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Public Law
123rd Legislature
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Chapter 14
H.P. 266 - L.D. 332

An Act To Update References to Federal Laws in the Maine Uniform Securities Act and To Make Other Technical Corrections to the 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, the Maine Uniform Securities Act incorporates various federal laws by reference, which laws are from time to time amended, and conforming the Maine Uniform Securities Act to federal laws would be delayed by waiting for the 90-day period to expire; and

Whereas, the regulation of securities is performed on both the federal and state level, and the conformity of federal and state laws increases regulatory effectiveness and reduces regulatory burden; 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. 32 MRSA §16103, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

§ 16103. References to federal statutes

Securities Act of 1933, 15 United States Code, Section 77a et seq., Securities Exchange Act of 1934, 15 United States Code, Section 78a et seq., Public Utility Holding Company Act of 1935, 15 United States Code, Section 79 et seq., Investment Company Act of 1940, 15 United States Code, Section 80a-1 et seq., Investment Advisers Act of 1940, 15 United States Code, Section 80b-1 et seq., Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1001 et seq., National Housing Act, 12 United States Code, Section 1701 et seq., Commodity Exchange Act, 7 United States Code, Section 1 et seq., Internal Revenue Code, 26 United States Code, Section 1 et seq., Securities Investor Protection Act of 1970, 15 United States Code, Section 78aaa et seq., Securities Litigation Uniform Standards Act of 1998, 112 Stat. 3227, Small Business Investment Act of 1958, 15 United States Code, Section 661 et seq. and Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq. mean those federal laws of those names, those statutes and the rules and regulations adopted under those laws and statutes, as amended, as of December 31, 2006.

Sec. 2. 32 MRSA §16202, sub-§14, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

14. Limited private offering transactions, any issuer. A sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:

- A. Not more than 10 purchasers are present in this State during any 12 consecutive months, other than those designated in subsection 13;
- B. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;
- C. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer licensed under this chapter or an agent licensed under this chapter for soliciting a prospective purchaser in this State; and
- D. The issuer reasonably believes that all the purchasers in this State, other than those designated in subsection 13, are purchasing for investment;

Sec. 3. 32 MRSA §16202, sub-§15, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

15. Limited private offering transactions, Maine issuer. A sale or an offer to sell securities of a corporation, limited partnership or limited liability company organized under the laws of this State or any issuer determined by the administrator by order to have its principal place of business in this State, if the sale or offer is by or on behalf of the issuer and if the transaction is part of a single issue in which:

- A. Not more than 25 purchasers are present in this State during any 12 consecutive months, other than those designated in subsection 13;
- B. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;
- C. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer licensed under this chapter or an agent licensed under this chapter for soliciting a prospective purchaser in this State;
- D. The issuer reasonably believes that all the purchasers in this State, other than those designated in subsection 13, are purchasing for investment;
- E. The issuer files with the administrator a notification for exemption that must be in such form as may be prescribed by the administrator by order or by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A; and
- F. The issuer provides a copy of the notification of exemption to each offeree of securities sold in reliance on this exemption, which must contain such legends as the administrator prescribes, notifying the offeree that the securities have not been registered with the administrator, that they may be considered restricted securities and that the issuer is under an obligation to make a reasonable finding that the securities are a suitable investment for the offeree;

Sec. 4. 32 MRSA §16306, sub-§7 is enacted to read:

7. Appointment of presiding officer. For purposes of any hearing conducted pursuant to this section, the administrator may appoint a qualified person to preside at the hearing and to make proposed findings of fact and conclusions of law. The responsibility for the entry of the final findings of fact and conclusions of law and for the issuance of any final order remains with the administrator.

Sec. 5. 32 MRSA §16412, sub-§1, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

1. Disciplinary conditions, applicants. If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may deny an application, or may condition or limit licensing, of an applicant to be a broker-dealer, agent, investment adviser or investment adviser representative ~~and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.~~

Sec. 6. 32 MRSA §16412, sub-§2, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

2. Disciplinary conditions, licensees. If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may revoke, suspend, condition or limit the license of a licensee ~~and, if the licensee is a broker-dealer or investment adviser, the license of a partner, officer, director or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.~~ Notwithstanding this subsection, the administrator may not:

A. Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after that state's order is reported; or

B. Under subsection 4, paragraph E, subparagraph (1) or (2), issue an order on the basis of an order issued under the securities act of another state unless the other state's order was based on conduct for which subsection 4 would authorize the action had the conduct occurred in this State.

Sec. 7. 32 MRSA §16412, sub-§3, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

3. Disciplinary penalties, licensees. If the administrator finds that the order is in the public interest and subsection 4, ~~paragraphs~~paragraph A to, B, C, D, E, F, H, I and, J or paragraphs, L and or M authorize~~authorizes~~ the action, an order under this chapter may censure, impose a bar on or impose a civil penalty fine in an amount not to exceed a maximum of \$5,000 per violation on a licensee ~~and, if the licensee is a broker-dealer or investment adviser, any partner, officer, director or person having a similar status or performing similar functions, or any person directly or indirectly in control, of the broker-dealer or investment adviser.~~

Sec. 8. 32 MRSA §16412, sub-§4, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

4. Grounds for discipline. A person may be disciplined under subsections 1 to 3 if the person or, in the case of a broker-dealer or investment adviser, the broker-dealer or investment adviser, a partner, officer or director of the broker-dealer or investment adviser, a person occupying a similar status or performing similar functions or a person directly or indirectly controlling the broker-dealer or investment adviser:

A. Has filed an application for licensing in this State under this chapter or the predecessor act within the previous 10 years that, as of the effective date of licensing or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

B. Intentionally or knowingly violated or intentionally or knowingly failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years;

C. Has pleaded guilty or nolo contendere to or been convicted of murder or a Class A, B or C crime or a felony or within the previous 10 years has pleaded guilty or nolo contendere to or been convicted of a Class D or E crime or a misdemeanor involving a security, a commodity future or option contract or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance or any crime indicating a lack of fitness to engage in the securities business;

D. Is enjoined or restrained by a court of competent jurisdiction in any action from engaging in or continuing an act, practice or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

E. Is the subject of an order, issued after notice and opportunity for hearing by:

(1) The securities or other financial services regulator of a state or by the Securities and Exchange Commission, a self-regulatory organization or other federal agency denying, revoking, barring or suspending registration or licensing as a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;

(2) The securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;

(3) The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant or licensee from membership in the self-regulatory organization;

(4) A court adjudicating a United States Postal Service fraud order;

(5) The insurance regulator of a state denying, suspending or revoking registration or licensing as an insurance producer or its equivalent;

(6) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business; or

(7) The United States Commodity Futures Trading Commission denying, suspending or revoking registration under the federal Commodity Exchange Act;

F. Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the United States Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator or a depository institution, insurance or other financial services regulator of a state that the person intentionally or knowingly violated the federal Securities Act of 1933, the federal Securities Exchange Act of 1934, the federal Investment Advisers Act of 1940, the federal Investment Company Act of 1940, the federal Commodity Exchange Act, the securities or commodities law of a state or a federal or state law under which a business involving investments, franchises, insurance, banking or finance is regulated;

G. Is insolvent, either because the person's liabilities exceed the person's assets or because the person can not meet the person's obligations as they mature. The administrator may not enter an order against an applicant or licensee under this paragraph without a finding of insolvency as to the applicant or licensee;

H. Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 16411, subsection 4 or refuses access to a licensee's office to conduct an audit or inspection under section 16411, subsection 4;

I. Has failed to reasonably supervise an agent, investment adviser representative or other individual if the agent, investment adviser representative or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act or engaged in conduct that would be grounds for discipline under this subsection within the previous 10 years;

J. Is subject to an order entered by a court of competent jurisdiction or entered after notice and opportunity for hearing by a federal or state licensing agency denying, suspending, revoking or restricting the person's license to sell real estate, insurance or any investment other than securities, provided that the order resulted from allegations of misconduct. This paragraph also applies when the denial, suspension, revocation or restriction of the license is pursuant to a consent agreement between the person and the licensing agency, whether or not the agency also issues an order;

K. After notice and opportunity for a hearing, has been found within the previous 10 years:

(1) By a court of competent jurisdiction to have intentionally and knowingly violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated;

(2) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person; or

(3) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

L. Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance or insurance laws of a state;

M. Has engaged in unlawful, dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous 10 years; or

N. Is not qualified on the basis of factors such as training, experience and knowledge of the securities business; except that, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for licensing as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection 5. The administrator may require an applicant for licensing under section 16402 or 16404 who has not been registered or licensed in a state within the 2 years preceding the filing of an application in this State to successfully complete an examination.

Sec. 9. 32 MRSA §16412, sub-§7, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

7. Procedural requirements. An order issued may not be issued under this section, except under subsection 6, without:

A. Appropriate notice to the applicant or licensee;

B. Opportunity for hearing; and

C. Findings of fact and conclusions of law in a record in accordance with Title 5, chapter 375.

Sec. 10. 32 MRSA §16412, sub-§10 is enacted to read:

10. Appointment of presiding officer. For purposes of a hearing conducted pursuant to this section, the administrator may appoint a qualified person to preside at the hearing and to make proposed findings of fact and conclusions of law. The responsibility for the entry of the final findings of fact and conclusions of law and for the issuance of any final order remains with the administrator.

Sec. 11. 32 MRSA §16603, sub-§1, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

1. Civil action instituted by administrator. If the administrator believes that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has engaged, is engaging or is about to engage in an act, practice or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may request that the Attorney General bring an action in the Superior Court of the county in which the person resides or has the principal place of business or in the Superior Court of Kennebec County to enjoin the act, practice or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

Sec. 12. 32 MRSA §16604, sub-§2, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

2. Summary process. An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any censure, bar, civil fine or costs of investigation the administrator will seek, a statement of the reasons for the order and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a censure, bar or civil penalty or requirement for payment of the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. A summary order issued against any person becomes a final order 30 days after the administrator mails notice to the interested parties of the right to request a hearing if they fail to request a hearing or on the date of the hearing if the person requesting the hearing fails to appear. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

Sec. 13. 32 MRSA §16606, sub-§3, as enacted by PL 2005, c. 65, Pt. A, §2, is amended to read:

3. Copies of public records. The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted or order issued under this chapter may establish a reasonable charge for furnishing the record, not to exceed \$.50 per page; for providing a licensee register in an electronically readable format, not to exceed \$20 per copy; or for certification, not to exceed \$10 per certified record. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

Effective March 20, 2007.