LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

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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

fingerprint-based background checks for teachers and educational personnel.

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

Effective May 3, 1999.

CHAPTER 111

H.P. 572 - L.D. 812

An Act to Allow the State Police to Accept Revenue for Providing Services to Municipalities and Counties

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

Sec. 1. 25 MRSA §1508, as enacted by PL 1985, c. 275, §1, is repealed and the following enacted in its place:

§1508. Criminal justice telecommunications and radio communications systems

1. Telecommunications system. The Bureau of the State Police shall provide for the installation, operation and maintenance of a criminal justice telecommunications system for the purpose of promptly collecting, exchanging and distributing information relating to criminal justice problems of the State, counties and municipalities. The system may be connected, directly or indirectly, with similar systems operated and maintained by other states or the Federal Government.

2. Telecommunications expenses; revenue. The Chief of the State Police shall provide for the location and maintenance of the central processing system and telecommunications lines. Federal agencies, state departments and agencies, counties and municipalities shall provide, at their own expense, the terminals, personnel and supplies for their proper operation. The Bureau of the State Police may charge the various federal agencies, state departments and agencies, counties and municipalities for the installation and maintenance of the end-user routers and modems necessary to connect to the criminal justice telecommunications system. Revenue received from federal agencies, state departments and agencies, counties and municipalities must be allocated for the purpose of funding the cost of providing the services.

3. Guidelines. The criminal justice telecommunications system must be installed, operated and maintained in accordance with the rules adopted by the National Law Enforcement Telecommunications System, the National Crime Information Center and the Chief of the State Police or the chief's designee. The character of the communications sent, the time, place and manner of sending messages and all matters connected with the system are under the control and management of the Chief of the State Police or the chief's designee.

4. Radio communications and dispatch. The Bureau of the State Police may provide, at the request of a municipality or county, radio communications and dispatch services to the municipality or county.

5. Radio communications and dispatch revenue. The Chief of the State Police may charge the various federal agencies, state departments and agencies, counties and municipalities for the radio communications and dispatch services. Revenue received from federal agencies, state departments and agencies, counties and municipalities must be allocated for the purpose of funding the cost of providing the services.

See title page for effective date.

CHAPTER 112

H.P. 513 - L.D. 720

An Act Concerning the Method of Taking of Soft Shell Clams

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

Sec. 1. 12 MRSA §6623, sub-§1-A is enacted to read:

1-A. Artificial breathing device prohibited. A person may not fish for or take soft shell clams while using an artificial breathing device that allows that person to breathe underwater. This subsection does not apply to the holder of a lease issued under section 6072, 6072-A or 6072-B when fishing for or taking soft shell clams cultivated on the leased area.

See title page for effective date.

CHAPTER 113

S.P. 401 - L.D. 1192

An Act to Update Insurance Financial Standards

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

Sec. 1. 13-A MRSA §811 is enacted to read:

§811. Redomestication by Maine insurer

A Maine insurer that transfers its domicile to another state shall file with the Secretary of State notification of redomestication on a form prescribed by the Secretary of State and approved by the Superintendent of Insurance.

Sec. 2. 13-A MRSA §1207-A is enacted to read:

§1207-A. Redomestication by foreign insurer

1. A foreign insurer that transfers its domicile to this State shall file with the Secretary of State a long-form certificate of good standing or its equivalent, duly certified by the proper official of the previous state of domicile, and an application for redomestication to become a Maine insurer on a form prescribed by the Secretary of State and approved by the Superintendent of Insurance.

2. A foreign insurer qualified to do business in this State that transfers its domicile to a state other than Maine shall file with the Secretary of State notification by a foreign insurer of redomestication in a form prescribed by the Secretary of State and approved by the Superintendent of Insurance.

Sec. 3. 13-A MRSA §1401, sub-§16-A is enacted to read:

16-A. Notification by a Maine insurer of redomestication, as provided by section 811, $55;

Sec. 4. 13-A MRSA §1401, sub-§§27-A and 27-B are enacted to read:

27-A. Application for redomestication to become a Maine insurer, as provided in section 1207-A, $80;

27-B. Notification by a foreign insurer of redomestication, as provided by section 1207-A, $35;

Sec. 5. 24-A MRSA §221-A, sub-§3, as amended by PL 1993, c. 313, §5, is further amended to read:

3. Audits required. All insurers, excepting insurers transacting business in this State pursuant to the terms of chapter 51, shall cause to be conducted an annual audit by an independent certified public accountant ~~and~~. Each domestic insurer shall file an audited financial report with the superintendent on or before June 1st for the year ending December 31st preceding. An extension of the filing deadline may be granted by the superintendent upon a showing by the insurer or its accountant that there exists valid justification for such an extension. A foreign or alien insurer shall file an audited financial report upon the superintendent's request. A firm of independent certified public accountants engaged to perform an audit of an insurer shall substitute the appointed audit partner in charge with another audit partner in charge at least once every 7 years. An accountant substituted for pursuant to this subsection may not serve as a partner in charge of that audit until 2 years ~~from~~ after the date of substitution.

Sec. 6. 24-A MRSA §221-A, sub-§4, ¶D, as amended by PL 1993, c. 313, §6, is further amended to read:

D. The statement must include an independent certified public accountant's letter, in conformance with standards established by the National Association of Insurance Commissioners, attesting to that certified public accountant's qualifications, possession of license and subscription to the code of professional ethics and pronouncements issued by the American Institute of Certified Public Accountants.

Sec. 7. 24-A MRSA §221-A, sub-§§6 and 7, as enacted by PL 1985, c. 330, §1, are amended to read:

6. Application and effective date. For those insurers doing business in this State ~~which~~ that are subject to this section, the filing of the initial annual audited financial reports required under this section ~~shall be~~ are due June 30, 1986, covering the calendar year December 31, 1985. Similar recurring reports ~~shall be~~ are due each June ~~30th~~ 1st thereafter.

7. Exemptions. Upon written application of any insurer subject to this section, the superintendent may grant an exemption of the filing requirements under this section if the superintendent finds upon review of the application that compliance would constitute a financial hardship upon the insurer.

If an insurer's annual statement reflects business ~~in this State~~ in an amount less than $100,000 in written premium for the preceding year, the insurer is exempt from the filing requirements of this section with respect to that year.

Sec. 8. 24-A MRSA §222, sub-§2, ¶B, as amended by PL 1989, c. 385, §2, is further amended to read:

B. Control

(1) 'Control,' including 'controlling,' 'controlled by' and 'under common control with,' means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of

voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with or a corporate office held by the person. Control ~~shall be~~ is presumed to exist if any person is the beneficial owner of 10% or more of the voting securities, or voting ~~insurance policies~~ rights in the case of mutual or reciprocal insurers, or guaranty capital shares if a mutual insurer has established a guaranty fund, of any other person. A beneficial owner may rely in determining the amount of voting securities of any person outstanding upon information set forth in that person's most recent quarterly or annual report filed with the Securities and Exchange Commission pursuant to the Exchange Act unless the beneficial owner knows or has reason to believe that the information contained ~~therein~~ in the quarterly or annual report is inaccurate. Two or more domestic mutual insurance companies ~~who~~ that have restricted their licensed territories to the State ~~shall~~ are not ~~be deemed to be~~ considered subject to this section merely because ~~such~~ those insurance companies commonly share facilities, incurred expenses, personnel services, or otherwise utilize cost allocations based on generally accepted accounting principles including pro rata sharing of assumed risks.

(2) Notwithstanding the presumption of control contained in subparagraph (1), the superintendent, upon application of the insurance company, may determine that the insurer is not controlled by the person presumed to control it. In addition, the superintendent, after notice and an opportunity to be heard, may determine, notwithstanding the absence of the presumption in subparagraph (1), that a person does control an insurance company or companies.

Sec. 9. 24-A MRSA §222, sub-§2, ¶F, as repealed and replaced by PL 1975, c. 356, §1, is amended to read:

F. ~~Subsidiary.~~ "Subsidiary" of a specified person ~~shall mean~~ means an affiliate controlled by ~~a~~ that person, directly or indirectly, through one or more intermediaries.

Sec. 10. 24-A MRSA §222, sub-§2, ¶I is enacted to read:

I. "Voting security" means any security with voting rights or any security convertible into or evidencing a right to acquire a security with voting rights.

Sec. 11. 24-A MRSA §222, sub-§8, ¶A, as enacted by PL 1975, c. 356, §1, is amended to read:

A. Every insurer ~~which~~ that is authorized to do business in this State and ~~which~~ that is a member of an insurance holding company system shall register with the superintendent, except that ~~such~~ these requirements ~~shall~~ do not apply to a foreign insurer domiciled in a jurisdiction ~~which~~ that in the opinion of the superintendent has adopted by statute or regulation disclosure statements and standards substantially similar to those contained in this chapter. ~~Any~~ An insurer domiciled in a jurisdiction that has not adopted by statute or regulation disclosure requirements and standards substantially similar to those contained in this section may be treated as a domestic insurer for purposes of this section. Each insurer ~~which~~ that is subject to registration under this subsection shall register within ~~60 days after the effective date of this section or~~ 15 days after it becomes subject to registration, ~~whichever is later~~ and annually thereafter by May 1st, unless the superintendent, for good cause shown, extends the time for registration and then an insurer must file within ~~such~~ that extended time. Nothing in this section ~~shall~~ may be construed to prohibit the superintendent from requesting any authorized insurer ~~which~~ that is a member of a holding company system and not subject to registration under this section for a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its state of domicile. Upon request of the insurer or of the insurance regulatory authority of another jurisdiction in which the insurer is authorized to transact insurance, the superintendent at the insurer's expense shall furnish a copy of the registration statement or other information filed by a domestic insurer with the superintendent pursuant to this chapter;

Sec. 12. 24-A MRSA §222, sub-§11-A, as enacted by PL 1993, c. 313, §12, is amended to read:

11-A. Extraordinary dividends. For purposes of this subsection, an extraordinary dividend or distribution is any dividend or distribution that exceeds the greater of:

A. Ten percent of the insurer's surplus to policyholders as of December 31st of the preceding year; or

B. The net gain from operations for the 12-month period ending December 31st of the preceding year.

In addition to the provisions of paragraphs A and B, any dividend or distribution declared at any time within 5 years following any acquisition of control of a domestic insurer or by any person controlling that insurer~~, as long as that is an extraordinary dividend that~~ is an extraordinary dividend if it has not been approved by a number of continuing directors equal to a majority of the continuing directors in office immediately preceding that acquisition of control ~~is an extraordinary dividend~~.

A pro rata distribution of any class of the insurer's own securities is not considered an extraordinary dividend or distribution for purposes of this section. An insurer subject to registration under this section may pay an extraordinary dividend or make any other extraordinary distribution to its stockholders upon the expiration of 60 days from the time the superintendent is notified of the declaration if within that period the superintendent has not disapproved the payment or upon the superintendent's approval of that payment within the 60-day period. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the superintendent's approval and such a declaration does not confer any rights to stockholders until the superintendent has approved the payment of the dividend or distribution or the superintendent has not disapproved that payment within the 60-day period. The insurer's surplus following any dividends or distributions to shareholders under this subsection must be reasonable in relation to the insurer's outstanding liabilities and adequate to meet the insurer's financial needs. An extraordinary dividend or distribution that is permissible under statutory terms and conditions in the insurer's state of domicile is deemed to meet the requirements of this section if the value of that dividend or distribution does not materially exceed the value that would be permissible under this section.

Sec. 13. 24-A MRSA §222, sub-§12, ¶C is enacted to read:

C. A member of an insurer's holding company system shall comply fully and accurately with a request by the insurer to provide it with information necessary to respond to an examination request by the superintendent pursuant to this section.

Sec. 14. 24-A MRSA §222, sub-§§17 and 18, as enacted by PL 1975, c. 356, §1, are amended to read:

17. Jurisdiction of courts; service of process. Any person obtaining or attempting to obtain control of a domestic insurer ~~shall by such act~~ is subject ~~such person~~ to the jurisdiction of the courts of this State and to service of process in the manner provided in this Title. Unless a valid appointment of an agent for service of process is on file with the superintendent pursuant to another provision of this Title, the person is deemed to have appointed the superintendent as agent for service of process, and service may be made in the same manner as provided in section 2105.

18. Rules. The superintendent may, upon notice and opportunity for all interested ~~parties~~ persons to be heard, ~~issue such~~ adopt reasonable rules~~, regulations and orders~~ as ~~shall be~~ necessary to carry out and effectuate provisions of this section.

Sec. 15. 24-A MRSA §226, sub-§§1 and 2, as amended by PL 1973, c. 585, §12, are further amended to read:

1. ~~The~~ Within 60 days after completion of the examination, the superintendent shall deliver a copy of the verified examination report to the person examined, together with a notice affording ~~such~~ that person 20 days or ~~such~~ an additional reasonable period as the superintendent for good cause may allow, within which to review the report and recommend changes ~~therein~~ to the report.

2. If ~~so~~ requested by the person examined, within the period allowed under subsection 1, or if ~~deemed~~ determined advisable by the superintendent without such request, the superintendent shall hold a hearing relative to the report and ~~shall~~ may not file the report in the bureau until after ~~such~~ the hearing and ~~his~~ the superintendent's order ~~thereon~~ on the report; except that the superintendent may furnish a copy of the report to the Governor, Attorney General or Treasurer of State pending final decision ~~thereon~~ and, if ~~such~~ the copies are so furnished, they ~~shall be~~ are deemed confidential information until the other requirements of this section with regard to examination reports have been satisfied. In lieu of convening a hearing, the superintendent may reopen the examination or, if supported by the information obtained, may adopt some or all of the modifications proposed by the person examined.

Sec. 16. 24-A MRSA §412, sub-§1, as repealed and replaced by PL 1975, c. 77, is amended to read:

1. No insurance company other than a domestic real estate title insurance company or a domestic mutual fire insurance company ~~which~~ that is transacting only the business of fire, marine or glass on the assessment plan ~~shall~~ may do so in this State unless it makes and maintains a deposit with the Superintendent of Insurance, as security for all its ~~policyholders'~~ policyholders, of securities ~~which~~ that are ~~deemed~~ determined eligible for deposit under section 1253. ~~Such~~ The deposit ~~shall~~ must be maintained in a minimum actual market value ~~which~~ that, exclusive of interest, ~~shall~~ may never be less than $100,000. ~~Such~~

The deposit ~~shall~~ must be retained by the superintendent and disposed of as directed by section 1263.

Sec. 17. 24-A MRSA §413-A, sub-§1, as enacted by PL 1995, c. 375, Pt. D, §1, is amended to read:

1. Port of entry. An alien insurer that has been authorized by the superintendent to use the State as its port of entry for the transaction of business in the United States is considered a domestic insurer to the extent provided in this section. An alien insurer that has been approved by another state to use that state as its port of entry is considered to be domiciled in that state in the same manner, if there is a valid reciprocity agreement between that state and this State or if the superintendent has determined that the applicable laws of that state are substantially similar to this section and its implementing rules.

Sec. 18. 24-A MRSA §421, sub-§7 is enacted to read:

7. Any person or entity required by Title 24 or this Title to appoint an agent for service of process who does not have a valid appointment on file with the superintendent is deemed to have appointed the superintendent as agent for service of process, and process may be served within this State in the same manner as provided in section 2105. This subsection does not relieve that person or entity from the requirement to appoint an agent for service of process or from the applicable penalties for failure to comply with that requirement.

Sec. 19. 24-A MRSA §731-B, sub-§1, ¶C, as amended by PL 1993, c. 666, Pt. C, §1, is further amended to read:

C. Maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States ~~policyholders and~~ ceding insurers, their assigns and successors in interest.

(1) The assuming insurer shall report annually to the superintendent information substantially the same as that required to be reported on the National Association of Insurance Commissioners Annual Statement form by licensed insurers to enable the superintendent to determine the sufficiency of the trust fund.

(2) In the case of a single assuming insurer, the trust must consist of a trusteed account representing the assuming insurer's liabilities attributable to ~~business written in the~~ reinsurance ceded by United States ceding insurers and, in addition, include a trusteed surplus of at least $20,000,000.

(3) ~~In the case of a~~ A group of incorporated insurers under common administration ~~that is under the supervision of the Department of Trade and Industry of the United Kingdom,~~ may in the superintendent's discretion secure its obligations with a pooled trust fund if the group ~~must have~~ has an aggregate policyholders' surplus of $10,000,000,000 and ~~the~~ has continuously transacted insurance during the 3 years preceding the period for which credit for reinsurance is to be taken. The trust must be in an amount equal to the group's several liabilities attributable to ~~business written in the~~ reinsurance ceded by United States ceding insurers. In addition, the group shall maintain a joint trusteed surplus of ~~which~~ at least $100,000,000 ~~is~~ that must be held jointly for the benefit of the United States ceding insurers of any member of the group. Each member of the group shall make available to the superintendent an annual certification of the member's solvency by that member's domiciliary regulator and the member's independent public accountant. Each group member shall comply with the filing requirements of subparagraph 1, submit to the State's authority to examine the member's books and records~~,~~ and bear the expense of the examination.

(4) ~~In the case of a~~ A group including incorporated and individual unincorporated underwriters~~,~~ may secure its obligations with a pooled trust fund if the trust ~~must consist~~ consists of a trusteed account ~~representing~~ in an amount at least equal to the group's liabilities attributable to ~~business written in the~~ reinsurance ceded by United States ceding insurers and, in addition, ~~include~~ includes a trusteed surplus of at least $100,000,000~~, which~~ that must be held jointly for the benefit of United States ceding insurers of any member of the group. An incorporated member of the group may not be engaged in any business other than underwriting as a member of the group and ~~is~~ must be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. ~~The group shall make available to the superintendent an annual certification by the group's domiciliary regulator and the independent public accountants of the solvency of each underwriter.~~ Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the superintendent an an-

nual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group or, if a certification is unavailable, financial statements prepared by independent public accountants.

(4-A) The superintendent in rules adopted pursuant to subsection 7 may establish alternative criteria for approval of a reinsurance trust if the superintendent determines that the criteria provide adequate protection to policyholders of United States ceding insurers and are in substantial conformance with standards approved by the National Association of Insurance Commissioners.

(5) The trust must be established in a form approved by the superintendent and consistent with any rules adopted by the superintendent pursuant to this section. The form of the trust and any amendments to the trust must also have been approved by the insurance regulatory official of the state where the trust is domiciled or of another state that, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for ~~its~~ the benefit of the assuming insurer's United States ~~policyholders and~~ ceding insurers, their assigns and successors in interest. The trust and the assuming insurer are subject to examination, as determined by the superintendent, at the assuming insurer's expense. The trust must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(6) The trustees of the trust shall report to the superintendent in writing by February 28th of each year, setting forth the balance of the trust and listing the trust's investments at the end of the preceding year and certifying the date of termination of the trust, if so planned, or certifying that the trust does not expire before December 31st of the current year.

(7) The corpus of the trust is to be valued as any other admitted asset or assets;

Sec. 20. 24-A MRSA §731-B, sub-§1, ¶D, as enacted by PL 1989, c. 846, Pt. E, §2 and affected by §4, is amended to read:

D. Does not meet the requirements of paragraph A, B or C, but only with respect to risks located in a jurisdiction ~~other than the United States, when~~ where that reinsurance is required by ~~any applicable~~ law ~~or regulation of that jurisdiction~~. The superintendent for good cause after notice and opportunity for hearing may disallow or reduce the credit otherwise permitted under this paragraph.

Sec. 21. 24-A MRSA §731-B, sub-§6, as enacted by PL 1989, c. 846, Pt. E, §2 and affected by §4, is repealed.

Sec. 22. 24-A MRSA §944, as enacted by PL 1991, c. 128, is repealed.

Sec. 23. 24-A MRSA §3487 is enacted to read:

§3487. Redomestication of insurers

1. Redomestication of foreign insurers to Maine. Any stock or mutual insurer that is organized under the laws of any other state and has a valid certificate of authority to do business in this State may become a domestic insurer with approval of the superintendent by amending its certificate of organization or equivalent corporate charter and by designating a location in this State as its principal place of business. The redomestication must be approved if the chief insurance regulatory official of the other state certifies to the superintendent that the redomestication is in compliance with all requirements established by the laws of that state, and the superintendent determines that the insurer's operations and corporate organization will comply with the requirements of this chapter and that the redomestication is not contrary to the interests of policyholders or the public. The amendments to the insurer's certificate of organization may provide that the corporation is a continuation of the corporate identity of the original foreign corporation and that the original date of incorporation in its original domiciliary state is the date of incorporation of the domestic insurer. The insurer's certificate of authority must be amended as of the effective date of the superintendent's approval to reflect the insurer's status as a domestic insurer and its new home office, and the insurer is thereafter subject to all provisions of this Title applicable to domestic insurers.

2. Redomestication of domestic insurers. Any domestic insurer may, upon the approval of the superintendent, transfer its domicile to any other state in which it is authorized to transact the business of insurance in accordance with the procedures established by the laws of that state. The proposed redomestication must be approved if the superintendent determines that the certificate of organization has been amended in conformance with section 3310 and that the redomestication is not contrary to the

interests of policyholders or the public. The insurer ceases to be a domestic insurer as of the date the redomestication is recognized by its new state of domicile. Unless the superintendent determines that the insurer no longer qualifies for a certificate of authority, the insurer's certificate of authority must be amended as of the effective date of the redomestication to reflect the insurer's status as a domestic insurer and its new home office in its new state of domicile, and the insurer is thereafter subject to all provisions of this Title applicable to foreign insurers.

3. Effect of redomestication. The certificate of authority, producers' appointments and licenses, rate approvals and all other actions and permissions by the superintendent that are in effect at the time any insurer authorized to transact the business of insurance in this State transfers its corporate domicile to this State or any other state pursuant to this section or by merger, consolidation or any other lawful method continue in full force and effect upon the redomestication if the insurer remains duly qualified to transact the business of insurance in this State. All outstanding policies and other legal or contractual obligations of any redomesticating insurer remain in full force and need not be endorsed as to the new name of the company or its new location unless ordered by the superintendent. The insurer shall file new policy forms with the superintendent on or before the effective date of the redomestication but may use existing policy forms with appropriate endorsements if allowed by and under such conditions as approved by the superintendent. Each redomesticating insurer shall notify the superintendent of the details of the proposed redomestication and shall file promptly any resulting amendments to corporate documents filed or required to be filed with the superintendent.

4. Filing with Secretary of State. Each insurer that transfers its domicile to this State shall file with the Secretary of State a long-form certificate of good standing or its equivalent, duly certified by the proper official of the previous state of domicile and an application for redomestication to become a Maine insurer in a form prescribed by the Secretary of State and approved by the superintendent. Each foreign insurer qualified to do business in this State that transfers its domicile to a state other than Maine shall file with the Secretary of State a notification by a foreign insurer of redomestication in a form prescribed by the Secretary of State and approved by the superintendent. Each domestic insurer that transfer its domicile to another state shall file with the Secretary of State a notification of redomestication in a form prescribed by the Secretary of State and approved by the superintendent.

Sec. 24. 24-A MRSA §6451-A is enacted to read:

§6451-A. Applicability to other health organizations

This chapter applies to fraternal benefit societies authorized to do business in this State pursuant to section 4124, to health maintenance organizations authorized to do business in this State pursuant to section 4204 and to nonprofit hospital or medical service organizations authorized to do business in this State pursuant to Title 24, section 2305. Such health organizations are considered insurers for purposes of this chapter and are subject to the provisions applicable to property and casualty insurers where this chapter provides separate standards for property and casualty insurers and for life or health insurers.

Sec. 25. 24-A MRSA §6452, sub-§1, as enacted by PL 1993, c. 634, Pt. A, §1, is amended to read:

1. Duty to file. A domestic insurer shall, on or before March ~~15th~~ 1st, submit to the superintendent a report of its risk-based capital levels as of the end of the previous calendar year, in a form and containing such information as is required by the risk-based capital instructions. In addition, a domestic insurer shall file its risk-based capital report:

A. With the NAIC in accordance with the risk-based capital instructions; and

B. With the insurance ~~superintendent~~ regulator in any state in which the insurer is authorized to do business, if ~~the insurance superintendent~~ that regulator has notified the insurer of its request for the filing in writing, in which case the insurer shall file its risk-based capital report not later than the later of:

(1) Fifteen days ~~from~~ after the receipt of notice to file its risk-based capital report with that state; or

(2) The filing date.

Sec. 26. 24-A MRSA §6453, sub-§3, ¶A, as enacted by PL 1993, c. 634, Pt. A, §1, is amended to read:

A. Within 45 days ~~of~~ after the company action level event; or

Sec. 27. 24-A MRSA §6453, sub-§6, as enacted by PL 1993, c. 634, Pt. A, §1, is amended to read:

6. Duty to file copies of plan with other states. A domestic insurer that files a risk-based capital plan or revised risk-based capital plan with the superintendent pursuant to this section shall file a copy of the risk-based capital plan or revised risk-based capital plan with the insurance ~~superintendent~~ regulator in

any state in which the insurer is authorized to do business if:

A. That state has a risk-based capital provision substantially similar to that required by this chapter; and

B. The insurance ~~superintendent~~ regulator of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the risk-based capital plan or revised risk-based capital plan in that state no later than the later of:

(1) Fifteen days after the receipt of notice to file a copy of its risk-based capital plan or revised risk-based capital plan with the state; or

(2) The date on which the risk-based capital plan or revised risk-based capital plan is filed ~~under section 6454, subsection 3~~ with the superintendent.

Sec. 28. 24-A MRSA §6454, sub-§1, ¶¶F, H and I, as enacted by PL 1993, c. 634, Pt. A, §1, are amended to read:

F. ~~The~~ Provided the insurer has not challenged the determination under section 6457, the notification by the superintendent to the insurer that:

(1) The risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the superintendent, unsatisfactory; and

(2) ~~Provided the insurer has not challenged the determination under section 6457, that notification~~ The superintendent's finding unless vacated or stayed constitutes a regulatory action level event with respect to the insurer;

H. Provided the insurer has not challenged the determination under section 6457, the notification by the superintendent to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if that failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event or regulatory action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the superintendent has so stated in the notification; or

I. If the insurer, under section 6457, challenges a determination by the superintendent under paragraph H, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the challenge unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no substantial adverse effect on the ability of the insurer to eliminate the company action level event or regulatory action level event with respect to the insurer.

Sec. 29. 24-A MRSA §6454, sub-§4, as enacted by PL 1993, c. 634, Pt. A, §1, is amended to read:

4. Consultants. The superintendent may retain actuaries, investment experts and other consultants as may be necessary in the judgment of the superintendent to review the insurer's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities and operations of the insurer; and formulate the corrective order with respect to the insurer. For insurers offering managed care plans as defined in section 4301, the analysis of the insurer's operations may include an analysis of its contractual relationships with providers and the ability of the providers to fulfill their contractual obligations. The fees, costs and expenses relating to consultants must be borne by the affected insurer or such other party as directed by the superintendent.

Sec. 30. 39-A MRSA §403, sub-§3, ¶A, as repealed and replaced by PL 1995, c. 398, §2, is amended to read:

A. An individual self-insurer providing an irrevocable standby letter of credit as security shall file with the Superintendent of Insurance a letter of credit, on a form approved by the superintendent, copies of any agreements or other documents establishing the terms and conditions of the employer's reimbursement obligations to the financial institution issuing the letter of credit, together with copies of any required security agreements, mortgages or other agreements or documents granting security for the employer's reimbursement obligations and any other agreements that contain conditions, restrictions or limitations of any kind upon the employer, the superintendent or the Treasurer of State. The form of letter of credit approved by the superintendent must include, but is not limited to, all terms specifically required by this subsection and all terms reasonably required to secure the payment of compensation and benefits to claimants as required under this Act. The superintendent, upon receipt of the original irrevocable standby letter of credit, shall promptly forward it to the Treasurer of State.

~~The Superintendent of Insurance shall adopt rules to establish the qualifications for financial institutions issuing irrevocable standby letters of~~

~~credit that must include maintenance of a long-term unsecured debt rating of at least A by either Moody's Investors Service, Inc. or Standard and Poor's Corporation, or with commercial paper within the 3 highest short-term rating categories established by Moody's Investors Service, Inc. or Standard and Poor's Corporation. The irrevocable standby letter of credit must be the individual obligation of the issuing financial institution, may not be subject to any agreement, condition, qualification or defense between the financial institution and the employer and may not in any way be contingent on reimbursement by the employer. If the rating of an issuing financial institution that has issued an irrevocable standby letter of credit pursuant to this section falls below the required standard, the employer must obtain a new irrevocable standby letter of credit from a qualified financial institution or must provide other eligible security of equal value approved by the superintendent. The irrevocable standby letter of credit is automatically extended for one year from the date of expiration unless, 90 days prior to any expiration date, the issuing financial institution notifies the superintendent that the financial institution elects not to renew the irrevocable standby letter of credit.~~

In order to issue an irrevocable standby letter of credit as security under this paragraph, a financial institution or its parent company must either:

(1) Maintain a long-term unsecured debt rating of at least A by either Moody's Investors Service, Inc. or Standard and Poor's Corporation;

(2) Maintain a short-term commercial paper rating within the 3 highest categories established by Moody's Investors Service, Inc. or Standard and Poor's Corporation; or

(3) Be certified in writing by the Superintendent of Banking to be well capitalized and well managed in accordance with the criteria set forth in Title 9-B, section 446-A, subsections 1 and 2. The Superintendent of Insurance shall keep the certification confidential, except from the subject financial institution, in accordance with Title 9-B, section 226.

The Superintendent of Insurance may adopt rules to establish additional qualifications for financial institutions issuing irrevocable standby letters of credit. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

The irrevocable standby letter of credit must be the individual obligation of the issuing financial institution, may not be subject to any agreement, condition, qualification or defense between the financial institution and the employer and may not in any way be contingent on reimbursement by the employer. If the rating of an issuing financial institution that has issued an irrevocable standby letter of credit pursuant to this section falls below the required standard, the employer shall obtain a new irrevocable standby letter of credit from a qualified financial institution or shall provide other eligible security of equal value approved by the Superintendent of Insurance. The irrevocable standby letter of credit is automatically extended for one year from the date of expiration unless, 90 days prior to any expiration date, the issuing financial institution notifies the Superintendent of Insurance that the financial institution elects not to renew the irrevocable standby letter of credit.

An irrevocable standby letter of credit that has been issued by a qualified financial institution and accepted by the Superintendent of Insurance binds the issuing financial institution to pay one or more drafts drawn by the Treasurer of State, as directed by the superintendent, as long as the draft does not exceed the total amount of the irrevocable standby letter of credit. Any draft presented by the Treasurer of State, as directed by the superintendent, must be promptly honored if accompanied by the certification of the superintendent that any obligation under this chapter has not been paid when due or that a proceeding in bankruptcy has been initiated by or with respect to the employer in a court of competent jurisdiction.

If the Superintendent of Insurance certifies that the superintendent has been notified by the issuing financial institution that the irrevocable standby letter of credit ~~will expire~~ expires by its terms in 30 days or less and that the irrevocable standby letter of credit was not replaced within 15 days after that notice to the superintendent by other eligible security of equal value approved by the superintendent, then the financial institution must remit within 15 days the full amount of the irrevocable letter of credit to the Treasurer of State without further certification.

Any proceeds from a draw on such an irrevocable standby letter of credit by the Treasurer of State, as directed by the Superintendent of Insurance, must be held by the Treasurer of State on behalf of workers' compensation claimants to secure payment of claims until either the superintendent authorizes the Treasurer of State to release those proceeds to the employer upon provision by the employer of replacement security adequate to meet the requirements for secu-

rity set by the superintendent or the superintendent directs distribution of the proceeds in accordance with this Title.

To the extent not inconsistent with state law, the letter of credit is subject to and governed by the ~~Uniform Customs and Practice for Documentary Credits, 1983,~~ International Standby Practices 1998 or successor practices governing standby letters of credit duly adopted by the International Chamber of Commerce ~~Publication No. 400~~. If any legal proceedings are initiated with respect to payment of the letter of credit, those proceedings are subject to the State's courts and law.

See title page for effective date.

CHAPTER 114

H.P. 477 - L.D. 684

An Act to Allow for Continuing Law Enforcement Certification of the Commissioner of Public Safety and the Assistant to the Commissioner

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

Sec. 1. 25 MRSA §2804-H is enacted to read:

§2804-H. Continuing certification

If the commissioner or assistant to the commissioner is a law enforcement officer who is certified under sections 2804-B and 2804-C, the officer's certification does not lapse during the period the officer serves as commissioner or as assistant to the commissioner.

See title page for effective date.

CHAPTER 115

H.P. 531 - L.D. 738

An Act to Revise Maine's Trespass Laws

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

Sec. 1. 17-A MRSA §402, sub-§4, ¶D-1 is enacted to read:

D-1. Notwithstanding any other provision of this section, a landowner who posts that landowner's land by paint markings and who intends to prohibit access without permission of the landowner or the landowner's agent or intends to prohibit access for a particular purpose may do this by posting in a prominent place one or more qualifying signs that by words or symbols set forth the nature of the prohibition. The landowner need not post the qualifying signs at 100-foot intervals.

See title page for effective date.

CHAPTER 116

H.P. 415 - L.D. 557

An Act to Prohibit Surveillance of Dressing Rooms, Bathrooms and Similar Places

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

Sec. 1. 17-A MRSA §511, sub-§2, as enacted by PL 1975, c. 499, §1, is amended to read:

2. As used in this section, "private place" means a place where one may reasonably expect to be safe from surveillance, including, but not limited to, changing or dressing rooms, bathrooms and similar places, but ~~does not include~~ excluding a place to which the public or a substantial group has access.

See title page for effective date.

CHAPTER 117

H.P. 553 - L.D. 774

An Act to Amend the Laws Pertaining to the Movement of a Mobile Home Over a Public Way and the Movement of Objects Requiring an Overlimit Movement Permit

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

Sec. 1. 29-A MRSA §1002, sub-§9, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

9. Mobile homes. A mobile home may not be moved over a public way unless the operator of the vehicle hauling it has in possession a permit issued pursuant to section 2382 or a written certificate from the tax collector of the municipality in which the mobile home is situated on the day of the move, identifying the mobile home and stating that all