

MAINE STATE LEGISLATURE

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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
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THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
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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

specific advanced technology product specifications identified by the customer or end user of the product; or

B. The mercury-added product is reasonable and appropriate for a specific use. In this situation, the petitioner must demonstrate that:

(1) A system exists for the proper collection, transportation and processing of the product at the end of its life; and

(2) One of the following applies:

(a) Use of the product provides a net benefit to the environment, public health or public safety when compared to available nonmercury alternatives; or

(b) Technically feasible nonmercury alternatives are not available at comparable cost.

Prior to approving an exemption, the commissioner may consult with neighboring states, by means of the interstate clearinghouse under section 1671 or otherwise, to promote consistency in the way in which mercury-added products are regulated. The commissioner may request individuals receiving an exemption to maintain records and provide reasonable reports to the department that characterize mercury use. Exemptions may be granted for a term not to exceed 5 years and may be renewed upon written application if the commissioner finds that the mercury-added product continues to meet the criteria of this subsection and the manufacturer or other persons comply with the conditions of its original approval. The board shall adopt rules for processing exemption applications that provide for public participation, taking into account the role of the interstate clearinghouse. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 5. Mercury-added thermostats. By January 15, 2004, the Department of Environmental Protection shall submit to the Joint Standing Committee on Natural Resources a plan to significantly improve the collection of mercury-added thermostats at the end of their life. The plan must include recommendations regarding responsibility for and participation in the collection, transportation and processing of mercury-added thermostats. The Joint Standing Committee on Natural Resources may report out legislation relating to the collection of mercury-added thermostats during the Second Regular Session of the 121st Legislature.

See title page for effective date.

CHAPTER 222

H.P. 1102 - L.D. 1509

An Act To Allow the Early Submission of an Application To Become Licensed as a Motor Vehicle Inspector

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

Sec. 1. 29-A MRSA §1761, sub-§1-A is enacted to read:

1-A. Application and examination. A person may submit an application with the required fee under subsection 3 for an inspection mechanic certificate to the Department of Public Safety, Bureau of State Police and complete the examination up to 6 months prior to the person's 18th birthday. The Bureau of State Police may process the application and test the applicant up to 6 months prior to the applicant's 18th birthday but may not issue the certificate until the applicant is 18 years of age.

See title page for effective date.

CHAPTER 223

H.P. 362 - L.D. 470

An Act To Ensure Fairness Regarding Use of Consumer Credit Reports in Insurance Underwriting

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

Sec. 1. 24-A MRSA §2169-B is enacted to read:

§2169-B. Use of consumer reports in insurance underwriting

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

A. "Adverse action" means a denial or cancellation of, an increase in any charge for or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance, existing or applied for, in connection with the underwriting of personal insurance.

B. "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

C. "Consumer" means an individual insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for a personal insurance policy.

D. "Consumer report" has the same meaning as in Title 10, section 1312, subsection 3.

E. "Consumer reporting agency" has the same meaning as in Title 10, section 1312, subsection 4.

F. "Credit information" means any credit-related information derived from a consumer report, found on a consumer report itself or provided on an application for personal insurance. "Credit information" does not include information that is not credit-related regardless of whether it is contained in a credit report or application or used to calculate an insurance score.

G. "Insurance score" means a number or rating that is derived from an algorithm, computer application, model or other process that is based in whole or in part on credit information for the purposes of predicting the future loss exposure of an individual applicant or insured.

H. "Personal insurance" means private passenger automobile, homeowners, motorcycle, mobile home owners and noncommercial dwelling fire insurance policies and boat, personal watercraft, snowmobile and recreational vehicle policies that are individually underwritten for personal, family or household use.

2. Use of consumer reports. Notwithstanding this subsection, an insurer may use a consumer report as permitted under the Fair Credit Reporting Act pursuant to Title 10, chapter 210 and 15 United States Code, Chapter 41. An insurer may use information obtained from a consumer reporting agency to calculate an insurance score for underwriting and rating purposes, except that an insurer may not:

A. Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status or nationality of a consumer as a factor;

B. Deny, cancel or refuse to renew a policy of personal insurance solely on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by paragraph A;

C. Base an insured's renewal rates for personal insurance solely upon credit information, without

consideration of any other applicable factor independent of credit information;

D. Take an adverse action against a consumer solely because that consumer does not have a credit card account, without consideration of any other applicable factor independent of credit information;

E. Consider an absence of credit information, the number of inquiries or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer has demonstrated to the superintendent that an absence of credit information, the number of inquiries or an inability to calculate an insurance score is a relevant factor to the risk underwritten or rated by the insurer and the insurer applies this factor in a manner approved by the superintendent; or

F. Take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days before the date the policy is first written or renewal is issued.

3. Notice of use of credit information. If credit information is used by an insurer, an insurer shall disclose, either on the insurance application or at the time the insurance application is taken, that credit information may be obtained by the insurer in connection with the application. The disclosure must be written or provided to an applicant in the same medium as the application for insurance. The insurer is not required to provide the disclosure statement required under this subsection to any insured on a renewal policy if such consumer has previously been provided a disclosure statement. An insurer may demonstrate compliance with this subsection by using the following example disclosure statement: "In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a 3rd party in connection with the development of your insurance score."

4. Notice of adverse action. If an insurer makes an adverse action based on credit information, the insurer shall provide the consumer with notice as required by this subsection. The insurer shall provide:

A. Notice to the consumer that an adverse action has been taken in accordance with the requirements of the Fair Credit Reporting Act pursuant to Title 10, chapter 210 and 15 United States Code, Chapter 41; and

B. Notice to the consumer explaining the reason for the adverse action. The reason or reasons

must be provided in sufficiently clear and specific language so that an individual can identify the basis for the insurer's decision to take an adverse action. The notice must include a description of up to 4 factors that were the primary influences of the adverse action. The use of a generalized term such as "poor credit history," "poor credit rating" or "poor insurance score" does not meet the explanation requirements of this paragraph. Standardized credit explanations provided by consumer reporting agencies or other 3rd-party vendors are deemed to comply with this paragraph.

5. Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in Title 10, section 1317 or 15 United States Code, Section 1681i(a)(5) that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall reunderwrite and rerate the consumer within 30 days of receiving the notice. After reunderwriting or rerating the insured, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

6. Filing of insurance scoring models. An insurer that uses insurance scores to underwrite and rate risks shall file the scoring model or other scoring processes used by the insurer with the superintendent. A 3rd party may file scoring models on behalf of insurers. A filing that includes insurance scoring must include loss experience justifying the use of credit information if required by the superintendent. The insurance scoring model contained in a filing required under this subsection is confidential and not a public record within the meaning of Title 1, section 402, subsection 3.

7. Indemnification. An insurer shall indemnify, defend and hold agents harmless from and against all liability, fees and costs arising out of or relating to the actions, errors or omissions of a producer who obtains or uses credit information or insurance scores for an insurer, provided the producer, in the exercise of reasonable care, follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. This subsection may not be construed to provide a consumer or other insured with a cause of action that does not otherwise exist in the absence of this subsection. This subsection may not be construed to indemnify a producer for the producer's omission when a producer elects not to obtain a credit-related insurance score in connection

with an application for personal insurance coverage from an insurer that the producer represents if that insurer uses credit information as permitted under this section to underwrite that coverage.

8. Applicability. This section applies only to personal insurance. This section does not apply to commercial insurance.

See title page for effective date.

CHAPTER 224

H.P. 459 - L.D. 629

An Act To Increase the Collection of Child Support

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

Sec. 1. 19-A MRSA §2154, sub-§4-A is enacted to read:

4-A. Independent contractors. The following entities shall report to the department the hiring of an independent contractor to perform work for the State under a contract or subcontract in the same manner, except for reporting the date of birth, as the hiring of an employee is reported under subsection 4:

A. The State, when acting in the capacity of a contracting agency;

B. A contractor who contracts with the State; and

C. A subcontractor of a contractor under paragraph B.

The contractor's or subcontractor's taxpayer identification number may be reported in the place of the contractor's or subcontractor's social security number.

See title page for effective date.

CHAPTER 225

H.P. 823 - L.D. 1120

An Act To Amend the Laws Governing Noncompete Clauses in Broadcast Industry Contracts

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

Sec. 1. 26 MRSA §599, sub-§1, as enacted by PL 1999, c. 406, §1, is amended to read: