

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
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

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

A. Administrative expenses, personal services and equipment costs of the department related to the administration and enforcement of this subchapter, except that total disbursements for personal services may not exceed ~~\$2,000,000~~ \$2,250,000 per fiscal year, multiplied by an annual adjustment factor of 4% beginning in fiscal year 1999;

Sec. 3. 38 MRSA §569-A, sub-§8, ¶N, as enacted by PL 1997, c. 613, §3, is amended to read:

N. Sums up to ~~\$750,000~~ \$1,250,000 annually ~~in fiscal years 1998-99 and 1999-2000 only, during the 2-year period commencing July 1, 1998 and ending June 30, 2000~~ to distribute to community action agencies as defined in Title 22, section 5321 ~~to be used~~ for loans and grants to retrofit, repair or replace aboveground and underground oil storage tanks and associated piping at single-family residences. Money may not be disbursed from the fund for the purposes of this paragraph until the department has presented a plan for such disbursements to the Fund Insurance Review Board. A community action agency shall administer the funds in accordance with program operating standards, including the allocation formula established by the Maine State Housing Authority for its weatherization program.

Sec. 4. 38 MRSA §570, first ¶, as amended by PL 1997, c. 624, §5, is further amended to read:

The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-A, subsection 8, paragraphs B, D, E, H and J, or other damage incurred by the State, except for costs found by the commissioner to be eligible for coverage under the fund. The term "other damages," as used in this paragraph, includes interest computed at 15% a year from the date of expenditure, and damage for injury to, destruction of, loss of, or loss of use of natural resources and the reasonable costs of assessing natural resources damage. The commissioner shall demand reimbursement of costs and ~~payment of damages paid by the department from state or federal funds except for amounts that are not eligible for coverage by the fund to be recovered~~ under this section and payment subchapter. Payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor

other recovery efforts against one responsible party may relieve any other responsible party of liability.

Sec. 5. 38 MRSA §570, first ¶, as amended by PL 1997, c. 624, §6, is further amended to read:

The intent of this subchapter is to provide the means for rapid and effective cleanup and to minimize direct and indirect damages and the proliferation of 3rd-party claims. Accordingly, each responsible party is jointly and severally liable for all disbursements made by the State pursuant to section 569-B, subsection 5, paragraphs B, D, E and G or other damage incurred by the State, including interest computed at 15% a year from the date of expenditure, and damage for injury to, destruction of, loss of or loss of use of natural resources and the reasonable costs of assessing natural resources damage. The commissioner shall demand reimbursement of costs and payment of damages paid by the department from state or federal funds to be recovered under this section and payment must be made promptly by the responsible party or parties upon whom the demand is made. If payment is not received by the State within 30 days of the demand, the Attorney General may file suit in the Superior Court and, in addition to relief provided by other law, may seek punitive damages as provided in section 568. Notwithstanding the time limits stated in this paragraph, neither a demand nor other recovery efforts against one responsible party may relieve any other responsible party of liability.

See title page for effective date.

CHAPTER 279

H.P. 1182 - L.D. 1693

An Act to Clarify the Regulation of Viatical Settlement Contracts When Sold as Investments

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

Whereas, viatical settlement contracts are currently being sold as investments in this State; and

Whereas, the regulation of viatical settlement contracts as securities under the Revised Maine Securities Act needs clarification for the protection of Maine consumers and their investments; 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. 32 MRSA §10302, sub-§2, ¶C, as enacted by PL 1985, c. 400, §2, is amended to read:

C. A sales representative acting for an issuer effecting offers or sales of securities in transactions exempt by one or more paragraphs of section 10502, subsection 2, except paragraph S;

Sec. 2. 32 MRSA §10501, sub-§9, ¶D is enacted to read:

D. The "issuer" of a fractional or pooled interest in a viatical settlement contract means the person who creates, for the purpose of sale, the fractional or pooled interest. The "issuer" of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transaction with the investor in such a contract but does not include a broker-dealer or sales representative.

Sec. 3. 32 MRSA §10501, sub-§18, as amended by PL 1999, c. 37, §11, 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; viatical settlement contract; voting-trust certificate; certificate of deposit for a security; documents of title to or certificates of interest or participation in an oil, gas or other mineral title or lease or in payments out of production under 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. 4. 32 MRSA §10501, sub-§22 is enacted to read:

22. Viatical settlement contract. "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement contract" does not include:

A. The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement provider pursuant to the Viatical Settlements Act;

B. The assignment, transfer, sale, devise or bequest of a life insurance policy, for any value less than the expected death benefit, by the viator to a friend or family member who enters into no more than one such agreement in a calendar year;

C. An assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union or other licensed lending institution as collateral for a loan; or

D. The exercise of accelerated benefits pursuant to the terms of the Maine Insurance Code and of the life insurance policy.

Sec. 5. 32 MRSA §10502, sub-§2, ¶Q, as amended by PL 1989, c. 542, §42, is further amended to read:

Q. Any offer or sale of securities of a corporation organized under the laws of this State, if the number of holders of securities of the entity, exclusive of persons specified in section 10501, subsection 4, will in consequence of the sale exceed 10, but will not in consequence of the sale exceed 25 in number and if the securities sold in reliance on this subsection have not been offered to the public by general advertisement or general solicitation. Any person who relies on this exemption shall file with the administrator a notification for exemption ~~which shall~~ that must be in such form as may be prescribed by the administrator and ~~which shall require~~ requires only the following information: The name, address and telephone number of the issuer; the state and date of incorporation of the issuer; the name, address and telephone number of persons who may respond to inquiries about the issuer; the location at which the books and records of the issuer ~~shall be~~ are kept and whether they ~~will be~~ are available for inspection by shareholders; a description of all classes of securities of the issuer, including newly authorized classes of securities, providing the number of authorized units of each class, par value per unit and the number of units of each

class as are issued and outstanding; a description of the class of securities ~~as shall be~~ offered for sale, including the number of units authorized, par value per unit, the number of units currently outstanding, the number of units being offered for sale, the number of units to be outstanding and the price at which each unit is offered for sale; a description of the rights of holders of the securities offered pursuant to this exemption, including voting rights and if cumulative or non-cumulative liquidation rights, preemptive rights and any other rights or limitations applicable to the securities; the date the annual meeting of the shareholders ~~will be~~ is held, the location and time of the meeting, a description of how the shareholders ~~will be~~ are notified and if an annual financial statement and report of activity ~~will be~~ is available to shareholders; a brief description of how the proceeds of the offering will be used and ~~if whether~~ proceeds shall will be returned to investors if minimum amounts are not raised by a specific date; a brief description of the issuer's plan of business and whether the business is currently operational; and a list of the significant risks assumed by the investor, including management experience, competitive and economic factors, net worth position of the issuer and improbable or limited opportunity for release of the securities. A copy of the notification of exemption ~~shall must~~ be made available to each offeree of securities sold in reliance on this exemption and ~~shall must~~ contain such legends as the administrator ~~shall prescribe~~ prescribes, notifying the offeree that the securities have not been registered with the administrator, that they may be ~~deemed~~ considered restricted securities and that the issuer is under an obligation to make a reasonable finding that the securities are a suitable investment for the offeree. The administrator may ~~promulgate~~ adopt such rules as are considered necessary to further define or implement this subsection consistent with the intent of this subsection; ~~and~~

Sec. 6. 32 MRSA §10502, sub-§2, ¶R, as amended by PL 1997, c. 168, §25, is further amended to read:

R. Any transaction by an issuer not involving any public offering within the meaning of the United States Securities Act of 1933, Section 4(2) and the rules ~~promulgated~~ adopted under that Act, including, but not limited to, any transaction exempt from registration with the United States Securities and Exchange Commission under the United States Securities and Exchange Commission, Rule 506, or any successor rule adopted under the United States Securities Act of 1933, and any transaction constituting a nonpublic offering under rules adopted by the adminis-

trator, if no later than 15 days after the first sale in this State of a security in reliance on the exemption from registration provided in this subsection, the issuer shall file with the administrator a notice on United States Securities and Exchange Commission Form D, as amended, and the consent to service of process required by section 10704, and pay a filing fee of \$300 for each security sold in this State; ~~and~~

Sec. 7. 32 MRSA §10502, sub-§2, ¶S is enacted to read:

S. Any offer or sale of a viatical settlement contract, if:

(1) The underlying viatical settlement transaction with the viator was not in violation of the Viatical Settlements Act; and

(2) Such disclosure documents as the administrator, by rule or order, requires are delivered to each offeree or purchaser.

Sec. 8. 32 MRSA §10502, sub-§7 is enacted to read:

7. Rules. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 9. 32 MRSA §10504, sub-§1, as enacted by PL 1997, c. 168, §28, is amended to read:

1. Filing of sales and advertising literature. The administrator, by rule or order, may require the filing of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security is a federal covered security or the security or transaction qualifies for an exemption under section 10502, subsection 2, paragraphs A to R for which the filing of a notice with the administrator is not required ~~or the security is a federal covered security.~~

Sec. 10. 32 MRSA §10607-A is enacted to read:

§10607-A. Right to rescission applicable to sales of viatical settlement contracts

1. Right to rescind transaction. In addition to any other rights provided for under this Act or otherwise, an investor who purchases a viatical settlement contract may rescind the investment by giving written notice of rescission to the entity designated for such notice in the disclosure documents, by ordinary mail postage prepaid, within 30 business days following the later of:

A. The day on which the investor received the final disclosure document pertaining to the transaction as required under this Act and the rules of orders under this Act; or

B. The day on which the investor paid the required consideration for the purchase of the viatical settlement contract.

2. Form of notice. The notice is sufficient if addressed to the entity designated for such notice, at the address given in the disclosure statement pertaining to the transaction. Notice of rescission is effective upon deposit in the United States mail. The notice of rescission need not take a particular form and is sufficient if it expresses the intention of the purchaser to rescind the transaction.

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

Effective May 21, 1999.

CHAPTER 280

H.P. 276 - L.D. 384

An Act to Establish Victims' Rights for the Victims of Juvenile Crimes

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

Sec. 1. 15 MRSA §3007 is enacted to read:

§3007. Victims' rights

In addition to any rights given to victims of juvenile crimes in this Part, the victim of a juvenile crime has the rights that a victim has under Title 17-A, section 1175.

See title page for effective date.

CHAPTER 281

H.P. 300 - L.D. 408

An Act Regarding the Waiver Process Under the Lobster Apprenticeship Program

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

Sec. 1. 12 MRSA §6422, sub-§4, ¶A, as amended by PL 1997, c. 574, §2, is further amended to read:

A. Documents to the commissioner that the person obtained practical lobster fishing experience as a sternman employed by the holder of a Class II or Class III license issued under section 6421. This paragraph is repealed December 31, 1999;

See title page for effective date.

CHAPTER 282

H.P. 525 - L.D. 732

An Act to Require Certain Disclosures by Providers of Funeral Services

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

Sec. 1. 32 MRSA §1407 is enacted to read:

§1407. Disclosure of funeral establishment ownership; rental caskets

1. Ownership information. A funeral establishment shall disclose the name and address of each person holding an ownership interest in the funeral establishment on each contract or agreement for provision of funeral services or supplies and on any document required by federal law.

2. Rental caskets. A funeral establishment shall disclose on its general price list and casket price list either that the funeral establishment offers rental caskets and the cost of rental or that the funeral establishment does not offer rental caskets.

3. Federal Trade Commission regulations. The disclosures required under this section supplement the disclosures required by the Federal Trade Commission pursuant to its regulations governing the funeral industry.

Sec. 2. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

1999-00

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Office of Licensing and Registration

All Other \$1,000