MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

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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
2000

§423-B. Watercraft sanitary waste pump-out facilities at marinas

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Marina" means a facility that provides supplies or services and has the capacity to provide any combination of slip space or mooring for 18 or more vessels that exceed 24 feet in length.

B. "Pump-out facility" means a facility that pumps or receives sanitary wastes out of marine sanitation devices that are specifically designed to receive, retain and discharge sanitary wastes and that are installed on board watercraft. "Pump-out facility" includes a stationary pump-out station, a portable marine toilet dump station and a mobile pump-out vessel.

2. Pump-out facilities required. A marina serving coastal waters shall provide a pump-out facility or provide through a written contractual agreement approved by the commissioner a facility to remove sanitary waste from the holding tanks of watercraft.

3. Exception. A marina is not required to meet the requirements in subsection 2 until a grant for the construction or renovation of a pump-out facility or the initial cost of a contractual agreement is offered to that marina pursuant to subsection 4.

4. Cost share. Subject to the availability of funds, the commissioner shall award grants using a combination of federal and state funds for the costs of constructing, renovating, operating and maintaining pump-out facilities and providing facilities through contractual agreements according to the following schedule:

A. The commissioner shall pay 90% of these costs incurred by municipal marinas; and

B. The commissioner shall pay up to 75% of these costs incurred by marinas other than municipal marinas.

When awarding grants, the commissioner shall give priority to a pump-out facility over a contractual agreement and shall give priority to a pump-out facility that the Commissioner of Marine Resources certifies is likely to result in the opening of a shellfish harvesting area that is closed under Title 12, section 6172.

See title page for effective date.

CHAPTER 656

S.P. 1007 - L.D. 2574

An Act to Harmonize State Financial Services Laws with Federal Law

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

Whereas, the federal Financial Services Modernization Act of 1999 provides that if state law does not allow a mutual insurance company to reorganize as a stock insurer within a mutual holding company structure, a mutual insurance company may transfer its domicile to any state that has such a law without submitting a withdrawal plan to the Superintendent of Insurance; and

Whereas, Maine law does not currently allow a mutual insurance company to reorganize as a stock insurer within a mutual holding company structure; and

Whereas, this Act authorizes a mutual insurance company to reorganize as a stock insurer within a mutual holding company structure; 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. 9 MRSA §5007, as amended by PL 1981, c. 456, Pt. A, §31, is further amended by adding at the end a new paragraph to read:

This section does not apply to a national bank, a federal savings bank, a subsidiary of a national bank or federal savings bank or any other financial institution or credit union chartered under the laws of the United States or any state and subject to supervision and regulation by a federal financial regulatory agency.

Sec. 2. 9 MRSA §5008, sub-§4 is enacted to read:

4. Exemption. This section does not apply to a national bank, a federal savings bank, a subsidiary of a national bank or federal savings bank or any other financial institution or credit union chartered under the laws of the United States or any state and subject to supervision and regulation by a federal financial regulatory agency.

Sec. 3. 9 MRSA §5009, sub-§3 is enacted to read:

3. Exemption. This section does not apply to a national bank, a federal savings bank, a subsidiary of a national bank or federal savings bank or any other financial institution or credit union chartered under the laws of the United States or any state and subject to supervision and regulation by a federal financial regulatory agency.

Sec. 4. 9 MRSA §5012, as amended by PL 1999, c. 221, §3 and c. 386, Pt. A, §18, is further amended by adding at the end a new paragraph to read:

This section does not apply to a national bank, a federal savings bank, a subsidiary of a national bank or federal savings bank or any other financial institution or credit union chartered under the laws of the United States or any state and subject to supervision and regulation by a federal financial regulatory agency.

Sec. 5. 24-A MRSA §§3488 to 3490 are enacted to read:

§3488. Reorganization of mutual insurer through formation of mutual holding company

1. Procedure for reorganization as stock insurer. A mutual insurer may be reorganized as a stock insurer within a mutual holding company as provided in this section. The mutual insurer shall submit to the superintendent a reasonable reorganization plan, referred to in this section as the "plan," and the procedure for putting the plan into effect. A hearing must be held on the plan. Notice of the hearing must be provided pursuant to section 230 to the insurer, its directors or trustees, its officers, employees and its policyholders, all of whom have the right to appear and be heard at the hearing. The plan may not take effect unless approved by the superintendent.

2. Plan requirements. The plan must contain provisions for:

A. The reorganizing insurer to become a stock insurer;

B. The formation of a mutual holding company;

C. The members of the reorganizing insurer to become members of the mutual holding company with membership interests therein and the membership interests in the reorganizing insurer to be extinguished; and

D. At least 51% of the voting stock issued and outstanding by the reorganized insurer to be acquired and held, directly or through one or more stock holding companies, by the mutual holding company.

3. Number of stock holding companies. The plan may provide for the formation of one or more intermediate stock holding companies.

4. Approval of plan. The superintendent may not approve a plan unless:

A. The terms and conditions of the plan are fair and equitable;

B. The plan is subject to approval by vote of not less than 2/3 of the insurer's policyholders voting on the plan in person, by proxy or by mail at a meeting of policyholders called by the insurer for that purpose pursuant to reasonable notice of the meeting and procedures as approved by the superintendent. The plan must specify that only persons who were policyholders both at least one year before the submission of the plan to the superintendent and on a subsequent date before the vote found reasonable by the superintendent are entitled to vote. Each eligible policyholder is entitled to one vote;

C. The plan, when completed, would provide paid-in capital stock for the reorganized insurer in an amount not less than the minimum paid-in capital stock required of a new domestic stock insurer upon initial authorization to transact like kinds of insurance, together with expendable surplus funds in an amount not less than 1/2 of such required capital stock; and

D. The superintendent finds that the insurer's management has not, through reduction in volume of new business written or cancellation or any other means, sought to reduce, limit or affect the number or identity of the reorganizing insurer's members to be entitled to participate in the plan or to secure for the individuals comprising management any unfair advantage through the plan.

5. Compensation. A director, officer, agent or employee of the reorganizing insurer or any other person may not receive any fee, commission or other valuable consideration whatsoever, other than that person's usual regular salary and compensation, for in any manner aiding, promoting or assisting in the reorganization except as set forth in the plan approved by the superintendent. This provision does not prohibit the payment of reasonable fees and compensation to attorneys, accountants or actuaries for services performed in the independent practice of their professions, even though they also may be directors of the insurer.

6. Effective date of plan. The plan becomes effective, after approval by the superintendent and by the policyholders, upon the filing with the superintendent and the Secretary of State of amended and restated articles of incorporation of the reorganized insurer pursuant to section 3310 and articles of incorporation of the mutual holding company and any related stock holding company.

7. Consequence of effective plan. The following are the consequences of a plan that becomes effective pursuant to subsection 6.

A. The reorganizing insurer immediately becomes a domestic stock insurer.

B. The members of the reorganizing insurer on the effective date immediately become members of the mutual holding company with membership interests in that holding company. All membership interests in the reorganizing insurer are extinguished.

C. A person becoming a policyholder of the reorganized insurer after the effective date of the plan becomes a member of the mutual holding company immediately upon issuance of the policy or contract.

D. One hundred percent of the voting stock issued by the reorganized insurer in the reorganization is owned, directly or through one or more stock holding companies, by the mutual holding company. All stock issued by the reorganized insurer in the reorganization is considered duly and validly issued, fully paid and nonassessable.

E. The reorganized insurer is a continuation of the reorganizing insurer. The reorganization may not annul, modify or change any of the insurer's existing suits, rights, contracts or liabilities except as provided in the plan.

8. Assistance in determining approval of plan. For the purpose of determining whether a plan meets the requirements of this section and any other relevant provisions of this Title, the superintendent may employ staff personnel and outside consultants. All reasonable costs related to the review of a plan, including those attributable to the use of staff personnel, must be borne by the insurer or insurers making the filing.

9. Injunctive relief and damages. If the reorganizing insurer complies substantially and in good faith with the requirements of subsection 4, paragraph B with respect to the giving of any required notice to policyholders, the insurer's failure to give notice to a person entitled to notice does not impair the validity of the actions and proceedings taken under this section or entitle that person to any injunctive or other equitable relief with respect to those actions and proceedings. This subsection does not impair any claim for damages that person would otherwise have due to failure to give notice.

10. Exclusion of certain insurers. This section does not apply to an insurer authorized to transact life insurance or annuities or an insurer formed pursuant to chapter 52.

§3489. Requirements applicable to a mutual holding company

1. Definitions. As used in section 3488, this section and section 3490, unless the context otherwise indicates, the following terms have the following meanings.

A. "Mutual holding company" means a mutual holding company formed pursuant to section 3488.

B. "Outside director" means a person who is not an officer, employee or consultant of the mutual holding company, a related stock holding company, the reorganized insurer or other subsidiary of the mutual holding company or a related stock holding company.

C. "Public offering" means an offer that includes an offer to individuals that is made by means of public advertising or general solicitation. "Public offering" does not include:

(1) Issuance of stock to the mutual holding company or any related stock holding company; or

(2) An offer or sale that is exempt from registration by virtue of Title 32, section 10502, subsection 2, paragraph I, L, N, Q or R.

D. "Reorganized insurer" means a mutual insurer reorganized as a stock insurer pursuant to section 3488.

E. "Stock holding company" and "related stock holding company" mean an incorporated entity that holds, directly or indirectly, at least 51% of the voting stock of a reorganized insurer.

F. "Voting stock" means common stock with general voting rights in the election of directors.

2. Mutual holding company formed through reorganization. The following provisions apply to a mutual holding company.

A. The provisions of Title 13-A that are applicable to a mutual insurer apply to a mutual holding company as though it were a mutual insurer.

B. A mutual holding company may not dissolve, liquidate or wind up except through proceedings under this Title for the liquidation or dissolution of the reorganized insurer or as the superintendent may otherwise approve. In the event proceedings are instituted for the complete liquidation of the reorganized insurer:

(1) The mutual holding company automatically becomes a party to the proceedings;

(2) All of the mutual holding company's assets, including its holdings of shares in the reorganized insurer or any stock holding company, are deemed assets of the estate of the reorganized domestic stock insurer to the extent necessary to satisfy claims of persons who have class 1, class 2, class 3 or class 4 claims under section 4379; and

(3) Members of the mutual holding company are deemed to hold class 8 claims with respect to the mutual holding company under section 4379.

C. The name of a mutual holding company must contain the word "mutual" and may not contain the words "insurance," "assurance" or "annuity." The mutual holding company's powers may not include doing insurance business. The articles of incorporation of a mutual holding company must contain provisions stating that:

(1) It is "a mutual holding company organized under the Maine Revised Statutes, Title 24-A, section 3488";

(2) A purpose of the mutual holding company is to hold, directly or through one or more stock holding companies, not less than 51% of the voting stock of a reorganized insurer;

(3) It is not authorized to issue voting stock;

(4) It is not authorized to conduct any business other than that of a holding company, except for the acquisition, ownership, management and disposition of its assets and all reasonably related actions; and

(5) Its members have the rights specified in, and are subject to, sections 3360, 3361, 3362, 3363, 3488, this section, the mutual holding company's articles of incorporation and its bylaws.

D. At least a majority of the directors of the mutual holding company and any related stock holding company and any committee of the board of directors of the mutual holding company and of any related stock holding company must be outside directors.

E. Each time voting stock of the reorganized insurer or any related stock holding company is offered in a public offering for a price payable in cash, each policyholder of the reorganized insurer must receive, without payment, nontransferable subscription rights to purchase that voting stock at the same price and in accordance with procedures approved by the superintendent as fair and equitable.

F. At least 30 days before the issuance of any voting stock or securities convertible into voting stock of the reorganized insurer or any related stock holding company, other than in an underwritten public offering or a bona fide sale to an unrelated 3rd party, the reorganized insurer or related stock holding company shall provide to the superintendent written notice of the proposed price of those securities or the procedure whereby the price will be determined and the terms and conditions of the offering. The superintendent may disapprove the issuance of the stock or securities if the superintendent finds that the price is unfair. The superintendent's failure to make a finding on a transaction subject to this paragraph within 30 days after it has been filed with the superintendent has the effect of an approval unless the superintendent has requested supplemental information or issued a notice of hearing.

G. The stock holding company or the reorganized insurer may not award any stock options or stock grants to officers or directors of the mutual holding company, the stock holding company or the reorganized insurer until 6 months after the completion of either a public offering or private placement of voting stock or securities convertible into voting stock of the reorganized insurer or a related stock holding company to any person other than the mutual holding company or the stock holding company.

H. The aggregate percentage of voting stock of the reorganized insurer or any related stock holding company directly or indirectly owned or controlled by outside directors may not exceed 18%, unless the reorganized insurer or the related stock holding company has provided at least 30 days' prior written notice to the superintendent and the superintendent has not objected to a higher percentage.

I. The aggregate percentage of voting stock of the reorganized insurer or any related stock holding company directly or indirectly owned or

controlled by directors and officers of the mutual holding company, a related stock holding company or the reorganized insurer who are also employed by any of the foregoing may not exceed 18% of the voting stock of the reorganized insurer or any related stock holding company, unless the reorganized insurer or the related stock holding company has provided 30 days' prior written notice to the superintendent and the superintendent has not objected to a higher percentage.

J. A trust established in connection with an employee stock ownership plan or other employee benefit plan established for the benefit of employees of the reorganized insurer, a related stock holding company or the mutual holding company may not directly or indirectly own or control, in the aggregate, more than 10% of the voting stock of the stock holding company or the reorganized insurer, unless the reorganized insurer or the related stock holding company has provided 30 days' prior written notice to the superintendent and the superintendent has not objected to a higher percentage. The holdings of any such employee stock ownership plan or other employee benefit plan that are allocated to directors and officers who are employees must be included in determining compliance with paragraph I.

K. A person may not own or control, directly or indirectly, more than 15% of any class of voting stock of the reorganized insurer or any related stock holding company without the prior approval of the superintendent.

L. All voting stock of the reorganized insurer or any related stock holding company acquired by any person in excess of the maximum amount permitted to be acquired by that person pursuant to this subsection is deemed to be nonvoting stock for so long as it is held by any person in excess of those limitations. In addition to any other enforcement powers of the superintendent under this Title, a violation of the limitations of ownership may be enforced or enjoined, as the case may be, by appropriate proceedings commenced by the reorganized insurer or any related stock holding company, the superintendent, the attorney general, any member of the mutual holding company or any stockholder of the reorganized insurer or of any related stock holding company. The action must be commenced in the Kennebec County Superior Court or the superior court in the jurisdiction of which the reorganized insurer has its home office, and the court may issue any order, injunctive or otherwise, that it finds necessary to cure the violation or to prevent the action.

M. A mutual holding company and a related stock holding company are each deemed to be a holding company of the reorganized insurer within the meaning of section 222, and all provisions of that section apply to transactions occurring between the mutual holding company, the stock holding company and the reorganized insurer. Approval of the plan of reorganization by the superintendent pursuant to section 3488 is considered approval of the acquisition of control by a mutual holding company and any related stock holding company under sections 222 and 3476.

N. For purposes of the limitations on ownership or control of voting stock contained in this subsection, any issued and outstanding securities that represent the right to acquire or that are convertible into voting stock, including warrants, options and rights to purchase voting stock, are deemed to represent the number of shares of voting stock issuable upon conversion or exercise of such securities or rights for the purposes of both the number of shares owned or controlled by a person and the total number of shares of voting stock outstanding.

For purposes of determining ownership or control of voting stock, the indirect ownership of stock in the reorganized insurer by virtue of having an ownership interest in the mutual holding company may not be considered.

3. Merger or consolidation by mutual holding company or stock holding company. With the written approval of the superintendent, a mutual holding company or stock holding company may:

A. Merge or consolidate with or acquire the assets of a mutual holding company organized pursuant to this chapter or pursuant to the mutual holding company laws of another state;

B. Either alone or together with one or more of the reorganized insurers or stock holding companies or subsidiaries of any of them, merge or consolidate with or acquire the assets of a mutual insurer; or

C. Merge or consolidate with any other person.

4. Merger with another mutual holding company. If a mutual holding company merges with a mutual holding company organized under the laws of another state or acquires the membership interests in a foreign mutual insurer, that merger or acquisition must comply with the requirements of Maine law and rules and of any other state's law, rule or regulation that is applicable to the foreign mutual holding company or mutual insurer. In the event of a conflict of state laws, rules or regulations, Maine laws and rules apply. A

foreign mutual insurer that is merged or acquired pursuant to this section may at the same time redomesticate to this State by complying with the applicable requirements of this State and of the foreign mutual insurer's state of domicile.

5. Acquisition of stock or assets of other persons. A mutual holding company may acquire the capital stock or assets of other persons.

6. Membership interest. A membership interest in a mutual holding company does not constitute a security under Title 32, section 10501, subsection 18 or any other law of this State and is not transferable.

7. Election of directors. Directors of the mutual holding company must be elected by plurality vote of all members voting in that election in person or by proxy. If the mutual holding company takes any action, other than election of its directors, that would require a vote of policyholders if the mutual holding company were a mutual insurer, then that action requires a vote of members of the mutual holding company.

§3490. Conversion of mutual holding company

1. Approval of reorganization plan. A mutual holding company may be reorganized in accordance with a plan of reorganization:

A. Approved by the superintendent, if the superintendent finds the plan to be fair and equitable, after a hearing of which notice has been given to the company's members pursuant to section 230; and

B. Approved by vote of not less than 2/3 of the company's members voting on the plan in person, by proxy or by mail at a meeting of members called by the company for that purpose. The mutual holding company shall provide reasonable notice to its members and determine the procedure for the meeting, subject to approval by the superintendent. The plan must specify that only persons who were members both at least one year before the submission of the plan and on a subsequent date before the vote found reasonable by the superintendent are entitled to vote. Each member is entitled to one vote.

2. Membership interests disposition. A plan of reorganization pursuant to subsection 1 must provide for extinguishment of the membership interests in the mutual holding company and may provide for either:

A. The conversion of the mutual holding company into a stock corporation, in which event the consideration, if any, distributed to members of the mutual holding company must be equal to that required under section 3477; or

B. The distribution to eligible members of the mutual holding company of consideration consisting of all assets of the mutual holding company, including all stock of the reorganized insurer or any stock holding company owned by the mutual holding company, or other consideration having equivalent aggregate value. The form of the other consideration may be cash, securities, additional insurance or annuity benefits or policy credits, increased dividends or other consideration. All such consideration must be allocated among eligible members of the mutual holding company in a manner that is fair and equitable to the company's members.

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

Effective April 10, 2000.

CHAPTER 657

H.P. 1788 - L.D. 2508

An Act Relating to Electric Industry Restructuring

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

Whereas, retail choice in the State's electricity market is scheduled by law to occur on March 1, 2000; and

Whereas, changes to various laws are necessary to bring the laws into conformity with the restructuring of the electric industry; and

Whereas, these changes must occur contemporaneously with the start of retail choice; 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. 5 MRSA §1766, 2nd ¶, as enacted by PL 1983, c. 803, is amended to read:

The private party undertaking the installation, erection, ownership, development or operation of such