

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

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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

Sec. 2. 37-B MRSA §610-B, first ¶, as enacted by PL 1997, c. 395, Pt. P, §6, is amended to read:

The Maine Veterans' Homes shall expend stipend funds received pursuant to section 610-A ~~first~~ primarily on the payment of debt service on, or the setting aside of funds irrevocably to repay as soon as possible, the outstanding principal amount of the bonded indebtedness of the homes and the bonded indebtedness of the State on which the homes are obligated to pay debt service. Any interest earned on funds set aside irrevocably to repay such bonded indebtedness must be credited to the General Fund.

See title page for effective date.

CHAPTER 289

H.P. 1254 - L.D. 1808

An Act to Amend the Definition of Lender Under the Uncontrolled Hazardous Substance Sites Law

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

Sec. 1. 38 MRSA §1362, sub-§1-B, as amended by PL 1993, c. 355, §58, is further amended to read:

1-B. Lender. "Lender" means any person, as defined by Title 9-B, section 131, subsection 30, including a successor or assignee of that person, that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person; a financial institution or credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsections 12-A and 17-A; a financial institution that is acting through a service corporation ~~pursuant to as defined in~~ Title 9-B, section 445 ~~131, subsection 5 37;~~ or any federal or state banking or lending agency that provides loans, guarantees or other financial assistance. For the purpose of this subsection, the phrase "acting through" includes the assignment or transfer of an interest in real property acquired in satisfaction of a debt.

See title page for effective date.

CHAPTER 290

H.P. 1091 - L.D. 1538

An Act to Grant Immunity to Medical Professionals Conducting Body Cavity Searches for Drugs

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

Sec. 1. 5 MRSA §200-G, sub-§3 is enacted to read:

3. Immunity. A person is immune from criminal or civil liability for an act or omission in conducting a body cavity search if:

A. The body cavity search is pursuant to a search warrant directing the body cavity search;

B. The person is authorized to conduct a body cavity search under the rules adopted pursuant to subsection 1; and

C. The person uses due care in conducting the body cavity search.

Nothing in this subsection requires a person authorized to conduct body cavity searches to conduct a body cavity search pursuant to a search warrant.

See title page for effective date.

CHAPTER 291

S.P. 527 - L.D. 1560

An Act to Amend the Qualifications for Appointment of the Adjutant General and Assistant Adjutant General

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

Sec. 1. 37-B MRSA §107, as amended by PL 1983, c. 594, §3, is repealed and the following enacted in its place:

§107. Qualifications for appointment of Adjutant General and assistant adjutant general

A person appointed Adjutant General or assistant adjutant general must have attained the federally recognized rank of Colonel in the Maine National Guard.

See title page for effective date.

CHAPTER 292

S.P. 140 - L.D. 376

An Act to Amend the Laws Relating to Long-term Care Insurance and to Require Disclosure to Insurance Consumers that Long-term Care

**Insurance Policies are Tax-qualified
for Purposes of Federal and State
Income Tax**

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

Sec. 1. 24-A MRSA §5057 is enacted to read:

§5057. Applicability

This chapter applies only to policies and certificates issued before January 1, 2000.

Sec. 2. 24-A MRSA c. 68-A is enacted to read:

CHAPTER 68-A

LONG-TERM CARE INSURANCE

§5071. Scope

This chapter applies to long-term care insurance policies or certificates delivered or issued for delivery in this State on or after January 1, 2000, except it does not apply to certificates issued under policies issued in other states to employer groups as described in section 2804 and labor union groups as described in section 2805. This chapter is not intended to supersede the obligations of entities subject to this chapter to comply with the substance of other applicable insurance laws to the extent that these laws are not inconsistent with the requirements of this chapter, except that laws and rules designed and intended to apply to Medicare supplement insurance may not be applied to long-term care insurance. Notwithstanding this chapter, any product advertised, marketed or offered as long-term care insurance is subject to this chapter.

§5072. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Applicant. "Applicant" means:

A. In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; or

B. In the case of a group long-term care insurance policy, the proposed certificate holder.

2. Certificate. "Certificate" means any certificate issued under a group long-term care insurance policy.

3. Group long-term care insurance policy. "Group long-term care insurance policy" means a long-term care insurance policy that is delivered or

issued for delivery in this State to an employer group, private purchasing alliance, labor union group, association group, trustee group, credit union group or other group as described in chapter 35.

4. Long-term care insurance policy. "Long-term care insurance policy" means any individual or group insurance policy or rider offered by a life or health insurer, fraternal benefit society, nonprofit hospital and medical service organization, nonprofit health care service organization, prepaid health plan organization, health maintenance organization or other similar organization authorized to issue life or health insurance that is advertised, marketed, offered or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense-incurred basis, indemnity basis, prepaid or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services provided in a setting other than an acute care unit of a hospital. "Long-term care insurance policy" includes individual and group annuities and life insurance policies or riders that directly provide or that supplement coverage for long-term care insurance and a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. "Long-term care insurance policy" does not include:

A. An insurance policy or contract described as Medicare supplement insurance under chapter 67;

B. An insurance policy or contract offered primarily to provide basic hospital expense coverage, basic medical surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage or limited benefit health coverage; and

C. With regard to life insurance, an insurance policy or contract that accelerates the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention or permanent institutional confinement and that provides the option of a lump sum payment for those benefits and does not condition the benefits or the eligibility for those benefits upon the receipt of long-term care.

§5073. Extraterritorial jurisdiction; group long-term care insurance

1. Groups other than employer, union, trustee and association groups. A group long-term care insurance policy may not be offered to a resident of this State under a group policy issued in another state

to a group other than an employer group as described in section 2804, a labor union group as described in section 2805, a trustee group as described in section 2806 or an association group as described in section 2805-A unless the superintendent has made a determination that the requirements of this chapter have been met.

2. Trustee groups. Group long-term care insurance may not be offered to an employee of an employer covered under a group policy issued in another state to a trustee group as described in section 2806 if a plurality of the employer's employees are based in this State unless the superintendent has made a determination that the requirements of this chapter have been met.

3. Association groups. The following applies to group long-term care insurance coverage issued to association groups.

A. Group long-term care insurance coverage may not be offered to a resident of this State under a group policy issued in another state to an association group as described in section 2805-A, other than an association of employers, unless the superintendent has made a determination that the requirements of this chapter have been met.

B. Group long-term care insurance may not be offered to an employee of an employer covered under a group policy issued in another state to an association of employers if a plurality of the employer's employees are based in this State unless the superintendent has made a determination that the requirements of this chapter have been met.

§5074. Disclosure standards for long-term care insurance

The following standards apply to disclosures relating to long-term care insurance.

1. Disclosures. The superintendent may adopt rules that include standards for full and fair disclosure setting forth the manner, content and required disclosures for the sale of long-term care insurance policies and certificates; terms of renewability; initial and subsequent conditions of eligibility; nonduplication of coverage provisions; coverage of dependents; preexisting conditions; termination of insurance; continuation or conversion; probationary periods; limitations, exceptions and reductions; elimination periods; requirements for replacement; recurrent conditions; and definitions of terms. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

2. Outline of coverage. An outline of coverage must be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose. In the case of producer solicitations, an insurance producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form. In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form. In the case of a policy issued to an employer group as described in section 2804, a labor union group as described in section 2805 or a trustee group as described in section 2806, an outline of coverage is not required to be provided if the information described in this subsection is contained in other materials relating to enrollment that have been filed with and approved by the superintendent. The outline of coverage must be in a standard format, including style, arrangement, overall appearance and content, prescribed by the superintendent and must include the following information:

A. A description of the principal benefits and coverage provided in the policy or certificate;

B. A statement of the principal exclusions, reductions and limitations contained in the policy or certificate;

C. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage must be specifically described;

D. A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

E. A description of the terms under which the policy or certificate may be returned and premium refunded;

F. A statement as to whether the policy or certificate is intended to be qualified for purposes of federal and state individual income taxes; and

G. A brief description of the relationship of cost of care and benefits.

3. Qualification for purposes of federal and state individual income taxes. The face page of all long-term care insurance policies and certificates must contain a prominent statement as to whether the policy or certificate is intended to be qualified for purposes of federal and state individual income taxes.

4. Individual life insurance policy that provides long-term care benefits. At the time of policy or certificate delivery, a policy summary must be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request but, regardless of a request, the insurer shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary also must include:

A. An explanation of how the long-term care benefits interact with other components of the policy, including deductions from death benefits;

B. An illustration of the amount of benefits, the length of benefits and the guaranteed lifetime benefits, if any, for each covered person;

C. Any exclusions, reductions and limitations on benefits of long-term care;

D. A statement indicating whether any long-term care inflation protection option required by law is available under this policy; and

E. If applicable to the policy or certificate type, the summary must also include:

(1) A disclosure of the effects of exercising other rights under the policy;

(2) A disclosure of guarantees related to long-term care costs of insurance charges; and

(3) Current and projected maximum lifetime benefits.

The provisions of the policy or certificate summary listed in this subsection may be incorporated into a basic illustration required to be delivered in accordance with the life insurance policy summary that is required to be delivered in accordance with this Title governing life insurance policy summaries or with comparable statutory requirements in any other state.

5. Certificates of group long-term care insurance. A certificate issued pursuant to a group long-term care insurance policy that is delivered or issued for delivery in this State must include:

A. A description of the principal benefits and coverage provided in the policy;

B. A statement of the principal exclusions, reductions and limitations contained in the policy; and

C. A statement that the group master policy determines governing contractual provisions and that the policy is available for viewing in the offices of the policyholder and will be copied for the certificate holder upon request at no cost.

§5075. Required provisions; prohibitions; loss ratio standards for long-term care insurance

1. Prohibitions. A long-term care insurance policy or certificate may not:

A. Be canceled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual;

B. Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

C. Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than for lower levels of care.

2. Preexisting condition. A long-term care insurance policy or certificate must provide coverage for preexisting conditions in accordance with the following.

A. A policy or certificate may not define "preexisting condition" in a manner that is more restrictive than the following: "Preexisting condition" means a condition for which medical advice or treatment was recommended by or received from a provider of health care services within 6 months preceding the effective date of coverage of an insured person.

B. A policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless such loss or confinement begins within 6 months following the effective date of coverage of an insured person.

C. The definition of "preexisting condition" in paragraph A does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered

until the waiting period described in paragraph B expires. A long-term care insurance policy or certificate may not exclude, or use waivers or riders of any kind to exclude, limit or reduce, coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in paragraph B.

D. The superintendent may extend the limitation periods set forth in paragraphs A and B with regard to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

3. Prior hospitalization or institutionalization.

A long-term care insurance policy or certificate that contains provisions regarding prior hospitalization or institutionalization must comply with the following requirements.

A. A long-term care insurance policy or certificate may not be delivered or issued for delivery in this State if the policy:

(1) Conditions eligibility for any benefits on a prior hospitalization requirement;

(2) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(3) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care or recuperative benefits on a prior institutionalization requirement.

B. A long-term care insurance policy or certificate containing post-confinement, post-acute care or recuperative benefits must clearly label such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits."

C. A long-term care insurance policy, certificate or rider that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than 30 days.

D. The superintendent may adopt rules further restricting the use of prior institutionalization requirements. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

4. Free-look provision. Applicants for long-term care insurance have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. A long-term care insurance policy or certificate must have a notice prominently printed on the first page or attached to the policy or certificate stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason.

5. Benefit payment status report on long-term care benefits. Any time a long-term care benefit that is funded through a life insurance policy or certificate by the acceleration of the death benefit is in benefit payment status, a monthly report must be provided to the policyholder or certificate holder. The report must include:

A. Any long-term care benefits paid out during the month;

B. An explanation of any changes in the policy, including changes in death benefits or cash values, due to long-term care benefits being paid out; and

C. The amount of long-term care benefits existing or remaining.

6. Loss ratios. The superintendent may adopt rules establishing loss ratio standards for long-term care insurance policies if a specific reference to long-term care insurance policies or certificates is contained in the rules. Any loss ratio standards for employer groups as described in section 2804 and labor union groups as described in section 2805 apply to the group policy and not to certificates. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

7. Marketing as long-term care or nursing home insurance. This chapter applies to any policy, certificate or rider advertised, marketed or offered as long-term care or nursing home insurance.

§5076. Incontestability period

1. Policies or certificates in effect for less than 6 months. For a policy or certificate that has been in effect for less than 6 months, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that was material to the acceptance for coverage.

2. Policies or certificates in effect for more than 6 months but less than 2 years. For a policy or

certificate that has been in effect for at least 6 months but less than 2 years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that was both material to the acceptance for coverage and that pertains to the condition for which benefits are sought.

3. Policies or certificates in effect for 2 years or more. After a policy or certificate has been in effect for at least 2 years, the policy or certificate may not be contested upon the grounds of misrepresentation alone. The policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

4. Field-issued policies or certificates. A long-term care insurance policy or certificate may not be field-issued based on medical or health status. For the purposes of this subsection, "field-issued" means a policy or certificate issued by an agent or a 3rd-party administrator pursuant to the underwriting authority granted to the agent or 3rd-party administrator by an insurer.

5. Recovery of benefit payments by the insurer. If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer if the policy or certificate is rescinded.

6. Death of the insured. Upon the death of the insured, this section does not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care and the remaining death benefits under these policies are governed by sections 2507 and 2615 relating to the incontestability requirements for individual and group life insurance. In all other events, this section applies to life insurance policies that accelerate benefits for long-term care.

§5077. Nonforfeiture benefits

1. Offer required. Except as provided in subsection 2, a long-term care insurance policy or certificate may not be delivered or issued for delivery in this State unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate that includes a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. If the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that must be made available for a specified period of time following a substantial increase in premium rates.

2. Group policyholders. When a group long-term care insurance policy is issued, the offer required in subsection 1 must be made to the group policy-

holder. If the group long-term care insurance policy is issued to a group described in section 2808 other than to a continuing care retirement community or other similar entity, the offer must be made to each proposed certificate holder.

3. Rules. The superintendent shall adopt rules specifying the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits and the standards regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse is available and the substantial premium rate increase that triggers a contingent benefit upon lapse as described in subsection 1. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§5078. Rulemaking

The superintendent shall adopt rules to promote premium adequacy, to protect a policyholder and a certificate holder in the event of substantial rate increases and to establish minimum standards for marketing practices, insurance producer compensation, insurance producer testing, penalties and reporting practices for long-term care insurance. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

§5079. Penalties

In addition to any other penalties provided by this Title or the laws of this State, an insurer or insurance producer that violates any requirement of this chapter or rule adopted pursuant to this chapter relating to the regulation of long-term care insurance or the marketing of such insurance is subject to a fine of up to the greater of 3 times the amount of commissions paid for each policy involved in the violation or \$10,000.

§5080. Applicability

This chapter applies to long-term care policies and certificates issued or delivered in this State on or after January 1, 2000. Policies and certificates issued prior to January 1, 2000 and remaining in effect on that date are subject to the requirements of chapter 68. Those policies and any certificates issued pursuant to those policies prior to January 1, 2000 continue in effect subsequent to the enactment of this chapter.

All certificates of coverage issued or delivered to residents of this State after January 1, 2000 must meet the requirements of this chapter and any rules adopted pursuant to this chapter, except that long-term care policies or certificates issued pursuant to a provision

included in a policy approved in accordance with chapter 68 giving a policyholder or certificate holder a right to purchase or increase coverage at a later date may be issued with benefits consistent with chapter 68 after January 1, 2000.

See title page for effective date.

CHAPTER 293

H.P. 154 - L.D. 216

An Act to Prohibit the Transportation of Open Containers that Contain Liquor

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

Sec. 1. 28-A MRSA §1051, sub-§5, as enacted by PL 1997, c. 306, §1, is amended to read:

5. Transporting partially consumed bottles. A partially consumed bottle of table wine that is removed from the premises under subsection 4 must be ~~securely sealed and bagged by the licensee, either to be in conformance with any applicable open container law for those patrons on foot or transported in the trunk of a motor vehicle. If the vehicle is not equipped with a trunk, the securely sealed opened table wine bottle may be transported in that compartment of the vehicle that is the least accessible to the driver transported in compliance with Title 29-A, section 2112-A, if transported by motor vehicle, or securely sealed and bagged if transported on foot or by means other than a motor vehicle.~~

Sec. 2. 29-A MRSA §2112, as enacted by PL 1993, c. 683, Pt. A, §2 and affected by Pt. B, §5, is repealed.

Sec. 3. 29-A MRSA §2112-A is enacted to read:

§2112-A. Open container; drinking in a vehicle prohibited

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Alcohol" means spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquors, intended for human consumption that contains more than 1/2 of 1% of alcohol by volume.

B. "Open alcoholic beverage container" means a bottle, can or other receptacle that contains any amount of alcohol, and that is open or has a bro-

ken seal, or the contents of which are partially removed.

C. "Passenger area" means the area designed to seat the operator and passengers while a motor vehicle is in operation and any area readily accessible to the operator or a passenger, including the glove compartment, while in their seating positions.

D. "Public way" means a way, including a right-of-way, owned and maintained by the State, a county or a municipality over which the general public has a right to pass.

2. Violation. The operator of a vehicle on a public way is in violation of this section if the operator or a passenger in the passenger area of the vehicle:

A. Consumes alcohol; or

B. Possesses an open alcoholic beverage container.

3. Exceptions. An operator of a vehicle is not in violation of this section if:

A. The operator or a passenger possesses an open alcoholic beverage container in a vehicle not equipped with a trunk if the open alcoholic beverage container is located behind the last upright seat of the vehicle or in an area not normally occupied by the operator or passenger;

B. A passenger transported for a fee consumes alcohol or possesses an open alcoholic beverage container in a vehicle designed for the for-hire transportation of passengers other than a taxicab;

C. A passenger possesses an open alcoholic beverage container or a passenger consumes alcohol in the living quarters of a motor home, trailer, semitrailer or truck camper; or

D. The operator or the operator's employer holds a valid off-premise catering license issued under Title 28-A, section 1052 and the alcohol is being transported either to or from a catered event.

See title page for effective date.

CHAPTER 294

H.P. 211 - L.D. 289

An Act to Amend the Uniform Unclaimed Property Act concerning Tangible Property Held by Landlords or by State Institutions