

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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
2001

Sec. 1. 32 MRSA §85, sub-§6, as enacted by PL 1999, c. 764, §1, is amended to read:

6. Ambulance operator course. By January 1, ~~2003~~ 2004, a person whose job description includes operating an ambulance in an emergency mode or transporting a patient must possess certification of successful completion of a basic ambulance vehicle operator course, or a course that has been approved by the board as an equivalent, in order to operate an ambulance in an emergency mode or to transport a patient. This requirement applies to all paid and volunteer ambulance operators and transporters. This requirement is in addition to vehicle operator requirements of Title 29-A or other law. A person whose job description includes operating an ambulance in an emergency mode or transporting a patient who successfully completes a basic ambulance vehicle operator course or a course that has been approved by the board as an equivalent may apply to the board for reimbursement for the cost of the course.

Sec. 2. PL 1999, c. 764, §2 is amended to read:

Sec. 2. Pilot project. The Department of Public Safety, Maine Emergency Medical Services shall conduct a pilot project to provide training for ambulance operators required under this Act and explore alternative funding sources for that training. Maine Emergency Medical Services shall hire a consultant through a competitive bidding process to set up, conduct and report on the results of the pilot project. Maine Emergency Medical Services shall report on the results of the pilot project to the joint standing committee of the Legislature having jurisdiction over public safety matters by January 1, ~~2004~~ 2002. The report must contain a plan for implementation of this Act and any necessary implementing legislation. Following review of the report, the committee may introduce a bill regarding ambulance operator training to the ~~First~~ Second Regular Session of the 120th Legislature.

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

Effective April 11, 2001.

CHAPTER 46

H.P. 244 - L.D. 280

An Act Concerning Recordkeeping in Relation to Employment of Minors

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

Sec. 1. 26 MRSA §781, sub-§1-A is enacted to read:

1-A. De minimis violations of section 774. Notwithstanding subsection 1, absent a finding that reasonably suggests a pattern of knowing and intentional conduct, the bureau may disregard the following violations of section 774:

A. A violation of the limits on the time that work may begin or end under section 774, subsection 1, paragraph F or G or section 744, subsection 2, paragraph F, as long as the violation is no greater than 10 minutes per day;

B. A violation of the number of hours a minor may work in any day under section 774, subsection 1, paragraph B, C or D or section 774, subsection 2, paragraph C or D, as long as the violation is not greater than 10 minutes per day; and

C. A violation of the number of hours worked in a week under section 774, subsection 1, paragraph A or B or section 774, subsection 2, paragraph A or B, as long as the violation is not greater than 50 minutes in a week.

See title page for effective date.

CHAPTER 47

H.P. 341 - L.D. 431

An Act to Amend the Credit for Reinsurance Provisions of the Maine Insurance Code

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

Sec. 1. 24-A MRSA §601, sub-§26 is enacted to read:

26. Accreditation as reinsurer. Application fee for accreditation as reinsurer \$500.

Sec. 2. 24-A MRSA §731-B, sub-§1, ¶B-1 is enacted to read:

B-1. Is accredited as a reinsurer in this State, in accordance with the following standards.

(1) To apply for accreditation, a reinsurer shall file with the superintendent a written application on a form prescribed by the superintendent, accompanied by the fee prescribed in section 601, subsection 26 and an agreement to submit to the jurisdiction of the courts of this State and to the authority

of the superintendent to examine the reinsurer's books and records.

(2) An accredited reinsurer must be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien reinsurer, that reinsurer must be entered through and licensed to transact insurance or reinsurance in at least one state.

(3) An accredited reinsurer shall file with the superintendent, as part of its application and annually thereafter, a copy of its annual statement filed with the insurance department of its state of domicile or United States port of entry and a copy of its most recent audited financial statement.

(4) A reinsurer applying for accreditation that maintains a surplus as regards to policyholders in an amount not less than \$20,000,000 is deemed to be accredited if the reinsurer's application is not denied by the superintendent within 90 days after submission of the application. The superintendent has the discretion to grant accreditation to an applicant with a surplus less than \$20,000,000 subject to such terms and conditions as the superintendent determines to be necessary and appropriate for the protection of domestic ceding insurers and their policyholders.

The superintendent may deny, suspend, revoke or place restrictions upon a reinsurer's accreditation, after notice and opportunity for hearing, for failure to comply with the requirements of this paragraph or for any grounds that would warrant similar action against the certificate of authority of an authorized insurer.

Sec. 3. 24-A MRSA §731-B, sub-§1, ¶C, as amended by PL 1999, c. 113, §19, 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 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 trustee account representing the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, include a trustee surplus of at least \$20,000,000.

~~(3) A group of incorporated insurers under common administration may in the superintendent's discretion secure its obligations with a pooled trust fund if the group has an aggregate policyholders' surplus of \$10,000,000,000 and 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 reinsurance ceded by United States ceding insurers. In addition, the group shall maintain a joint trustee surplus of at least \$100,000,000 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.~~

(3-A) A group including incorporated and individual unincorporated underwriters may secure its obligations with funds held in trust in compliance with the following standards.

(a) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, the trust must consist of a trustee account in an amount at least equal to the group's several liabilities attributable to reinsurance ceded by United States domiciled ceding insurers to any member of the group.

(b) Notwithstanding the other provisions of this section, for reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995 and not amended or renewed after that date, the trust must consist of a trustee account in an amount not less than the group's sev-

eral insurance and reinsurance liabilities attributable to business written in the United States.

(c) In addition, the group shall maintain a trustee surplus of at least \$100,000,000 held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

An incorporated member of the group may not be engaged in any business other than underwriting as a member of the group and is subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. 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 annual 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 group including incorporated and individual unincorporated underwriters may secure its obligations with a pooled trust fund if the trust consists of a trustee account in an amount at least equal to the group's liabilities attributable to reinsurance ceded by United States ceding insurers and, in addition, includes a trustee surplus of at least \$100,000,000 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 must be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. 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 annual 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 the benefit of the assuming insurer's United States 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. 4. 24-A MRSA §731-B, sub-§1, ¶D, as amended by PL 1999, c. 113, §20, is further amended to read:

D. Does not meet the requirements of paragraph A, B, ~~B-1~~ or C, but only with respect to risks located in a jurisdiction where that reinsurance is required by law. The superintendent for good cause after notice and opportunity for hearing may disallow or reduce the credit otherwise permitted under this paragraph.

Sec. 5. 24-A MRSA §731-B, sub-§2-A is enacted to read:

2-A. Credit for reinsurance may not be allowed on the basis of a trust maintained pursuant to subsection 1, paragraph C unless the assuming insurer agrees in the trust agreements to the following conditions.

A. Notwithstanding any other provisions in the trust instrument, if the trust fund contains an amount less than the amount required by this section, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

B. The assets must be distributed by and claims must be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

C. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part of the assets of the trust fund are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part of the assets of the trust fund must be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

D. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection.

Sec. 6. 24-A MRSA §731-B, sub-§3, as amended by PL 1993, c. 313, §18, is further amended to read:

3. A An asset or a reduction from liability for the reinsurance ceded to an assuming insurer not meeting the requirements of subsection 1 is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must equal the value of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the contract, if such security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:

A. Cash;

B. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets; or

C. Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution no later than December 31st of the year for which filing is being made and in the possession of the ceding company on or before the filing date of its annual statement.

(1) A letter of credit from an issuer determined to be acceptable as of the date of issuance or the date of confirmation of the letter, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continues to be acceptable as security until its expiration, extension, renewal, modification or amendment, whichever first occurs. The ceding insurer shall replace a nonqualifying letter of credit at its earliest opportunity.

(2) The letter of credit must indicate that it is not subject to any condition or qualification outside the letter of credit, and that the beneficiary need only draw a sight draft under the letter and present the letter to obtain funds and that no other document need be presented.

Sec. 7. 24-A MRSA §731-B, sub-§5, as enacted by PL 1989, c. 846, Pt. E, §2 and affected by §4, is amended to read:

5. Credit is allowed as an asset or deduction from liability to any ceding insurer only for reinsurance ceded to an assuming insurer qualified under this section, except that no credit is allowed, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance is payable under a contract or contracts reinsured by the assuming insurer on the basis of the liability of the ceding insurer under the contracts reinsured reported claims allowed by the court, without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary receiver unless the contract or other written agreement specifically provides another payee in the event of the insolvency of the ceding insurer or unless the assuming insurer, with the consent of the direct insured or insureds, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the reinsured policies and in substitution for the obligations of the ceding insurer to those payees.

The reinsurance agreement may condition the payments upon written notice by the ceding insurer's domiciliary receiver to the assuming insurer of the pendency of a claim on the contract reinsured within a reasonable time after the claim is filed in the proceeding where the claim is to be adjudicated. During the pendency of such a claim, any assuming insurer may investigate the claim and interpose, at the assuming insurer's own expense, any defenses in the proceeding that the assuming insurer determines available to the ceding insurer or to the ceding insurer's receiver. The expenses may be filed as a claim against the insolvent ceding insurer to the extent of its proportionate share of the benefit that may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. When 2 or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense must be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

Sec. 8. 24-A MRSA §731-B, sub-§7, as enacted by PL 1989, c. 846, Pt. E, §2 and affected by §4, is amended to read:

7. The superintendent may adopt rules, subject to Title 5, chapter 375, to implement this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 48

H.P. 152 - L.D. 163

An Act to Extend Workers' Compensation Twenty-four-hour Pilot Projects

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

Sec. 1. 39-A MRSA §403, sub-§2, ¶D, as amended by PL 1995, c. 36, §1 and c. 277, §1, is repealed and the following enacted in its place:

D. Unless continued or modified by law, this subsection is repealed January 1, 2005.

Sec. 2. Retroactivity. This Act applies retroactively to January 1, 2001.

See title page for effective date.

CHAPTER 49

H.P. 155 - L.D. 166

An Act Concerning Commercial Shooting Areas

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

Whereas, banding of game birds used in commercial shooting areas and used by game bird suppliers no longer serves an important purpose in managing the State's natural resources; and

Whereas, Hungarian partridge are highly sought after as a game species by the patrons of commercial shooting areas and appear to pose no threat of establishing a viable wild population outside of commercial shooting areas; and

Whereas, the current commercial shooting fee structure imposes an undesirable burden on the patrons of commercial shooting areas; 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. 12 MRSA §7104, as amended by PL 1997, c. 432, §19, is repealed.

Sec. 2. 12 MRSA §7104-A, first ¶, as enacted by PL 1993, c. 216, §1, is amended to read:

A person may not charge any fee for access to land if the fee is contingent upon the taking of game on that land or directly related to the taking of game on the land unless the land is an authorized commercial shooting area licensed under section ~~7104~~ 7105-A. This section does not apply to the following fees:

Sec. 3. 12 MRSA §7105, as amended by PL 1999, c. 790, Pt. A, §15, is repealed.

Sec. 4. 12 MRSA §7105-A is enacted to read:

§7105-A. License to operate a commercial shooting area

1. Issuance. The commissioner may issue licenses authorizing the establishment and operation of commercial shooting areas to qualified applicants. A commercial shooting area license authorizes the owner of a commercial shooting area to charge others for the