

# 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**

## PART C

**Sec. C-1. 32 MRSA §10313, sub-§1, ¶B**, as enacted by PL 1985, c. 400, §2, is amended to read:

B. Has intentionally or knowingly ~~or willfully~~ violated or failed to comply with a provision of this Act, a predecessor Act or a rule or order under this Act or a predecessor Act, the United States Securities Act of 1933, the United States Securities Exchange Act of 1934, the United States Investment Advisers Act of 1940, the United States Investment Company Act of 1940 or the United States Commodity Exchange Act, or the securities law of any other state, but only if the acts constituting the violation of that state's law would constitute a violation of this Act had the acts taken place in this State;

**Sec. C-2. 32 MRSA §10502, sub-§5**, as enacted by PL 1985, c. 400, §2, is amended to read:

**5. Burden of proof.** In any civil, ~~criminal~~ or administrative proceeding under this Act, the burden of proving an exemption or any exception from a definition is upon the person claiming it.

**Sec. C-3. 32 MRSA §10604, sub-§1**, as amended by PL 1991, c. 548, Pt. D, §8, is repealed and the following enacted in its place:

**1. Intentional or knowing violation.** A person is guilty of the crime of violating the Revised Maine Securities Act if that person intentionally or knowingly violates:

A. Any provision of this Act, except section 10204;

B. Any rule or order of the administrator under this Act; or

C. Section 10204, knowing the statement made is false or misleading in any material respect.

**Sec. C-4. 32 MRSA §10604, sub-§4**, as enacted by PL 1985, c. 400, §2, is repealed.

**Sec. C-5. 32 MRSA §10604, sub-§§6 to 8** are enacted to read:

**6. Class C crime.** A violation of the Revised Maine Securities Act is a Class C crime.

**7. Venue.** When a person pursuant to one scheme or course of conduct, whether upon the same person or several persons, engages in fraudulent or other prohibited practices under subchapter II, engages in unlawful transactions of business or other unlawful conduct under subchapter III or engages in unlawful offers to sell or purchase or unlawful sales or purchases under subchapter IV, the State may opt for a

single Class C count and, in that circumstance, prosecution may be brought in any venue in which one or more of the unlawful acts were committed.

**8. Affirmative defense.** In any criminal prosecution, an exemption or any exception from a definition under this Act must be proved by the defendant by a preponderance of the evidence.

## PART D

**Sec. D-1. 9-A MRSA §8-303, sub-§7, ¶B**, as amended by PL 1991, c. 755, §1, is further amended to read:

B. The name and state of the financial institution underwriting the debt must appear ~~in at least 10-point type on the face of~~ on the credit card.

**Sec. D-2. 9-B MRSA §241, sub-§7**, as amended by PL 1991, c. 755, §2, is repealed and the following enacted in its place:

**7. Restrictions on use of names of Maine financial institutions on credit cards.** A credit card may be titled and may have the name of a financial institution authorized to do business in this State on the card if:

A. The terms of the credit card contract comply with the laws applicable to that financial institution; or

B. The name and state of the financial institution underwriting the debt appears on the credit card.

See title page for effective date.

## CHAPTER 661

H.P. 1593 - L.D. 2222

**An Act to Revise and Update the  
Charter of the Maine Employers'  
Mutual Insurance Company in  
Furtherance of its Mission**

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

**Sec. 1. 24-A MRSA §3701**, as amended by PL 1991, c. 885, Pt. C, §1, is further amended to read:

**§3701. Purpose**

The Maine Employers' Mutual Insurance Company is established for the purposes of providing workers' compensation insurance and employers' liability insurance incidental to and written in connection with workers' compensation coverage to employers of this State at the highest level of service and

savings consistent with reasonable applicable actuarial standards and the sound financial integrity of the company. It is also the purpose of the company to encourage employer involvement and to be responsive to each division's experience, advice, practice and operating effectiveness.

**Sec. 2. 24-A MRSA §3702, sub-§3**, as enacted by PL 1991, c. 885, Pt. C, §2, is amended to read:

**3. Division.** "Division" means an industry or geographic grouping as established under section ~~3712~~ 3712-A.

**Sec. 3. 24-A MRSA §3703, sub-§1**, as amended by PL 1995, c. 551, §4, is further amended to read:

**1. Workers' compensation.** The company shall provide workers' compensation insurance and employers' liability insurance incidental to and written in connection with workers' compensation coverage to employers in this State. The company may not write other lines of insurance. ~~The company may not write reinsurance or excess insurance. The company may reinsure workers' compensation and employers' liability insurance written by other insurers that are covering out-of-state employees of Maine-based employers that are insured by the company.~~ For the purpose of providing insurance to Maine-based employers operating in other states, the company may apply to appropriate regulatory authorities in those states for authority to write workers' compensation and employers' liability insurance for Maine-based employers' operations in those states. ~~Until the company has obtained the surplus otherwise required under this Title for casualty insurance companies, the company must receive approval from the superintendent before actually writing policies in each other state. The company may form or acquire subsidiary insurers in other states that are authorized to write only workers' compensation insurance and employers' liability insurance. The superintendent may not authorize a subsidiary insurer formed or acquired by the company to write any line of insurance in this State.~~

**Sec. 4. 24-A MRSA §3703, sub-§4**, as enacted by PL 1991, c. 885, Pt. C, §3, is repealed.

**Sec. 5. 24-A MRSA §3703, sub-§5**, as enacted by PL 1991, c. 885, Pt. C, §3, is amended to read:

**5. Composition of the board.** The board consists of up to ~~13~~ 9 members. ~~Nine~~ Six members must be officers, directors, employees, partners or members of policyholders who purchase workers' compensation coverage from the Maine Employers' Mutual Insurance Company, ~~except that the initial appointment~~

~~may include employers who have purchased coverage through the workers' compensation residual market mechanism. Three~~ Two members must be persons who represent the public interest of the company and must be appointed by the Governor within 30 days after a new board member is authorized or a vacancy occurs, subject to review and approval comment by the joint standing committee of the Legislature having jurisdiction over banking and insurance matters. The designated committee shall complete its review ~~and vote on approval of the appointments of the Governor~~ within 15 days of the Governor's written notice of appointment. If the designated committee fails to act within the required 15 days, then the appointees put forward by the Governor become the required board members. ~~Except for the initial selection of board members under subsection 4, each division as established pursuant to section 3712 must have one member on the board.~~ One member must be an at-large policyholder member elected by the board. The remaining board member is the president and chief executive officer who shall serve on the board of directors while employed as president and chief executive officer. The reduction in the number of board members from 13 to 9 must be done by attrition. The first 4 appointments to expire after September 1, 1998 may not be filled.

A member of the board ~~who is not elected by one of the divisions as specified in section 3712~~ may not be a lobbyist required to be registered with the Secretary of State, a service provider to the workers' compensation system or a representative of a service provider to the workers' compensation system.

**Sec. 6. 24-A MRSA §3703, sub-§§6, 7 and 9**, as enacted by PL 1991, c. 885, Pt. C, §3, are amended to read:

**6. Terms.** ~~The initial terms of the board of directors are staggered at 3 years, 2 years and one year. Of the initial division policyholders, 3 serve 3 year terms, 3 serve 2 year terms and 3 serve one year terms. The initial public interest members serve one 3 year term, one 2 year term and one one year term. A full term on the board of directors is 3 years. An individual may not serve more than 2 consecutive full terms as a director, except for the president and chief executive officer. All members shall serve for the terms provided and until their successors are appointed or elected and qualified.~~

**7. Corporate governance.** The ~~initial~~ board of directors shall, ~~at the organizational meeting of the company to complete organization,~~ adopt bylaws consistent with section 3359. The bylaws must provide a schedule of meetings and rules specifically relating to the conduct of meetings and voting procedures.

**9. Nominating committee.** The board shall create a nominating committee. The nominating committee shall present to the board nominees for the at-large and the policyholder board member ~~position~~ positions.

**Sec. 7. 24-A MRSA §3704-A,** as enacted by PL 1991, c. 885, Pt. C, §5, is repealed.

**Sec. 8. 24-A MRSA §3707, sub-§1,** as enacted by PL 1991, c. 885, Pt. C, §8, is amended to read:

**1. General authority.** The board may perform all acts necessary or convenient in the exercise of any power, authority or jurisdiction over the company, either in the administration of the company or in connection with the business of the company to fulfill the purposes of this chapter, ~~except as otherwise provided to the divisions under section 3712.~~

**Sec. 9. 24-A MRSA §3710, sub-§1,** as enacted by PL 1991, c. 885, Pt. C, §8, is repealed.

**Sec. 10. 24-A MRSA §3712,** as amended by PL 1995, c. 560, Pt. G, §9, is repealed.

**Sec. 11. 24-A MRSA §3712-A** is enacted to read:

#### **§3712-A. Divisions**

**1. Industry and geographic divisions.** The company shall maintain industry or geographic divisions consisting of general industry groupings. The industry or geographic divisions shall advise the board on workers' compensation insurance issues of importance to those industries or geographic areas. The divisions may parallel industry groups identified by the State's advisory organization as defined in section 2381-C. A separate high-risk division must also be created and maintained as defined in subsection 3.

Not more than 30 days after the assignment to a division, a policyholder may in writing appeal to the bureau on that assignment.

**2. Changes in divisions.** With the approval of the superintendent, the board may change the configuration of the divisions.

**3. High-risk division.** The high-risk division is subject to the following provisions.

A. An employer must be placed in the high-risk division if the employer has at least 2 lost-time claims, each greater than \$10,000 and a loss ratio greater than 1.0, over the last 3 years for which data is available.

B. The board, with the approval of the superintendent, may modify the eligibility standards for

the high-risk division, if those standards limit those in the division to employers who have measurably adverse loss experience, have a relatively high claim frequency record or have demonstrated an attitude or practice of noncompliance with reasonable safety requirements or claims management standards.

C. Eligibility requirements must be applied annually at the policy renewal date or, if the necessary claim history is not available at that time, 30 days after notice to the insured.

D. Deductibles in the high-risk division are subject to this paragraph.

(1) A deductible applies to all coverage for policyholders in the high-risk division that meet the following qualifications:

(a) A net annual premium of \$20,000 or more subject to adjustment, pursuant to this section, in the State;

(b) A premium not subject to retrospective rating; and

(c) The policyholder's threshold loss ratio is 1.0 or greater.

The deductible is \$1,000 a claim but applies only to wage loss benefits paid on injuries occurring during the year of coverage. The sum of all deductibles in one year of coverage may not exceed the lesser of 15% of net annual payment for coverage or \$25,000. Each loss to which a deductible applies must be paid in full by the company. After the year of coverage has expired, the policyholder shall reimburse the company the amount of the deductibles. This reimbursement is considered as payment for coverage for purposes of cancellation or nonrenewal.

Unless otherwise acted upon as provided for in subsection 2, beginning October 1, 1996, the board shall adjust, annually, the \$20,000 payment of coverage level established in this subsection to reflect any change in rates for the high-risk division and any change in wage levels in the preceding calendar year. Changes in wage levels are determined by reference to changes in the state average weekly wage, as computed by the Department of Labor. Any adjustment is rounded off to the nearest \$1,000 increment.

(2) For policies effective on or after January 1, 1994, the board may modify, with

the approval of the superintendent, the mandatory deductible elements. Any modification or elimination of this rating feature must consider the incentive impact on an employer, the reasonableness of the retained cost relative to the claim history, safety record or claims management practices of impacted employers and the ability of employers of all sizes to absorb these costs.

E. The board may file, with the superintendent, retrospective rating plans that, after hearing, may be imposed on an employer with a demonstrated record of repeated serious violations of workplace health and safety rules and regulations such as those adopted under Title 26, chapter 6 or 29 United States Code, Chapter 15, whichever is applicable.

F. The board shall develop and file with the superintendent, and, if not disapproved by the superintendent, make available to policyholders on a voluntary basis, retrospective rating plans.

**4. Division advisory boards.** Each division, except for the high-risk division, has its own advisory board.

A. Each advisory board must be composed of representatives of policyholders and employees of the policyholders of the division.

B. There may be up to 9 advisory board members for each division, with a ratio of 2 members selected by the policyholders within the division to each member who is an employee selected from employees of the policyholders within the division. The president, with the approval of the board, shall establish procedures for the initial and subsequent selection of advisory board members, and procedures for the filling of vacancies and replacements. Terms are for 3 years on a staggered basis.

C. Each advisory board shall elect a chair.

D. Each advisory board shall hold regular meetings and advise the board in the following areas:

- (1) Workplace safety training;
- (2) Claims administration and adjusting;
- (3) Compliance with advisory board performance standards;
- (4) Debit and credit plans reflecting member safety programs and experience;
- (5) Policyholder grievances;

(6) Premium audits; and

(7) Any other issues of concern to the advisory board.

**Sec. 12. 24-A MRSA §3713**, as enacted by PL 1991, c. 885, Pt. C, §8, is amended to read:

**§3713. Authority to contract with licensed producers**

~~The president may enter into contracts, as directed by the board as provided for in this chapter. The divisions may enter into contracts within the scope of their authority for servicing as provided in this chapter and in accordance with the standards adopted by the board. The board shall, by rule or by the plan of operation, specify the requirements for and standards by which contracts are issued. Awarding of contracts must be based on price, qualification of the contractor or subcontractors and the quality and extent of services to be provided and is not limited to licensed insurance carriers. Servicing contracts for safety engineering, loss prevention, claim management, premium audit and other functions when there are multiple qualified contractors may be divided upon a geographical or other basis if, in the judgment of the governing committee of the division, those distributions are in the best interest of policyholders. The company may contract with licensed general lines insurance agents producers to submit applications and otherwise assist applicants and insureds.~~

**Sec. 13. 24-A MRSA §3714, sub-§§1, 2 and 5**, as enacted by PL 1991, c. 885, Pt. C, §8, are amended to read:

**1. Separate accounting.** In addition to the financial reporting requirements applicable to the company, there must be a separate accounting of each division by fiscal year to the extent practicable. These financial statements must be based on the premiums collected and earned, claims paid and incurred, expenses accrued or allocated, investment income allocated to and any other financial items that are associated with or allowable to each division.

**2. Rates.** Rates developed and filed by the company, ~~and the supporting actuarial analysis, must consider, to the extent credible, the experience of each division based on sound actuarial principles must be in accordance with chapter 25, subchapter II-B.~~

Rates filed within the rate-band are considered voluntary for purposes of chapter 25, subchapter II-B. If a rate is filed outside the rate band, the superintendent may disapprove the rate if it is excessive, inadequate or unfairly discriminatory, using the standards set forth in section 2382.

"Rate band" means the range of rates from 85% to 145% of the benchmark rate. For the purposes of this subsection, "benchmark rate" is the pure premium rate filing filed by the State's advisory organization as defined in section 2381-C and currently approved by the superintendent.

**5. Assessment.** Any assessment levied against policyholders in a division is for the exclusive benefit of the policyholders subject to the assessment. Any policyholder not paying an undisputed assessment is not eligible for coverage from the company or in the voluntary market.

See title page for effective date.

---



---

## CHAPTER 662

H.P. 1603 - L.D. 2229

**An Act to Implement  
Recommendations of the Joint  
Standing Committee on Business and  
Economic Development Relating to  
the Review of the Maine  
Development Foundation under the  
State Government Evaluation Act**

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

**Sec. 1. 10 MRSA §918, sub-§1**, as enacted by PL 1977, c. 548, §1, is amended to read:

**1. Private sector corporators.** Private sector corporators ~~shall be~~ are those individuals, partnerships, firms, corporations and other organizations providing support ~~of at least \$250~~ annually to the foundation at a level determined by the board of directors.

**Sec. 2. 10 MRSA §918, sub-§2**, as amended by PL 1989, c. 443, §19, is further amended to read:

**2. Public sector corporators.** Public sector corporators ~~shall be~~ are those agencies of government and other organizations providing support ~~of at least \$50~~ annually to the foundation, at a level determined by the board of directors. For the purposes of this chapter, public sector corporators ~~shall~~ include: ~~Municipal~~ municipal and county government; councils of government; local and area development corporations; regional planning commissions; development districts; state agencies; higher educational facilities, including the components of the state university system, the Maine Maritime Academy, private colleges and ~~post-secondary~~ postsecondary schools, and technical colleges; and such other public or quasi-public entities as may be approved by the directors of the foundation.

**Sec. 3. 10 MRSA §919**, as enacted by PL 1977, c. 548, §1, is repealed and the following enacted in its place:

**§919. Board of directors; officers**

The Board of Directors of the Maine Development Foundation, referred to in this chapter as the "board of directors," consists of a minimum of 15 directors elected or appointed to serve in that capacity in accordance with this section. The board of directors shall annually determine the number of directors for the succeeding year. The corporators shall elect 1/2 of the elected directors from among the private sector corporators and 1/2 of the elected directors from among the public sector corporators. The Governor shall appoint 2 directors from among the ex officio corporators. Except for the president of the Maine Development Foundation, a person may not serve as a director for more than 5 years in succession. The corporators shall elect a chair, a vice-chair and a treasurer from among the board of directors. The board of directors shall appoint a president of the Maine Development Foundation. The president may not be appointed from among the other directors. Upon appointment, the president becomes a director and the chief executive officer of the Maine Development Foundation.

See title page for effective date.

---



---

## CHAPTER 663

H.P. 1613 - L.D. 2239

**An Act to Amend the Law  
Concerning Tax Base Sharing**

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

**Sec. 1. 30-A MRSA §5752, sub-§§1 and 3**, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, are further amended to read:

**1. Agreement.** Any 2 or more municipalities may, by a vote of their legislative bodies, enter into an agreement to share all or a specific part of the commercial, industrial or residential assessed valuation located within their respective communities. Municipalities that vote to enter into an agreement pursuant to this section are not required to have borders that are contiguous.

**3. Administration.** The shared valuation ~~shall~~ must be assessed in the municipality in which the property is located. It ~~shall~~ must be taxed at the rate applicable in that municipality. The tax so assessed ~~shall~~ must be collected by the municipality in which the property is located and the share of that tax, as