

MAINE STATE LEGISLATURE

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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

rections or the commissioner's designee may request the court to make a determination whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. If requested, the court shall make that determination prior to the expiration of 180 days from the start of the placement and shall review that determination not less than once every 12 months until the juvenile is no longer residing outside the juvenile's home.

See title page for effective date.

CHAPTER 592

S.P. 756 - L.D. 2034

An Act to Correct Errors and Inconsistencies in Licensing Requirements for Licensed Insurance Professionals and Insurers

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

Sec. 1. 24 MRSA §2305, first ¶, as amended by PL 1973, c. 585, §12, is further amended to read:

The superintendent shall issue a certificate of authority ~~on~~, which is continuous unless revoked or suspended by the superintendent, and collect payment of a fee, which ~~shall be~~ is the same as for an insurer as provided in Title 24-A, section 601, if the applicant meets the following requirements:

Sec. 2. 24 MRSA §2305-A is enacted to read:

§2305-A. Conditions of certificate of authority

1. Duration. A certificate of authority continues in force as long as the nonprofit hospital or medical service organization is entitled under this Title and until suspended or revoked by the superintendent or terminated at the organization's request.

2. Annual fee. The nonprofit hospital or medical service organization shall pay an annual fee, which is the same as for an insurer, as provided in Title 24-A, section 601.

3. Reinstatement. Upon payment by the nonprofit hospital or medical service organization of the fee for reinstatement specified in Title 24-A, section 601, the superintendent may, upon the organization's request made within 3 months after suspension, reinstate a certificate of authority that the superintendent suspended due to the organization's failure to pay

the annual fee. Otherwise the organization may be granted another certificate of authority only after filing an application and meeting all other requirements as for an original certificate of authority in this State.

Sec. 3. 24 MRSA §2306, first ¶, as amended by PL 1993, c. 702, Pt. A, §3, is further amended to read:

Annually, on or before ~~April~~ March 1st, every corporation organized under this chapter shall file in the office of the superintendent a statement verified by at least 2 of the principal officers of that corporation showing its condition on the previous December 31st. The statement must be on an annual statement blank of the National Association of Insurance Commissioners for use by nonprofit hospital or medical service corporations, be prepared in accordance with the association's annual statement instructions, follow practices and procedures prescribed by the association's accounting practices and procedures manual and be accompanied by any useful or necessary modification or adaptation and any additional information required by the superintendent.

Sec. 4. 24 MRSA §2314, as repealed and replaced by PL 1977, c. 694, §382, is amended to read:

§2314. Suspension or revocation of certificate of authority

~~The Notwithstanding Title 4, section 1151 and Title 5, section 10051, the superintendent may file a petition with the Administrative Court seeking the revocation of suspend or revoke a certificate of authority or license granted under this chapter for cause at any time pursuant to a hearing held in accordance with Title 5, chapter 375, subchapter IV.~~

Sec. 5. 24 MRSA §2317-A, as enacted by PL 1989, c. 556, Pt. D, §1, is amended to read:

§2317-A. Explanation and notice to parent of minor

Title 24-A, sections ~~421~~, 2713-A and 2823-A ~~shall~~ and chapter 16 apply to nonprofit hospital corporations, nonprofit medical service corporations and nonprofit health care plans to the extent not inconsistent with this chapter and the reasonable implications of this chapter.

Sec. 6. 24 MRSA §2332, sub-§§4 and 5, as amended by PL 1991, c. 334, §2, are further amended to read:

4. Notification of assessment. On or before July 1st of each year, the superintendent shall ~~notify~~ forward to each nonprofit hospital or medical service organization and health care plan ~~of~~ an itemized bill of

the amount due for the annual assessment due, the amount due for the filing of the annual statement and the amount due for the certificate of authority annual fee pursuant to Title 24-A, section 601.

5. Time of payment. Payment for the annual assessment, the annual statement filing fee and the annual fee must be made on or before August 10th.

Sec. 7. 24 MRSA §2332, sub-§6, as enacted by PL 1985, c. 446, §1, is amended to read:

6. Revocation or suspension. If the assessment, annual statement filing fee or annual fee is not paid to the superintendent on or before the prescribed date, the certificate of authority of any nonprofit hospital or medical service organization or health care plan to transact business in this State may be revoked or suspended by the superintendent, after a hearing thereon or upon waiver of hearing by the nonprofit hospital or medical service organization or health care plan, until the assessment is paid.

Sec. 8. 24 MRSA §2601, sub-§§5 and 6, as enacted by PL 1977, c. 492, §3, are repealed.

Sec. 9. 24-A MRSA §3, as amended by PL 1997, c. 457, §7, is repealed and the following enacted in its place:

§3. "Insurance" defined

"Insurance" means a contract under which one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies or to act as surety, except that the following types of contracts are not considered insurance:

1. Charitable gift annuity. A charitable gift annuity agreement, as defined in section 703-A;

2. Road or tourist service contract. A road or tourist service contract, other than a contract issued by a licensed insurer, related to the repair, operation and care of automobiles or to the protection and assistance of automobile owners or drivers; and

3. Home service contract. A home service contract whereby, for a set fee and specified duration, a person agrees to defray the cost of repair or replacement or provide or arrange for the repair or replacement of all or any part of any structural component, appliance or system of a home necessitated by wear and tear, deterioration or inherent defect or by failure of an inspection to detect the likelihood of any such loss.

Sec. 10. 24-A MRSA §413, sub-§6, as amended by PL 1973, c. 585, §12, is further amended to read:

6. Appointment of the superintendent ~~an agent~~ pursuant to section 421 ~~as its attorney~~ to receive service of legal process;

Sec. 11. 24-A MRSA §415, as amended by PL 1995, c. 544, §§3 and 4, is further amended to read:

§415. Continuation of certificate of authority

1. A certificate of authority continues in force as long as the insurer is entitled under this Title and until suspended or revoked by the superintendent or terminated at the insurer's request.

3. The superintendent may, ~~in his discretion,~~ upon the insurer's request made within 3 months after ~~expiration suspension,~~ reinstate a certificate of authority ~~which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration, and that the superintendent suspended due to the insurer's failure to pay the annual fee~~ upon payment by the insurer of the fee for reinstatement specified in section 601 ~~(fee schedule)~~. Otherwise the insurer ~~shall~~ may be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this State.

4. ~~When an insurer is issued a first time certificate of authority and if its assigned biennial continuation date, as a result of such assignment, will be less than one year hence, the fee assessed for the certificate of authority shall not exceed 1/2 the biennial continuation filing fees according to the fee schedule, subject to any applicable retaliatory provisions.~~

5. ~~The superintendent is authorized to issue continuation certificates for less than a 2 year term in order to implement the biennial continuation of insurers on biennial continuation dates established by the superintendent. If a continuation certificate is issued to an insurer for one year or less, the fees assessed for such certificate and annual statement filing shall be not more than 1/2 the applicable biennial fees according to the fee schedule.~~

Sec. 12. 24-A MRSA §421, sub-§1, as amended by PL 1997, c. 457, §10, is further amended to read:

1. Before the superintendent authorizes it to transact insurance in this State, each insurer shall appoint ~~a resident attorney as its~~ an agent to receive service of legal process issued against the insurer in this State. The insurer shall file with the superintendent a copy of the appointment. The notice to the superintendent must be accompanied by a copy of a resolution of the board of directors or like governing body of the insurer, if an incorporated insurer,

showing that those officers who executed the appointment were duly authorized to do so on behalf of the insurer. The registered agent must consent to the appointment.

Sec. 13. 24-A MRSA §421, sub-§5, as amended by PL 1997, c. 457, §14, is further amended to read:

5. At the time of application for a certificate of authority the insurer shall file the appointment with the superintendent, together with designation of the person to whom process against it served upon the appointed ~~attorney~~ agent is to be forwarded. The insurer may change such designation by a new filing.

Sec. 14. 24-A MRSA §601, first ¶, as amended by PL 1991, c. 334, §5, is further amended to read:

The superintendent shall collect ~~in advance~~, and persons so served shall pay to the superintendent, fees, licenses and miscellaneous charges as follows.

Sec. 15. 24-A MRSA §601, sub-§4, as amended by PL 1991, c. 334, §5, is repealed.

Sec. 16. 24-A MRSA §601, sub-§5, as amended by PL 1997, c. 457, §18 and affected by §55, is further amended to read:

5. Producers. Producers' license and appointment fees are:

A. Issuance fee for original resident producer license, including limited license \$30;

B. Appointment of resident producer, each insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group \$30;

~~Biennial continuation of fee for appointment,~~ each insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group \$30;

C. Temporary license issuance fee \$50;

E. Issuance fee for original nonresident producer license \$70;

Appointment of such producer, each insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group \$70;

~~Biennial continuation of fee for appointment,~~

each insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider risk retention group \$70;

F. Issuance fee for resident agency license \$30;

~~Biennial continuation fee~~ \$30;

Biennial fee for appointment, each insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group \$30;

G. Issuance fee for nonresident agency license \$70;

~~Biennial continuation fee~~ \$70; ~~and~~

Biennial fee for appointment, each insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group \$70; and

H. Issuance fee for resident independent producer authority \$70;

Biennial continuation \$70;

Issuance fee for nonresident, independent producer authority \$150;

Biennial continuation \$150.

Sec. 17. 24-A MRSA §601, sub-§7, as amended by PL 1993, c. 637, §§6 and 7, is further amended to read:

7. Consultants. Consultant license fees are:

A. Issuance fee for original resident consultant license \$50;

~~Biennial continuation fee~~ \$50;

B. Issuance fee for original nonresident consultant license \$100;

~~Biennial continuation fee~~ \$100;

C. Issuance fee for resident consultant ~~organization~~ agency license \$50;

Biennial ~~renewal~~ fee \$50; and

D. Issuance fee for nonresident consultant ~~organization~~ agency license \$100;

Biennial ~~renewal~~ fee \$100.

Sec. 18. 24-A MRSA §601, sub-§8, as amended by PL 1993, c. 637, §8, is further amended to read:

8. Adjusters. Adjuster license fees are:

- | | |
|--|-----------|
| A. Issuance fee for original resident adjuster license | \$30; |
| Biennial continuation <u>fee</u> | \$30; |
| B. Issuance fee for original nonresident adjuster license | \$60; |
| Biennial continuation <u>fee</u> | \$60; |
| C. Temporary license | \$50; |
| D. Issuance fee for resident adjuster organization <u>agency</u> license | \$30; |
| Biennial renewal fee | \$30; and |
| E. Issuance fee for nonresident adjuster organization <u>agency</u> license | \$60; |
| Biennial renewal fee | \$60. |

Sec. 19. 24-A MRSA §1402, sub-§§1, 2, 3, 4, 5 and 7, as enacted by PL 1997, c. 457, §23 and affected by §55, are amended to read:

1. Adjuster. "Adjuster" means any ~~person~~ individual who, as an independent contractor or as an employee of an independent contractor, or as an employee of another organization, for fee, commission or other compensation, investigates for, settles on behalf of and reports to an insurer, fraternal benefit society, workers' compensation self-insurer or insured relative to claims arising under the workers' compensation laws or other types of insurance contracts. "Adjuster" does not include:

- A. Attorneys admitted to practice in this State;
- B. Employees of insurers;
- C. Licensed producers authorized by contract to settle and pay claims within a specified limit established by the insurer or fraternal benefit society not to exceed \$5,000;
- D. Persons excepted from licensure as adjusters pursuant to Title 5, section 1727-A and persons acting as adjusters solely on behalf of the State or counties, cities and towns;
- E. Persons adjusting only life and health insurance claims; or
- F. Adjuster trainees.

2. Adjuster trainee. "Adjuster trainee" means any ~~person~~ individual with less than one year total experience handling loss claims under insurance contracts or the workers' compensation laws. ~~—An "adjuster trainee" must be who is not licensed in this State as an adjuster and who is 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.~~

3. Agency. "Agency" means any corporation, association, limited liability company, partnership, limited partnership or other legal entity, other than an individual, that operates as an engages in insurance producer, consultant or adjuster under a license issued pursuant to this chapter activities. An agency includes a sole proprietorship where more than one licensed individual is employed by or works under the name of the agency or where the individual licensee uses a name for the agency other than the individual licensee's own name.

4. Consultant. "Consultant" means any ~~person~~ individual who, for a fee, advises or offers to advise any person insured or seeking insurance or named or to be named as beneficiary, or having or to have any interest in or insured under any property and casualty or life and health insurance contract or annuity contract, existing or proposed.

A. "To advise" means to provide information relative to coverage, rights or interests under insurance or annuity contracts, or relative to the retention, exchange, surrender, exercise of rights or other disposition of insurance or annuity contracts.

B. "Consultant" includes a person who collects a fee from the insured or potential insured for advice on financial planning and as part of that planning sells or plans to sell insurance policies under an insurance producer license on which the producer will collect commissions.

C. "Consultant" includes a person who collects a fee from the insured or potential insured for advice on estate planning or for the sale of a trust package and as part of the estate planning sells or plans to sell insurance policies under an insurance producer license on which the producer will collect commissions.

D. "Consultant" does not include:

- (1) An attorney licensed to practice who is actively practicing law in this State;
- (2) An insurance actuary and member or associate of the Society of Actuaries or American Academy of Actuaries;

(3) A public accountant certified under Title 32, chapter 113 or a certified public accountant who is certified under Title 32, chapter 113 and in active public practice; or

(4) A licensed insurance producer who receives a fee in lieu of a commission pursuant to section 1450 if the insurance producer receives a fee for the insurance transaction and not for other services provided; or

(5) A financial institution or a financial institution holding company if the insurance advice is given as part of its trust department rendering insurance advice in a fiduciary capacity.

5. Insurance producer. "Insurance producer" means ~~a person~~ any individual who engages in insurance producer activities. Unless the person receives commission for the service, this definition does not include: a person whose insurance producer activities are limited to taking applications for certificates under group insurance contracts issued pursuant to sections 2603, 2605-A, 2606-A, 2804, 2805, and 2806; a person whose insurance producer activities are limited to taking applications for certificates of insurance under approved group contracts where underwriting is not required and where certificates are issued to members of the group without contribution from the members; or a person whose activities relate to enrolling participants in a credit life and health insurance policy to the extent authorized under chapter 37, a group life insurance policy to the extent authorized under chapter 31, a group health insurance policy to the extent authorized under chapter 35 or a group credit involuntary unemployment insurance policy.

A. For the purposes of this Title, a person currently licensed as an agent or broker is deemed to be an insurance producer.

This paragraph is repealed on July 1, 1998.

7. License. "License" means a document issued by the superintendent authorizing a person to act as an insurance producer, adjuster or consultant for ~~classes~~ kinds of insurance specified in the document as authorized in this chapter. The license itself does not create any authority, actual, apparent or inherent, in the licensee to represent or commit any particular insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group.

Sec. 20. 24-A MRSA §1413, sub-§§1 and 5, as enacted by PL 1997, c. 457, §23 and affected by §55, are amended to read:

1. License required. An agency, whether it has a location in this State or not, must be licensed as an insurance producer, adjuster or consultant agency in order to ~~engage~~ authorize individual licensees to act on the agency's behalf by engaging in insurance producer, adjuster or consultant activities or in order to use the name of the agency in insurance-related advertising in the State. An agency has no authority to act on its own without an individual licensee. A license authority held by an individual licensee employed by an agency does not transfer to other employees within that agency. Licensure of a nonresident agency does not depend upon the ~~agency~~ agency's maintaining an agency license in another state. Agency licensees are subject to the standards of section 407, subsection 2, ~~where~~ when applicable, and section 408, subsections 1 and 4. Agency licensees may advertise only in the names under which they are licensed. An agency may not be licensed with the word "company" in its name after ~~the effective date of this subsection~~ June 11, 1997.

5. Resident branch offices. A resident agency establishing more than one place of business in this State must procure an agency branch registration for each location within the State. A resident branch office is any office location other than the location of the licensed agency that regularly conducts insurance business or that is advertised as a location where the public may contact the agency or its employees concerning insurance services. An office location that meets this definition that is itself a separate legal entity from the licensed agency must obtain a separate agency license and can not be registered as a branch office. ~~A place of residence need not be registered as a branch office so long as that address is filed with the superintendent.~~ The licensed person designated as responsible for the agency is responsible for all branch locations.

Sec. 21. 24-A MRSA §1415, as enacted by PL 1997, c. 457, §23 and affected by §55, is amended to read:

§1415. License authorities

1. Producer authorities. ~~A~~ An individual resident or nonresident insurance producer may receive the following authorities under the license:

- A. Property and casualty;
- B. Life and health;
- C. Variable contract; ~~or~~
- D. Independent producer; or
- E. Surplus lines.

2. Consultant authorities. A resident or non-resident consultant may receive the following authorities under the license:

- A. Property and casualty; or
- B. Life and health.

3. Adjuster authorities. A resident or nonresident adjuster may receive the property and casualty authority under the license.

Sec. 22. 24-A MRSA §1417, sub-§4, ¶¶B and C, as enacted by PL 1997, c. 457, §23 and affected by §55, are amended to read:

B. The license has been issued upon the basis of a reciprocal agreement with another government and the action in this State is based upon evidence, in the form of a certified copy, that the authority issuing the license ~~which that~~ provided the basis for reciprocal licensing in this State has revoked or suspended the licensee's license; ~~or~~

C. The health or physical safety of a person or persons is in immediate jeopardy at the time of the superintendent's action; and, acting in accordance with chapter 3 or Title 5, chapter 375, subchapter IV or VI, the superintendent would fail to adequately respond to a known risk, provided that the revocation, suspension or refusal to renew does not continue for more than 30 days;

Sec. 23. 24-A MRSA §1417, sub-§4, ¶¶D and E are enacted to read:

D. The licensee has failed after being notified twice by regular mail at the licensee's last known address to pay any money due the superintendent; or

E. The licensee has failed after being notified twice by regular mail at the licensee's last known address to comply within 60 days with continuing education requirements pursuant to section 1482.

Sec. 24. 24-A MRSA §§1419 and 1421, as enacted by PL 1997, c. 457, §23 and affected by §55, are amended to read:

§1419. Duty to notify of changes; payment of late fee

Any Unless a different time is set by another provision of law, any change of business address, business telephone number, name or other material change in the conditions or qualifications set forth in the original application of a producer, adjuster, consultant or agency must be reported to the superintendent no later than 30 days after the change. This requirement includes any conviction of a crime other

than a traffic violation or any disciplinary action brought by an insurance regulatory official of any other jurisdiction against the licensee or against any officer, director, member or partner in an agency. If notice of the change is received after ~~30 days~~ the prescribed time period, the licensee shall pay the late fee for filing as prescribed in section 601. The levying of this late fee by the superintendent may be appealed pursuant to section 236. In the event the late fee charge is appealed, it becomes a final agency action and the superintendent shall issue an order. If the late fee charge is not appealed, the payment of the fee is not considered a final agency action and is not considered a disciplinary action. Every previous consent order or agreement issued by the superintendent for failure to notify the superintendent of address change may be considered payment of a late fee and not considered a disciplinary action upon request by the licensee. This section does not negate the superintendent's authority to bring an action under ~~section 12-A or section 1417~~ any other applicable provision of law.

§1421. Licensing forms

The superintendent or an independent licensing service designated by the superintendent shall prescribe, consistent with the applicable requirements of this chapter, and furnish all forms required under this chapter in connection with applications for and issuance of licenses. The superintendent or an independent testing service designated by the superintendent shall prescribe and furnish all forms required in connection with examinations for licenses.

Sec. 25. 24-A MRSA §1423, sub-§1-A is enacted to read:

1-A. Examination content. The examination may be administered as a 2-part examination. If a 2-part examination is administered, one part of the examination must test the applicant's knowledge as to the kinds of insurance for which the application is made and the other part must test the person's knowledge of the duties and responsibilities of an insurance producer, adjuster or consultant and the insurance laws and rules of this State.

Sec. 26. 24-A MRSA §1423, sub-§§5 and 6, as enacted by PL 1997, c. 457, §23 and affected by §55, are amended to read:

5. Examination results. Within 30 days after a person completes the examination, the superintendent or any independent testing service designated by the superintendent ~~must~~ shall inform the person whether or not the person has passed. ~~The test may be a 2-part test. One part of the test must test the applicant's knowledge as to insurance industry practices and one part must test the applicant's knowledge of state insurance law.~~ A person who fails ~~all or one part of~~

the examination must remit the required fees before being rescheduled for ~~either one part or all of~~ another examination. A person who fails one part of a 2-part examination must pay the full examination fee but need only be examined on the part of the examination that the person failed. A person who does not apply for a license within 2 years after passing one part or all of an examination must register and pay the fee for a subsequent examination.

6. Separate examination for each category.

An applicant for more than one kind of license or for more than one authority under a license must be separately examined for each category of license or authority and shall pay a separate examination fee for each examination. Nothing in this section prohibits the giving of all required examinations to a particular applicant on the same day.

Sec. 27. 24-A MRSA §1424, sub-§§1, 4 and 7, as enacted by PL 1997, c. 457, §23 and affected by §55, are amended to read:

1. Application. Application for an insurance producer, consultant, adjuster or agency license must be made to the superintendent by the applicant ~~and accompanied by the applicable license application fees under section 601. The application fee is not subject to refund.~~ The application must be signed by the applicant as determined necessary by the superintendent. Upon filing the application, the applicant automatically agrees to participation in an electronic interstate licensing system, which may involve the sharing of information, including social security numbers, with insurance regulatory officials in other jurisdictions, with the National Association of Insurance Commissioners, and with insurers, nonprofit hospital or medical service organizations, health maintenance organizations, fraternal benefit societies and other licensees authorized to do business in the State. An applicant's social security number is not otherwise public information. Use of this information by any person other than licensees and regulatory officials of other states and provinces and for any purpose other than to verify licensure in this State is prohibited. Any person who violates this subsection is subject to criminal penalties under section 214.

4. Designation of authorized individuals. An agency shall designate in its application all licensed ~~persons~~ individuals who have the authority to act in the name of the agency. An agency may register either nonresident or resident individual licensees to act in the name of the agency.

7. Public records. Except as provided in subsection 1, the superintendent shall withhold from public inspection information of a personal nature concerning ~~applicants for license~~ licensees. The name, business address, business telephone number,

licensing history and complaint record of ~~an applicant~~ a licensee are public records.

Sec. 28. 24-A MRSA §1424, sub-§8, ¶A is enacted to read:

A. Once the temporary licensee has evidence that the temporary licensee is no longer licensed as a resident in another state, the licensee may apply for a permanent license pursuant to this section.

Sec. 29. 24-A MRSA §1426, sub-§2, as enacted by PL 1997, c. 457, §23 and affected by §55, is amended to read:

2. Fees. If the license is issued, the superintendent shall notify the licensee of the applicable application and issuance fees due pursuant to section 601. If the license is refused, the superintendent shall notify the applicant of the application fees ~~for application for an insurance producer, consultant or adjuster license are not refundable due.~~ Failure to pay the required fees by a licensee within 90 days results in termination of the licensee's license pursuant to section 1417, subsection 4. Failure to pay fees due by a nonlicensee may be enforced pursuant to section 214.

Sec. 30. 24-A MRSA §1427, sub-§1, ¶¶B and C, as enacted by PL 1997, c. 457, §23 and affected by §55, are amended to read:

B. An applicant for a license as a limited insurance producer who solicits or sells travel and baggage insurance; ~~or~~

C. An applicant for a license as a resident title insurance producer who is an attorney at law duly licensed to practice law in this State; or

Sec. 31. 24-A MRSA §1427, sub-§1, ¶D is enacted to read:

D. An applicant for a license as a limited insurance producer who solicits or sells mechanical breakdown insurance.

Sec. 32. 24-A MRSA §1430, sub-§1, as enacted by PL 1997, c. 457, §23 and affected by §55, is repealed.

Sec. 33. 24-A MRSA §1430, sub-§1-A is enacted to read:

1-A. License for an indefinite term. Each license issued under this chapter continues in force continuously unless suspended, revoked or otherwise terminated by the superintendent.

Sec. 34. 24-A MRSA §1430, sub-§2, as enacted by PL 1997, c. 457, §23 and affected by §55, is repealed.

Sec. 35. 24-A MRSA §1430, sub-§2-A is enacted to read:

2-A. Biennial license fees. Each nonresident adjuster and consultant must be billed by the superintendent a biennial fee as provided in section 601 and must pay the fee due by January 1st of even-numbered years. Each nonresident producer with an independent producer authority must be billed by the superintendent a biennial fee as provided in section 601 and must pay the fee due by February 1st of odd-numbered years. Each nonresident insurance agency must be billed by the superintendent a biennial fee as provided in section 601 and must pay the fee due by April 1st of odd-numbered years. Each resident adjuster, consultant and producer with independent producer authority must be billed by the superintendent a biennial fee as provided in section 601 and must pay the fee due by October 1st of even-numbered years. Each resident agency must be billed by the superintendent a biennial fee as provided in section 601 and must pay the fee due by December 1st of even-numbered years.

Sec. 36. 24-A MRSA §1430, sub-§3, as enacted by PL 1997, c. 457, §23 and affected by §55, is repealed.

Sec. 37. 24-A MRSA §1430, sub-§3-A is enacted to read:

3-A. Termination. Failure to pay the required fees by a licensee within 90 days from the due date results in termination of the license pursuant to section 1417, subsection 4.

Sec. 38. 24-A MRSA §§1431 and 1432, as enacted by PL 1997, c. 457, §23 and affected by §55, are repealed.

Sec. 39. 24-A MRSA §1441, sub-§1, as enacted by PL 1997, c. 457, §23 and affected by §55, is repealed.

Sec. 40. 24-A MRSA §1441, sub-§1-A is enacted to read:

1-A. Licensed producers. This subchapter applies to licensed resident and nonresident producers.

Sec. 41. 24-A MRSA §§1441-A and 1441-B are enacted to read:

§1441-A. Appointment of insurance producers or agencies

1. Appointment. Each insurer, health maintenance organization, fraternal benefit society, nonprofit

hospital or medical service organization, viatical settlement provider or risk retention group appointing an insurance producer or agency in this State shall appoint the producer or agency in writing, specifying the kinds of insurance or annuity business to be transacted by the insurance producer or agency for the insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group, and shall pay the appointment fee at the rate specified in section 601. The insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group may forward new appointment fees to the superintendent on a quarterly basis. The insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group need not file the appointments with the superintendent but shall maintain the appointments in the insurer's office. Upon request of the superintendent, the insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group shall provide copies of appointments to the superintendent within 14 days unless the request is part of an examination pursuant to section 221. The insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group shall designate and maintain a list of each insurance producer within an appointed agency that represents the insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group. The fee for designation of an insurance producer within an agency is the same as for an appointment. The insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group shall pay the full appointment fee without regard to the effective date of the appointment. An insurance producer who qualifies to be licensed to sell variable annuity contracts pursuant to section 1411 must be separately appointed as to variable annuities and the insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group shall pay a separate appointment fee for the appointment.

§1441-B. Termination of producer or agency appointment

1. Termination. Subject to the producer's or agency's contract obligations and rights, if any, an insurer, health maintenance organization, fraternal

benefit society, nonprofit hospital or medical service organization, viatical settlement provider, risk retention group, agency or producer may terminate a producer's or agency's appointment at any time. If the insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group intends to terminate the producer's or agency's authority to represent the insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group for any kind of business, the insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group shall provide 90 days' advance written notice of the termination or modification to the producer or agency. A notice is not required when:

A. The producer or agency is subject to suspension or revocation of license under section 1417;

B. The producer or agency fails to pay money due the insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group;

C. There is a sale or merger of the agency;

D. There is an insolvency or bankruptcy of the agency;

E. The producer or agency holds a limited license;

F. The producer or agency is an employee of an insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group or when the producer or agency by contractual agreement represents only one insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group or a group of affiliated insurers and the property rights in the renewals are owned by the insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group or a group of affiliated insurers. An insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group may not cancel or renew policies as a result of the termination of the producer's or agency's contract under this paragraph;

G. The producer has died or been adjudicated as incompetent if the producer is a natural person;

H. The agency or producer has dissolved if the agency or producer is a corporation;

I. A date mutually agreed upon by an insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group and the agency or producer has been reached;

J. An insurer, health maintenance organization, fraternal benefit society, nonprofit hospital or medical service organization, viatical settlement provider or risk retention group and the agency or producer have mutually agreed upon other terms; or

K. All insurers' licenses or appointments terminate or expire.

2. Notice. Notice of cancellation of an appointment must be maintained in the insurer's office and must be forwarded to the superintendent within 14 days of a request from the superintendent.

3. Rights of insureds. The termination of an appointment under this section does not affect the rights of insureds.

Sec. 42. 24-A MRSA §1472, sub-§2, ¶C, as enacted by PL 1997, c. 457, §23 and affected by §55, is amended to read:

C. Must pass any written examination required for the license under ~~this~~ subchapter III.

Sec. 43. 24-A MRSA §1476 is enacted to read:

§1476. Activities of insurance adjusters

The following requirements govern the activities of insurance adjusters.

1. Solicitation. An adjuster seeking to provide adjusting services to an insured for a fee to be paid by the insured may not solicit or offer an adjustment services contract to any person for at least 36 hours after an accident or occurrence as a result of which the person might have a potential claim.

2. Contract provision. Any such adjustment services contract must contain a provision, prominently printed on the first page of the contract, stating that the person contracting with the adjuster has the option to rescind the contract within 2 business days after the contract is signed.

Sec. 44. 24-A MRSA §1481-A is enacted to read:

§1481-A. Applicability of subchapter

1. Applicability. This subchapter applies to licensed producers and licensed consultants.

2. Exceptions. Except for limited licenses for the sale of annuities, this subchapter does not apply to persons holding only limited licenses under section 1416.

Sec. 45. 24-A MRSA §1482, as enacted by PL 1997, c. 457, §23 and affected by §55, is amended to read:

§1482. Educational requirements

As a prerequisite to maintaining a license, ~~resident~~ licensees must complete 30 hours of continuing education every 2 years in programs or courses approved by the superintendent. The superintendent may, for good cause shown, grant an extension of time to any person to allow that person to comply with this subchapter.

Sec. 46. 24-A MRSA §1483, sub-§1, as enacted by PL 1997, c. 457, §23 and affected by §55, is amended to read:

1. Application. Each application for approval of a continuing education program must be submitted according to the guidelines prescribed by the superintendent accompanied by the appropriate fee in section 601. The fee is nonrefundable. A fee is required only for original course submissions. Subsequent or renewal filings of approved courses are ~~not~~ considered original if modified in any manner.

Sec. 47. 24-A MRSA §1484, as enacted by PL 1997, c. 457, §23 and affected by §55, is amended to read:

§1484. Failure to comply

The license of any insurance producer or consultant who ~~fails to comply is out of compliance with this subchapter terminates upon the biennial expiration date. The insurance producer may have the license reinstated if the insurance producer complies with continuing education requirements within 60 days from the date the license terminates for at least 60 days, is subject to suspension or revocation pursuant to section 1417, subsection 4.~~

Sec. 48. 24-A MRSA §2002-A, sub-§3, as enacted by PL 1993, c. 153, §16, is amended to read:

3. Surplus lines brokers Producers with surplus lines authority may procure the following kinds of

insurance from eligible surplus lines insurers without adherence to the procedures set forth in section 2004:

A. Wet marine and transportation insurance;

B. Insurance on subjects located, resident or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this State;

C. Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations; or

D. Insurance on aircraft owned or operated by manufacturers of aircraft or of aircraft operated in commercial interstate flight, or cargo of such aircraft, or against liability other than workers' compensation and employer's liability arising out of the ownership, maintenance or use of such aircraft.

Sec. 49. 24-A MRSA §2003, as enacted by PL 1969, c. 132, §1, is amended to read:

§2003. Definitions -- "producer," "export"

1. "Broker" "Producer" as used in this chapter and unless context otherwise requires, means a ~~surplus lines broker~~ producer with surplus lines authority duly licensed as such under this chapter.

2. To "export" means to place in an unauthorized insurer under this Surplus Lines Law insurance covering a subject of insurance resident, located or to be performed in Maine.

Sec. 50. 24-A MRSA §2004, sub-§1, as enacted by PL 1969, c. 132, §1, is amended to read:

1. The insurance must be procured through a licensed producer with surplus lines ~~broker~~ authority.

Sec. 51. 24-A MRSA §2005, as amended by PL 1973, c. 585, §12, is repealed.

Sec. 52. 24-A MRSA §2006, sub-§§1 and 2, as amended by PL 1973, c. 585, §12, are further amended to read:

1. The superintendent may by order declare eligible for export generally and without compliance with section 2004, subsections 2, 3 and 4, ~~and section 2005~~, any class or classes of insurance coverage or risk for which ~~he~~ the superintendent finds, after a hearing of which notice was given to each insurer authorized to transact such class or classes in this State, that there is not a reasonable or adequate market among authorized insurers either as to acceptance of the risk, contract terms, or premium or premium rate. Any such order shall continue in effect during the

existence of the conditions upon which predicated, but subject to earlier termination by the superintendent.

2. The ~~broker~~ producer shall file with or as directed by the superintendent a memorandum as to each such coverage placed by ~~him~~ the producer in an unauthorized insurer, in such form and context as the superintendent may reasonably require for the identification of the coverage and determination of the tax payable to the State relative thereto.

Sec. 53. 24-A MRSA §2006, sub-§3, as enacted by PL 1969, c. 132, §1, is amended to read:

3. ~~The broker, or a licensed Maine agent of the authorized insurer or a general lines broker, a~~ producer may also place with authorized insurers any insurance coverage made eligible for export generally under subsection 1, and without regard to rate or form filings ~~which that~~ may otherwise be applicable as to the authorized insurer. As to coverages so placed in an authorized insurer the premium tax thereon ~~shall~~ must be reported and paid by the insurer as required generally under the law of this State.

Sec. 54. 24-A MRSA §2007, as amended by PL 1973, c. 585, §12, is further amended to read:

§2007. Eligible surplus lines insurers

1. A ~~broker shall~~ producer may not knowingly place surplus lines insurance with an insurer that is unsound financially; or that is ineligible under this section.

2. The superintendent shall from time to time publish a list of all surplus lines insurers ~~deemed determined~~ by ~~him~~ the superintendent to be eligible currently, and shall mail a copy of such list to each ~~broker producer~~ at ~~his~~ the producer's office last of record with the superintendent. This subsection ~~shall not be deemed~~ may not be construed to cast upon the superintendent the duty of determining the actual financial condition or claims practices of any unauthorized insurer; and the status of eligibility, if granted by the superintendent, ~~shall~~ may indicate only that the insurer appears to be sound financially and to have satisfactory claims practices, and that the superintendent has no credible evidence to the contrary. While any such list is in effect, the ~~broker producer~~ shall restrict to the insurers so listed all surplus lines business placed by ~~him~~ the producer.

Sec. 55. 24-A MRSA §2008, as enacted by PL 1969, c. 132, §1, is amended to read:

§2008. Evidence of the insurance; changes; penalty

1. Upon placing a surplus lines coverage, the ~~broker producer~~ shall promptly issue and deliver to the insured evidence of the insurance consisting either of

the policy as issued by the insurer, or, if such policy is not then available, the surplus lines ~~broker's~~ producer's certificate. Such a certificate ~~shall~~ must be executed by the ~~broker producer~~ and shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and taxes collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the certificate ~~shall~~ must state the name and address and proportion of the entire direct risk assumed by each such insurer.

2. ~~No broker shall~~ A producer may not issue any such certificate or any cover note, or purport to insure or represent that insurance will be or has been granted by any unauthorized insurer, unless ~~he~~ the producer has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

3. If, after the issuance and delivery of any such certificate, there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by an insurer as stated in the ~~broker's~~ producer's original certificate, or in any other material respect as to the insurance evidenced by the certificate, the ~~broker producer~~ shall promptly issue and deliver to the insured a substitute certificate accurately showing the current status of the coverage and the insurers responsible ~~thereunder~~ under the certificate.

4. If a policy issued by the insurer is not available upon placement of the insurance and the ~~broker producer~~ has issued and delivered ~~his~~ the certificate as ~~hereinabove~~ provided in this section, upon request ~~therefor~~ by of the insured the ~~broker producer~~ shall as soon as reasonably possible procure from the insurer its policy evidencing ~~such~~ the insurance and deliver ~~such~~ the policy to the insured in replacement of the ~~broker's producer's~~ certificate ~~theretofore~~ issued.

5. Any producer with surplus lines ~~broker~~ authority who knowingly or negligently issues a false certificate of insurance or who fails promptly to notify the insured of any material change with respect to such insurance by delivery to the insured of a substitute certificate as provided in subsection 3, ~~shall~~ upon conviction, ~~be~~ is subject to the penalty provided by section 12 or to any greater applicable penalty otherwise provided by law.

Sec. 56. 24-A MRSA §2009, as amended by PL 1973, c. 585, §12, is further amended to read:

§2009. Identification and notice on contract

Every insurance contract procured and delivered as a surplus lines coverage pursuant to this chapter shall have stamped upon it, and bearing the name of the producer with surplus lines authority who procured it, the following:

"This insurance contract is issued pursuant to the Maine Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Maine Insurance Bureau of Insurance."

Sec. 57. 24-A MRSA §2011, as enacted by PL 1969, c. 132, §1, is amended to read:

§2011. Insurer's liability for losses and unearned premiums

1. As to a surplus lines risk ~~which that~~ has been assumed by an unauthorized insurer pursuant to this chapter, and if the premium ~~thereon~~ has been received by the producer with surplus lines authority who placed such insurance, in all questions ~~thereafter~~ arising under the coverage as between the insurer and the insured the insurer ~~shall be~~ is deemed to have received the premium due to it for such coverage; and the insurer ~~shall be~~ is liable to the insured as to losses covered by such insurance, and for unearned premiums ~~which that~~ may become payable to the insured upon cancellation of such insurance, whether or not in fact the broker producer is indebted to the insurer with respect to ~~such the~~ insurance or for any other cause.

2. Each unauthorized insurer assuming a surplus lines risk under this chapter ~~shall be~~ is deemed ~~thereby~~ to have subjected itself to the terms of this section.

Sec. 58. 24-A MRSA §2012, as amended by PL 1997, c. 457, §§33 and 34 and affected by §55, is further amended to read:

§2012. Surplus lines authority

1. Any person while licensed in this State as a resident ~~general lines agent or as a general lines broker, producer~~ who is ~~deemed determined~~ by the superintendent to be competent and trustworthy with respect to the handling of surplus lines, and while maintaining an office at a designated location in this State, may be licensed as a producer with surplus lines authority.

2. Application for the ~~license shall~~ authority ~~must~~ be made to the superintendent on forms as designated and furnished by the superintendent.

3. The ~~license application and authority fee shall~~ must be as specified in section 601 (~~fee schedule~~).

4. The ~~license and licensee are~~ producer with surplus lines authority ~~is~~ subject to the applicable provisions of chapter 16.

5. A nonresident producer who is considered by the superintendent to be competent and trustworthy with respect to the handling of surplus lines may apply for ~~license as a surplus lines broker authority~~ under the following circumstances:

A. If the nonresident maintains a business location within this State and maintains all records of surplus lines transactions within this State; or

B. If the nonresident transacts only liability insurance business and only on behalf of a purchasing group registered with the superintendent and the nonresident agrees to produce surplus lines records in this State within 14 days from a request of the superintendent.

Sec. 59. 24-A MRSA §2013, as amended by PL 1997, c. 457, §35 and affected by §55, is further amended to read:

§2013. License suspension or revocation

1. Notwithstanding Title 5, chapter 375, subchapter VI, the superintendent may, after notice and opportunity for hearing, deny, revoke, suspend or limit the permissible activities under any surplus lines ~~broker's license~~ authority:

A. If the broker producer fails to remit the tax as required by section 2016;

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

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

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

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

2. The procedures provided by chapter 16 for suspension or revocation of licenses apply to suspension or revocation of a surplus lines ~~broker's license~~ authority.

3. Upon a ruling by the ~~Administrative Court~~ superintendent suspending or revoking a ~~broker's producer's~~ surplus lines ~~license~~ authority the superin-

tendent may ~~file a complaint with the Administrative Court seeking the suspension or revocation of~~ suspend or revoke all other licenses or authorities held by the same individual under this Title.

Sec. 60. 24-A MRSA §2014, as enacted by PL 1969, c. 132, §1, is amended to read:

§2014. Producer's surety bond

A licensed producer with surplus lines ~~broker authority~~ may accept and place surplus line business for any insurance ~~agent or broker producer~~ licensed in this State for the kind of insurance involved, and may compensate the ~~agent or broker therefor~~ producer for the business.

Sec. 61. 24-A MRSA §2015, as amended by PL 1997, c. 457, §36, is further amended to read:

§2015. Record of procured coverages

1. Each ~~broker producer~~ shall keep in ~~his~~ the producer's office in this State a full and true record of each surplus lines coverage procured by ~~him~~ the producer, including a copy of each daily report, if any, a copy of each certificate of insurance issued ~~by him~~, books of account in which financial entries are recorded respecting these transactions and such of the following items as may be applicable:

- A. Amount of the insurance;
- B. Gross premium charged;
- C. Return premium paid, if any;
- D. Rate of premium charged upon the several items of property;
- E. Effective date of the contract; and the terms ~~thereof~~ of the contract;
- F. Name and address of each insurer on the direct risk and the proportion of the entire risk assumed by such insurer, if less than the entire risk;
- G. Name and address of the insured;
- H. Brief general description of the property or risk insured and where located or to be performed; and
- I. Other information as may be required by the superintendent.

2. The record may not be removed from this State, except in the case of a nonresident licensed as a producer with surplus lines ~~broker authority~~ for the purpose of transacting liability insurance business on behalf of a registered purchasing group, and must be open to examination by the superintendent at all times within 5 years after issuance of the coverage to which

it relates. For the purpose of investigation or examination by the superintendent, records may be maintained in electronic form.

Sec. 62. 24-A MRSA §2016, sub-§1, as amended by PL 1997, c. 457, §37, is further amended to read:

1. Each ~~broker producer~~ shall maintain in the ~~broker's~~ producer's office within the State a monthly report showing the amount of insurance placed for any person or organization, the location of each risk, the gross premium charged, the name of each insurer with which the insurance was placed, the date and term of each insurance contract issued during the preceding month and any other pertinent information required by the superintendent. The report must show in the same detail each contract cancelled during the month covered by the report and the return premium on it. The monthly report must be made available to the superintendent for examination at the ~~broker's~~ producer's office location in the State at any time or by delivery to the bureau upon 5 days' notice by the superintendent.

Within 45 days of the end of each calendar quarter, the ~~broker producer~~ shall pay to the Treasurer of State 3% of the difference between the gross premiums and the return premiums reported for the business transacted during the preceding calendar quarter.

Sec. 63. 24-A MRSA §2018, as amended by PL 1991, c. 674, §2, is further amended to read:

§2018. Failure to file statement or pay tax

If any ~~broker producer~~ fails to ~~file the monthly statement or fails to~~ remit the tax provided by section 2016 within 30 days after the tax is due, the superintendent may, following an adjudicatory hearing, assess a penalty of not less than \$25 for each day of delinquency. Any fine collected by the superintendent must be paid to the Treasurer of State and credited to the Insurance Regulatory Fund.

Sec. 64. 24-A MRSA §2019, sub-§§2 and 3, as amended by PL 1973, c. 585, §12, are further amended to read:

2. Before the surplus lines insurer may do business in this State, each insurer shall appoint an agent to receive service of legal process issued against it in this State. The insurer shall file with the superintendent a copy of the appointment. The notice to the superintendent must be accompanied by a copy of a resolution of the board of directors or like governing body of the insurer, if an incorporated insurer, showing that those officers who executed the appointment were duly authorized to do so on behalf of the insurer. Service of legal process against the insurer may be made in any such action by service of

2 copies thereof upon the superintendent, and payment of the service of process fee specified in section 601 (fee schedule) the designated agent. The superintendent shall forthwith mail a copy of the process served to the person designated by the insurer in the policy for the purpose, by prepaid registered or certified mail with return receipt requested. If no such person agent is so designated in the policy, the superintendent shall in like manner mail service of legal process against the insurer may be made by mailing a copy of the process to the broker producer through whom such insurance was procured, or to the insurer at its principal place of business, addressed to the address of the broker producer or insurer, as the case may be, last of record with the superintendent. Upon service of process upon the superintendent in accordance with this provision, the court shall be is deemed to have jurisdiction in personam of the insurer.

3. An unauthorized insurer issuing such policy shall be is deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall must contain a provision stating the substance of this section, and designating the person to whom the superintendent shall mail process must be served as provided in subsection 2 of this section.

Sec. 65. 24-A MRSA §2020, as amended by PL 1995, c. 329, §31, is further amended to read:

§2020. Producer's surety bond

1. Every applicant for a surplus lines broker's license producer's authority 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 producer'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 \$20,000.

2. The bond must remain in force until released by the superintendent or until canceled by the surety. Without prejudice to liability previously incurred, the surety may cancel the bond upon 30 days' advance written notice to both the broker producer and the superintendent. Upon notice to the superintendent of cancellation by the surety and failure of the surplus lines broker producer to procure a satisfactory replacement bond prior to cancellation, the surplus lines broker's license producer's authority terminates.

Sec. 66. 24-A MRSA §2160, sub-§2, as enacted by PL 1997, c. 457, §38, is amended to read:

2. Benefit not associated with indemnification or loss. Unless otherwise provided by law, a provision may not be included within an insurance policy if the sole intent of the provision is to give to the insured a benefit that is not associated with indemnification or loss. This subsection does not apply to annuities.

Sec. 67. 24-A MRSA §2385-C, sub-§§2 to 4, as enacted by PL 1991, c. 885, Pt. B, §12 and affected by §13, are amended to read:

2. Standards for workplace health and safety consultations. The superintendent shall, in consultation with the Department of Labor, may adopt rules establishing the standards for approval of workplace health and safety consultations provided to employers by insurance carriers, including provision of adequate facilities, qualifications of persons providing the consultations, specialized techniques and professional services to be used and educational services to be offered to employers.

3. Required coverage and premium. All insurance carriers writing workers' compensation coverage in the State shall offer workplace health and safety consultations to each employer as part of the workers' compensation insurance policy. The premium for the workplace health and safety consultation must be identified as a separate amount that must be paid.

4. Optional purchase from another provider. An employer may elect to purchase workplace health and safety consultation services from a provider other than the insurer. Upon submission by the employer of a certificate of completion of workplace health and safety consultation services from another approved provider, the insurance carrier must refund to the employer the portion of the premium attributable to the workplace health and safety consultation.

Sec. 68. 24-A MRSA §4124, as repealed and replaced by PL 1977, c. 682, §5, is amended to read:

§4124. Licenses

Societies which are now authorized to transact business in this State may continue such business until the first day of January, 1970. The authority of these societies and all societies hereafter licensed may thereafter be renewed biennially but in all cases to terminate on the first day of the succeeding July or at those other times which the Commissioner of Business Regulation shall designate. A license so issued shall continue must be issued to each fraternal benefit society that qualifies under this chapter. The license continues in full force and effect until the new license is issued or specifically refused suspended or revoked by the superintendent. For each license or renewal Upon issuance of the license and annually thereafter the society shall pay the superintendent a fee which

~~shall be that is~~ the same as for an insurer as provided in section 601. A duly certified copy or duplicate of such license ~~shall be is~~ prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter. On or before July 1st of each year, the superintendent shall forward to each fraternal benefit society an itemized bill of the amount due for the filing of the annual statement and the amount due for the certificate of authority annual fee.

Sec. 69. 24-A MRSA §4129, as amended by PL 1997, c. 457, §49, is further amended to read:

§4129. Service of process

Every society authorized to do business in this State shall appoint in writing a ~~licensed attorney an agent~~ located in the State ~~to act as its true and lawful attorney~~ upon whom all lawful process in any action or proceeding against it is served and shall agree in writing that any lawful process against it ~~which that~~ is served on the ~~attorney agent~~ is of the same legal force and validity as if served upon the society and that the authority continues in force so long as any liability remains outstanding in this State. Copies of such appointment certified by the appointed ~~attorney agent~~ are deemed sufficient evidence of the appointment and may be admitted in evidence with the same force and effect as the original.

Service may only be made upon the appointed ~~attorney, agent~~ or, if absent, upon the person in charge. It must be made in duplicate and constitutes sufficient service upon the society. When legal process against a society is served upon the appointed ~~attorney agent~~, the appointed ~~attorney agent~~ shall forthwith forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer. Legal process may not be served upon a society except ~~is~~ as provided in this section.

Sec. 70. 24-A MRSA §4134, sub-§1, as amended by PL 1973, c. 585, §12, is further amended to read:

1. Every society transacting business in this State shall annually, on or before the ~~1st first~~ day of March, unless for cause shown such time has been extended by the superintendent, file with the superintendent a true statement of its financial condition, transactions and affairs for the preceding calendar year ~~and pay a fee of \$50 for filing same.~~ The statement ~~shall must~~ be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the superintendent. The fee for filing the annual statement is the same as for an insurer as provided in section 601.

Sec. 71. 24-A MRSA §4216, sub-§1, as amended by PL 1989, c. 842, §17, is further amended to read:

1. ~~The Notwithstanding Title 4, section 1151 and Title 5, section 10051, the superintendent may file a complaint with the Administrative Court seeking the suspension or revocation of any~~ suspend or revoke a certificate of authority issued to a health maintenance organization under this chapter if he the superintendent finds that any of the following conditions exist after a hearing held in accordance with Title 5, chapter 375, subchapter IV:

A. The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under section 4203, unless amendments to such submissions have been filed with and approved by the superintendent;

B. The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services ~~which that~~ do not comply with the requirements of section 4207;

C. The health maintenance organization does not provide or arrange for basic health care services;

D. The Commissioner of Human Services certifies to the superintendent that:

(1) The health maintenance organization does not meet the requirements of section 4204, subsection 1, paragraph B; or

(2) The health maintenance organization is unable to fulfill its obligations to furnish health care services;

E. The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

F. The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under section 4206;

G. The health maintenance organization has failed to implement the complaint system required by section 4211 in a manner to reasonably resolve valid complaints;

H. The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

I. The continued operation of the health maintenance organization would be hazardous to its enrollees;

I-1. The health maintenance organization has failed to meet the surplus requirements of section 4204-A; or

J. The health maintenance organization has otherwise failed to substantially comply with this chapter.

Sec. 72. 24-A MRSA §4219, sub-§1, as repealed and replaced by PL 1977, c. 694, §436, is amended to read:

1. When the superintendent has cause to believe that grounds exist for ~~the filing of a complaint seeking~~ the suspension or revocation of a certificate of authority, ~~he~~ the superintendent shall notify the health maintenance organization and the Commissioner of Human Services in writing specifically stating the grounds for suspension or revocation. The Commissioner of Human Services, or ~~his~~ the commissioner's designated representative, shall participate in any disciplinary proceedings. In the process of determining whether grounds for suspension or revocation exist the findings of the commissioner with respect to matters relating to the quality of health care services provided ~~shall be~~ are conclusive and binding upon the Superintendent of Insurance. The duration of and conditions attached to any suspension ~~shall be~~ are determined by the ~~Administrative Court~~ superintendent after a hearing held in accordance with Title 5, chapter 375, subchapter IV.

Sec. 73. 24-A MRSA §6095, sub-§1, as enacted by PL 1987, c. 481, §3, is amended to read:

1. **Notice of operations and designation of agent for service of process.** Before offering insurance in this State, a risk retention group shall submit to the superintendent:

A. A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the date of chartering and organization, its principal place of business and such other information, including information on its membership, as the superintendent may require to verify that the risk retention group is qualified under section 6093, subsection 13;

B. A copy of its plan of operation or a feasibility study and applicable revisions of the plan or study submitted to its state of domicile, provided that the provision relating to the submission of a plan of operation or a feasibility study shall does not apply with respect to any line or classification of liability insurance ~~which that~~ was defined

in the Product Liability Risk Retention Act of 1981 before October 27, 1986; and was offered before that date by any risk retention group ~~which that~~ had been chartered and operating for not less than 3 years before that date; and

C. A designation of ~~the superintendent as its~~ an agent for the purpose of receiving service of legal documents or process. That designation ~~shall be~~ is subject to the provisions of section 421.

Sec. 74. 24-A MRSA §6098, sub-§2, as enacted by PL 1987, c. 481, §3, is amended to read:

2. **Registration.** The purchasing group shall register with the superintendent and designate ~~the superintendent as its~~ an agent solely for the purpose of receiving service of legal documents or process, except that the requirements ~~shall~~ do not apply in the case of a purchasing group:

A. ~~Which That~~ in any state of the United States:

- (1) Was domiciled before April 2, 1986; and
- (2) Is domiciled on and after October 27, 1986;

B. ~~Which That~~:

- (1) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state; and
- (2) Since October 27, 1986, purchased its insurance from an insurance carrier licensed in any state;

C. ~~Which That~~ was a purchasing group under the requirements of the Product Liability Retention Act of 1981 before October 27, 1986; and

D. ~~Which That~~ does not purchase insurance that was not authorized for purposes of an exemption under that Act, as in effect before October 27, 1986. That designation shall be subject to section 421.

Sec. 75. 24-A MRSA §6203, sub-§1, ¶B, as amended by PL 1995, c. 625, Pt. A, §27, is further amended by amending subparagraph (17) to read:

- (17) A power of attorney duly executed by the provider, if not domiciled in the State, appointing ~~the superintendent as the~~ an agent for service of process in any legal action brought;

Sec. 76. 24-A MRSA §6803, sub-§1, ¶D, as enacted by PL 1997, c. 430, §1 and affected by §2, is amended to read:

D. A viatical settlement provider license issued to a person authorizes all partners, officers and key management personnel of that person to act on that person's behalf as if these individuals are also licensed, unless such activity requires a license under another provision of this Title. These persons must be named in the application and any supplements to the application and the authorization terminates upon the expiration, suspension or revocation of the license.

Sec. 77. 24-A MRSA §6803, sub-§§3 and 5, as enacted by PL 1997, c. 430, §1 and affected by §2, are amended to read:

3. Renewal. A license for a viatical settlement provider is ~~renewed for one year upon payment of a continuous~~ so long as the licensee remains qualified. The viatical settlement provider must pay an annual fee of \$400. Failure to pay the fee within the terms prescribed may result in the revocation of the license unless cured within 5 days of written notice of failure to pay to the principal office of the licensee.

5. Authority under license. A license issued to any person authorizes all officers, partners and key management personnel of that person to act on behalf of the viatical settlement provider ~~or the independent viatical producer under the license~~, unless such activity requires a license under another provision of this Title. All officers, partners and key management personnel of the person must be named in the application and any supplements to the application. The licensed producer of a viatical settlement provider must be regarded as in the place of the viatical settlement provider in all respects regarding the solicitation of viatical settlements on behalf of the viatical settlement provider. A producer authorized by a viatical settlement provider is the provider's agent in all matters of viatical settlements.

Sec. 78. 24-A MRSA §6803, sub-§7, ¶B, as enacted by PL 1997, c. 430, §1 and affected by §2, is repealed.

Sec. 79. 24-A MRSA §6803, sub-§8, as enacted by PL 1997, c. 430, §1 and affected by §2, is amended to read:

8. Nonresidents. The superintendent may not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the superintendent ~~or the applicant has filed with the superintendent the applicant's written irrevocable consent that an action against the applicant may be commenced against the applicant by service of process on the superintendent.~~

Sec. 80. 24-A MRSA §6803, sub-§9, as enacted by PL 1997, c. 430, §1 and affected by §2, is amended to read:

9. List. The superintendent shall maintain a complete list of all viatical settlement providers ~~and independent viatical producers~~ licensed or with license pending in this State. The list must be available upon request to the general public.

Sec. 81. 24-A MRSA §6806, sub-§1-A is enacted to read:

1-A. Fee for filing annual report. The fee for filing the annual report is the same as for an insurer as provided in section 601. On or before July 1st of each year, the superintendent shall forward to each viatical settlement provider an itemized bill for the amount due for the filing of the annual statement and the amount due for the certificate of authority annual fee.

See title page for effective date.

CHAPTER 593

H.P. 1423 - L.D. 1987

An Act to Amend Review Criteria Used by the Public Utilities Commission

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

Sec. 1. 35-A MRSA §3156, first ¶, as amended by PL 1995, c. 120, §2 and affected by §5, is further amended to read:

The commission may issue a certificate of approval for an electric rate stabilization agreement, following submission to it of an application for approval, in the form and with any supporting data as the commission may require. The commission shall issue or deny the certification within ~~60~~ 120 days of receipt of an application.

Sec. 2. 35-A MRSA §3156, sub-§1, as enacted by PL 1993, c. 712, §6, is amended to read:

1. Benefits. The agreement, and any assistance in financing the agreement to be provided by the Finance Authority of Maine, will provide ~~near-term~~ substantial net benefits to ratepayers of the utility that will be reflected in rates paid by the electric utility's customers. The commission may consider whether alternative arrangements providing greater net benefits to ratepayers are reasonably likely to be available to the utility and may not issue a certificate if the commission concludes that such an alternative arrangement is reasonably likely to be available;

Sec. 3. 35-A MRSA §3156, sub-§2, as enacted by PL 1993, c. 712, §6, is repealed and the following enacted in its place: