

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
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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
1999

§5002-B. Continuity of coverage**1. Persons provided continuity of coverage.**

This section provides continuity of coverage for a person who seeks coverage under a Medicare supplement policy if:

A. That person was previously covered under a Medicare supplement policy issued by the same or a different carrier. For purposes of this section, the Medicare supplement policy under which the person is seeking coverage is the "succeeding policy." The Medicare supplement policy that previously covered the person is the "prior policy";

B. Coverage under the prior Medicare supplement policy terminated within 90 days before the date the person applies for the succeeding policy; and

C. The prior policy was issued during the insured's open enrollment period or was issued to replace another Medicare supplement policy and the insured had continuous coverage beginning in the insured's open enrollment period with no gap in coverage in excess of 90 days. For purposes of this section, any Medicare supplement policy that covered the person before the prior policy is an "earlier policy."

2. Prohibition against discontinuity. The insurer shall, for any person described in subsection 1, waive any medical underwriting or preexisting conditions exclusion to the extent that benefits would have been payable under the prior policy and any earlier policy if those policies were still in effect. This subsection does not require the succeeding insurer to pay any benefits that are not within the terms of coverage of the succeeding policy solely because they would have been paid by the prior policy.

3. Determination of benefits. When a determination of benefits under the prior policy is required, the issuer of the prior policy shall, at the request of the issuer of the succeeding policy, furnish a statement of benefits available or pertinent information sufficient to permit verification of the benefit determination or the determination itself by the issuer of the succeeding policy. For purposes of this section, benefits of the prior policy are determined in accordance with the definitions, conditions and covered expense provisions of that policy rather than those of the succeeding policy. The benefit determination must be made as if coverage had not been replaced.

4. Rulemaking. The superintendent shall adopt rules concerning guaranteed issuance and continuity of Medicare supplement policies for certain eligible persons. Rules adopted pursuant to this subsection are

routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 5. 24-A MRSA §5015, as enacted by PL 1997, c. 370, Pt. D, §1, is repealed.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect April 28, 1999.

Effective April 28, 1999.

CHAPTER 37
S.P. 152 - L.D. 472**An Act to Amend the Revised Maine Securities Act**

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

Sec. 1. 32 MRSA §10301, sub-§2, as amended by PL 1997, c. 168, §1, is further amended to read:

2. Employment of unlicensed persons. It is unlawful for any issuer or broker-dealer ~~licensed under this Act~~ to employ or contract with a person as a sales representative in this State unless the sales representative is licensed or exempt from licensing under this Act.

Sec. 2. 32 MRSA §10301, sub-§3, as amended by PL 1989, c. 542, §8, is further amended to read:

3. Employment of suspended or barred persons. It is unlawful for a broker-dealer, investment adviser or an issuer engaged in offering securities in this State in connection with any of the broker-dealer's, investment adviser's or issuer's securities activities in this State to employ or contract with any person who is then suspended or barred from association with a broker-dealer or investment adviser by the administrator. No broker-dealer, investment adviser or issuer may be deemed to have violated this subsection if the broker-dealer, investment adviser or issuer sustains the burden of proof that the broker-dealer, investment adviser or issuer did not know and in the exercise of reasonable care could not have known of the suspension or bar. Upon request from a broker-dealer, investment adviser or issuer and for good cause shown, the administrator, by order, may waive the prohibition of this subsection with respect to a particular person then suspended or barred.

Sec. 3. 32 MRSA §10302, sub-§2, ¶A-2 is enacted to read:

A-2. A sales representative acting for a broker-dealer licensed under section 10301, subsection 1, in effecting in this State transactions exclusively with financial and institutional investors acting for themselves or in a fiduciary capacity.

Sec. 4. 32 MRSA §10306, sub-§3, as enacted by PL 1985, c. 400, §2, is amended to read:

3. Branch offices. ~~For purposes of this section, a "branch "Branch office" means each any office of a broker-dealer or investment adviser located in this State, other than the principal office of the broker-dealer in this State from which 3 or more sales representatives transact business or investment adviser.~~

Sec. 5. 32 MRSA §10311, sub-§3 is enacted to read:

3. Successor firms. A successor firm shall file a license application with the administrator within 30 days of becoming a successor firm as described in section 10501, subsection 21.

Sec. 6. 32 MRSA §10313, sub-§1, as amended by PL 1997, c. 660, Pt. C, §1, is further amended by amending the first paragraph to read:

1. Denial, suspension, revocation. The administrator may, after notice and opportunity for hearing, by order, deny, suspend or revoke any license, limit the activities ~~which that~~ an applicant or licensee may perform in this State or censure or bar any applicant or licensee from association with ~~a~~ an issuer, licensed broker-dealer or investment adviser, if the administrator finds that the order is in the public interest and that the applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner, executive officer or director, any person occupying a similar status or performing similar functions or any person directly or indirectly controlling the broker-dealer or investment adviser:

Sec. 7. 32 MRSA §10313, sub-§1, ¶F, as amended by PL 1989, c. 542, §25, is further amended by amending subparagraph (1) to read:

(1) An order by the securities agency or administrator of another state, Canadian province or territory ~~or~~, the United States Securities and Exchange Commission, or the National Association of Securities Dealers entered after notice and opportunity for hearing, barring the applicant or denying, suspending or revoking the applicant's license as a broker-dealer, sales representative or investment adviser, or the substantial equivalent of those terms as defined in this Act;

Sec. 8. 32 MRSA §10313, sub-§4, as amended by PL 1989, c. 542, §26, is further amended to read:

4. Cancellation. If the administrator finds that any applicant or licensee is no longer in existence or has ceased to do business as a broker-dealer, sales representative or investment adviser, ~~or is a successor firm that has failed to comply with section 10311, subsection 3,~~ is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or ~~cannot~~ can not be located after reasonable search, the administrator may, by order, cancel the license or application.

Sec. 9. 32 MRSA §10404, sub-§5, as enacted by PL 1987, c. 592, is amended to read:

5. Simplified statement. For purposes of simplifying the registration statement for smaller offerings and promoting uniformity with other states, the ~~superintendent~~ administrator may adopt, by rule ~~promulgated~~ adopted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, a form to be used as the registration statement for securities being registered under this section and sold in offerings in which the aggregate offering price does not exceed the maximum amount specified in the rule. The form need not require all the information included in this section and may require information not included in this section.

Sec. 10. 32 MRSA §10501, sub-§3, as amended by PL 1989, c. 542, §38, is further amended to read:

3. Filing. "Filing" means the receipt of any document by the administrator or designee of the administrator ~~for filing~~.

Sec. 11. 32 MRSA §10501, sub-§18, as amended by PL 1997, c. 168, §23, is further amended to read:

18. Security. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; any limited partnership interest; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; documents of title to ~~and~~ or certificates of interest or participation in an oil, gas or other mineral title or lease or in payments out of production under ~~such any title~~, lease, right or royalty; any put, call, straddle or option entered into a national securities exchange relating to foreign currency; any put, call, straddle or option on any security, certificate of deposit or group or index of securities, including any interest therein or based on the value thereof; or, in general, any interest or instrument commonly

known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period or any interest in a contributory or noncontributory pension or welfare plan subject to the United States Employee Retirement Income Security Act of 1974.

Sec. 12. 32 MRSA §10501, sub-§21 is enacted to read:

21. Successor firm. "Successor firm" includes any broker-dealer or investment adviser whose direct or indirect ownership or control has changed by more than 45% within a 10-year period.

Sec. 13. 32 MRSA §10502, sub-§1, ¶C, as amended by PL 1993, c. 257, §10, is further amended to read:

C. Any security issued by and representing an interest in or a direct obligation of, or guaranteed by, any depository institution or depository institution holding company, the deposit accounts of which are insured by the Federal Deposit Insurance Corporation or any successor to this agency authorized by federal law or a deposit insurance fund expressly authorized by state law and supervised by a state governmental official or agency. ~~This exemption does not apply to securities representing an interest in a depository institution that is required by law to have as its majority shareholder a mutual holding company, to securities convertible into those securities or to warrants, options or rights to purchase those securities;~~

Sec. 14. 32 MRSA §10502, sub-§2, as amended by PL 1997, c. 168, §§24 and 25, is further amended by amending the first paragraph to read:

2. Exempt transactions. The following transactions are exempted from ~~sections~~ section 10401 ~~and 10504~~:

Sec. 15. 32 MRSA §10601, sub-§3, as amended by PL 1989, c. 542, §46, is further amended to read:

3. Oaths; subpoenas; production of matters.

For purposes of any investigation or proceeding under this Act, the administrator or any officer or employee designated by rule or order, may administer oaths and affirmations, take evidence, issue subpoenas to require the attendance of witnesses, compel testimony and require the production of any matter, including, but

not limited to, books, papers, correspondence, memoranda, agreements or other documents or records, which is relevant to the inquiry.

The administrator may require or permit any person to file a statement in writing, under oath or otherwise as the administrator may determine, as to the facts and circumstances concerning the matter to be investigated. It is unlawful to fail to provide promptly any written statement if requested.

Nothing in this subsection may prevent an individual from asserting the privilege against self-incrimination.

Sec. 16. 32 MRSA §10602, sub-§1, ¶C, as amended by PL 1991, c. 509, §35, is further amended to read:

C. Bar that person from association with any ~~licensed issuer~~, broker-dealer or investment adviser in this State, but in each case only after compliance with section 10708, subsection 6;

Sec. 17. 32 MRSA §10602, sub-§3, as enacted by PL 1991, c. 82, §9, is amended to read:

3. Liability of control persons. In an administrative action brought by the administrator, or a civil action brought by the Attorney General for a violation of any provision of this Act or any rule or order adopted or issued by the administrator pursuant to this Act, every person who directly or indirectly controls another person liable for the violation, every partner, officer or director of that other person, every person occupying a similar status or performing similar functions, every employee of that other person who materially aids in the act or transaction constituting the violation and every broker-dealer or sales representative who materially aids in the act or transaction constituting the violation is liable to the same extent as that other person, unless the person otherwise secondarily liable under this Act proves that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. Any of the remedies authorized by section 10603, subsections 1 and 2 may be granted with respect to a person secondarily liable under this subsection. This subsection is not intended to abrogate any right to contribution that may exist at common law with respect to an award of restitution.

Sec. 18. 32 MRSA §10702, sub-§1, as amended by PL 1989, c. 542, §57, is further amended to read:

1. Cooperation. The administrator and the employees of the administrator may cooperate, including bearing the expense of the cooperation, with the securities agencies or securities administrator of another state or Canadian province or territory or

another country, the United States Securities and Exchange Commission, the United States Commodity Futures Trading Commission, the Federal Trade Commission, the United States Securities Investor Protection Corporation, any self-regulatory organization established under the United States Securities Exchange Act of 1934 or the United States Commodity Exchange Act, any national or international organization of securities officials or agencies and any governmental law enforcement agency.

See title page for effective date.

CHAPTER 38

H.P. 161 - L.D. 223

An Act to Release Estate Tax Liens on Certain Real Estate

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

Sec. 1. 36 MRSA §4072, as amended by PL 1989, c. 42, §2, is further amended to read:

§4072. Lien for taxes

All property subject to taxes under this chapter, in whatever form of investment it may happen to be, is charged with a lien for all taxes, interest and penalties ~~which that~~ are or may become due on that property. The lien does not attach to any real or personal property after the property has been sold or disposed of for value by the personal representative, trustee or surviving joint tenant. Upon payment of those taxes, interest and penalties due under this chapter, or upon determination that no tax is due, the State Tax Assessor shall upon request execute a discharge of the tax lien for recording in the appropriate registry or registries of deeds.

Any lien that attached to real property prior to September 30, 1989 and after the property was sold or disposed of for value by the personal representative, trustee or surviving joint tenant is released by operation of this section.

See title page for effective date.

CHAPTER 39

H.P. 532 - L.D. 739

An Act to Form a New Local Education Agency

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

Whereas, the Legislature has previously authorized the formation of the Appleton, Camden, Hope, Lincolnville and Rockport community school district for the purpose of assuming the operation of grades 9 to 12 in those towns; and

Whereas, the Appleton, Camden, Hope, Lincolnville and Rockport community school district, incorporated as the Five Town Community School District, will assume responsibility as the local education agency for secondary education in these towns beginning July 1, 1999; and

Whereas, the Five Town Community School District must also be designated as the local education agency for applied technology education in these towns so that a plan for reorganizing the provision of vocational education in the Knox County region can be presented to the State Board of Education for its approval; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 20-A MRSA §8451, sub-§2, ¶G, as amended by PL 1991, c. 518, §17, is further amended to read:

G. Region 8. KNOX COUNTY. Units located in this region include: ~~Appleton; Hope~~ Five Town Community School District (Appleton, Camden, Hope, Lincolnville and Rockport); Islesboro; ~~Lincolnville;~~ School Administrative District No. 5 (Owls Head, Rockland and South Thomaston); School Administrative District No. 7 (North Haven); School Administrative District No. 8 (Vinalhaven); ~~School Administrative District No. 28 (Camden and Rockport);~~ School Administrative District No. 40 (Friendship, Union, Waldoboro, Warren and Washington); and School Administrative District No. 50 (Cushing, St. George and Thomaston).

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

Effective March 29, 1999.
