2021

An Act Concerning Commercial Fishing in the Vicinity of Monhegan Island

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

Sec. 1. 12 MRSA §6421, sub-§5, ¶C, as enacted by PL 1995, c. 468, §3, is amended to read:

C. Meets the requirements of the apprentice program under section 6422 or section 6475;

Sec. 2. 12 MRSA §6422, sub-§4, ¶¶A and B, as amended by PL 1997, c. 250, §7, are further amended to read:

A. Documents to the commissioner that the person obtained practical lobster fishing experience as a sternman employed by the holder of a Class II or Class III license issued under section 6421; ~~or~~

B. Documents to the commissioner that the person obtained practical lobster fishing experience as a holder of a student license issued under section 6421; or

Sec. 3. 12 MRSA §6422, sub-§4, ¶E is enacted to read:

E. Documents to the commissioner that the person obtained practical lobster fishing experience as an apprentice in the Monhegan Lobster Conservation Area pursuant to section 6475.

Sec. 4. 12 MRSA c. 619, sub-c. V is enacted to read:

SUBCHAPTER V

MONHEGAN LOBSTER CONSERVATION AREA

§6471. Monhegan Lobster Conservation Area

1. Monhegan Lobster Conservation Area. The following coastal waters of the State in the vicinity of Monhegan Island are known as the Monhegan Lobster Conservation Area:

Beginning at a point located on Loran line 9960-25850 that is 2 nautical miles southwest-erly of the nearest shore of Monhegan Island; then following Loran line 9960-25850 in a southwesterly direction to the point where it in-tersects the 3-mile territorial sea line; then fol-lowing the territorial sea line around the southern end of Monhegan Island to the point where it in-tersects Loran line 9960-12889; then following Loran line 9960-12889 in a somewhat northerly direction to the point where it intersects a point that is 2 nautical miles from the nearest shore of Monhegan Island; then following a line that is 2 nautical miles from the nearest shore of Monhe-gan Island and that continues around the north-ern end of Monhegan Island to the point of beginning.

§6472. Closed and open seasons

1. Closed season. It is unlawful for a person to fish for or take lobsters in the Monhegan Lobster Conservation Area from June 26th to November 30th, both days inclusive, and on any day not included in the open season established by the commissioner under subsection 2.

2. Open season. The commissioner shall an-nually by November 1st establish by rule an open season of 180 consecutive days between December 1st and the following June 25th during which a person may fish for or take lobsters in the Monhegan Lobster Conservation Area.

A. Before establishing the open season under this section, the commissioner shall determine the open season preferred by 2/3 of the indi-viduals registered to obtain Monhegan Lobster Conservation Area trap tags under section 6474.

B. In adopting rules under this subsection, the commissioner is not required to hold a public hearing on the rules pursuant to Title 5, section 8052.

C. A person may not petition the commissioner pursuant to Title 5, section 8055 for the adoption or modification of a rule establishing the open lobster season in the Monhegan Lobster Conser-vation Area.

D. Notwithstanding any provisions to the con-trary, the commissioner may adopt rules under this subsection without the advice and consent of the Marine Resources Advisory Council. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6473. Fishing in other waters