

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-THIRD LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 6, 2006 to June 21, 2007**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 20, 2007**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2007**

B. A firm that does not have an office in this State may perform services described in section 12201, subsection 3-A, paragraph B for a client having its home office in this State and may use the title "CPA" or "CPA firm" without a permit issued under this section only if:

(1) It qualifies for a firm permit pursuant to subsections 3 and 8; and

(2) It performs such services through an individual with practice privileges under section 12251, subsection 4-B.

C. A firm that is not subject to the requirements of paragraphs A and B may perform professional services other than those described in section 12201, subsection 3-A while using the title "CPA" or "CPA firm" in this State without a permit issued under this section only if the firm:

(1) Performs such services through an individual with practice privileges under section 12251, subsection 4-B; and

(2) Has legal authority to perform such services in the state of that individual's principal place of business.

**Sec. 12. 32 MRSA §12252, sub-§3,** as amended by PL 2003, c. 344, Pt. D, §22, is further amended to read:

**3. Firm permits.** The following provisions apply to the issuance of firm permits.

A. An applicant for initial issuance or renewal of a permit to practice under this section shall show that a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of certificates who are licensed in a state and that all partners, officers, shareholders, members or managers whose principal place of business is in this State ~~or~~ and who perform professional services in this State hold valid individual permits issued by the board. Firms may include nonlicensee owners in accordance with paragraph B.

B. A certified public accountancy firm or public accountancy firm may include nonlicensee owners as long as:

(1) All nonlicensee owners are individuals who actively participate in the certified public accountancy firm or public accountancy firm; and

(2) The firm complies with such other requirements as the board may impose by rule; and

(3) The firm designates an individual who is a licensee of this State or, in the case of a

firm that must have a permit pursuant to subsection 1, paragraph A, subparagraph (3), designates an individual who is a licensee of another state who meets the requirements set out in section 12251, subsection 4-B, paragraph A who is responsible for the proper registration of the firm and identifies that individual who is a licensee to the board.

**Sec. 13. 32 MRSA §12252, sub-§4,** as enacted by PL 1987, c. 489, §2, is amended to read:

**4. Office registered.** An applicant for initial issuance or renewal of a permit to practice under this section shall ~~be required to~~ register each office of the firm within this State with the board and ~~to~~ show that each such office is under the charge of a person holding a valid permit to practice, issued under section 12251 or the corresponding provision of prior law or the laws of another state.

**Sec. 14. 32 MRSA §12275, sub-§14** is enacted to read:

**14. Substantial equivalency.** For purposes of this section:

A. As an individual exercising permit privileges in the State pursuant to section 12251, subsection 4-B and complying with the restrictions on the scope of such privileges under subsection 4-B is equivalent to an individual holding a certificate under section 12227 and to an individual holding a permit to practice under section 12251, each reference in this section to certificate and permit holders is deemed to include, on an equal basis, individuals exercising such privileges;

B. A firm in compliance with section 12252, subsection 1 must, for the purposes of this section, be deemed to hold a valid permit to practice issued under section 12252; and

C. Notwithstanding any other provision of this section, it is not a violation of this section if a firm that does not hold a valid permit under section 12252 and that does not maintain an office in this State provides professional services in this State if the firm complies with the requirements of section 12252, subsection 1, paragraph B or C, whichever is applicable.

See title page for effective date.

## CHAPTER 385

### S.P. 344 - L.D. 1027

#### An Act To Clarify the Definition of "Physical or Mental Disability" in the Maine Human Rights Act

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

**Whereas,** after the Maine Supreme Judicial Court's ruling in Whitney v. Wal-Mart 2006 ME 37 invalidated rules providing guidance for interpretation of the definition of "physical or mental disability" in the Maine Human Rights Act; and

**Whereas,** there may be confusion in the application of the existing statutory definition without the guidance of the rules; and

**Whereas,** this Act provides a new statutory definition of "physical or mental disability" that is narrower than the existing law after the Whitney decision, and the enactment of the new definition removes any confusion; 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 §4553, sub-§7-A,** as amended by PL 1991, c. 99, §2, is repealed and the following enacted in its place:

**7-A. Physical or mental disability.** "Physical or mental disability" has the meaning set forth in section 4553-A.

**Sec. 2. 5 MRSA §4553, sub-§7-B,** as enacted by PL 1995, c. 393, §6, is repealed.

**Sec. 3. 5 MRSA §4553-A** is enacted to read:

**§4553-A. Physical or mental disability**

**1. Physical or mental disability, defined.** "Physical or mental disability" means:

A. A physical or mental impairment that:

- (1) Substantially limits one or more of a person's major life activities;
- (2) Significantly impairs physical or mental health; or
- (3) Requires special education, vocational rehabilitation or related services;

B. Without regard to severity unless otherwise indicated: absent, artificial or replacement limbs, hands, feet or vital organs; alcoholism; amyotrophic lateral sclerosis; bipolar disorder; blindness or abnormal vision loss; cancer; cerebral palsy; chronic obstructive pulmonary disease; Crohn's disease; cystic fibrosis; deafness or abnormal

hearing loss; diabetes; substantial disfigurement; epilepsy; heart disease; HIV or AIDS; kidney or renal diseases; lupus; major depressive disorder; mastectomy; mental retardation; multiple sclerosis; muscular dystrophy; paralysis; Parkinson's disease; pervasive developmental disorders; rheumatoid arthritis; schizophrenia; and acquired brain injury;

C. With respect to an individual, having a record of any of the conditions in paragraph A or B; or

D. With respect to an individual, being regarded as having or likely to develop any of the conditions in paragraph A or B.

**2. Additional terms.** For purposes of this section:

A. The existence of a physical or mental disability is determined without regard to the ameliorative effects of mitigating measures such as medication, auxiliary aids or prosthetic devices; and

B. "Significantly impairs physical or mental health" means having an actual or expected duration of more than 6 months and impairing health to a significant extent as compared to what is ordinarily experienced in the general population.

**3. Exceptions.** "Physical or mental disability" does not include:

A. Pedophilia, exhibitionism, voyeurism, sexual behavior disorders, compulsive gambling, kleptomania, pyromania or tobacco smoking;

B. Any condition covered under section 4553, subsection 9-C; or

C. Psychoactive substance use disorders resulting from current illegal use of drugs, although this may not be construed to exclude an individual who:

- (1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in such use;
- (2) Is participating in a supervised rehabilitation program and is no longer engaging in such use;
- (3) Is erroneously regarded as engaging in such use, but is not engaging in such use; or
- (4) In the context of a reasonable accommodation in employment, is seeking treatment or has successfully completed treatment.

**Sec. 4. 5 MRSA §4554, sub-§4** is enacted to read:

**4. Physical or mental disability.** The definition of "physical or mental disability" in section 4553-A is

intended to be interpreted broadly to create greater coverage than under the federal Americans with Disabilities Act of 1990.

**Sec. 5. 5 MRSA §4566, sub-§7**, as amended by PL 1977, c. 694, §29, is further amended to read:

**7. Rules and regulations.** To adopt, amend and rescind rules and regulations to effectuate this Act, such adoption, amendment and rescission to be made in the manner provided by chapter 375, subchapter H ~~2. Rules adopted to implement section 4553-A are major substantive rules as defined in chapter 375, subchapter 2-A;~~

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

Effective June 21, 2007.

## CHAPTER 386

### H.P. 982 - L.D. 1390

#### An Act Related to Special Purpose Reinsurance Vehicles

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

**Whereas**, current law imposes outdated restrictions that hinder the ability of a Maine domestic insurer to form special purpose reinsurance vehicles; and

**Whereas**, due to these restrictions, market conditions cause a Maine domestic insurer to seek authorization for special purpose reinsurance vehicles in other states; and

**Whereas**, this legislation authorizes the establishment of special purpose reinsurance vehicles by Maine domestic insurers with the approval of the Superintendent of Insurance; 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. 24-A MRSA §731-B, sub-§1, ¶A**, as amended by PL 2003, c. 249, §1, is further amended to read:

A. Is licensed to transact insurance or reinsurance in this State, provided the assuming insurer maintains surplus as regards policyholders in an

amount not less than the sum of paid-in capital stock, if any, and surplus as otherwise required for a certificate of authority for the kinds and amount of insurance and assumed reinsurance the insurer has in force net of any applicable ceded reinsurance. If the assuming insurer is licensed as a special purpose reinsurance vehicle pursuant to section 782 and maintains capital and surplus in accordance with the requirements of section 787, credit for reinsurance under a special purpose reinsurance vehicle contract, as defined in section 781, subsection 15, is allowed only to the extent that:

- (1) The fair value of the assets held ~~in trust~~ by or for the benefit of the ceding insurer equals or exceeds the obligations due and payable to the ceding insurer by the special purpose reinsurance vehicle under the special purpose reinsurance vehicle contract;
- (2) The assets are held ~~in trust~~ in accordance with the requirements in subchapter 6;
- (3) The assets are administered in the manner and pursuant to arrangements under subchapter 6;
- (4) The assets are held or invested in one or more of the forms allowed in section 795; and
- (5) The contract complies with all other relevant requirements of subchapter 6;

**Sec. 2. 24-A MRSA §781, sub-§7**, as enacted by PL 2003, c. 249, §2, is amended to read:

**7. Fully funded.** "Fully funded" means, with respect to a special purpose reinsurance vehicle contract, that the fair value of the assets under the control of the ceding insurer or held in trust by or on behalf for the benefit of the special purpose reinsurance vehicle ceding insurer under the special purpose reinsurance vehicle contract on the date on which the special purpose reinsurance vehicle contract is effected, equals or exceeds the aggregate limit as defined in ~~this subchapter~~ subsection 1.

**Sec. 3. 24-A MRSA §781, sub-§7-A** is enacted to read:

**7-A. Impairment.** "Impairment" or "impaired" means, with respect to a special purpose reinsurance vehicle or any of its protected cells, that either:

- A. The available capital of the special purpose reinsurance vehicle or protected cell has fallen below the applicable initial capital requirement without the approval of the superintendent; or
- B. The fair value of the assets under the control of the ceding insurer or held in trust for the benefit of the ceding insurer under a special purpose reinsurance vehicle contract is less than the ag-