LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 13, 2003

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2003

This subsection may not be construed to alter the terms of a life insurance policy or supersede any law governing the regulation of life insurance policies.

See title page for effective date.

CHAPTER 110

H.P. 259 - L.D. 316

An Act To Prohibit Absolute Discretion Clauses in Health Carrier Contracts

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

Sec. 1. 24-A MRSA §4303, sub-§9 is enacted to read:

9. Absolute discretion clauses. The use and enforcement of an absolute discretion clause is governed by this subsection.

A. A policy, contract, certificate or agreement offered, delivered, issued or renewed for delivery in this State by a carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services may not contain a provision purporting to reserve sole or absolute discretion to the carrier to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State.

B. A carrier may not enforce a provision in a policy, contract, certificate or agreement that was offered, delivered or issued for delivery in this State and has been continued or renewed by a group policy holder or individual enrollee in this State that purports to reserve sole or absolute discretion to the carrier to interpret the terms of the contract or to provide standards of interpretation or review that are inconsistent with the laws of this State.

See title page for effective date.

CHAPTER 111

S.P. 213 - L.D. 604

An Act To Allow the Maine Turnpike Authority To Benefit from Advantageous Interest Rates

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

Sec. 1. 23 MRSA §1983 is enacted to read:

§1983. Interest rate agreements

The authority is authorized to enter from time to time into agreements with another party, on terms and conditions that the authority determines are necessary or convenient, in which the authority agrees to make a payment to, or to receive a payment from, the other party based on a comparison at a future date between an interest rate specified on the date of the agreement and a rate derived on or about that future date from an interest rate index. The authority is authorized to enter into any credit enhancement or liquidity agreement on terms and conditions that the authority determines are necessary or convenient for carrying out this section.

See title page for effective date.

CHAPTER 112

S.P. 465 - L.D. 1409

An Act To Update the Process for the Allocation of the State Ceiling on Tax-exempt Bonds

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

Whereas, updates to the provisions concerning the allocation of the state ceiling for tax-exempt bonds are necessary to revive the secondary market for educational loans for Maine students; 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. 10 MRSA §363, sub-§1-A, as amended by PL 1999, c. 728, §1, is further amended to read:

1-A. Procedure. For each calendar year, the Legislature may establish a procedure for allocation of the entire amount of the state ceiling by allocating an amount of the state ceiling to the specific issuers designated in this section for further allocation by each specific issuer to itself or to other issuers for specific bond issues requiring an allocation of the state ceiling or for carryforward. This procedure supersedes the federal formula to the full extent that the United States Code, Title 26, authorizes the Legislature to vary the

federal formula. Allocations may be reviewed by the Legislature periodically and unused allocations may be reallocated to other issuers; however, notwithstanding the existence of legislation allocating or reallocating all or any portion of the state ceiling, at any time during the period from September 1st to and including December 31st of any calendar year, and at any other time that the Legislature is not in session, a group consisting of a representative of each of the issuers specifically identified in subsections 4, 6 ~~and~~, 7, 8 and 8-A; ~~a representative of a corporation created pursuant to the former Title 20, section 2237 and Title 20-A, section 11407;~~ and a representative of the Governor designated each year by the Governor may, by written agreement executed by no fewer than 4 of the ~~5~~ 6 voting representatives, allocate amounts not previously allocated and reallocate unused allocations from one of the specific issuers designated in this section to another specific issuer for further allocation or carryforward, with respect to the state ceiling for that calendar year only. In no event may any issuer have more than one vote. If an issuer is allocated a portion of the state ceiling in more than one category, the written agreement must be executed by no fewer than 4 of the 6 voting representatives. The issuer specifically identified in subsection 5 and a representative of the Department of Economic and Community Development designated each year by the Commissioner of Economic and Community Development shall participate as nonvoting members of the group of representatives described in this subsection with respect to agreements or recommendations for allocation or reallocation of the state ceiling. Except for records containing specific and identifiable personal information acquired from applicants for or recipients of financial assistance, the records of the group of representatives described in this subsection are public records and the meetings of the group of representatives described in this subsection are public proceedings within the meaning of Title 1, chapter 13, subchapter ~~I~~ 1.

Sec. 2. 10 MRSA §363, sub-§8, as amended by PL 1999, c. 728, §6 and affected by §20 and amended by PL 2001, c. 44, §11 and affected by §14, is further amended to read:

8. Allocations to the Maine Educational Loan Authority. That portion of the state ceiling allocated to the ~~categories of bonds providing funds for the purposes of a corporation created pursuant to the former Title 20, section 2237, and Title 20-A, section 11407, or of~~ issuance of bonds by the Maine Educational Loan Authority pursuant to Title 20-A, chapter 417-A must be allocated to ~~that corporation or to~~ the Maine Educational Loan Authority~~, or both, and each may further allocate the portion of the state ceiling allocated to it to bonds requiring an allocation to qualify as tax-exempt bonds~~. ~~Any further allocation or reallocation of any portion of the state ceiling from the Maine Educational Loan Authority or a corporation created pursuant to former Title 20, section 2237 and Title 20-A, section 11407 to each other or to another specific issuer designated in this section must be done in accordance with the requirements in subsection 1-A.~~

A. Prior to issuing loans funded through an allocation of the state ceiling for the issuance of education loans, an issuer or lender must provide to the appropriate agency within the Department of Professional and Financial Regulation examples of the disclosures to be made to loan recipients or obligors. The information must be provided to the Bureau of Financial Institutions if the issuer or lender is a financial institution or credit union established pursuant to state or federal law or to the Office of Consumer Credit Regulation for all other issuers or lenders. This information must be provided to the appropriate agency within the Department of Professional and Financial Regulation upon request, or in the course of an examination of the issuer or lender by the agency, and must include a description of any interest rate or other discounts offered that clearly identifies all of the terms and conditions of obtaining any discount, a projection of the approximate number or percentage of loan obligors who are likely to benefit from the discounts and any other disclosures pursuant to guidelines established by the Bureau of Financial Institutions and the Office of Consumer Credit Regulation for the issuance of education loans that would benefit from an allocation of the state ceiling. The Bureau of Financial Institutions and the Office of Consumer Credit Regulation shall jointly adopt, to the extent allowed by law, rules to carry out the provisions of this paragraph by establishing uniform disclosure requirements and sanctions for noncompliance. Rules adopted pursuant to this paragraph are routine technical rules, as defined in Title 5, chapter 375, subchapter ~~II-A~~ 2-A. All information provided to the appropriate agencies within the Department of Professional and Financial Regulation must include the source of the information and the basis for any projections.

B-1. All education loans made under the federal Higher Education Act of 1965, 20 United States Code, Chapter 28 that are purchased or originated with proceeds of tax-exempt bonds using a portion of the state ceiling on private activity bonds must be guaranteed by the state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter ~~I~~ 1, provided that this requirement does not apply to serial loans of a borrower that are guaranteed by a different guarantee agency and acquired or financed with tax-exempt bond proceeds prior to the effective date

of this paragraph. The state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter ~~1~~ 1 shall use its best efforts to provide competitive rates for the guarantee function.

Sec. 3. 10 MRSA §363, sub-§8-A is enacted to read:

8-A. Allocations to issuer of bonds for purchase of education loans. That portion of the state ceiling allocated to the categories of bonds providing funds for the purposes of an entity designated pursuant to Title 20-A, section 11407, must be allocated to the entity designated pursuant to Title 20-A, section 11407.

A. Prior to issuing loans funded through an allocation of the state ceiling for the issuance of education loans, an issuer or lender must provide to the appropriate agency within the Department of Professional and Financial Regulation examples of the disclosures to be made to loan recipients or obligors. The information must be provided to the Bureau of Financial Institutions, Department of Professional and Financial Regulation if the issuer or lender is a financial institution or credit union established pursuant to state or federal law or to the Office of Consumer Credit Regulation, Department of Professional and Financial Regulation for all other issuers or lenders. This information must be provided to the appropriate agency within the Department of Professional and Financial Regulation upon request, or in the course of an examination of the issuer or lender by the agency, and must include a description of any interest rate or other discounts offered that clearly identifies all of the terms and conditions of obtaining any discount, a projection of the approximate number or percentage of loan obligors who are likely to benefit from the discounts and any other disclosures pursuant to guidelines established by the Bureau of Financial Institutions and the Office of Consumer Credit Regulation for the issuance of education loans that would benefit from an allocation of the state ceiling. The Bureau of Financial Institutions and the Office of Consumer Credit Regulation shall jointly adopt, to the extent allowed by law, rules to carry out the provisions of this paragraph by establishing uniform disclosure requirements and sanctions for noncompliance. Rules adopted pursuant to this paragraph are routine technical rules, as defined in Title 5, chapter 375, subchapter 2-A. All information provided to the appropriate agencies within the Department of Professional and Financial Regulation must include the source of the information and the basis for any projections.

B. All education loans made under the federal Higher Education Act of 1965, 20 United States Code, Chapter 28 that are purchased with proceeds of tax-exempt bonds using a portion of the state ceiling on private activity bonds must be guaranteed by the state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter 1; however, this requirement does not apply to serial loans of a borrower that are guaranteed by a different guarantee agency and acquired or financed with tax-exempt bond proceeds prior to the effective date of this paragraph. The state agency designated as administrator of federal guaranteed student loan programs pursuant to Title 20-A, chapter 417, subchapter 1 shall use its best efforts to provide competitive rates for the guarantee function.

Sec. 4. 20-A MRSA §11407, as amended by PL 1999, c. 728, §11 and affected by §§20 and 21, is further amended to read:

§11407. Authorization for Governor to request organizations to acquire loan notes

To the extent and for the purposes contemplated by the federal Internal Revenue Code of 1954, Section 103(e), as amended, and successor provisions thereto, including without limitation the federal Internal Revenue Code of 1986, Section 150(d), as amended, the Governor may on behalf of the State request the organization of one or more nonprofit corporations to operate exclusively for the purpose of acquiring student loan notes incurred under the federal Higher Education Act of 1965, 20 United States Code, Chapter 28, Title IV, Part B, as amended. ~~Notwithstanding the requirements of this section, if a nonprofit corporation formed under this section does not comply with the requirements of this section, the~~ The Governor may request on behalf of the State that one or more state agencies acquire student loan notes incurred under the federal Higher Education Act of 1965, 20 United States Code, Chapter 28, Title IV, Part B, as amended.

1. Origination of loans. ~~A nonprofit corporation formed under this section~~ Any entity acquiring student loan notes may not originate federally guaranteed loans ~~or otherwise extend credit to any person~~. The ~~corporation~~ entity may not discriminate against any financial institution or credit union authorized to do business in this State or any other entity with respect to the acquisition of loans. The ~~corporation~~ entity shall adopt policies regarding conflict of interest.

2. Loan guarantee. All education loan notes incurred under the federal Higher Education Act of 1965, 20 United States Code, Chapter 28 ~~by a nonprofit corporation formed under this section~~ that

are acquired with proceeds of tax-exempt bonds using a portion of the state ceiling on private activity bonds must be guaranteed by the state agency designated as administrator of federal guaranteed student loan programs pursuant to chapter 417, subchapter ~~I~~ 1, provided that this requirement does not apply to serial loans of a borrower that are guaranteed by a different guarantee agency and acquired or financed with tax-exempt bond proceeds prior to the effective date of this paragraph. The state agency designated as administrator of federal guaranteed student loan programs pursuant to chapter 417, subchapter ~~I~~ 1 shall use its best efforts to provide competitive rates for the guarantee function.

3. Board of directors. The board of directors of a nonprofit corporation formed under this section consists of 7 members. Four members representing the public with full voting rights must be appointed by the Governor, subject to review and approval by the joint standing committee of the Legislature having jurisdiction over business and economic development matters and confirmation by the Legislature. ~~The initial terms of the members appointed by the Governor pursuant to this subsection begin on the date of the corporation's year 2000 annual meeting or on December 31, 2000, whichever date occurs first.~~ The terms of the initial members must be staggered: 2 members must be appointed to 2-year terms and 2 members must be appointed to 3-year terms. On the expiration of a term of any member, a successor must be appointed to a 3-year term. A member serves until a successor is appointed and qualified. A member is eligible for reappointment. If a member is appointed to fill a vacancy in an unexpired term, that member may serve only for the remainder of that term until a successor is appointed. An officer, director or employee of a nonprofit corporation formed under this section may not at the same time serve as an officer, director or employee of the Maine Educational Loan Authority, of the state agency designated as administrator of federal guaranteed student loan programs pursuant to chapter 417, subchapter ~~I~~ 1 or of any entity that has a contract to provide a significant level of administrative services to a nonprofit corporation formed under this section, to the Maine Educational Loan Authority or to the state agency designated as administrator of federal guaranteed student loan programs pursuant to chapter 417, subchapter ~~I~~ 1.

4. Public meetings and records. Except for records containing specific and identifiable personal information acquired from applicants for or recipients of financial assistance, the books and records of a nonprofit corporation formed under this section are public records and the meetings of such a corporation are public proceedings within the meaning of Title 1, chapter 13, subchapter ~~I~~ 1.

5. Use of competitive bidding. ~~A nonprofit corporation formed~~ An entity designated under this section may enter into contracts for loan administration, loan servicing and other substantial operating contracts related to loan purchase activities through an open competitive bidding process in accordance with this subsection. The ~~corporation~~ entity shall adopt rules requiring that loan administration or servicing contracts may not be entered into without prior public notice and opportunity for interested persons to make proposals, and the ~~corporation~~ entity may not adopt the rules until after providing public notice and opportunity for public comment on the proposed rules. In adopting those rules, the ~~corporation~~ entity shall consider to the extent possible the rules and procedures with respect to the competitive bidding process set forth in Title 5, chapter 155, subchapter ~~I-A~~ 1-A. Any loan administration or servicing contract must be approved by the board after review of the contract and an accompanying fairness opinion prepared by an independent 3rd party.

6. Annual report. ~~A nonprofit corporation formed~~ An entity designated under this section shall report annually on its activities during the previous fiscal year to the joint standing committees of the Legislature having jurisdiction over business and economic development matters, appropriations matters and education matters. The report must include a listing of the current directors and officers ~~of the corporation~~; a summary of the ~~corporation's~~ purchases of loans in the secondary market during the previous fiscal year; a listing of the institutions from which loans were purchased during the previous fiscal year; ~~a summary of the corporation's direct student loans;~~ and a complete financial statement of the ~~corporation's~~ entity's operations related to loan purchases during the previous fiscal year, including a breakdown of income and costs, the administrative and operating costs ~~of the corporation~~, the assets and liabilities ~~of the corporation~~, the total excess revenues over expenditures for the previous fiscal year and the total accumulation of these revenues, the total income derived from investments during the previous fiscal year, the disposition and use of excess revenues, the proceeds from investments and the geographic distribution and distribution between institutions of higher learning of its student loans among residents of this State. The report must demonstrate that all revenues, including reserves, that are acquired with proceeds of tax-exempt bonds using a portion of the state ceiling on private activity bonds are being used in a manner consistent with the public purpose for which the bonds are issued. The report must include similar information on all affiliated entities and must be provided annually in writing to the joint standing committees of the Legislature having jurisdiction over business and economic development matters, appropriations matters and education matters by December 1st. ~~A nonprofit~~

~~corporation formed~~ An entity designated under this section shall also file copies of the ~~corporation's~~ entity's Internal Revenue Code forms and returns with the Attorney General and the joint standing committee of the Legislature having jurisdiction over business and economic development matters.

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

Effective May 6, 2003.

CHAPTER 113

H.P. 246 - L.D. 303

An Act To Increase Protection for Endangered and Threatened Species

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

Sec. 1. 12 MRSA §7756, first ¶, as enacted by PL 1999, c. 316, §1, is amended to read:

For the purposes of this section, "to take, take and taking" means the ~~intentional or negligent~~ act or omission that results in the death of any endangered or threatened species.

Sec. 2. 12 MRSA §7756, sub-§1, as amended by PL 1999, c. 316, §1, is repealed and the following enacted in its place:

1. Prohibited acts regarding endangered or threatened species; negligence. Except as provided in subsection 2, a person may not negligently:

A. Import into the State or export out of the State any endangered or threatened species. Notwithstanding section 7901-A, a person who violates this paragraph commits a Class E crime;

B. Hunt, take, trap or possess any endangered or threatened species within the State. Notwithstanding section 7901-A, a person who violates this paragraph commits a Class E crime;

C. Possess, process, sell, offer for sale, deliver, carry, transport or ship, by any means whatsoever, any endangered or threatened species or any part of an endangered or threatened species. Notwithstanding section 7901-A, a person who violates this paragraph commits a Class E crime; or

D. Except as allowed under subsection 2, paragraph A:

(1) Feed, set bait for or harass any endangered or threatened species. Notwithstanding section 7901-A, a law enforcement officer, as defined in Title 25, section 2801-A, subsection 5, must issue a warning to a person who violates this subparagraph for the first time; or

(2) Feed, set bait for or harass any endangered or threatened species. Notwithstanding section 7901-A, a person who violates this subparagraph after having previously been given a warning under subsection 1 commits a Class E crime.

Sec. 3. 12 MRSA §7756, sub-§1-A is enacted to read:

1-A. Prohibited acts regarding endangered or threatened species; intentional. Except as provided in subsection 2, a person may not intentionally:

A. Import into the State or export out of the State any endangered or threatened species. Notwithstanding section 7901-A, a person who violates this paragraph commits a Class D crime;

B. Hunt, take, trap or possess any endangered or threatened species within the State. Notwithstanding section 7901-A, a person who violates this paragraph commits a Class D crime;

C. Possess, process, sell, offer for sale, deliver, carry, transport or ship, by any means whatsoever, any endangered or threatened species. Notwithstanding section 7901-A, a person who violates this paragraph commits a Class D crime; or

D. Except as allowed under subsection 2, paragraph A:

(1) Feed, set bait for or harass any endangered or threatened species. Notwithstanding section 7901-A, a law enforcement officer, as defined in Title 25, section 2801-A, subsection 5, must issue a warning to a person who violates this subparagraph for the first time; or

(2) Feed, set bait for or harass any endangered or threatened species. Notwithstanding section 7901-A, a person who violates this subparagraph after having previously been given a warning under subsection 1 commits a Class D crime.

Sec. 4. 12 MRSA §7756, sub-§2, as amended by PL 1999, c. 316, §1, is amended by amending the first paragraph to read: