

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

FIRST SPECIAL SESSION
April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 2008

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 18, 2008

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

Penmor Lithographers
Lewiston, Maine
2008

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

Sec. 1. 5 MRSA §17656, sub-§1, ¶C, as amended by PL 2007, c. 491, §97, is further amended to read:

C. If the new employer makes the election provided under paragraph B, or the member makes the election provided under paragraph D, all funds in the applicable retirement program contributed by the member's former employer on account of the member's previous employment must be transferred to the account of the new employer and must be used to liquidate the liability incurred by reason of the previous employment.

Sec. 2. 5 MRSA §17656, sub-§1, ¶D, as enacted by PL 2005, c. 636, Pt. B, §1, is amended to read:

D. ~~If the plan from which the member is transferring and the plan to which the member is transferring are both plans described in section 286-M, subsection 3, paragraph A, subparagraph (3), the member~~ Notwithstanding paragraph A, a member of the Maine Public Employees Retirement System who is a law enforcement officer as defined in Title 25, section 2801-A, subsection 5, or a state firefighter, whose previous membership was based upon employment as a municipal firefighter as defined in section 286-M, a law enforcement officer or a state firefighter may elect to make the contribution necessary to include all or part of the member's creditable service and earnable compensation from the prior plan in the new plan. The retirement system shall establish procedures for determining the contribution necessary for such a member to carry forward all or part of the creditable service and earnable compensation from a prior plan or plans. For purposes of this paragraph, "state firefighter" means a person employed by the State with the primary responsibility of aiding in the extinguishment of fires and includes a member of emergency medical services line personnel as defined in section 286-M, subsection 2, paragraph H.

Sec. 3. 5 MRSA §18253, sub-§1, ¶C, as amended by PL 2007, c. 491, §201, is further amended to read:

C. If the new employer makes the election provided under paragraph B, or the member makes the election provided under paragraph E, all funds in the applicable retirement program contributed by the member's former employer on account of the member's previous employment must be transferred to the account of the new employer and must be used to liquidate the liability incurred by reason of the previous employment.

Sec. 4. 5 MRSA §18253, sub-§1, ¶E, as enacted by PL 2005, c. 636, Pt. B, §2, is amended to read:

~~E. If the plan from which the member is transferring and the plan to which the member is transferring are both plans described in section 286-M, subsection 3, paragraph A, subparagraph (3), the member~~ Notwithstanding paragraph A, a member of the Maine Public Employees Retirement System who is a law enforcement officer as defined in Title 25, section 2801-A, subsection 5, or a municipal firefighter as defined in section 286-M, whose previous membership was based upon employment as a law enforcement officer, a state firefighter or a municipal firefighter, and whose service retirement benefits are not otherwise governed by section 18801, subsection 1, paragraph A, subparagraph 2 may elect to make the contribution necessary to include all or part of the member's creditable service and earnable compensation from the prior plan in the new plan. The retirement system shall establish procedures for determining the contribution necessary for such a member to carry forward all or part of the creditable service and earnable compensation from a prior plan or plans. For purposes of this paragraph, "state firefighter" means a person employed by the State with the primary responsibility of aiding in the extinguishment of fires and includes a member of emergency medical services line personnel as defined in section 286-M, subsection 2, paragraph H.

See title page for effective date.

CHAPTER 543

H.P. 1477 - L.D. 2091

An Act To Protect Life Insurance Consumers

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

Sec. 1. 24-A MRSA §6802-A, sub-§6, ¶A, as enacted by PL 2003, c. 636, §5, is amended to read:

A. Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in, acts including:

- (1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a settlement provider, settlement producer, financing entity, insurer, insurance producer or any other person false material information, or concealing material

information, as part of, in support of or concerning a fact material to one or more of the following:

- (a) An application for the issuance of a settlement contract or insurance policy;
 - (b) The underwriting of a settlement contract or insurance policy;
 - (c) A claim for payment or benefit pursuant to a settlement contract or insurance policy;
 - (d) Premiums paid on an insurance policy;
 - (e) Payments and changes in ownership or beneficiary made in accordance with the terms of a settlement contract or insurance policy;
 - (f) The reinstatement or conversion of an insurance policy;
 - (g) The solicitation, offer, effectuation or sale of a settlement contract or insurance policy;
 - (h) The issuance of written evidence of a settlement contract or insurance policy; or
 - (i) A financing transaction; ~~or~~
- (2) Employing any device, scheme or artifice to defraud related to policies acquired pursuant to a settlement contract;
- (3) Entering into stranger-originated life insurance; or
- (4) Failing to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person other than the insurer or its authorized representatives in connection with the issuance of a policy;

Sec. 2. 24-A MRSA §6802-A, sub-§6-A is enacted to read:

6-A. Life expectancy evaluation. "Life expectancy evaluation" means the process to determine the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live considering medical records and appropriate experiential data.

Sec. 3. 24-A MRSA §6802-A, sub-§9, as enacted by PL 2003, c. 636, §5, is repealed.

Sec. 4. 24-A MRSA §6802-A, sub-§9-A is enacted to read:

9-A. Settlement contract. "Settlement contract" means a written agreement between a viator and a settlement provider establishing the terms under which

compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. "Settlement contract" includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this State. "Settlement contract" includes a premium finance loan made for a life insurance policy by a lender to a viator on or before the date of issuance of the policy when the viator or the insured receives on the date of the premium finance loan a guarantee of a future settlement value of the policy or when the viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy. "Settlement contract" does not include:

A. A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

B. A collateral assignment of a policy by the owner of the policy;

C. Loan proceeds that are used solely to pay:

(1) Premiums for the policy; and

(2) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses and 3rd-party collateral provider fees and expenses, including fees payable to letter of credit issuers;

D. A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, as long as neither the default itself nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

E. Unless the premium finance loan otherwise constitutes a settlement contract under this subsection, a loan made by a lender that does not violate Title 9-A, Article 2;

F. An agreement in which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health and bodily safety of the per-

son insured or are trusts established primarily for the benefit of such parties;

G. Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or by a trust established by the employer, of life insurance on the life of the employee;

H. A bona fide business succession planning arrangement:

(1) Between shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(2) Between partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(3) Between members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

I. An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

J. Any contract, transaction or arrangement other than those set forth in paragraphs A to I exempted from the definition of "settlement contract" by the superintendent by rule based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 24-A MRSA §6802-A, sub-§12-A is enacted to read:

12-A. Stranger-originated life insurance. "Stranger-originated life insurance" means an act or practice to initiate a life insurance policy for the benefit of a person who, at the time of the origination of the policy, has no insurable interest in the insured. "Stranger-originated life insurance" includes, but is not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person who, at the time of the inception of the policy, could not lawfully initiate the policy and when, at the time of policy inception, there is an arrangement or agreement to directly or indirectly transfer the ownership of the policy or the policy benefits to another person. A trust that is created to give the appearance of insurable interest and is used to initiate policies for investors violates insurable interest laws and the prohibition against wagering on life. "Stranger-originated life insurance"

does not include those practices set forth in subsection 9-A.

Sec. 6. 24-A MRSA §6811, sub-§5, as enacted by PL 2003, c. 636, §13, is amended to read:

5. Prohibition on settlements. It is a violation of this chapter for any person to enter into a settlement contract at any time prior to, or at the time of the application for, the issuance of a policy or within a 2-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the settlement provider that one or more of the following conditions have been met within the 2-year period:

A. The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, as long as the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, as long as the coverage has been continuous and under the same group sponsorship; and

B. The viator submits independent evidence to the settlement provider that one or more of the following conditions have been met within the 2-year period:

(1) The viator or insured is terminally ill or chronically ill; or

(2) The viator or insured disposes of the viator's entire ownership interest in a closely held corporation pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued.

Sec. 7. Review by Bureau of Insurance. The Superintendent of Insurance shall review current state law, other state laws and model laws relating to life settlements. In conducting the review, the superintendent shall consult with insurance companies, persons or companies or their trade or professional organizations licensed in this or other jurisdictions to do the business of life settlements and insurance producers. The superintendent shall develop recommendations relating to the solicitation of life insurance for the purpose of settling policies, the use of premium finance agreements in association with viatical and life settlements and the disclosures made to viators and owners of life insurance policies. The superintendent shall submit any recommendations, including recommendations for legislation, to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters not later than March 1, 2009. The joint standing committee of the Legislature having jurisdiction over insurance and financial services matters may submit legislation to the

First Regular Session of the 124th Legislature related to the report submitted by the superintendent.

See title page for effective date.

CHAPTER 544

H.P. 1569 - L.D. 2200

An Act To Ensure Full Payment of Annuity Death Benefits

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

Sec. 1. 24-A MRSA §2537, sub-§10, as enacted by PL 1969, c. 132, §1, is repealed and the following enacted in its place:

10. A variable annuity contract delivered or issued for delivery in this State may include as an incidental benefit a provision for payment on death during the deferred period of an amount equal to the greater of the sum of the premiums or stipulated payments paid under the contract and the value of the contract at the time of death. The beneficiary under the contract may not be paid any other amount. A variable annuity contract that includes such incidental benefit may not be deemed to be life insurance and therefore is not subject to the provisions of this Title governing life insurance contracts. A variable annuity contract with a provision for any other benefit on death during the deferred period is subject to the provisions of this Title governing life insurance contracts. A payment on death pursuant to a variable annuity contract under this subsection must be made in accordance with section 2436. This subsection applies to variable annuity contracts delivered or issued for delivery in this State on or after January 1, 2009.

See title page for effective date.

CHAPTER 545

H.P. 1652 - L.D. 2290

An Act To Protect Access to Health Care

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

Sec. 1. 34-B MRSA §3608, sub-§1, ¶E, as amended by PL 2007, c. 286, §8, is further amended to read:

E. Develop techniques for identifying and providing services to consumers at risk, based on the principle that services will be provided as close to the consumer's home as possible; ~~and~~

Sec. 2. 34-B MRSA §3608, sub-§1, ¶F, as enacted by PL 2007, c. 286, §8, is amended to read:

F. Enable, among other things, the sharing of confidential client information to the extent necessary to protect the client's health and safety when it is determined the client has an urgent need for mental health services. The network members shall share confidential client information, even without a client's consent, to the extent necessary to protect the client's health and safety in a period of urgent need for mental health services when the client lacks the capacity to give consent for the information sharing or when an exigency exists so that the client's health and safety is better protected if the information is shared without a delay to obtain consent. A person or entity participating in good faith in sharing information under this paragraph is immune from civil liability that might otherwise result from these actions, including, but not limited to, a civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information. The department shall adopt rules to identify the limits and requirements to be included in the memoranda. These rules are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and

Sec. 3. 34-B MRSA §3608, sub-§1, ¶G is enacted to read:

G. Provide consolidated mental health crisis services for children and adults, beginning March 1, 2009, through a memorandum of understanding among providers of mental health services in the network that must include provisions to ensure coordination, eliminate duplication and provide a level of crisis services established by the department.

Sec. 4. 36 MRSA §2891, sub-§1, as corrected by RR 2003, c. 2, §116, is amended to read:

1. Hospital. "Hospital" means an acute care health care facility with permanent inpatient beds planned, organized, operated and maintained to offer for a continuing period of time facilities and services for the diagnosis and treatment of illness, injury and deformity; with a governing board and an organized medical staff offering continuous 24-hour professional nursing care; with a plan to provide emergency treatment 24 hours a day and including other services as defined in rules of the Department of Health and Human Services relating to licensure of general and specialty hospitals; and that is licensed under Title 22, chapter 405 as a general hospital, specialty hospital or critical access hospital. For purposes of this chapter, "hospital" does not include a nursing home or a publicly owned specialty hospital or, for state fiscal years beginning on or after July 1, 2008, municipally funded hospitals.