

## CHAPTER 1

### GENERAL DEFINITIONS AND PROVISIONS

#### §1. Short title

This Title shall be known and be cited as the Maine Insurance Code. [PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### §2. "Person" defined

"Person" includes an individual, firm, partnership, corporation, association, syndicate, organization, society, business trust, attorney-in-fact and every natural or artificial legal entity. [PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### §3. "Insurance" defined

"Insurance" means a contract under which one undertakes to pay or indemnify another as to loss from certain specified contingencies or perils, to pay or grant a specified amount or determinable benefit or annuity in connection with ascertainable risk contingencies or to act as surety, except that the following types of contracts are not considered insurance: [PL 1997, c. 592, §9 (RPR).]

**1. Charitable gift annuity.** A charitable gift annuity agreement, as defined in section 703-A; [PL 1997, c. 592, §9 (NEW).]

**2. Road or tourist service contract.** A road or tourist service contract, other than a contract issued by a licensed insurer, related to the repair, operation and care of automobiles or to the protection and assistance of automobile owners or drivers; [PL 2011, c. 345, §1 (AMD); PL 2011, c. 345, §7 (AFF).]

**3. Home service contract.** A home service contract whereby, for a set fee and specified duration, a person agrees to defray the cost of repair or replacement or provide or arrange for the repair or replacement of all or any part of any structural component, appliance or system of a home necessitated by wear and tear, deterioration or inherent defect or by failure of an inspection to detect the likelihood of any such loss; and [PL 2011, c. 345, §1 (AMD); PL 2011, c. 345, §7 (AFF).]

**4. Service contract.** A service contract as defined in section 7102, subsection 11. [PL 2011, c. 345, §2 (NEW); PL 2011, c. 345, §7 (AFF).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1995, c. 375, §C1 (AMD). PL 1997, c. 457, §7 (AMD). PL 1997, c. 592, §9 (RPR). PL 2011, c. 345, §§1, 2 (AMD). PL 2011, c. 345, §7 (AFF).

#### §4. "Insurer" defined

"Insurer" includes every person engaged as principal and as indemnitor, surety or contractor in the business of entering into contracts of insurance. [PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

**§5. Superintendent, bureau defined**

**1. Superintendent.** "Superintendent" means the Superintendent of the Bureau of Insurance. [PL 1973, c. 585, §6 (RPR).]

**2. Bureau.** "Bureau" means the Bureau of Insurance. [PL 1973, c. 585, §6 (RPR).]

## SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §6 (RPR).

**§6. "Domestic," "foreign," "alien" insurer defined**

**1. Domestic insurer.** A "domestic" insurer is one formed under the laws of this State. [PL 1969, c. 132, §1 (NEW).]

**2. Foreign insurer.** A "foreign" insurer is one formed under the laws of any jurisdiction other than this State. [PL 1969, c. 132, §1 (NEW).]

**3. Alien insurer.** An "alien" insurer is a foreign insurer formed under the laws of any country other than the United States of America, its states, districts, commonwealths and possessions. [PL 1969, c. 132, §1 (NEW).]

## SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

**§7. "State" defined**

When in context signifying other than this State, "state" means any state, district, territory, commonwealth or possession of the United States of America. [PL 1995, c. 329, §3 (AMD).]

## SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1995, c. 329, §3 (AMD).

**§8. "Authorized," "unauthorized" insurer defined**

**1. Authorized insurer.** An "authorized" insurer is one duly authorized to transact insurance in this State by a subsisting certificate of authority issued by the superintendent. [PL 1969, c. 132, §1 (NEW); PL 1973, c. 585, §12 (AMD).]

**2. Unauthorized insurer.** An "unauthorized" insurer is one not so authorized. [PL 1969, c. 132, §1 (NEW).]

## SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1973, c. 585, §12 (AMD).

**§9. "Transacting insurance" defined**

In addition to other aspects of insurance operations to which provisions of this Title by their terms apply, "transact" with respect to a business of insurance includes any of the following, whether by mail or any other means: [PL 1969, c. 132, §1 (NEW).]

**1. Solicitation or inducement;**  
[PL 1969, c. 132, §1 (NEW).]

**2. Negotiations;**  
[PL 1969, c. 132, §1 (NEW).]

**3. Effectuation of a contract of insurance;**  
[PL 1969, c. 132, §1 (NEW).]

4. Transaction of matters subsequent to effectuation and arising out of such a contract.  
[PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### **§10. Application of code as to particular types of insurers**

No provision of this Title shall apply with respect to: [PL 1969, c. 132, §1 (NEW).]

1. Domestic mutual assessment insurers, as identified in chapter 51, except as stated in such chapter;

[PL 1969, c. 177, §1 (AMD).]

2. Fraternal benefit societies, except as stated in chapter 55;

[PL 1997, c. 676, §2 (AMD).]

3.

[PL 1997, c. 457, §9 (RP).]

4. Unless otherwise expressly provided by this Title, a domestic insurer heretofore formed under a special Act of the Legislature, when inconsistent with such special Act as heretofore amended;

[PL 1997, c. 676, §3 (AMD).]

5. The government contracting activities of a health care servicing entity, as defined in Title 22, section 3173, contracting, whether directly or as a subcontractor, with the Department of Health and Human Services, unless otherwise expressly provided by this Title. This Title may apply to other insurance or managed care activities of a health care servicing entity; or

[PL 1997, c. 676, §4 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

6. The government contracting activities of a health care servicing entity, as defined in Title 22-A, section 207, subsection 7, contracting, whether directly or as a subcontractor, with the Department of Health and Human Services, unless otherwise expressly provided by this Title. This Title may apply to any other insurance or managed care activities of a health care servicing entity.

[PL 2007, c. 695, Pt. C, §14 (AMD).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §1 (AMD). PL 1985, c. 399, §1 (AMD). PL 1997, c. 457, §§8,9 (AMD). PL 1997, c. 676, §§2-4 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 539, Pt. N, §55 (AMD). PL 2007, c. 695, Pt. C, §14 (AMD).

#### **§11. Particular provisions prevail**

Provisions of this Title as to a particular kind of insurance, type of insurer or matter shall prevail over provisions relating to insurance, insurers or matters in general. [PL 1969, c. 132, §1 (NEW).]

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW).

#### **§12. General penalty**

**(REPEALED)**

#### SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §§1-A (RPR). PL 1989, c. 269, §2 (RP).

#### **§12-A. Civil penalty and enforcement provisions**

1. **Civil penalty.** Civil penalties may be assessed against any person who:

A. Violates any provision of this Title, Title 24 or any other law enforced by the superintendent; [PL 1997, c. 634, Pt. B, §1 (RPR).]

B. Violates any rule lawfully adopted by the superintendent; or [PL 1997, c. 634, Pt. B, §1 (RPR).]

C. Violates any lawful order of the superintendent that has not been stayed by order of the superintendent or the Superior Court. [PL 1997, c. 634, Pt. B, §1 (RPR).]

The Superior Court, upon an action brought by the Attorney General, may assess a civil penalty of not less than \$500 and not more than \$5,000 for each violation in the case of an individual and not less than \$2,000 and not more than \$15,000 for each violation in the case of a corporation or other entity other than an individual, unless the applicable law specifies a different civil penalty.

The superintendent, following an adjudicatory hearing, may assess a civil penalty of up to \$500 for each violation in the case of an individual and a civil penalty of up to \$10,000 for each violation in the case of a corporation or other entity other than an individual, unless the applicable law specifies a different civil penalty. The superintendent shall notify the Attorney General or the Attorney General's designee of any such adjudicatory hearing at the time that the notice of hearing is issued by the superintendent. The superintendent may not assess a civil penalty if the Attorney General notifies the superintendent that the Attorney General intends to pursue an action in Superior Court to seek civil penalties for the same conduct. If the Attorney General elects to pursue the noticed action in Superior Court, the Attorney General shall notify the superintendent of that decision no later than 7 days prior to the hearing.

[PL 2005, c. 41, §1 (AMD).]

**1-A. Equitable relief; actual damages.** In addition to a civil penalty awarded pursuant to subsection 1, the Superior Court may award to any injured insured or applicant for insurance who is represented by the Attorney General reasonable equitable relief and actual damages.

[PL 1989, c. 826 (NEW).]

**2. Cease and desist orders.** The superintendent may issue a cease and desist order following an adjudicatory hearing held in conformance with Title 5, chapter 375, subchapter IV, if the superintendent finds that any person has engaged in or is engaging in any act or practice in violation of any law administered or enforced by the superintendent, any rules promulgated under that law or any lawful order of the superintendent.

A. A cease and desist order is effective when issued, unless the order specifies a later effective date or is stayed pursuant to Title 5, section 11004. [PL 1991, c. 298, §1 (AMD).]

B. In the event an appeal is taken, the court shall issue its own order for compliance to the extent that the superintendent's order is affirmed. [PL 1989, c. 269, §3 (NEW).]

C. Violation of any cease and desist order shall be punishable as a violation of this Title in accordance with this section. [PL 1989, c. 269, §3 (NEW).]

[PL 1991, c. 298, §1 (AMD).]

**2-A. Emergency cease and desist.** The superintendent may issue an emergency cease and desist order, without prior notice and hearing, if the complaint shows that a person is engaging in unlicensed insurance activities or is engaging in conduct that creates an immediate danger to the public safety or is causing or is reasonably expected to cause significant, imminent and irreparable public injury.

A. A request for an emergency cease and desist order must be in writing in the form of a verified complaint. [PL 1991, c. 298, §2 (NEW).]

B. An emergency cease and desist order is effective immediately and will continue in force and effect until further order by the superintendent or unless stayed by the superintendent or by a court of competent jurisdiction. [PL 1991, c. 298, §2 (NEW).]

C. Upon issuance of an emergency cease and desist order, the superintendent shall serve on the person affected by the order, by registered or certified mail to the person's last known address, an order that contains a statement of the charges and a notice of hearing. The hearing, held in conformance with Title 5, chapter 375, subchapter IV, must be held within 10 days of the effective date of the emergency order, unless a later time is agreed upon by all parties. [PL 1991, c. 298, §2 (NEW).]

D. At the hearing, the superintendent shall affirm, modify or set aside, in whole or in part, the emergency cease and desist order and may combine and employ any other enforcement or penalty provisions available to the superintendent to arrive at a final order. [PL 1991, c. 298, §2 (NEW).]

E. The superintendent's order after hearing is a final order in all respects and is subject to subsection 2, paragraph A and section 236. [PL 1991, c. 298, §2 (NEW).]  
[PL 1991, c. 298, §2 (NEW).]

**3. Reprimand or censure.** The superintendent may issue a letter of reprimand or censure to any licensee, but only after opportunity for hearing has been provided to any and all persons who are subjects of the reprimand.  
[PL 1989, c. 269, §3 (NEW).]

**4. Refunds of overcharges.** In the event that any insurer, fraternal benefit society, nonprofit hospital service plan, nonprofit medical service plan, nonprofit health care plan, health maintenance organization or preferred provider organization makes charges to any person that are not in conformity with a filing that it is required to submit for approval or disapproval by this Title or Title 24, the superintendent may order that refunds of any overcharges be made.  
[PL 2009, c. 13, §1 (AMD).]

**5. Election of enforcement options.** The superintendent may elect to utilize any or all of the enforcement options provided by this section, in combination or in sequence, as the superintendent deems appropriate. The penalties and provisions of this section are in addition to any other penalty provided by law.  
[PL 1989, c. 269, §3 (NEW).]

**6. Restitution.** The superintendent may order restitution for any insured or applicant for insurance injured by a violation for which a civil penalty may be assessed pursuant to this section.  
[PL 1989, c. 826 (NEW).]

#### SECTION HISTORY

PL 1989, c. 269, §3 (NEW). PL 1989, c. 826 (AMD). PL 1991, c. 298, §§1,2 (AMD). PL 1997, c. 634, §B1 (AMD). PL 2001, c. 165, §B1 (AMD). PL 2005, c. 41, §1 (AMD). PL 2009, c. 13, §1 (AMD).

#### §13. Retention of unpaid premium

Any insurance company, broker or agent may retain an amount equal to any undisputed unpaid premium due on the policy under which a claim is being presented, in connection with claims by and settled with an insured, as long as the unpaid premium remains unpaid 60 days after the effective date of that policy or the date of the original billing for the unpaid premium, whichever occurs later. The unpaid premium may not be retained as against any loss payee or mortgagee named in the policy up to the amount of the unpaid balance owed to that loss payee or mortgagee on the date the loss that gave rise to the claim occurred. This section does not apply to a health insurance policy. [PL 1993, c. 117, §1 (NEW).]

#### SECTION HISTORY

PL 1993, c. 117, §1 (NEW).

#### §14. Affordable Care Act defined

As used in this Title, "federal Affordable Care Act" means the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and any amendments to or regulations or guidance issued under those acts. [PL 2011, c. 90, Pt. D, §1 (NEW).]

#### SECTION HISTORY

PL 2011, c. 90, Pt. D, §1 (NEW).

#### **§15. NAIC defined**

As used in this Title, "NAIC" or "National Association of Insurance Commissioners" means the National Association of Insurance Commissioners or its successor organization of insurance regulators. [PL 2021, c. 521, §1 (NEW).]

#### SECTION HISTORY

PL 2021, c. 521, §1 (NEW).

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