

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2010 to April 12, 2010

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 12, 2010

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

Augusta, Maine
2010

the bureau may authorize an off-premise retail licensee stocking at least 100 different ~~brands~~ labels of malt liquor to conduct taste testing of malt liquor on that licensee's premises. Any other consumption of alcoholic beverages on an off-premise retail licensee's premises is prohibited, except as permitted under section 460 or 1205.

Sec. 9. 28-A MRSA §1207, sub-§2, ¶H, as enacted by PL 2009, c. 459, §4, is amended to read:

H. The retail licensee may conduct up to 3 tastings per month but no more than ~~42~~ 24 taste-testing events per year, including tastings under section 460 or 1205.

Sec. 10. 28-A MRSA §1207, sub-§2, ¶L, as enacted by PL 2009, c. 459, §4, is amended to read:

~~L. Taste testing activities must be conducted in a manner that precludes the possibility of observation by children. Prior to a taste-testing event, the retail licensee shall post prominently at the entrance to the store a sign that announces the date and time of the event. The Department of Public Safety shall report annually by January 15th 15, 2011 to the joint standing committee of the Legislature having jurisdiction over alcohol regulation matters regarding the operation and effectiveness of this paragraph in providing proper notice to adults who may wish to preclude minors from observing the taste testing of alcoholic beverages.~~

Sec. 11. 28-A MRSA §1207, sub-§2, ¶M is enacted to read:

M. An off-premise retail licensee, with prior approval from the bureau, may conduct an invitation-only taste-testing event at the off-premise retail licensee's premises in place of or to coincide with a taste-testing event that is open to the public. A taste-testing event that is exclusively invitation only is not subject to the posting requirement in paragraph L.

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

Effective March 16, 2010.

CHAPTER 511

H.P. 1059 - L.D. 1510

An Act To Maintain Compliance of Maine's Insurance Laws with National Standards

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

PART A

Sec. A-1. 24-A MRSA §221-A, sub-§3, as amended by PL 1999, c. 113, §5, is further amended to read:

3. Audits required. All insurers, excepting insurers transacting business in this State pursuant to the terms of chapter 51, shall cause to be conducted an annual audit by an independent certified public accountant. Each domestic insurer shall file an audited financial report with the superintendent on or before June 1st for the year ending December 31st preceding. An extension of the filing deadline may be granted by the superintendent upon a showing by the insurer or its accountant that there exists valid justification for such an extension. A foreign or alien insurer shall file an audited financial report upon the superintendent's request. A firm of independent certified public accountants engaged to perform an audit of an insurer shall substitute the appointed audit partner in charge with another audit partner in charge at least once every ~~7~~ 5 years. An accountant substituted for pursuant to this subsection may not serve as a partner in charge of that audit until ~~2~~ 5 years after the date of substitution, unless the superintendent waives this requirement on the basis of unusual circumstances upon application by the insurer.

Sec. A-2. 24-A MRSA §221-A, sub-§7, as amended by PL 1999, c. 113, §7, is repealed and the following enacted in its place:

7. Exemptions. Upon written application of any insurer subject to this section, the superintendent may grant an exemption of the filing requirements under this section if the superintendent finds upon review of the application that compliance would constitute a financial hardship upon the insurer.

An insurer is exempt from the filing requirements of this section for any year in which the insurer's annual statement reflects:

A. Nationwide business in an amount less than \$1,000,000 in written premium plus reinsurance assumed; and

B. Outstanding loss reserves in an amount less than \$1,000,000.

Sec. A-3. 24-A MRSA §222, sub-§11-A, as amended by PL 1999, c. 113, §12, is repealed.

Sec. A-4. 24-A MRSA §222, sub-§11-B, as enacted by PL 1993, c. 313, §12, is repealed.

Sec. A-5. 24-A MRSA §222, sub-§11-C is enacted to read:

11-C. Dividends and distributions. The superintendent shall review all dividends and distributions declared or paid by any insurer registered under subsection 8 at least annually.

A. An insurer shall notify the superintendent within 5 days after the declaration of any dividend or distribution. If the dividend or distribution is not disapproved pursuant to paragraph B and is not an extraordinary dividend as defined in paragraph C, the insurer may pay the dividend or distribution once the superintendent has approved the payment or 10 days have elapsed after the superintendent's receipt of notice.

B. The superintendent shall issue an order restricting or disallowing the payment of dividends and distributions if the superintendent determines that the insurer's surplus would not be reasonable in relation to the insurance company's outstanding liabilities, that the insurer's surplus would be inadequate to that company's financial needs or that the insurer's financial condition would constitute a condition hazardous to policyholders, claimants or the public.

C. An extraordinary dividend may not be paid until affirmatively approved by the superintendent or until at least 60 days after the superintendent has received a request to pay an extraordinary dividend.

(1) For purposes of this subsection, "extraordinary dividend" means any dividend or distribution, other than a pro rata distribution of a class of the insurer's own securities, that:

(a) Exceeds 10% of the insurer's surplus to policyholders as of December 31st of the preceding year or the net gain from operations for the preceding calendar year, whichever is greater;

(b) Is declared within 5 years after any acquisition of control of a domestic insurer or of any person controlling that insurer, unless it has been approved by a number of continuing directors equal to a majority of the directors in office immediately preceding that acquisition of control; or

(c) Is not paid entirely from unassigned funds. For purposes of this division, 50% of the net of unrealized capital gains and unrealized capital losses, reduced, but not to less than zero, by that portion of the asset valuation reserve attributable to equity investments, must be excluded from the calculation of unassigned funds.

(2) An insurer may declare an extraordinary dividend on a conditional basis, subject to the superintendent's approval. A declaration pursuant to this subparagraph does not confer any rights upon stockholders until the superintendent has approved the payment or the 60-day review period has elapsed.

Sec. A-6. 24-A MRSA §788, as amended by PL 2007, c. 386, §16, is further amended to read:

§788. Dividends

The special purpose reinsurance vehicle may not declare or pay dividends in any form to its owners unless the dividends do not cause the reinsurance vehicle or any of its protected cells to become impaired and, after giving effect to the dividends, the assets of the reinsurance vehicle, including assets held in trust pursuant to the terms of the insurance securitization, must be sufficient to meet its obligations. Except for dividends specifically provided for in the approved plan of operation under section 782, subsection 2, paragraph H, the prior approval of the superintendent is required for any dividend paid during the term of coverage or while the reinsurance vehicle has undischarged obligations to the ceding insurer. The dividends may be declared by the board of directors of the reinsurance vehicle if the dividends would not violate the provisions of this subchapter or the approved plan of operation and would not jeopardize the fulfillment of the obligations of the reinsurance vehicle or the trustee pursuant to the special purpose reinsurance vehicle insurance securitization, the special purpose reinsurance vehicle contract or any related transaction. The provisions of section 222, ~~subsections 11-A and 11-B~~ subsection 11-C do not apply to such dividends.

PART B

Sec. B-1. 24-A MRSA §952-A, sub-§5 is enacted to read:

5. Applicability to health carriers. A health carrier not otherwise subject to this section or section 993 shall file an actuarial opinion in accordance with the applicable National Association of Insurance Commissioners annual statement instructions. For purposes of this section, "health carrier" means an insurer, health maintenance organization, nonprofit corporation subject to Title 24 or fraternal benefit society that provides health insurance or comparable health benefits. This section and rules adopted pursuant to this section apply to health carriers to the extent that they specifically refer to health carriers or impose requirements that are consistent with and no more stringent than the annual statement instructions.

Sec. B-2. 24-A MRSA §994, sub-§1, as enacted by PL 2007, c. 281, §2 and affected by §3, is amended to read:

1. Statement of actuarial opinion. The statement of actuarial opinion under section 993, subsection 1 must be provided with the annual ~~actuarial opinion statement~~ under section 993, ~~subsection 2~~ 423 in accordance with the appropriate NAIC property and casualty annual statement instructions and is a public record subject to disclosure pursuant to Title 1, chapter 13.

PART C

Sec. C-1. 24-A MRSA §1402, sub-§1, ¶B, as enacted by PL 1997, c. 457, §23 and affected by §55, is amended to read:

B. Employees Property and casualty insurance adjusters who are employees of insurers;

Sec. C-2. 24-A MRSA §1402, sub-§9-A is enacted to read:

9-A. Multiple peril crop insurance adjuster. “Multiple peril crop insurance adjuster” means a person who adjusts crop insurance claims under the federal crop insurance program administered by the United States Department of Agriculture.

Sec. C-3. 24-A MRSA §1402, sub-§11-A is enacted to read:

11-A. Property and casualty insurance adjuster. “Property and casualty insurance adjuster” means a person who adjusts property and casualty claims of any kind except for multiple peril crop insurance claims.

Sec. C-4. 24-A MRSA §1410, sub-§9 is enacted to read:

9. Multiple peril crop insurance adjuster examination. An individual applying for a resident multiple peril crop insurance adjuster license must either pass a crop adjuster examination administered by the superintendent under this section or provide proof of federal crop insurance certification pursuant to a process that includes passing a crop adjuster proficiency examination.

Sec. C-5. 24-A MRSA §1415, sub-§3, as enacted by PL 1997, c. 592, §21, is amended to read:

3. Adjuster authorities. A resident or nonresident adjuster may receive the ~~property and casualty authority~~ following authorities under the license:

A. Property and casualty insurance adjuster; and

B. Multiple peril crop insurance adjuster.

Sec. C-6. 24-A MRSA §1472, sub-§2, ¶C, as amended by PL 2001, c. 259, §44, is further amended to read:

C. Must pass any written examination required for the license under subchapter H 2 or maintain federal crop insurance certification in the case of multiple peril crop insurance adjusters who established license qualification through such certification.

PART D

Sec. D-1. 24-A MRSA §2849-B, sub-§4-A, as enacted by PL 1997, c. 445, §27 and affected by §32, is amended to read:

4-A. Alternative method. The superintendent may adopt rules that substitute for the requirement of subsection ~~4~~ 3-A a requirement that prohibits application of a medical underwriting or preexisting condition exclusion with respect to classes or categories of benefits that are covered under the replaced contract or policy. The rules must define those classes or categories consistent with any federal regulations adopted pursuant to the federal Public Health Service Act, Title XXVII, Section 2701(c)(3)(B).

PART E

Sec. E-1. 24-A MRSA §6451-A, as enacted by PL 1999, c. 113, §24, is repealed and the following enacted in its place:

§6451-A. Applicability to other regulated entities

This chapter applies to fraternal benefit societies authorized to do business in this State pursuant to section 4124, to health maintenance organizations authorized to do business in this State pursuant to section 4204 and to nonprofit hospital or medical service organizations authorized to do business in this State pursuant to Title 24, section 2305.

1. Fraternal benefit societies providing life or annuity benefits. Fraternal benefit societies providing life or annuity benefits are subject to the provisions of this chapter applicable to life or health insurers.

2. Fraternal benefit societies providing health benefits. Fraternal benefit societies providing health benefits are considered health organizations for purposes of this chapter.

3. Other licensees. Health maintenance organizations and nonprofit hospital or medical service organizations are considered health organizations for purposes of this chapter.

4. Provisions applicable to health organizations. Except as otherwise expressly provided in this chapter, health organizations are subject to the provisions of this chapter applicable to property and casualty insurers.

Sec. E-2. 24-A MRSA §6453, sub-§1, ¶A, as amended by PL 1997, c. 81, §7, is further amended to read:

A. The filing of a risk-based capital report by an insurer that indicates that:

(1) The insurer's total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or

(2) ~~A life or health~~ The insurer has total adjusted capital that is greater than or equal to its company action level risk-based capital but ~~less than the product of its authorized~~

~~control level risk based capital and 2.5 and has a negative trend, if its total adjusted capital is less than the product of its authorized control level risk-based capital and:~~

~~(a) If the insurer is a life or health insurer, 2.5; or~~

~~(b) If the insurer is a health organization as described in section 6451-A, subsection 2, 3.0;~~

See title page for effective date.

CHAPTER 512

H.P. 1203 - L.D. 1702

An Act To Amend the Laws Governing Advanced Practice Registered Nurses

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

Sec. 1. 32 MRSA §2205-B, sub-§3, as enacted by PL 1995, c. 379, §8 and affected by §11, is repealed.

See title page for effective date.

CHAPTER 513

S.P. 595 - L.D. 1558

An Act Regarding Accidental Death Benefits for Beneficiaries of Deceased Firefighters

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

Sec. 1. 5 MRSA §18601, as enacted by PL 1985, c. 801, §§5 and 7, is repealed and the following enacted in its place:

§18601. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Professional firefighter. "Professional firefighter" means an employee of a municipal fire department who is a member of the Participating Local District Retirement Program or who is a participating member under chapter 425 and who aids in the extinguishment of fires, whether or not the employee has other administrative duties.

2. Qualifying member. "Qualifying member" means:

A. A member who dies as a result of an injury arising out of and in the course of employment as an employee;

B. After October 31, 2004, an active member who is a professional firefighter who dies as a result of an injury or disease as described in Title 39-A, section 328 if the injury or disease that causes the death is the result of a condition that develops within 30 days of the active member's participating in firefighting or training or a drill that involves firefighting. If the professional firefighter dies after 30 days but within 6 months of participating in firefighting or training or a drill that involves firefighting, there is a rebuttable presumption that the death is the result of an injury arising out of and in the course of employment as a professional firefighter; or

C. A former member receiving a disability retirement benefit who dies as a result of an injury arising out of and in the course of employment as an employee.

Sec. 2. Rules. The Board of Trustees of the Maine Public Employees Retirement System shall adopt rules to implement this Act. These rules must be submitted to the joint standing committee of the Legislature having jurisdiction over labor matters at least 30 days prior to final adoption. Rules adopted pursuant to this section are routine technical as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A.

Sec. 3. Retroactivity. This Act applies retroactively to November 1, 2004.

See title page for effective date.

CHAPTER 514

H.P. 1144 - L.D. 1616

An Act To Enhance Newborn Blood Spot Screening To Conform to Federal Newborn Screening Standards

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

Sec. 1. 22 MRSA §42, sub-§5, as amended by PL 2007, c. 508, §1, is further amended to read:

5. Confidentiality of records containing certain medical information. Department records that contain personally identifying medical information that are created or obtained in connection with the department's public health activities or programs are confidential. These records include, but are not limited to, information on genetic, communicable, occupational or environmental disease entities, and information