STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF INSURANCE
34 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0034

Paul R. LePage
GOVERNOR

Eric A. Cioppa
Superintendent

Bulletin 426
Rebates – Guidance for Producers
(Replaces Bulletin 384)

This Bulletin replaces Bulletin 384 and provides additional guidance for producers regarding what activities may be conducted under Maine's amended rebating statutes.

The purpose of Maine's anti-rebating laws is to protect both insurance consumers and the insurance industry. A consumer's choice to purchase insurance should not be influenced by inducements that could result in an unsuitable policy choice, and insurance must be provided in a nondiscriminatory manner to like insureds or potential insureds. Anti-rebating statutes are designed to protect insurer solvency and prevent predatory pricing, both of which can hurt market participants and consumers.

The general rule under Maine's rebating[1] laws is that no person may offer a discount or other inducement to a purchaser or prospective purchaser of insurance unless it is specified in the policy or the insurer's filings.[2] A determination whether a given arrangement violates Maine's rebating statutes is fact-specific and will depend upon the circumstances of the interaction between the parties. Some of the factors that the Bureau will evaluate in determining whether an arrangement violates the general prohibition on rebating will be the timing of the alleged inducement, the prior relationship between the parties, the type of benefit, and the recipient of the benefit. Section 2163-A of the Insurance Code establishes the permitted statutory exceptions to the general prohibition on rebating. Recent changes to this section have expanded the statutory exceptions by increasing the dollar thresholds and addressing the circumstances under which value-added services may be provided for free or at a reduced fee. These changes will go into effect on November 1, 2017.[3] The purpose of this Bulletin is to give insurance professionals an overview of the statutory changes and provide guidance regarding how these new exceptions are interpreted by the Bureau.

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[1] The subject of this Bulletin is compliance with laws prohibiting improper sales inducements. It does not relate in any way to the health insurance premium rebates that are required by state and federal law when insurers fail to meet minimum medical loss ratio standards.

[2] The rebate provision concerning life and health insurance is found in the Maine Insurance Code at 24-A M.R.S. § 2160. The corresponding provision for property and casualty insurance is located at 24-A M.R.S. § 2162. The provisions are not identical, but set forth the same basic principles for purposes of this Bulletin.

[3] *See* P.L. 2017, ch. 84 (L.D. 1161).

Gifts and Prizes

As of November 1, 2017, a producer may offer gifts valued up to $100 per year per person in connection with the marketing of insurance, and conduct raffles or drawings with prizes valued at no more than $500[4], so long as there is no participation costs to entrants. These gifts may not be in the form of cash; however, cash equivalents (*e.g.*, pre-paid MasterCard or VISA gift card) are no longer prohibited. For group coverage, the $100 limit applies on a per-applicant-or-policyholder basis; *i.e.*, $100 per group, not $100 per covered life.

"Value-added" services

Maine's recent statutory changes clarify that in certain circumstances, value-added services may be provided to a customer or potential customer, for free or at a reduced fee, without violating the general prohibition on rebating. Those services or discounts that can be valued at $100 or less per policy per year are clearly acceptable under 24-A M.R.S. § 2163-A(1). If the services are worth more than $100, the limitation will depend upon whether the value-added service is offered selectively or to all existing customers or potential customers.

If services valued in excess of $100 are offered to specific customers, the services must be either included within the insurance policy or "directly related to the firm's servicing of the insurance contract or offered or undertaken to provide risk control for the benefit of a client."[5]

In evaluating whether a value-added service is directly related to the servicing of the insurance contract, licensees should look at the type of insurance involved and the nature of the services to be offered. The Bureau appreciates that the marketplace has become more complicated, especially for employers in the group health insurance market, and producers want to be able to use their expertise to provide customer assistance in a number of new areas.

The following examples are not intended as a complete list of acceptable services, but are offered to illustrate the range of services that would **generally** not be considered prohibited rebates:

- Risk management assistance provided by the producer;
- Regulatory and/or legislative updates;
- Enhancements that operate to make the producer's own services and office operations more efficient and convenient for the insured;
- System improvements, which could include software provided to employers, which make information about group benefits provided through the producer more accessible to employers and employees;
- Services provided for COBRA or HIPAA administration for group health insurance customers;
- Administration of employer-sponsored Section 125 plans, flexible spending accounts (FSAs), and health reimbursement accounts (HRAs) for group health insurance customers.

[4] The dollar limits for gifts and raffles were formerly $20 and $100, respectively.

[5] 24-A M.R.S. § 2163-A(2).

Producers and insurers should be cautious of providing services for free or at reduced cost for enhancements that provide significant value to the customer but have a relatively limited connection to the customer's insurance program. This is an important factor in determining whether the service has been offered primarily as a gift or inducement.

For example, the connection between the insurance coverage and the provision of assistance with payroll or human resource management is likely to be too attenuated to qualify for the "value-added" exemption. Additionally, services that are purchased by the producer from a third party (as opposed to being provided "in house") may be too far removed from the underlying insurance relationship.

Producers and insurers may offer value-added services for free or at a discount without regard to the underlying insurance relationship only when the receipt of services is not contingent upon the purchase of insurance and when the services are offered on the same terms to all potential insurance customers.[6]

October 25, 2017

Eric A. Cioppa
Superintendent of Insurance

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[6] 24-A M.R.S. § 2163-A(3).

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Bulletin 457

Surplus Lines Eligibility for Property Insurance

Placement of Insurance in Surplus Lines Market
(Supersedes Bulletins 328, 414, and 439)

This Bulletin replaces Bulletins 328, 414, and 439. It explains the conditions under which a risk may be placed in the surplus lines market, addresses a 2019 change to the Maine Insurance Code which allows disability insurance to be placed in surplus lines subject to the statutory requirements outlined in this Bulletin, and clarifies when surplus lines coverage is appropriate for property insurance.[1]

Producers should keep in mind, as a matter of professional competence,[2] that placing coverage in surplus lines should always be the exception, not the rule. The Bureau of Insurance does not license surplus lines carriers. These carriers are exempt from most of the Insurance Code's consumer protections, and do not participate in the guaranty associations that protect policyholders if an insurer becomes insolvent. The Insurance Code provides clear rules for producers to follow in determining whether to place coverage in surplus lines:

- Life insurance, health insurance (except disability insurance), and employee benefit excess ("stop-loss") insurance;[3] reinsurance;[4] and workers' compensation[5] insurance may not go into surplus lines.

- Motor vehicle insurance should not generally go into surplus lines because an assigned risk market is available.[6]

[1] P.L. 2019, Ch. 20 (L.D. 260), effective April 5, 2019, *amending* 24-A M.R.S. § 2002-A(1)(B).
[2] 24-A M.R.S. § 1420-K(1)(H).
[3] 24-A M.R.S. § 2002-A(1).
[4] 24-A M.R.S. § 2002-A(2).
[5] 39-A M.R.S. § 102(14).
[6] 24-A M.R.S. § 2325.

For other risks, the following conditions apply:

- The insurance must be procured through a licensed producer with surplus lines authority.

- The coverage must be necessary for the adequate protection of a risk in this state. This requires the producer to review the needs of the particular risk. If adequate protection is available in the admitted market, then the producer may not place the risk in the surplus lines market.

- The coverage must be one that an authorized insurer may write.

- The producer must have made a diligent effort to place the coverage with authorized insurers.[7] This is not a mechanical exercise. Therefore, doing a specific number of inquiries does not mean that the producer has fulfilled this requirement. Rather, this is a function of many variables, including for example the type of insurance sought and the coverage limits needed. The diligent effort requirement does not end when coverage is placed in surplus lines. At renewal, the producer should investigate whether circumstances exist, such as improved loss history or improved market conditions, which favor returning the risk to the admitted market.

These conditions are cumulative; therefore, all of them must be met before the risk may be placed outside of the admitted market.

Other considerations apply to the decision to place coverage in surplus lines:

- Surplus lines coverage is often more expensive than comparable coverage in the admitted market. However, sometimes a surplus lines insurer might offer similar coverage terms at a lower premium than an authorized insurer would. This is not a reason to place the risk in the surplus lines market.

- A producer may not place a risk in the surplus market if the desired coverage exists in the admitted market. The test under Section 2004 is whether admitted coverage is available to the insured, not whether it is available to a particular producer. An admitted carrier's decision not to deal with a producer does not give that producer preferential access to the surplus lines market.

- For property risks, the use of surplus lines might be appropriate when a certain level of coverage is available in the admitted market but more extensive coverage is needed to protect the financial interests of the property owner. For example, if the admitted market offers only actual cash value coverage for valuable equipment and the prospective insured needs more extensive protection—such as replacement cost or enhanced

[7] 24-A M.R.S. § 2004. Producers may place some coverages in surplus lines without adhering to the diligent effort requirement. These coverages are wet marine and transportation insurance, insurance on out-of-state risks, and insurance on interstate railroad and aircraft operations. *See* 24-A M.R.S. § 2002-A(3) for more details. Liability insurance purchased through a risk purchasing group is also exempt from this requirement. See the Maine Liability Risk Retention Act, 24-A M.R.S. §§ 6091–6104. Last, the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA") exempts placement of coverage for exempt commercial purchasers under some circumstances. *See* Bulletin 378, Changes to the Nonadmitted Insurance Laws, for more information.

replacement cost coverage—and a diligent effort to find that coverage on the admitted market has been unsuccessful, then Section 2004(2) would permit export to surplus lines. In this case, Section 2004 would allow a surplus lines insurer to provide the entire coverage, not just the coverage enhancements.

- The desired coverage must be in a line of business that an authorized insurer may lawfully write. The producer must make a diligent effort to place the coverage in that market. If the producer does not have appointments with any insurers that offer the desired coverage, and wishes to compete for the account, the first step to fulfill the diligent effort requirement must be to seek the necessary appointment or to place the coverage through an appointed producer.

- The admitted market is available even if a producer is blocked from placing an account with an authorized insurer because the account has a relationship with that insurer. In such cases, unless the requirements of Section 2004 are otherwise met, the coverage must remain in the admitted market, and the producer must obtain a broker of record letter in order to represent that account. A potential client's reluctance to sign a broker of record letter does not make admitted market coverage unavailable.

- The admitted market is available even if a producer loses its appointment with the authorized insurer, and the insurer is willing or, as in the case of personal property and casualty coverage, required to retain the insured. Bulletin 391, Personal Lines Agency Terminations and Book Rollovers, explains how producers and insurers should handle these terminations.

- Producers may place disability insurance coverage in surplus lines, subject to the same restrictions that apply to all other surplus lines placements. Producers should seek admitted market coverage and, if necessary, may look to surplus lines carriers for coverage in excess of that provided by the admitted market. Only in the case of a risk that will not be written by admitted market carriers (*e.g.*, due to the insured's profession) may a producer place the entire risk into surplus lines.

Last, the Superintendent reminds producers of other matters relevant to the surplus lines market:

- If the Superintendent determines, after a hearing, that a line does not have a reasonable or adequate market, the Superintendent may issue an order exempting that line from the diligent search requirement.[8] As of the date of this Bulletin, no lines are declared eligible for surplus lines placement ("eligible for export") by order of the Superintendent.

- Although surplus lines insurers are, by definition, not licensed in Maine, they do need to be eligible under the surplus lines law.[9] The status of eligibility is not a license to transact insurance in Maine. Eligibility indicates that the insurer appears to be sound financially and to have satisfactory claims practices, and that the Superintendent has no credible evidence to the contrary. A producer may not knowingly place surplus lines insurance with a financially unsound or ineligible insurer. A current list of eligible surplus lines insurers is available through the Bureau's license portal at https://www.maine.gov/pfr/insurance/licensee_search.html.

[8] 24-A M.R.S. § 2006.
[9] 24-A M.R.S. § 2007.

- Upon placing surplus lines coverage through a producer with surplus lines authority, a producer must promptly issue and deliver evidence of the insurance to the insured: either the policy issued by the insurer or, if the policy is not available, the surplus lines producer's certificate.[10]

- Each surplus lines policy must display the name of the surplus lines producer who procured the policy and the following notice:

  > This insurance contract is issued pursuant to the Maine Insurance Laws by an insurer neither licensed by nor under the jurisdiction of the Maine Bureau of Insurance.[11]

  The Superintendent interprets this in part to be a warning to the policyholder that the insurer does not participate in MIGA and that, should the surplus lines insurer become insolvent, MIGA will not pay the insurer's losses.

- Producers must keep "a full and true record" of each of their surplus lines placements.[12] [12]Paragraphs 2015(1)(A) through (H) list specific items that the record must include. Paragraph 2015(1)(I) allows the Superintendent to require other information. As of the date of this Bulletin, the Superintendent expects producers also to document thoroughly the basis for each surplus lines placement, including renewals of existing policies. The record should explain how the placement qualifies for export under Section 2004.

- Surplus lines producers must keep monthly reports of their surplus lines transactions. Producers must keep these reports in their offices and provide them upon the Superintendent's request.[13]

- Surplus lines premiums are subject to a 3% premium tax. The surplus lines producer is responsible for remitting this tax to Maine Revenue Services.[14] More information regarding this tax and the applicable procedures and forms is available directly from Maine Revenue Services at this link: http://www.state.me.us/revenue/.

The Superintendent expects that producers will comply with the Surplus Lines Law and the standards announced in this Bulletin. Any producer who has moved coverage from the admitted market to surplus lines should review carefully – and thoroughly document its review – whether the coverage should return to the admitted market at the policy's next renewal. Producers who fail to do so may be subject to disciplinary action.

April 14, 2021

Eric A. Cioppa
Superintendent of Insurance

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[10] 24-A M.R.S. § 2008.
[11] 24-A M.R.S. § 2009.
[12] 24-A M.R.S. § 2015.
[13] 24-A M.R.S. § 2016.
[14] 36 M.R.S. § 2531(2).

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Bulletin 458

Clear Choice Designs for the 2022 Individual Health Insurance Market

Bureau of Insurance Rule 851, which provides the process for approving standardized "Clear Choice" cost-sharing designs, took effect on June 8, 2021. Pursuant to Section 5 of the Rule, the official 2022 Clear Choice designs for individual market health plans are hereby finalized and attached to this Bulletin as an Appendix. Until further notice, carriers may rely on this chart in preparing their 2022 individual market health plan filings.

For future plan years, Paragraph 5(1)(A) of the Rule directs an annual review with stakeholder feedback. This process permits annual updates to the plans to be made without formal rulemaking. Follow-up bulletins are anticipated, similar to the annual rate and form filing bulletins currently published by the Bureau. Amendments to the Rule itself will be made only on an as-needed basis. If concerns arise, suggestions for improvements to the Rule are welcome.

Provisions in the Rule relating to small group coverage should be regarded as placeholders. Carriers need not take those provisions into account in preparing their 2022 small group filings. Although the Insurance Code currently requires Clear Choice designs in the small group market beginning in 2022,[1] pending legislation will repeal this requirement as long as the individual and small group markets remain separate, and will link Clear Choice for small group plans to the implementation of the pooled market.[2] The provisions relating to small group coverage were adopted as proposed, consistent with existing law, in order to facilitate the prompt adoption of the Rule and provide certainty to the market regarding the Clear Choice requirements as applied to individual health plans. Additional rulemaking is anticipated after the Legislature and Governor have acted on the bill now under consideration.

[1] 24-A M.R.S. § 2793(1).

[2] L.D. 1725: "An Act To Clarify the Deferral of the Pooled Market and Link Small Employer Clear Choice to Pooling in the Made for Maine Health Coverage Act." This bill would not prohibit carriers from offering one or more Clear Choice plans to small employers on an optional basis, but any such product offering would be purely voluntary until the pooled market is implemented.

The transition to Clear Choice in the individual market in 2022 will result in significant changes to coverage for many enrollees. As with any other plan transition, carriers are expected to map their existing 2021 enrollees to their most similar 2022 plan when they make their renewal offers. If there is uncertainty about which 2022 plan is most similar to a given 2021 plan, the Bureau will work with carriers to develop the most appropriate mapping. Subsection 4(3) of the Rule specifies that as a general rule, carriers may treat this mapping as a "modification" of the prior plan rather than a "discontinuance," in accordance with the provisions of the Continuity of Coverage Act clarifying that benefit modifications required by law do not conflict with enrollees' guaranteed renewal rights.[3] The exceptions are cases where carriers go beyond the modifications the law requires, either by replacing traditional insurance coverage with HMO coverage or *vice versa,* or by choosing not to offer a more similar Clear Choice plan available. In those cases, the replacement will be subject to the "minor modification" and "best interest" tests that apply whenever a carrier voluntarily replaces an old plan with a new plan.[4] The Bureau will work with carriers to resolve any questions regarding whether a carrier has chosen not to offer a more similar Clear Choice plan than its proposed replacement.

June 11, 2021

Eric A. Cioppa
Superintendent of Insurance

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[3] 24-A M.R.S. § 2850-B(3)(I)(3); 02-031 C.M.R. § 4(3)(A).

[4] 24-A M.R.S. §§ 2850-B(3)(G)(3) & (I)(4); 02-031 C.M.R. § 4(3)(B).

Appendix - Clear Choice Plan Design 2022

Benefits	Catastrophic	Bronze $7,500	Bronze $8,700	Bronze $7,000 HSA	Bronze $5,900 HSA	Silver $3,500	Silver $5,500	Silver $3,500 HSA	Silver $4,500 HSA	Gold $1,500	Gold $2,500	Platinum
Estimated AV Value	N/A	64.19%	64.56%	64.60%	64.70%	70.53%	70.52%	70.51%	66.38%	80.14%	77.48%	88.54%
Deductible	$8,700	$7,500	$8,700	$7,000	$5,900	$3,500	$5,500	$3,500	$4,500	$1,500	$2,500	$500
Maximum OOP	$8,700	$8,700	$8,700	$7,000	$7,050	$8,700	$7,500	$7,000	$7,000	$5,000	$6,000	$3,000
Coinsurance	0%	50%	0%			40%	30%			30%	30%	20%
PCP and Behavioral Health Office Visits*	$50 for 2nd & 3rd visits then deductible	$40	$50			$30	$30			$25	$25	$20
Specialist Visit		50% Coins. After Ded.	$100			$60	$60			$50	$50	$40
Free Standing Urgent Care		$60				$40	$40			$40	$40	$25
Outpatient Facility Fee (e.g., Ambulatory Surgery Center)												
Outpatient Surgery and Physician/Surgical Services												
Inpatient Hospital Services and ER		50% Coins. After Ded.	0% Coins. After Ded.	0%	50% Coins. After Ded.	40% After Deductible	30% After Deductible	10% Coins. After Ded.	20% Coins. After Ded.	30% Coins. After Ded.	30% Coins. After Ded.	20% Coins. After Ded.
Inpatient Physician, Rehabilitation, and Surgical Services	0% Coins. After Ded.											
Ambulance												
All other benefits												
RX - Tier 1 Generic		$25	$25			$25	$25			$25	$5 / $25	$0
RX - Tier 2 Preferred Brand		$50	0% After Deductible			$50	$50			$50	$50	$15
RX - Tier 3 NonPreferred		$100				$100	30%			$100	30% up to $300	$100
RX - Tier 4 Specialty		$250				$250	50%			$250	50% up to $600	$250
Preventive Medical Benefits	0%											
Pediatric Dental - Preventive & Diagnostic	0%											
Pediatric Dental - Restorative & Basic Services	20% Coinsurance After Deductible											
Pediatric Dental - Major Services & Medically Necessary Orthodontics	50% Coinsurance After Deductible											

* 1st PCP and Behavioral Health Office Visit have $0 copay; subsequent visits have copay before deductible except HSA plans

Before deductible

APPROVED
MARCH 17, 2021
BY GOVERNOR

CHAPTER
24
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 17 - L.D. 51

An Act To Enact the Maine Insurance Data Security Act

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

Sec. 1. 24-A MRSA c. 24-B is enacted to read:

CHAPTER 24-B

MAINE INSURANCE DATA SECURITY ACT

§2261. Short title

This chapter may be known and cited as "the Maine Insurance Data Security Act."

§2262. Construction

This chapter establishes standards for data security and exclusive standards for the investigation of and notification to the superintendent regarding a cybersecurity event applicable to licensees. This chapter may not be construed to create or imply a private cause of action for violation of its provisions or to curtail a private cause of action that would otherwise exist in the absence of this chapter.

§2263. Definitions

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

1. Authorized individual. "Authorized individual" means an individual whose access to the nonpublic information held by a licensee and its information systems is authorized and determined by the licensee to be necessary and appropriate.

2. Consumer. "Consumer" means an individual, including but not limited to an applicant for insurance, policyholder, insured, beneficiary, claimant or certificate holder, who is a resident of this State and whose nonpublic information is in a licensee's possession, custody or control.

3. Cybersecurity event. "Cybersecurity event" means an event resulting in unauthorized access to, disruption of or misuse of an information system or information stored on an information system.

"Cybersecurity event" does not include the unauthorized acquisition of encrypted nonpublic information if the encryption process or key is not also acquired, released or used without authorization.

"Cybersecurity event" does not include an event with regard to which the licensee has determined that the nonpublic information accessed by an unauthorized person has not been used or released and has been returned or destroyed.

4. Encrypted. "Encrypted," with respect to data, means that the data has been transformed into a form that results in a low probability of assigning meaning without the use of a protective process or key.

5. Information security program. "Information security program" means the administrative, technical and physical safeguards that a licensee uses to access, collect, distribute, process, protect, store, use, transmit, dispose of or otherwise handle nonpublic information.

6. Information system. "Information system" means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, as well as any specialized system such as an industrial or process control system, a telephone switching and private branch exchange system or an environmental control system.

7. Insurance carrier. "Insurance carrier" has the same meaning as in section 2204, subsection 15.

8. Licensee. "Licensee" means a person licensed, authorized to operate or registered or required to be licensed, authorized or registered pursuant to the insurance laws of this State. "Licensee" does not include a purchasing group or a risk retention group chartered and licensed in a state other than this State or a licensee that is acting as an assuming insurer and is domiciled in another state or jurisdiction.

9. Multifactor authentication. "Multifactor authentication" means authentication through verification of at least 2 of the following types of authentication factors:

A. Knowledge factors, such as a password;

B. Possession factors, such as a token or text message on a mobile telephone; and

C. Inherence factors, such as a biometric characteristic.

10. Nonpublic information. "Nonpublic information" means information that is not publicly available information and is:

A. Business-related information of a licensee the tampering with or unauthorized disclosure of, access to or use of which would materially and adversely affect the business, operations or security of the licensee;

B. Information that, because of name, number, personal mark or other identifier, can be used in combination with any one or more of the following data elements to identify a consumer:

(1) Social security number;

(2) Driver's license number or nondriver identification card number;

(3) Financial account number or credit or debit card number;

(4) Any security code, access code or password that would permit access to a consumer's financial account; or

(5) Biometric records; or

C. Information or data, except age or gender, in any form or medium created by or derived from a health care provider or a consumer and that relates to:

(1) The past, present or future physical, mental or behavioral health or condition of a consumer or a member of the consumer's family;

(2) The provision of health care to a consumer; or

(3) Payment for the provision of health care to a consumer.

"Nonpublic information" does not include a consumer's personally identifiable information that has been anonymized using a method no less secure than the so-called safe harbor method under the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

11. Publicly available information. "Publicly available information" means information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

A. Federal, state or local government records;

B. Widely distributed media; or

C. Disclosures to the general public that are required to be made by federal, state or local law.

For the purposes of this definition, a licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine that the information is of a type that is available to the general public and if a consumer can direct that the information not be made available to the general public and, if so, that the consumer has not done so.

12. Risk assessment. "Risk assessment" means the risk assessment that a licensee is required to conduct under section 2264, subsection 3.

13. Third-party service provider. "Third-party service provider" means a person that is not a licensee and that contracts with a licensee to maintain, process or store or otherwise is permitted access to nonpublic information through its provision of services to the licensee.

§2264. Information security program

1. Implementation of information security program. Commensurate with the size and complexity of the licensee, the nature and scope of the licensee's activities, including its use of 3rd-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the licensee's possession, custody or control, a licensee shall develop, implement and maintain a comprehensive, written information security program based on the licensee's risk assessment and containing administrative, technical and physical

safeguards for the protection of nonpublic information and the licensee's information systems.

2. Objectives of information security program. A licensee's information security program must be designed to:

A. Protect the security and confidentiality of nonpublic information and the security of the licensee's information systems;

B. Protect against reasonably foreseeable threats or hazards to the security or integrity of nonpublic information and the licensee's information systems;

C. Protect against unauthorized access to or use of nonpublic information and minimize the likelihood of harm to any consumer; and

D. Define and periodically reevaluate a schedule for retention of nonpublic information and a mechanism for its destruction when it is no longer needed.

3. Risk assessment. A licensee shall:

A. Designate one or more employees, an affiliate or another person to act on behalf of the licensee to be responsible for the licensee's information security program;

B. Identify reasonably foreseeable internal or external threats that could result in unauthorized access to or transmission, disclosure, misuse, alteration or destruction of nonpublic information, including threats to the security of the licensee's information systems and nonpublic information that are accessible to or held by 3rd-party service providers;

C. Assess the likelihood and potential damage of the threats described in paragraph B, taking into consideration the sensitivity of the nonpublic information;

D. Assess the sufficiency of policies, procedures and other safeguards in place to manage the threats described in paragraph B, including consideration of threats in each relevant area of the licensee's operations, including:

(1) Employee training and management;

(2) Information systems, including network and software design, as well as information classification, governance, processing, storage, transmission and disposal; and

(3) Detecting, preventing and responding to attacks, intrusions or other system failures; and

E. At least annually, assess the effectiveness of the key controls, information systems and procedures and other safeguards in paragraph D implemented to manage the threats described in paragraph B that are identified in the licensee's ongoing assessment.

4. Risk management. Based on its risk assessment pursuant to subsection 3, a licensee shall:

A. Design its information security program to mitigate the identified risks, commensurate with the size and complexity of the licensee, the nature and scope of the licensee's activities, including its use of 3rd-party service providers, and the sensitivity of the nonpublic information used by the licensee or in the licensee's possession, custody or control;

B. Consider the following security measures and implement the measures considered appropriate:

(1) Place access controls on information systems, including controls to authenticate and permit access only to authorized individuals to protect against the unauthorized acquisition of nonpublic information;

(2) Identify and manage the data, personnel, devices, systems and facilities that enable the licensee to achieve its business purposes in accordance with their relative importance to business objectives and the licensee's risk management strategy;

(3) Restrict access at physical locations containing nonpublic information to only authorized individuals;

(4) Protect, by encryption or other appropriate means, all nonpublic information while it is being transmitted over an external network and all nonpublic information stored on a laptop computer or other portable computing or storage device or media;

(5) Adopt secure development practices for applications developed and used by the licensee and procedures for evaluating, assessing or testing the security of externally developed applications used by the licensee;

(6) Modify information systems in accordance with the licensee's information security program;

(7) Use effective controls, which may include multifactor authentication procedures, for individuals accessing nonpublic information;

(8) Regularly test and monitor systems and procedures to detect actual and attempted attacks on or intrusions into information systems;

(9) Include audit trails within the information security program designed to detect and respond to cybersecurity events and to reconstruct material financial transactions sufficient to support normal operations and obligations of the licensee;

(10) Implement measures to protect against destruction, loss or damage of nonpublic information due to environmental hazards, such as fire and water damage, or other catastrophes or technological failures; and

(11) Develop, implement and maintain procedures for the secure disposal of nonpublic information in any format;

C. Include cybersecurity risks in the licensee's enterprise risk management process;

D. Stay informed regarding emerging threats to or vulnerabilities of information systems and use reasonable security measures when sharing information relative to the character of the sharing and the type of information shared; and

E. Provide its personnel with cybersecurity awareness training that is updated as necessary to reflect risks identified by the licensee in its risk assessment.

5. Oversight by board of directors. If a licensee has a board of directors, the board or an appropriate committee of the board, at a minimum, shall require the licensee's executive management or the executive management's delegates to:

A. Develop, implement and maintain the licensee's information security program; and

B. Report to the board in writing at least annually the following information:

(1) The overall status of the licensee's information security program and the licensee's compliance with this chapter; and

(2) Material matters related to the information security program, addressing issues such as risk assessment, risk management and control decisions, 3rd-party service provider arrangements, results of testing, cybersecurity events or cybersecurity violations and the executive management's responses to cybersecurity events or cybersecurity violations, and recommendations for changes to the information security program.

If a licensee's executive management delegates any of its responsibilities under this section, the licensee's executive management shall oversee each delegate's efforts with respect to the development, implementation and maintenance of the licensee's information security program and shall require each delegate to submit a report to the board pursuant to paragraph B.

6. Oversight of 3rd-party service provider arrangements. A licensee shall:

A. Exercise due diligence in selecting its 3rd-party service providers; and

B. Require each 3rd-party service provider to implement appropriate administrative, technical and physical safeguards to protect and secure the information systems and nonpublic information that are accessible to or held by the 3rd-party service provider.

7. Program adjustments. A licensee shall monitor, evaluate and adjust, as appropriate, its information security program consistent with any relevant changes in technology, the sensitivity of the licensee's nonpublic information, internal or external threats to nonpublic information and the licensee's own changing business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements and changes to information systems.

8. Incident response plan. As part of its information security program, a licensee shall establish a written incident response plan designed to promptly respond to and recover from any cybersecurity event that compromises the confidentiality, integrity or availability of nonpublic information in its possession; the licensee's information systems; or the continuing functionality of any aspect of the licensee's business or operations. The incident response plan must address the following areas:

A. The internal process for responding to a cybersecurity event;

B. The goals of the incident response plan;

C. The definition of clear roles, responsibilities and levels of decision-making authority;

D. External and internal communications and information sharing;

E. Requirements for the remediation of any identified weaknesses in the licensee's information systems and associated controls;

F. Documentation and reporting regarding cybersecurity events and related incident response activities; and

G. The evaluation and revision as necessary of the incident response plan following a cybersecurity event.

9. Annual certification to superintendent. By April 15th annually, an insurance carrier domiciled in this State shall submit to the superintendent a written statement certifying that the insurance carrier is in compliance with the requirements set forth in this section. An insurance carrier shall maintain for examination by the superintendent all records, schedules and data supporting this certification for a period of 5 years. To the extent that an insurance carrier has identified areas, systems or processes that require material improvement, updating or redesign, the insurance carrier shall document the identification and the remedial efforts planned and underway to address such areas, systems or processes. The documentation required pursuant to this subsection must be available for inspection by the superintendent.

§2265. Investigation of cybersecurity event

1. Investigation. If a licensee learns that a cybersecurity event has or may have occurred, the licensee or an outside vendor or service provider designated to act on behalf of the licensee shall conduct a prompt investigation. During the investigation, the licensee or an outside vendor or service provider designated to act on behalf of the licensee, at a minimum, shall:

A. Determine whether a cybersecurity event has occurred;

B. Assess the nature and scope of the cybersecurity event;

C. Identify any nonpublic information that may have been involved in the cybersecurity event; and

D. Perform or oversee the performance of reasonable measures to restore the security of the information systems compromised in the cybersecurity event in order to prevent further unauthorized acquisition, release or use of nonpublic information in the licensee's possession, custody or control.

2. System maintained by 3rd-party service provider. If a licensee learns that a cybersecurity event has or may have occurred in an information system maintained by a 3rd-party service provider, the licensee shall either use its best efforts to complete the steps listed in subsection 1 or confirm that the 3rd-party service provider has completed those steps.

3. Maintenance of records. A licensee shall maintain records concerning a cybersecurity event for a period of at least 5 years from the date of the cybersecurity event and shall produce those records upon demand of the superintendent.

§2266. Notification of cybersecurity event

1. Notification to superintendent. Notwithstanding Title 10, chapter 210-B, a licensee shall notify the superintendent as promptly as possible but in no event later than 3 business days from a determination that a cybersecurity event has occurred if:

A. This State is the licensee's state of domicile, in the case of an insurance carrier, or this State is the licensee's home state, as that term is defined in section 1420-A, subsection 2, in the case of an insurance producer; or

B. The licensee reasonably believes that the nonpublic information involved concerns 250 or more consumers residing in this State and that the cybersecurity event is either of the following:

(1) A cybersecurity event affecting the licensee of which notice is required to be provided to any government body, self-regulatory organization or other supervisory body pursuant to any state or federal law; or

(2) A cybersecurity event that has a reasonable likelihood of materially harming:

(a) Any consumer residing in this State; or

(b) Any material part of the normal operation of the licensee.

2. Provision of information by licensee. A licensee shall provide in electronic form as directed by the superintendent as much of the following information regarding a cybersecurity event as possible:

A. The date of the cybersecurity event;

B. A description of how the information was exposed, lost, stolen or breached, including the specific roles and responsibilities of 3rd-party service providers, if any;

C. How the cybersecurity event was discovered;

D. Whether any lost, stolen or breached information has been recovered and, if so, how this was done;

E. The identity of the source of the cybersecurity event;

F. Whether the licensee has filed a police report or has notified any regulatory, government or law enforcement agencies and, if so, when the report was filed or the notification was provided;

G. A description of the specific types of information acquired without authorization. For purposes of this subsection, "specific types of information" includes, but is not limited to, medical information, financial information and information allowing identification of a consumer;

H. The period of time during which the information system was compromised by the cybersecurity event;

I. The total number of consumers in this State affected by the cybersecurity event. The licensee shall provide its best estimate in the notification provided pursuant to subsection 1 to the superintendent and update this estimate with each subsequent report to the superintendent pursuant to this section;

J. The results of any review conducted by or for the licensee identifying a lapse in either automated controls or internal procedures or confirming that all automated controls or internal procedures were followed;

K. A description of efforts being undertaken to remediate the situation that permitted the cybersecurity event to occur;

L. A copy of the licensee's privacy policy and a statement outlining the steps the licensee will take to investigate and notify consumers affected by the cybersecurity event; and

M. The name and contact information of a person who is familiar with the cybersecurity event and authorized to act for the licensee.

The licensee has a continuing obligation to update and supplement initial and subsequent notifications to the superintendent concerning the cybersecurity event.

3. Notification to consumers. A licensee shall comply with Title 10, chapter 210-B, as applicable, and, when required to notify the superintendent under subsection 1, provide to the superintendent a copy of the notice sent to consumers pursuant to Title 10, chapter 210-B.

4. Notice regarding cybersecurity events of 3rd-party service providers. In the case of a cybersecurity event in an information system maintained by a 3rd-party service provider of which the licensee has become aware:

A. The licensee shall respond to the cybersecurity event as described under subsection 1; and

B. The computation of the licensee's deadlines for notification under this section begins on the day after the 3rd-party service provider notifies the licensee of the cybersecurity event or the day after the licensee otherwise has actual knowledge of the cybersecurity event, whichever is sooner.

Nothing in this chapter may be construed to prevent or abrogate an agreement between a licensee and another licensee, a 3rd-party service provider or any other party to fulfill any of the investigation requirements imposed under section 2265 or notice requirements imposed under this subsection.

5. Notice regarding cybersecurity events of reinsurers to insurers. This subsection governs notice regarding cybersecurity events of reinsurers to insurers.

A. In the case of a cybersecurity event involving nonpublic information that is used by a licensee that is acting as an assuming insurer or is in the possession, custody or control of a licensee that is acting as an assuming insurer and that does not have a direct contractual relationship with the affected consumers:

(1) The assuming insurer shall notify its affected ceding insurers and the superintendent of its state of domicile within 3 business days of making the determination that a cybersecurity event has occurred; and

(2) The ceding insurers that have a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under the laws of this State and any other notification requirements relating to a cybersecurity event imposed under this section.

B. In the case of a cybersecurity event involving nonpublic information that is in the possession, custody or control of a 3rd-party service provider of a licensee that is acting as an assuming insurer:

(1) The assuming insurer shall notify its affected ceding insurers and the superintendent of its state of domicile within 3 business days of receiving notice from its 3rd-party service provider that a cybersecurity event has occurred; and

(2) The ceding insurers that have a direct contractual relationship with affected consumers shall fulfill the consumer notification requirements imposed under the

laws of this State and any other notification requirements relating to a cybersecurity event imposed under this section.

6. Notice regarding cybersecurity events of insurance carriers to producers of record. In the case of a cybersecurity event involving nonpublic information that is in the possession, custody or control of a licensee that is an insurance carrier or its 3rd-party service provider, and for which information a consumer accessed the insurance carrier's services through an independent insurance producer, the insurance carrier shall notify the producers of record of all affected consumers no later than the time consumers must be notified under subsection 3 or as directed by the superintendent, except that the insurance carrier is excused from this obligation for those instances in which it does not have the current producer of record information for any individual consumer.

§2267. Power of superintendent

1. Investigate. The superintendent may examine and investigate the affairs of any licensee to determine whether the licensee has been or is engaged in any conduct in violation of this chapter. This power is in addition to the powers the superintendent has under sections 220 and 221. Any such examination or investigation must be conducted pursuant to those sections.

2. Enforcement. Whenever the superintendent has reason to believe that a licensee has been or is engaged in conduct in this State that violates this chapter, the superintendent may take action that is necessary or appropriate to enforce the provisions of this chapter.

§2268. Confidentiality

1. Materials held confidential. Documents, materials and other information in the control or possession of the bureau that are furnished by a licensee or an employee or agent acting on behalf of the licensee pursuant to section 2264, subsection 9 or section 2266, subsection 2, paragraph B, C, D, E, H, J or K or that are obtained by the superintendent in an investigation or examination pursuant to section 2267 are confidential by law and privileged, are not subject to Title 1, chapter 13, subchapter 1, are not subject to subpoena and are not subject to discovery or admissible in evidence in any private civil action; however, the superintendent is authorized to use the documents, materials and other information in the furtherance of any regulatory or legal action brought as a part of the superintendent's duties and to share them on a confidential basis in accordance with section 216, subsection 5.

2. Private civil action. Neither the superintendent nor any person who received documents, materials or other information while acting under the authority of the superintendent may be permitted or required to testify in any private civil action concerning any confidential documents, materials or other information subject to subsection 1.

3. Disclosure not waiver. Disclosure of information to the superintendent under this section or as a result of sharing as authorized in section 216, subsection 5 does not constitute a waiver of any applicable privilege or claim of confidentiality regarding the documents, materials or other information.

4. Final actions. This chapter may not be construed to prohibit the superintendent from releasing final, adjudicated actions that are open to public inspection pursuant to Title 1, chapter 13, subchapter 1 to a database or other clearinghouse service maintained by the

National Association of Insurance Commissioners, its affiliates or subsidiaries or any successor organization.

§2269. Application; exceptions

1. Small business exception. A licensee with fewer than 10 employees, including any independent contractors working for the licensee in the business of insurance, is exempt from section 2264.

2. Licensees subject to federal law. The following provisions apply to licensees subject to federal law.

A. A licensee that is subject to and in compliance with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and related privacy, security and breach notification regulations pursuant to 45 Code of Federal Regulations, Parts 160 and 164 and the federal Health Information Technology for Economic and Clinical Health Act, Public Law 111-5 is considered to meet the requirements of this chapter, other than the requirements of section 2266, subsection 1 for notification to the superintendent, if:

(1) The licensee maintains a program for information security and breach notification that treats all nonpublic information relating to consumers in this State in the same manner as protected health information;

(2) The licensee annually submits to the superintendent a written statement certifying that the licensee is in compliance with the requirements of this paragraph; and

(3) The superintendent has not issued a determination finding that the applicable federal regulations are materially less stringent than the requirements of this chapter.

B. A licensee that is an insurance producer business entity, as licensed pursuant to section 1420-E, owned by a depository institution and that maintains an information security program in compliance with the standards for safeguarding customer information as set forth pursuant to the federal Gramm-Leach-Bliley Act, 15 United States Code, Sections 6801 and 6805 is considered to meet the requirements of section 2264 if:

(1) Upon request, the licensee produces documentation satisfactory to the superintendent that independently validates the controlling depository institution's adoption of an information security program that satisfies the standards for safeguarding customer information;

(2) The licensee annually submits to the superintendent a written statement certifying that the licensee is in compliance with the requirements of this paragraph; and

(3) The superintendent has not issued a determination finding that the standards for safeguarding customer information are materially less stringent than the requirements of section 2264.

3. Employee, agent, representative or designee also a licensee. An employee, agent, representative or designee of a licensee that is also a licensee is exempt from section 2264 and need not develop its own information security program to the extent that the employee,

agent, representative or designee is covered by the information security program of the other licensee.

If a licensee ceases to qualify for an exception under this section, the licensee has 180 days to comply with this chapter.

§2270. Penalties

The superintendent may take any enforcement action permitted under section 12-A against any person that violates any provision of this chapter.

§2271. Rules

The superintendent may adopt rules necessary to carry out the provisions of this chapter. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

§2272. Effective date; implementation

This chapter takes effect January 1, 2022. A licensee must comply with section 2264 no later than January 1, 2022, except that a licensee must comply with section 2264, subsection 6 no later than January 1, 2023.

APPROVED
JUNE 16, 2021
BY GOVERNOR

CHAPTER
235
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 306 - L.D. 422

An Act To Enact the Maine Uniform Trust Decanting Act

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

Sec. 1. 18-B MRSA c. 12 is enacted to read:

CHAPTER 12

MAINE UNIFORM TRUST DECANTING ACT

§1201. Short title

This Act may be known and cited as "the Maine Uniform Trust Decanting Act." Any references in this chapter to "Act" mean "the Maine Uniform Trust Decanting Act."

§1202. Definitions

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

1. Appointive property. "Appointive property" means the property or property interest subject to a power of appointment.

2. Ascertainable standard. "Ascertainable standard" means a standard relating to an individual's health, education, support or maintenance within the meaning of 26 United States Code, Section 2041(b)(1)(A), as amended, or 26 United States Code, Section 2514(c)(1), as amended, and any applicable regulations.

3. Authorized fiduciary. "Authorized fiduciary" means:

A. A trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

B. A special fiduciary appointed under section 1208; or

C. A special-needs fiduciary under section 1212.

4. Beneficiary. "Beneficiary" means a person that:

A. Has a present or future, vested or contingent, beneficial interest in a trust;

B. Holds a power of appointment over trust property; or

C. Is an identified charitable organization that will or may receive distributions under the terms of the trust.

5. Charitable interest. "Charitable interest" means an interest in a trust that:

A. Is held by an identified charitable organization and makes the organization a qualified beneficiary;

B. Benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the identified charitable organization a qualified beneficiary; or

C. Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the identified charitable organization a qualified beneficiary.

6. Charitable organization. "Charitable organization" means:

A. A person, other than an individual, organized and operated exclusively for charitable purposes; or

B. A government or governmental subdivision, agency or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

7. Charitable purpose. "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose or another purpose the achievement of which is beneficial to the community.

8. Court. "Court" means the applicable court in this State having jurisdiction in matters relating to trusts.

9. Current beneficiary. "Current beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. "Current beneficiary" includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

10. Decanting power. "Decanting power" means the power of an authorized fiduciary under this Act to distribute property of a first trust to one or more 2nd trusts or to modify the terms of the first trust.

11. Expanded distributive discretion. "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

12. First trust. "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.

13. First-trust instrument. "First-trust instrument" means the trust instrument for a first trust.

14. General power of appointment. "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder or a creditor of the powerholder's estate.

15. Person. "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal entity.

16. Power of appointment. "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. "Power of appointment" does not include a power of attorney.

17. Powerholder. "Powerholder" means a person in which a donor creates a power of appointment.

18. Presently exercisable power of appointment. "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. "Presently exercisable power of appointment":

A. Includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard or the passage of a specified time period only after:

(1) The occurrence of the specified event;

(2) The satisfaction of the ascertainable standard; or

(3) The passage of the specified time period; and

B. Does not include a power exercisable only at the powerholder's death.

19. Qualified beneficiary. "Qualified beneficiary" means a beneficiary that on the date the beneficiary's qualification is determined:

A. Is a distributee or permissible distributee of trust income or principal;

B. Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph A terminated on that date without causing the trust to terminate; or

C. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

20. Reasonably definite standard. "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 United States Code, Section 674(b)(5)(A) and any applicable regulations.

21. Record. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

22. Second trust. "Second trust" means:

A. A first trust after modification under this Act; or

B. A trust to which a distribution of property from a first trust is or may be made under this Act.

23. Second-trust instrument. "Second-trust instrument" means the trust instrument for a 2nd trust.

24. Settlor. "Settlor, " except as otherwise provided in section 1224, means a person, including a testator, that creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to the person's contribution except to the extent another person has power to revoke or withdraw that portion.

25. Sign. "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or

B. To attach to or logically associate with the record an electronic symbol, sound or process.

§1203. Scope

1. Express trust. Except as otherwise provided in subsections 2 and 3, this Act applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

2. Trust solely for charitable purposes. This Act does not apply to a trust held solely for charitable purposes.

3. Restricted or prohibited decanting power. Subject to section 1214, a trust instrument may restrict or prohibit exercise of the decanting power.

4. Power not limited. This Act does not limit the power of a trustee, powerholder or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, a law of this State other than this Act, common law, a court order or a nonjudicial settlement agreement.

5. Ability of settlor. This Act does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

§1204. Fiduciary duty

1. Act in accordance with fiduciary duty. In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

2. No duty to exercise power; inform beneficiaries. This Act does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this Act.

3. Deemed to include decanting power. Except as otherwise provided in a first-trust instrument, for purposes of this Act and section 801 and section 802, subsection 1, the terms of the first trust are deemed to include the decanting power.

§1205. Application; governing law

1. This State. This Act applies to a trust that:

A. Has its principal place of administration in this State, including a trust whose principal place of administration has been changed to this State; or

B. Provides by its trust instrument that it is governed by the law of this State or is governed by the law of this State for the purpose of:

(1) Administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this State;

(2) Construction of terms of the trust; or

(3) Determining the meaning or effect of terms of the trust.

2. Creation of trust; court proceedings. Except as otherwise provided in this Act:

A. The Act applies to a trust created before, on or after the October 1, 2021;

B. The Act applies to any proceedings in court commenced on or after October 1, 2021;

C. The Act applies to proceedings in court pending on October 1, 2021 unless the court finds that application of a particular provision of the Act would interfere substantially with the effective conduct of the proceeding or prejudice a right of a party, in which case the particular provision of the Act does not apply; and

D. A rule of construction or presumption provided in the Act applies to a trust instrument executed prior to October 1, 2021 unless there is a clear indication of a contrary intent in the terms of the instrument.

3. Action before effective date of Act. Except as otherwise provided in subsection 2, an action done before October 1, 2021 is not affected by the Act.

§1206. Reasonable reliance

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this Act, a law of this State other than this Act or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

§1207. Notice; exercise of decanting power

1. Notice period. For purposes of this section, a notice period begins on the day notice is given under subsection 3 and ends 59 days after the day notice is given.

2. Exercise without consent or approval. Except as otherwise provided in this Act, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

3. Notice. Except as otherwise provided in subsection 4 or 6, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

A. Each settlor of the first trust, if living or then in existence;

B. Each qualified beneficiary of the first trust;

C. Each holder of a presently exercisable power of appointment over any part or all of the first trust;

D. Each person that currently has the right to remove or replace the authorized fiduciary;

E. Each other fiduciary of the first trust;

F. Each fiduciary of the 2nd trust; and

G. The Attorney General, if section 1213, subsection 2 applies.

4. Notice not required. An authorized fiduciary is not required to give notice under subsection 3 to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

5. Requirements of notice. A notice under subsection 3 must:

A. Specify the manner in which the authorized fiduciary intends to exercise the decanting power;

B. Specify the proposed effective date for exercise of the decanting power;

C. Include a copy of the first-trust instrument; and

D. Include a copy of all 2nd-trust instruments.

6. Waiver of notice period. The decanting power may be exercised before expiration of the notice period under subsection 1 if all persons entitled to receive notice waive the notice period in a signed record.

7. Right to file application. The receipt of notice, waiver of the notice period or expiration of the notice period does not affect the right of a person to file an application under section 1208 asserting that:

A. An attempted exercise of the decanting power is ineffective because the exercise did not comply with this Act or was an abuse of discretion or breach of fiduciary duty; or

B. Section 1221 applies to the exercise of the decanting power.

8. Failure to give notice; reasonable care. An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection 3 if the authorized fiduciary acted with reasonable care to comply with subsection 3.

§1208. Court involvement

1. Application to court. On application of an authorized fiduciary, a person entitled to notice under section 1207, subsection 3, a beneficiary or, with respect to a charitable interest, the Attorney General, the court may:

A. Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this Act and consistent with the fiduciary duties of the authorized fiduciary;

B. Appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this Act and to exercise the decanting power;

C. Approve an exercise of the decanting power;

D. Determine that a proposed or attempted exercise of the decanting power is ineffective because:

(1) After applying section 1221, the proposed or attempted exercise does not or did not comply with this Act; or

(2) The proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

E. Determine the extent to which section 1221 applies to a prior exercise of the decanting power;

F. Provide instructions to the trustee regarding the application of section 1221 to a prior exercise of the decanting power; or

G. Order other relief to carry out the purposes of this Act.

2. Court approval. On application of an authorized fiduciary, the court may approve:

A. An increase in the fiduciary's compensation under section 1215; or

B. A modification under section 1217 of a provision granting a person the right to remove or replace the fiduciary.

§1209. Formalities

An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by section 1207, identify the first trust and the 2nd trust or trusts and state the property of the first trust being distributed to each 2nd trust and the property, if any, that remains in the first trust.

§1210. Decanting power under expanded distributive discretion

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. "Noncontingent right" does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

B. "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

C. "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. "Successor beneficiary" does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

D. "Vested interest" means:

(1) A right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(2) A current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount or a percentage of value of some or all of the trust property;

(3) A current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount or a percentage of value of some or all of the trust property;

(4) A general power of appointment that is a presently exercisable general power of appointment; or

(5) A right, which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur, to receive an ascertainable part of the trust property on the trust's termination.

2. Expanded distributive discretion over principal. Subject to subsection 3 and section 1213, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

3. Restrictions on 2nd trust. Subject to section 1212, in an exercise of the decanting power under this section, a 2nd trust may not:

A. Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection 4;

B. Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary or successor beneficiary of the first trust, except as otherwise provided in subsection 4; or

C. Reduce or eliminate a vested interest.

4. Permitted 2nd trust. Subject to subsection 3, paragraph C and section 1213, in an exercise of the decanting power under this section, a 2nd trust may be a trust created or administered under the law of any jurisdiction and may:

A. Retain a power of appointment granted in the first trust;

B. Omit a power of appointment granted in the first trust, other than a general power of appointment that is a presently exercisable power of appointment;

C. Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

D. Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power of appointment may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

5. Power of appointment; permissible appointees. A power of appointment described in subsection 4, paragraphs A to D may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the class of beneficiaries of the first trust.

6. Expanded distributive discretion over part of principal. If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

§1211. Decanting power under limited distributive discretion

1. Limited distributive discretion defined. For purposes of this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

2. Limited distributive discretion over principal. An authorized fiduciary that has limited distributive discretion over the principal of the first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

3. Creation of 2nd trust; similar beneficial interests. Under this section and subject to section 1213, a 2nd trust may be created or administered under the law of any jurisdiction. Under this section, the 2nd trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust.

4. Distribution for benefit of beneficiary. A power to make a distribution under a 2nd trust created pursuant to this section for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is deemed to be for the benefit of a beneficiary if:

A. The distribution is applied for the benefit of the beneficiary;

B. The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated and if the distribution is made as permitted under this Part; or

C. The distribution is made as permitted under the terms of the first-trust instrument and the 2nd-trust instrument for the benefit of the beneficiary.

5. Limited distributive discretion over part of principal. If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

§1212. Trust for beneficiary with disability

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Beneficiary with a disability" means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who is subject to a guardianship, a conservatorship or a protective arrangement.

B. "Governmental benefits" means financial aid or services from a state, federal or other public agency.

C. "Special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

(1) A trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(2) If no trustee or fiduciary has discretion under subparagraph (1), a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(3) If no trustee or fiduciary has discretion under subparagraphs (1) and (2), a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

D. "Special-needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

2. Special-needs decanting. A special-needs fiduciary may exercise the decanting power under section 1210 over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

A. A 2nd trust is a special-needs trust that benefits the beneficiary with a disability; and

B. The special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

3. Beneficiary with a disability. In an exercise of the decanting power under this section, the following apply:

A. Notwithstanding section 1210, subsection 3, paragraph B, the interest in the 2nd trust of a beneficiary with a disability may:

(1) Be a pooled trust as defined under the federal Medicaid program for the benefit of the beneficiary with a disability under 42 United States Code, Section 1396p(d)(4)(C); or

(2) Contain payback provisions complying with reimbursement requirements under the federal Medicaid program under 42 United States Code, Section 1396p(d)(4)(A);

B. Section 1210, subsection 3, paragraph C does not apply to the interests of a beneficiary with a disability; and

C. Except as affected by any change to the interests of a beneficiary with a disability, the 2nd trust or, if there are 2 or more 2nd trusts, the 2nd trusts in the aggregate must grant each other beneficiary of the first trust beneficial interests in the 2nd trusts that are substantially similar to the beneficiary's beneficial interests in the first trust.

§1213. Protection of charitable interest

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event or after the passage of a specified time period and that is unconditional or will be held solely for charitable purposes.

B. "Unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986 on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

2. Determinable charitable interest; Attorney General may represent and bind. If a first trust contains a determinable charitable interest, for purposes of this section, the

Attorney General has the rights of a qualified beneficiary and may represent and bind the determinable charitable interest.

3. Limitation on 2nd trusts. If a first trust contains a determinable charitable interest, the 2nd trust or trusts may not:

A. Diminish the determinable charitable interest;

B. Diminish the interest of an identified charitable organization that holds the determinable charitable interest;

C. Alter any charitable purpose stated in the first-trust instrument; or

D. Alter any condition or restriction related to the determinable charitable interest.

4. Treatment of 2 or more 2nd trusts. If there are 2 or more 2nd trusts, the 2nd trusts must be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the determinable charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection 3.

5. State law applicable; exceptions. If a first trust contains a determinable charitable interest, a 2nd trust or trusts that include a determinable charitable interest pursuant to subsection 3 must be administered under the law of this State unless:

A. The Attorney General, after receiving notice under section 1207, does not object in a signed record delivered to the authorized fiduciary within the notice period;

B. The Attorney General consents in a signed record to the 2nd trust or trusts being administered under the law of another jurisdiction; or

C. The court approves the exercise of the decanting power.

6. Attorney General's powers and duties not limited. This Act does not limit the powers and duties of the Attorney General under a law of this State other than this Act.

§1214. Trust limitation on decanting

1. Decanting power prohibited. An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

A. The decanting power; or

B. A power granted by state law to the authorized fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

2. Decanting power restricted. Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

A. The decanting power; or

B. A power granted by state law to an authorized fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

3. Decanting power not precluded. A general prohibition on amendment or revocation of a first trust, a spendthrift provision or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

4. First trust permits modification or distribution. Subject to subsections 1 and 2, an authorized fiduciary may exercise the decanting power pursuant to this Act even if the

first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

5. Express prohibition or restriction included in 2nd trust. If a first-trust instrument contains an express prohibition described in subsection 1 or an express restriction described in subsection 2, the provision must be included in the 2nd-trust instrument.

§1215. Change in compensation

1. Compensation specified. If a first-trust instrument specifies an authorized fiduciary's compensation, the authorized fiduciary may not exercise the decanting power to increase the authorized fiduciary's compensation above the specified compensation unless:

A. All qualified beneficiaries of the 2nd trust consent to the increase in a signed record; or

B. The increase is approved by the court.

2. Compensation not specified. If a first-trust instrument does not specify an authorized fiduciary's compensation, the authorized fiduciary may not exercise the decanting power to increase the authorized fiduciary's compensation above the compensation permitted by this Part unless:

A. All qualified beneficiaries of the 2nd trust consent to the increase in a signed record; or

B. The increase is approved by the court.

3. Change in compensation incidental. A change in an authorized fiduciary's compensation that is incidental to other changes made by the exercise of the decanting power is not an increase in the authorized fiduciary's compensation for purposes of subsections 1 and 2.

§1216. Relief from liability and indemnification

1. Liability for breach of trust. Except as otherwise provided in this section, a 2nd-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument does.

2. Indemnification for claim otherwise payable. A 2nd-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

3. No reduction in liability in aggregate. A 2nd-trust instrument may not reduce fiduciary liability in the aggregate.

4. Division and reallocation of fiduciary powers; relief from fiduciary liability. Subject to subsection 3, a 2nd-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by a law of this State other than this Act.

§1217. Removal or replacement of authorized fiduciary

An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the authorized fiduciary unless:

1. Person holding power consents. The person holding the power to remove or replace the authorized fiduciary consents to the modification in a signed record and the modification applies only to the person;

2. Person holding power and qualified beneficiaries consent. The person holding the power to remove or replace the authorized fiduciary and the qualified beneficiaries of the 2nd trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

3. Court approves. The court approves the modification and the modification grants a substantially similar power to remove or replace the authorized fiduciary to another person.

§1218. Tax-related limitations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Grantor trust" means a trust as to which a settlor of a first trust is considered the owner under 26 United States Code, Sections 671 to 677 or 26 United States Code, Section 679.

B. "Internal Revenue Code" means the United States Internal Revenue Code of 1986.

C. "Nongrantor trust" means a trust that is not a grantor trust.

D. "Qualified benefits property" means property subject to the minimum distribution requirements of 26 United States Code, Section 401(a)(9), and any applicable regulations, or to any similar requirements that refer to 26 United States Code, Section 401(a)(9) or an applicable regulation.

2. Limitations on decanting power. An exercise of the decanting power is subject to the following limitations:

A. If a first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate or inheritance tax, the 2nd-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

B. If the first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for a charitable deduction for purposes of the income, gift or estate tax under the Internal Revenue Code or a state income, gift, estate or inheritance tax, the 2nd-trust instrument may not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

C. If the first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for the exclusion from the gift tax described in 26 United States Code, Section 2503(b), the 2nd-trust instrument may not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 United States Code, Section 2503(b). If the first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for the exclusion from the gift tax described in 26 United States Code, Section 2503(b) by application of 26 United States Code, Section 2503(c), the 2nd-trust instrument may not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 United States Code, Section 2503(c).

D. If the property of the first trust includes shares of stock in an S corporation, as defined in 26 United States Code, Section 1361 and the first trust is, or but for provisions of this Act other than this section would be, a permitted shareholder under any provision of 26 United States Code, Section 1361, an authorized fiduciary may exercise the power with respect to part or all of the S corporation stock only if any 2nd trust receiving the stock is a permitted shareholder under 26 United States Code, Section 1361(c)(2). If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this Act other than this section would be, a qualified subchapter S trust within the meaning of 26 United States Code, Section 1361(d), the 2nd-trust instrument may not include or omit a term that, if included or omitted, would have the effect of preventing the 2nd trust from qualifying as a qualified subchapter S trust.

E. If the first trust contains property that qualified, or would have qualified but for provisions of this Act other than this section, for an inclusion ratio of zero for purposes of the generation-skipping transfer tax under 26 United States Code, Section 2642(c), the 2nd-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for an inclusion ratio of zero under 26 United States Code, Section 2642(c).

F. If the first trust is directly or indirectly the beneficiary of qualified benefits property, the 2nd-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 United States Code, Section 401(a)(9) and any applicable regulations, or any similar requirements that refer to 26 United States Code, Section 401(a)(9) or an applicable regulation. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power, and section 1221 applies to the separate share.

G. If the first trust qualifies as a grantor trust because of the application of 26 United States Code, Section 672(f)(2)(A), the 2nd trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 United States Code, Section 672(f)(2)(A).

H. Subject to paragraph I, a 2nd-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(1) The first-trust instrument expressly indicates an intent to qualify for the tax benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the tax benefit; and

(2) The transfer of property held by the first trust, or the first trust, qualified, or but for provisions of this Act other than this section would have qualified, for the tax benefit.

For the purposes of this paragraph, "tax benefit" means a federal or state tax deduction, exemption, exclusion or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust.

I. Subject to paragraph D:

(1) Except as otherwise provided in paragraph H, the 2nd trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(2) Except as otherwise provided in paragraph J, the 2nd trust may be a grantor trust, even if the first trust is a nongrantor trust.

J. An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the authorized fiduciary within the notice period under section 1207 and:

(1) The first trust and a 2nd trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust and the 2nd trust does not grant an equivalent power to the settlor or other person; or

(2) The first trust is a nongrantor trust and a 2nd trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(a) The settlor has the power at all times to cause the 2nd trust to cease to be a grantor trust; or

(b) The first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the 2nd-trust instrument contains the same provision.

§1219. Duration of 2nd trust

1. Duration. Subject to subsection 2, a 2nd trust may have a duration that is the same as or different from the duration of the first trust.

2. Rules applicable to property. To the extent that property of a 2nd trust is attributable to property of the first trust, the property of the 2nd trust is subject to any rules governing maximum perpetuity, accumulation or suspension of the power of alienation that apply to property of the first trust.

§1220. Need to distribute not required

An authorized fiduciary may exercise the decanting power whether or not, under the first trust's discretionary distribution standard, the authorized fiduciary would have made

or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

§1221. Savings provision

1. Second-trust instrument in part not in compliance. If exercise of the decanting power would be effective under this Act except for the 2nd-trust instrument's partial noncompliance with this Act, the exercise of the decanting power is effective and the following applies with respect to the principal of the 2nd trust attributable to the exercise of the decanting power:

A. A provision in the 2nd-trust instrument that is not permitted under this Act is void to the extent necessary to comply with this Act; and

B. A provision required by this Act to be in the 2nd-trust instrument that is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with this Act.

2. Fiduciary action. If a trustee or other fiduciary of a 2nd trust determines that subsection 1 applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

§1222. Trust for care of animal

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals.

B. "Protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

2. Consent of protector. The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this Act if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

3. Rights of qualified beneficiary. A protector for an animal has the rights under this Act of a qualified beneficiary.

4. Time period first trust benefited animal. Notwithstanding any provision of this Act to the contrary, if a first trust is an animal trust, in an exercise of the decanting power, the 2nd trust must provide that trust property may be applied only for its intended purpose for the time period the first trust benefited the animal.

§1223. Terms of 2nd trust

A reference in this Title to a trust instrument or terms of the trust includes a 2nd-trust instrument and the terms of the 2nd trust.

§1224. Settlor

1. Settlor of first trust is settlor of 2nd trust. For purposes of the law of this State other than this Act and subject to subsection 2, a settlor of a first trust is deemed to be the

settlor of the 2nd trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

2. Consideration of intent. In determining settlor intent with respect to a 2nd trust, the intent of a settlor of the first trust, a settlor of the 2nd trust and the authorized fiduciary may be considered.

§1225. Later-discovered property

1. Distribution of all principal of first trust. Except as otherwise provided in subsection 3, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more 2nd trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the decanting power is part of the trust estate of the 2nd trust or trusts.

2. Distribution of less than all principal of first trust. Except as otherwise provided in subsection 3, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more 2nd trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the decanting power remains part of the trust estate of the first trust.

3. Disposition by fiduciary. An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a 2nd trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after the exercise of the decanting power.

§1226. Obligations

A debt, liability or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the 2nd trust after exercise of the decanting power.

§1227. Uniformity of application and construction

In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§1228. Relation to Electronic Signatures in Global and National Commerce Act

This Act modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not modify, limit or supersede 15 United States Code, Section 7001(c), or authorize electronic delivery of any of the notices described in 15 United States Code, Section 7003(b).

§1229. Effective date

This Act takes effect October 1, 2021.

APPROVED
MAY 25, 2021
BY GOVERNOR

CHAPTER
80
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 480 - L.D. 653

An Act To Provide Maine Residents Losing Employer-based Health Coverage with Information about Other Coverage

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

Sec. 1. 24-A MRSA §2809-A, sub-§1-B, as amended by PL 2007, c. 199, Pt. F, §1, is further amended to read:

1-B. Notification of availability of individual coverage. An insurer shall provide forms to group policyholders, and certificate holders when required by subsection 1-A, for the purpose of informing terminating group members of their right to purchase any individual health plan available in this State, including their eligibility for any special enrollment period to purchase an individual health plan pursuant to the federal Affordable Care Act, and of the availability of public health coverage options available in this State, including but not limited to MaineCare coverage. An adequate supply of forms must be provided to each group policyholder when the policy is issued and at least annually after the policy is issued. The superintendent may prescribe the content of the form by routine technical rule pursuant to Title 5, chapter 375, subchapter 2-A. The form must include at least the following:

A. A statement that all state residents not eligible for Medicare have a right to purchase any individual health plan available in this State;

B. A statement that in order to avoid a gap in coverage, the individual should apply for individual coverage prior to termination of group coverage;

~~C. A statement that if more than 90 days pass between the time the group coverage ends and the time individual coverage begins, the individual coverage may exclude preexisting conditions for one year; and~~

D. A statement that information concerning individual coverage is available from the Bureau of Insurance. The bureau's toll-free telephone number must also be provided~~.~~;

E. A statement that termination of coverage may be a qualifying life event for a special enrollment period to purchase an individual health plan. The length of time for the relevant special enrollment period and the dates for the next annual open enrollment must also be provided;

F. A statement that financial assistance may be available to eligible individuals to purchase a qualified health plan through the Maine Health Insurance Marketplace established in Title 22, section 5403. The marketplace's publicly accessible website and the toll-free telephone number must also be provided;

G. A statement that eligible individuals may qualify for free health coverage through MaineCare. The MaineCare program's publicly accessible website and toll-free telephone number must also be provided; and

H. A statement that the individual may contact the Health Insurance Consumer Assistance Program established in section 4326 for help obtaining health insurance coverage, including additional information and assistance enrolling in coverage. The program's publicly accessible website, toll-free telephone number and e-mail address must also be provided.

LAW WITHOUT GOVERNOR'S SIGNATURE

JUNE 30, 2021

CHAPTER

382

PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 542 - L.D. 737

An Act To Increase the Value of Property Exempt from Attachment and Execution

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

Sec. 1. 14 MRSA §3126-A, sub-§3, ¶B, as enacted by PL 1999, c. 587, §3, is amended to read:

B. The amount by which the sum of disposable earnings and exempt income for that week exceeds 40 times the minimum hourly wage prescribed by 29 United States Code, Section 206(a)(1) or the state minimum hourly wage prescribed by Title 26, section 664, whichever is higher at the time the earnings are payable; or

Sec. 2. 14 MRSA §4422, as amended by PL 2017, c. 177, §§1 to 4 and c. 209, §1 and corrected by RR 2017, c. 1, §7, is further amended to read:

§4422. Exempt property

The following property is exempt from attachment and execution, except to the extent that it has been fraudulently conveyed by the debtor~~.~~:

1. Residence. A debtor's residence. The exemption of a debtor's residence is subject to this subsection.

A. Except as provided in paragraph B, the debtor's aggregate interest, not to exceed ~~$47,500~~ $80,000 in value, in real or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that if minor dependents of the debtor have their principal place of residence with the debtor, the debtor's aggregate interest may not exceed ~~$95,000~~ $160,000 and except that if the debtor's interest is held jointly with any other person or persons, the exemption may not exceed in value the lesser of ~~$47,500~~ $80,000 or the product of the debtor's fractional share times ~~$95,000~~ $160,000.

B. The debtor's aggregate interest, not to exceed ~~$95,000~~ $160,000 in value, in property described in paragraph A, if the debtor or a dependent of the debtor is either a person 60 years of age or older or a person physically or mentally disabled and because of such disability is unable to engage in substantial gainful employment and

whose disability has lasted or can be expected to last for at least 12 months or can be expected to result in death; except that if the debtor's interest is held jointly with any other person or persons, the exemption may not exceed in value the lesser of ~~$95,000~~ $160,000 or the product of the fractional share of the debtor's interest times ~~$190,000~~ $240,000. ~~This paragraph does not apply to liens obtained prior to its effective date or to judgments based on torts involving other than ordinary negligence on the part of the debtor.~~ If the property is both the surviving owner's and deceased joint owner's primary residence, the maximum exemption for debtors who are joint owners may not be reduced due to the death of one of the joint owners when either:

(1) The deceased joint owner dies at 67 years of age or older and the surviving joint owner is at least 60 years of age; or

(2) The surviving joint owner is at least 67 years of age.

C. That portion of the proceeds from any sale of property ~~which~~ that is exempt under this section ~~shall be~~ is exempt for a period of ~~6~~ 12 months from the date of receipt of such proceeds for purposes of reinvesting in a residence within that period.

D. Any exemption claimed under this subsection does not apply to judgments based on torts involving other than ordinary negligence on the part of the debtor.

E. The amount of any exemption claimed under this subsection is limited to the amount of the exemption in effect on the date of the recording of the lien on the property against which the exemption is claimed;

2. Motor vehicle. The debtor's interest, not to exceed ~~$7,500~~ $10,000 in value, in one motor vehicle~~.~~;

3. Clothing; furniture; appliances; and similar items. The debtor's interest, not to exceed ~~$200~~ $500 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor~~.~~;

4. Jewelry. The debtor's aggregate interest, not to exceed ~~$750~~ $1,000 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor and the debtor's aggregate interest, not to exceed $4,000, in a wedding ring and an engagement ring~~.~~;

5. Tools of the trade. The debtor's aggregate interest, not to exceed ~~$5,000~~ $9,500 in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor, including, but not limited to, power tools, materials and stock designed and procured by the debtor and necessary for carrying on the debtor's trade or business and intended to be used or wrought in that trade or business~~.~~;

6. Furnaces, stoves and fuel. The debtor's interest in the following items held primarily for the personal, family or household use of the debtor or a dependent of the debtor:

A. One cooking stove;

B. All furnaces or stoves used for heating; and

C. All cooking and heating fuel not to exceed 10 cords of wood, 5 tons of coal, 1,000 gallons of petroleum products or its equivalent.;

7. Food, produce and animals. The debtor's interest in the following items held primarily for the personal, family or household use of the debtor or a dependent of the debtor:

A. All food provisions, whether raised or purchased, reasonably necessary for 6 months;

B. All seeds, fertilizers, feed and other material reasonably necessary to raise and harvest food through one growing season; and

C. All tools and equipment reasonably necessary for raising and harvesting food.;

8. Farm equipment. The debtor's interest in one of every type of farm implement reasonably necessary for the debtor to raise and harvest agricultural products commercially, including any personal property incidental to its maintenance and operation.;

9. Fishing boat. The debtor's interest in one boat, not exceeding 46 feet in length, used by the debtor primarily for commercial fishing.;

9-A. Logging implements. The debtor's interest in one of every type of professional logging implement reasonably necessary for the debtor to harvest and haul wood commercially, including any personal property incidental to its maintenance and operation.;

10. Life insurance contract. Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.;

11. Life insurance dividends, interest and loan value. The debtor's aggregate interest, not to exceed in value ~~$4,000~~ $5,000 less any amount of property of the estate transferred in the manner specified in ~~the~~ 11 United States Code, ~~Title 11,~~ Section 542(d), in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is dependent.;

12. Health aids. Professionally prescribed health aids for the debtor or a dependent of the debtor.;

13. Disability benefits; pensions. The debtor's right to receive the following:

A. A social security benefit, unemployment compensation or a federal, state or local public assistance benefit, including, but not limited to, all tax refunds attributable to the federal earned income tax credit and ~~additional~~ any child tax credit;

B. A veterans' benefit;

C. A disability, illness or unemployment benefit;

D. Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; or

E. A payment or account under a stock bonus, pension, profit-sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

(1) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(2) The payment is on account of age or length of service; and

(3) The plan or contract does not qualify under the United States Internal Revenue Code of 1986, Section 401(a), 403(a), 403(b), 408 or 409~~.~~;

13-A. Retirement funds. Retirement funds to the extent those funds are in a fund or account that is exempt from taxation under the United States Internal Revenue Code of 1986, Section 401, 403, 408, 408A, 414, 457 or 501(a), up to an aggregate value of ~~$1,000,000~~ $1,054,550. This subsection does not exempt:

A. Amounts contributed to the account or fund within 120 days before:

(1) The debtor files for bankruptcy if this exemption is being applied in a federal bankruptcy proceeding; or

(2) If this exemption is being applied in a proceeding other than a federal bankruptcy proceeding or for child support or spousal support covered by paragraph B, the earlier of the entry of judgment or other ruling against the debtor or the issuance of the levy, attachment, garnishment or other execution or order against which this exemption is being applied; or

B. Amounts in the account or fund necessary to satisfy child support or spousal support obligations~~.~~;

14. Legal awards; life insurance benefits. The debtor's right to receive or property that is traceable to the following:

A. An award under a crime victim's reparation law;

B. A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

C. A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

D. A payment, not to exceed ~~$12,500~~ $20,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

E. A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor~~.~~;

15. Other property. The debtor's aggregate interest, not to exceed in value ~~$400~~ $500, in any property, whether or not otherwise exempt under this section~~.~~;

16. Unused residence exemption for other exemptions. The debtor's interest, equal to any unused amount of the exemption provided under subsection 1 but not exceeding ~~$6,000~~ $10,500, in any property exempt under subsections 3 and 5 and subsection 14, paragraph D~~.~~; and

17. Cash; bank account. The debtor's interest in cash or in deposit accounts or other accounts of a financial institution, equal to any amount in cash or in the deposit account or other account of financial institutions, but not exceeding $3,000. The plaintiff, defendant or any other account owner may file an ex parte motion for dissolution of modification in the court in which a judgment or prejudgment order was entered for a hearing to establish how and to which account any exemption should be applied.

The exemptions set forth in this section are automatically adjusted to reflect changes by the percentage change, if any, from January 1st to December 31st of the preceding year in the Consumer Price Index for All Urban Consumers, Annual City Average, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, beginning April 1, 2024 and every 3 years thereafter. The Supreme Judicial Court shall publish the 3-year adjustment for an effective date of April 1st for the following year. Adjustments made pursuant to this paragraph must be rounded up to the next $50.

Sec. 3. 14 MRSA §4426, as amended by PL 2011, c. 203, §1, is further amended to read:

§4426. Exemptions in bankruptcy proceedings

Notwithstanding anything to the contrary in ~~the~~ 11 United States Code, ~~Title 11,~~ Section 522(b), a debtor may exempt from property of the debtor's estate under 11 United States Code~~, Title 11,~~ only that property exempt under ~~the~~ 11 United States Code, ~~Title 11,~~ Section 522(b)(3)(A) and (B), except that any debtor eligible for a residence exemption under section 4422, subsection 1, paragraph ~~B,~~ A-1 may exempt the amount allowed in that paragraph.

APPROVED
JUNE 21, 2021
BY GOVERNOR

CHAPTER
311
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 701 - L.D. 945

An Act Regarding Notice by Health Insurance Carriers of Policy Changes

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

Sec. 1. 24-A MRSA §4303, sub-§9, as amended by PL 2007, c. 199, Pt. B, §11, is further amended to read:

9. Notice of amendments to provider agreements. A carrier offering or renewing a health plan in this State shall notify a participating provider of a proposed amendment to a provider agreement at least 60 days prior to the amendment's proposed effective date. If an amendment that has substantial impact on the rights and obligations of providers is made to a manual, policy or procedure document referenced in the provider agreement, such as material changes to fee schedules or material changes to procedural coding rules specified in the manual, policy or procedure document, the carrier shall provide 60 days' notice to the provider. After the 60-day notice period has expired, the amendment to a manual, policy or procedure document becomes effective and binding on both the carrier and the provider subject to any applicable termination provisions in the provider agreement, except that the carrier and provider may mutually agree to waive the 60-day notice requirement. This subsection may not be construed to limit the ability of a carrier and provider to mutually agree to the proposed change at any time after the provider has received notice of the proposed amendment. <u>If the notice required by this subsection is provided by electronic communication, the subject line of the electronic communication must indicate that notice of an amendment to a provider agreement or manual, policy or procedure document is included in the communication and the notice of the amendment must be provided as an attachment to the communication, as a separate document.</u>

Sec. 2. Application. This Act applies to any proposed amendment to a provider agreement or manual, policy or procedure document made by a carrier on or after January 1, 2022.

APPROVED
JUNE 14, 2021
BY GOVERNOR

CHAPTER
200
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 749 - L.D. 1011

An Act To Include Excluded Individuals on Insurance Cards

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

Sec. 1. 29-A MRSA §1601, sub-§10 is enacted to read:

10. Excluded persons. Beginning January 1, 2022, if a person is explicitly excluded by endorsement from coverage on a policy that constitutes proof of financial responsibility under this chapter, the evidence of insurance or financial responsibility under subsection 2 must list the person as a person excluded by the policy. The requirements of this subsection do not apply to a policy that constitutes proof of financial responsibility under this chapter underwritten on a commercial policy form approved for use in this State.

APPROVED
JUNE 14, 2021
BY GOVERNOR

CHAPTER
200
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

H.P. 749 - L.D. 1011

An Act To Include Excluded Individuals on Insurance Cards

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

Sec. 1. 29-A MRSA §1601, sub-§10 is enacted to read:

10. Excluded persons. Beginning January 1, 2022, if a person is explicitly excluded by endorsement from coverage on a policy that constitutes proof of financial responsibility under this chapter, the evidence of insurance or financial responsibility under subsection 2 must list the person as a person excluded by the policy. The requirements of this subsection do not apply to a policy that constitutes proof of financial responsibility under this chapter underwritten on a commercial policy form approved for use in this State.

APPROVED
JUNE 23, 2021
BY GOVERNOR

CHAPTER
356
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-ONE

S.P. 515 - L.D. 1622

An Act To Promote Individual Retirement Savings through a Public-Private Partnership

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

Sec. 1. 5 MRSA c. 7-A is enacted to read:

CHAPTER 7-A

MAINE RETIREMENT SAVINGS BOARD

§171. Definitions

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

1. Board. "Board" means the Maine Retirement Savings Board under section 172.

2. Covered employee. "Covered employee" means an individual who is 18 years of age or older who is employed by a covered employer and who has wages or other compensation that are allocable to the State during a calendar year. "Covered employee" does not include:

A. An employee covered under the federal Railway Labor Act, 45 United States Code, Section 151;

B. An employee on whose behalf an employer makes contributions to a multiemployer pension trust fund authorized by the federal Labor Management Relations Act, 1947, Public Law 80-101, known as the Taft-Hartley Act; or

C. An individual who is an employee of the Federal Government, the State or any other state, any county or municipal corporation or any of the State's or any other state's units or instrumentalities.

"Covered employee" may include a part-time, seasonal or temporary employee only to the extent permitted in rules adopted by the board pursuant to section 174.

3. Covered employer. "Covered employer" means a person or entity engaged in a business, industry, profession, trade or other enterprise in the State, whether for profit or not for profit, that has not offered to its employees, effective in form or operation at any time within the current calendar year or 2 preceding calendar years, a specified tax-favored retirement plan. "Covered employer" does not include:

A. The Federal Government, the State or any other state, any county or municipal corporation or any of the State's or any other state's units or instrumentalities; or

B. An employer that has not been in business during both the current calendar year and the preceding calendar year.

If an employer does not maintain a specified tax-favored retirement plan for a portion of a calendar year ending on or after the effective date of this chapter, but does adopt such a plan for the remainder of that calendar year, the employer is not a covered employer for the remainder of the year.

4. Enterprise fund. "Enterprise fund" means the Maine Retirement Savings Program Enterprise Fund established in section 178.

5. ERISA. "ERISA" means the federal Employee Retirement Income Security Act of 1974, as amended, 29 United States Code, Section 1001 et seq.

6. Internal Revenue Code. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended.

7. IRA. "IRA" means a traditional IRA or Roth IRA.

8. Participant. "Participant" means an individual who has an IRA under the program.

9. Payroll deduction IRA or payroll deduction IRA arrangement. "Payroll deduction IRA" or "payroll deduction IRA arrangement" means an arrangement by which an employer allows employees to contribute to an IRA by means of payroll deduction.

10. Program. "Program" means the Maine Retirement Savings Program established in accordance with this chapter.

11. Retirement system. "Retirement system" means the Maine Public Employees Retirement System established in section 17101.

12. Roth IRA. "Roth IRA" means a Roth individual retirement account or Roth individual retirement annuity described in Section 408A of the Internal Revenue Code.

13. Specified tax-favored retirement plan. "Specified tax-favored retirement plan" means a plan, program or arrangement that is tax-qualified under or described in, and satisfies the requirements of, Section 401(a), Section 401(k), Section 403(a), Section 403(b), Section 408(k), Section 408(p) or Section 457(b) of the Internal Revenue Code, without regard to whether it constitutes an employee benefit plan under ERISA.

14. Traditional IRA. "Traditional IRA" means a traditional individual retirement account or traditional individual retirement annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

15. Wages. "Wages" means any compensation within the meaning of Section 219(f)(1) of the Internal Revenue Code that is received by an employee from an employer during a calendar year.

§172. Maine Retirement Savings Board

The Maine Retirement Savings Board is established pursuant to section 12004-G, subsection 33-G to develop and maintain the Maine Retirement Savings Program for individuals employed or self-employed for wages or other compensation in this State.

1. Appointments. The board consists of 9 voting members as follows:

A. The Treasurer of State, or the Treasurer of State's designee; and

B. Eight members appointed by the Governor:

(1) A member who has skill, knowledge and experience relating to the interests of employees in achieving financial security and developing financial capability, including through retirement saving;

(2) A member who is a representative of an association representing employees, including covered employees, or who has skill, knowledge and experience relating to the interests of employees in retirement saving;

(3) A member who is a representative of employers, including covered employers, or who has skill, knowledge and experience relating to the interests of small employers in retirement saving;

(4) A member of the public who is retired and is a representative of the interests of retirees and employees;

(5) A member who has skill, knowledge and experience in the field of retirement saving, retirement plans and retirement investment;

(6) A member who has expertise and experience in stakeholder outreach and engagement and marketing;

(7) A member who has expertise and experience in developing or maintaining online platforms and systems; and

(8) A member who has expertise and experience in program development and management.

2. Confirmation of members. The 8 members of the board appointed by the Governor are subject to approval by the joint standing committee of the Legislature having jurisdiction over financial services matters and confirmation by the Senate.

3. Terms; vacancy. The term of office of each member of the board appointed by the Governor is 4 years. A member is eligible for reappointment. If there is a vacancy for any cause for a member appointed by the Governor, the Governor shall make an appointment to become immediately effective for the unexpired term.

4. Chair. The members of the board shall elect one of its members annually to serve as the chair of the board.

5. Quorum. A majority of the voting members of the board constitutes a quorum for the transaction of business.

6. Compensation. A member of the board, except for the Treasurer of State and any designee of the Treasurer of State, must be compensated according to the provisions of section 12004-G, subsection 33-G.

7. Staffing. Except as otherwise provided, the Office of the Treasurer of State shall provide staff support to the board. The board shall reimburse the Office of the Treasurer of State for the full cost of any staff time provided to the board.

8. Meetings. The board shall meet monthly beginning no later than May 2022 and may also meet at other times at the call of the chair. All meetings of the board are public proceedings within the meaning of Title 1, chapter 13, subchapter 1.

§173. Duties of board; requirements of program

1. Duties. In carrying out the purposes of this chapter, the board shall:

A. Develop, establish, implement and maintain the program and, to that end, may conduct market, legal and feasibility analyses if the board considers them advisable;

B. Adopt rules the board considers necessary or advisable for the implementation and general administration and operation of the program as provided in section 174, consistent with the Internal Revenue Code and regulations under that Code, including to ensure that the program satisfies all criteria for favorable federal tax treatment and complies, to the extent necessary, with any other applicable federal or state law;

C. Use private sector partnerships to contract with a program administrator to administer the program and manage the investments under the supervision and guidance of the board in accordance with this chapter;

D. Cause funds to be held and invested and reinvested under the program;

E. Develop and implement an investment policy that defines the program's investment objectives consistent with the objectives of the program and that provides for policies and procedures consistent with those investment objectives. The board shall strive to select and offer investment options available to participants and other program features that are intended to achieve maximum possible income replacement balanced with an appropriate level of risk in an IRA-based environment consistent with the investment objectives under the policy. The investment options may encompass a range of risk and return opportunities and allow for a rate of return commensurate with an appropriate level of risk in view of the investment objectives under the policy. The menu of investment options must be determined by considering the nature and objectives of the program, the desirability based on behavioral research findings of limiting investment options under the program to a reasonable number and the extensive investment options available to participants in the event that they roll over funds in an IRA established under the program to an IRA outside the program. In accordance with paragraphs K and O, the board, in carrying out its responsibilities and exercising its powers under this chapter, shall employ or retain appropriate entities or personnel to assist or advise it and to whom to delegate the carrying out of such responsibilities and exercise of such powers;

F. Arrange for collective, common and pooled investment of assets of the program and enterprise fund, including investments in conjunction with other funds with which these assets are permitted to be collectively invested, with a view to saving costs through efficiencies and economies of scale;

G. Cause the program, enterprise fund and arrangements and accounts established under the program to be designed, established and operated:

(1) In accordance with best practices for retirement savings accounts;

(2) To encourage participation and saving and to make it simple, easy and convenient for participants to contribute and manage their savings;

(3) To promote sound investment practices and appropriate investment menus and default investments;

(4) To maximize simplicity and ease of administration for covered employers;

(5) To minimize costs, including by collective investment and economies of scale;

(6) To promote portability of benefits; and

(7) To avoid preemption of the program by federal law;

H. Educate participants and potential participants on the benefits of planning and saving for retirement, help them decide the level of participation and saving strategies that may be appropriate for them and help them develop greater financial capability and financial literacy, including through partnerships with organizations based in the State specializing in financial literacy education;

I. In accordance with rules adopted by the board, determine the eligibility of an employer, employee or other individual to participate in the program, including conditions under which an employer that terminates the offering of a specified tax-favored retirement plan can become a covered employer eligible to participate in the program;

J. Arrange for and facilitate compliance by the program or arrangements established under the program with all requirements applicable to the program under the Internal Revenue Code, including requirements for favorable tax treatment of the IRAs, and any other applicable federal or state law or accounting requirements, including using its best efforts to implement procedures minimizing the risk that covered employees will exceed the limits on tax-favored IRA contributions that they are eligible to make and otherwise providing or arranging for assistance to covered employers and covered employees in complying with applicable law and tax-related requirements in a cost-effective manner. The board may establish any processes it reasonably considers to be necessary or advisable to verify whether an employer is a covered employer, including reference to online data and possible use of questions in employer state tax filings, consistent with the objective of avoiding to the fullest extent practicable any need to require employers that are not covered employers to register with the program or take other action to demonstrate that they maintain specified tax-favored retirement plans or are exempt for other reasons from being treated as covered employers;

K. Employ or otherwise retain a program administrator, an executive director, staff, a trustee, a record keeper, investment managers, investment advisors, other administrative, professional and expert advisors and service providers, none of whom may be members of the board and all of whom serve at the pleasure of the board, and the board shall determine their duties and compensation. The board may authorize the executive director employed by the board to enter into contracts, as described in paragraph O, on behalf of the board or conduct any business necessary for the efficient operation of the board;

L. Discharge its duties and ensure that the members of the board discharge their duties with respect to the program solely in the interest of the participants as follows:

(1) For the exclusive purpose of providing benefits to participants and defraying reasonable expenses of administering the program; and

(2) With the care, skill, prudence and diligence under the circumstances then prevailing that persons of prudence, discretion and intelligence, acting in a like capacity and familiar with those matters, would use in the conduct of an enterprise of a like character and with like aims;

M. Make provision for costs and expenses incurred to initiate, implement, maintain, manage and administer the program and its investments to be paid or defrayed from investment returns or assets of the program or from the charging and collection of other fees, charges or funds, whether account-based, asset-based, per capita or otherwise, by or for the program or pursuant to arrangements established under the program to the extent permitted under federal and state law;

N. Accept any grants, gifts, legislative appropriation, loans and other funds from the State, any unit of federal, state or local government or any other person, firm or entity to defray the costs of administering and operating the program in accordance with the requirements of section 178, subsection 1;

O. Make and enter into contracts, agreements or arrangements for and collaborate and cooperate with and retain, employ and contract with or for any of the following to the extent the board considers necessary or advisable for the effective and efficient design, implementation and administration of the program consistent with the purposes set forth in this chapter and to maximize outreach to covered employers and covered employees:

(1) Services of private and public financial institutions, depositories, consultants, actuaries, counsel, auditors, investment advisors, investment administrators, investment management firms, other investment firms, 3rd-party administrators, other professionals and service providers, the retirement system, the Office of the Treasurer of State, other state treasurers and other state public retirement systems;

(2) Research, technical, financial, administrative and other services;

(3) Services of other state agencies and instrumentalities, including without limitation those with responsibilities for tax collection, budget, finance, labor and employment regulation, consumer protection, business regulation and liaison, benefits and public assistance, to assist the board in the exercise of its powers and duties, and all such agencies and instrumentalities shall provide such assistance at the board's request; or

(4) Services to develop and implement outreach efforts to gain input and disseminate information regarding the program and retirement saving in general, including timely information to covered employers regarding the program and how it applies to them, with special emphasis on their ability at any time to sponsor a specified tax-favored retirement plan that would exempt them from any responsibilities under the program;

P. Ensure that all contributions to an IRA under the program are used only to pay benefits to participants under the program, pay the cost of administering the program

or make investments for the benefit of the program and that no assets of the program or enterprise fund are transferred to the General Fund or to any other fund of the State or are otherwise encumbered or used for any other purpose;

Q. Consider whether procedures should be adopted to allow employers that are not covered employers because they are exempt from covered employer status to voluntarily participate in the program by automatically enrolling their employees, considering, among other factors, the potential legal consequences and the degree of employer demand to participate or facilitate participation by employees;

R. Evaluate the need for, and procure if and as considered necessary, insurance against any loss in connection with the property, assets or activities of the program, including, if and as considered necessary, pooled private insurance;

S. Indemnify, including procurement of insurance if and as needed for this purpose, each member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board;

T. Collaborate with, and evaluate the role of, financial advisors or other financial professionals, including in assisting and providing guidance for covered employees;

U. Along with its members, the program administrator and other staff of the board, comply with any applicable state ethics and gift laws, procurement codes and restrictions and restrictions on honoraria and may not:

(1) Directly or indirectly have any interest in the making of any investment under the program or in gains or profits accruing from any such investment;

(2) Borrow any program-related funds or deposits, or use any such funds or deposits in any manner, for the benefit of the board or any member or as an agent or partner of others; or

(3) Become an endorser, surety or obligor on investments made under the program; and

V. Carry out its powers and duties under the program pursuant to this chapter and exercise any other powers as are appropriate for the effectuation of the purposes, objectives and provisions of this chapter pertaining to the program.

2. Required elements of program. In accordance with the implementation dates set forth in subsection 3, the program must:

A. Allow an eligible individual in this State to choose whether or not to contribute to an IRA under the program, including allowing a covered employee in the State the choice to contribute to an IRA under the program through a payroll deduction IRA arrangement;

B. Notwithstanding any provision of state law related to payroll deduction to the contrary, require each covered employer to offer its covered employees the choice whether or not to contribute to a payroll deduction IRA by automatically enrolling them in the payroll deduction IRA with the opportunity to opt out. A covered employee who is not a participant because that employee has opted out will be automatically reenrolled with the opportunity to opt out again at regular or ad hoc intervals determined by the board in its discretion, but not more frequently than annually;

C. Provide that the IRA to which contributions are made is a Roth IRA, except that the board has the authority at any time, in its discretion, to add an option for all participants to affirmatively elect to contribute to a traditional IRA as an alternative to the Roth IRA;

D. Provide that, unless otherwise specified by the covered employee, a covered employee must automatically initially contribute 5% of the covered employee's salary or wages to the program and may elect to opt out of the program at any time or contribute at any higher or lower rate, expressed as a percentage of salary or wages, or, if the board in its discretion permits, expressed as a flat dollar amount, subject in all cases to the IRA contribution and income eligibility limits applicable under the Internal Revenue Code at no additional charge. The board is authorized to change, from time to time, the 5% automatic initial default contribution rate for all covered employees in its discretion;

E. Provide on a uniform basis, if and when the board so determines in its discretion, for an annual increase of each participant's contribution rate, by not more than 1% of salary or wages per year up to a maximum of 8%. Any such increases must apply to participants, as determined by the board in its discretion, either by default or only if initiated by affirmative participant election and are in either case subject to the IRA contribution and income eligibility limits applicable under the Internal Revenue Code;

F. Provide for direct deposit of contributions into investments under the program, including, but not limited to, a default investment such as a series of target date funds and a limited number of investment alternatives including a principal preservation option determined by the board. In addition, the board may provide that each participant's initial contributions, up to a specified dollar amount or for a specified period of time, are required to be invested in a principal preservation investment or, in the board's discretion, must be defaulted into such an investment unless the participant affirmatively opts for a different investment for those contributions. The board shall determine how often participants will have the opportunity to change their selections of investments for future contributions or existing balances or both;

G. Provide that employer contributions by a covered employer are not required or permitted;

H. Be professionally managed;

I. When possible and practicable, use existing employer and public infrastructure to facilitate contributions, record keeping and outreach and use pooled or collective investment arrangements for amounts contributed to the program;

J. Require the maintenance of separate records and accounting for each account under the program and allow for participants to maintain their accounts regardless of place of employment and to roll over funds into other IRAs or other retirement accounts;

K. Provide for reports on the status of each participant's account to be provided to each participant at least annually and make best efforts to provide each participant frequent or continual online access to information on the status of that participant's account;

L. Provide that each participant owns the contributions to and earnings on amounts contributed to the participant's account under the program and that the State and covered employers have no proprietary interest in those contributions or earnings;

M. Be designed and implemented in a manner consistent with federal law to the extent that it applies and consistent with the program not being preempted by, and the payroll deduction IRAs and covered employers not being subject to, ERISA;

N. Promote expanded retirement saving by encouraging employers in the State that would otherwise be covered employers to instead adopt a specified tax-favored retirement plan;

O. Make provision for participation in the program by individuals who are not employees, such as self-employed individuals and independent contractors, as provided in rules adopted pursuant to section 174, subsection 2;

P. Seek to keep fees, costs and expenses of the program as low as practicable, except that any administrative fee imposed on a covered employee for participating in the program may not exceed a reasonable amount relative to fees charged by similar established programs in other states. The fee may be an asset-based or investment return fee, flat fee or hybrid of the permissible fee structures identified in this paragraph;

Q. Adopt rules and establish procedures governing the distribution of funds from the program, including such distributions as may be permitted or required by the program and any applicable provisions of tax laws, with the objectives of maximizing financial security in retirement, helping to protect spousal rights and assisting participants with the challenges of decumulation of savings. The board has the authority to provide for one or more reasonably priced distribution options to provide a source of regular retirement income, including income for life or for the participant's life expectancy or for joint lives and life expectancies, as applicable;

R. Adopt rules and establish procedures promoting portability of benefits, including the ability to make tax-free rollovers or transfers from IRAs under the program to other IRAs or to tax-qualified plans that accept such rollovers or transfers;

S. Establish penalties in accordance with subsection 4 for a covered employer that fails without reasonable cause to enroll a covered employee in the program as required or that fails to transmit a payroll deduction IRA contribution to the program as required;

T. In accordance with subsection 1, paragraph C, use private sector entities to administer the program and invest the contributions to the program under the supervision and guidance of the board; and

U. Allow the board to provide for the establishment, maintenance, administration, operation and implementation of the program to be carried out jointly with, or in partnership, collaboration, coordination or alliance with one or more other states, the Federal Government or any federal, state or local agencies or instrumentalities.

3. Implementation. The board shall implement the program in phases as required in this subsection.

A. Beginning April 1, 2023, the board shall require a covered employer with 25 or more covered employees to offer the program to its covered employees.

B. Beginning October 1, 2023, the board shall require a covered employer with 15 to 24 covered employees to offer the program to its covered employees.

C. Beginning April 1, 2024, the board shall require a covered employer with 5 to 14 covered employees to offer the program to its covered employees.

Notwithstanding paragraphs A to C, a covered employer may voluntarily offer the program to its covered employees on or after April 1, 2023. A covered employer with fewer than 5 employees is not required to offer the program to its covered employees but may offer the program to its employees at the option of the employer and in accordance with rules established by the board.

4. Penalties. The board shall establish and enforce penalties in accordance with this subsection.

A. If a covered employer fails to enroll a covered employee without reasonable cause, the covered employer is subject to a penalty for each covered employee for each calendar year or portion of a calendar year during which the covered employee was not enrolled in the program or had not opted out of participation in the program and, for each calendar year beginning after the date on which a penalty has been assessed with respect to a covered employee, is subject to a penalty for any portion of that calendar year during which the covered employee continues to be unenrolled without opting out of participation in the program. The amount of any penalty imposed on a covered employer for the failure to enroll a covered employee without reasonable cause is determined as follows:

(1) Prior to April 1, 2024, the maximum penalty per covered employee is $10;

(2) From April 1, 2024 to March 31, 2025, the maximum penalty per covered employee is $20;

(3) From April 1, 2025 to September 30, 2026, the maximum penalty per covered employee is $50; and

(4) On or after October 1, 2026, the maximum penalty per covered employee is $100.

B. A penalty may not be imposed on a covered employer for any failure to enroll a covered employee for which it is established that the covered employer did not know that the failure existed and exercised reasonable diligence to meet the requirements of this chapter.

C. A penalty may not be imposed on a covered employer for any failure to enroll a covered employee if the covered employer exercised reasonable diligence to meet the requirements of this chapter and the covered employer complies with those requirements with respect to each covered employee by the end of the 90-day period beginning on the first date the covered employer knew, or exercising reasonable diligence would have known, that the failure existed.

D. In the case of a failure that is due to reasonable cause and not to willful neglect, all or part of the penalty may be waived to the extent that the payment of the penalty would be excessive or otherwise inequitable relative to the failure involved.

E. If a covered employer fails to remit a payroll deduction contribution to the program on the earliest date the amount withheld from the covered employee's compensation can reasonably be segregated from the covered employer's assets, but not later than the 15th day of the month following the month in which the covered employee's

contribution amounts are withheld from the covered employee's paycheck, the failure to remit the contribution on a timely basis is subject to the same penalties as apply to employer misappropriation of employee wage withholdings and to the penalties specified in paragraph A.

F. The Attorney General shall represent the board in enforcement and collection of penalties.

§174. Rules

1. Authority. The board may adopt rules as necessary to implement this chapter, except that the board shall adopt rules required pursuant to subsection 2. Rules adopted pursuant to this chapter are routine technical rules as defined in chapter 375, subchapter 2-A.

2. Required rules. The board shall adopt rules to:

A. Establish the processes for enrollment and contributions to an IRA under the program, notwithstanding any provision of state law related to payroll deductions to the contrary, including withholding by covered employers of employee payroll deduction contributions from wages and remittance for deposit to an IRA, automatic enrollment in a payroll deduction IRA and opt-outs by covered employees, voluntary contributions by others, including self-employed individuals and independent contractors, through payroll deduction or otherwise, the making of default contributions using default investments and participant selection of alternative contribution rates or amounts and alternative investments from among the options offered under the program;

B. Establish the processes for withdrawals, rollovers and direct transfers from an IRA under the program in the interest of facilitating portability of benefits;

C. Establish processes for phasing in enrollment of eligible individuals, including phasing in enrollment of covered employees by size or type of covered employer in accordance with section 173, subsection 3;

D. Establish requirements for the determination of whether a part-time, seasonal or temporary employee is a covered employee eligible to participate in the program;

E. Establish a process for a participant to make nonpayroll contributions to accounts under the program;

F. Establish a process for an employer to be determined to be exempt from the program because the employer sponsors a specified tax-favored retirement plan; and

G. Conduct outreach to individuals, employers, other stakeholders and the public regarding the program, including specifying the contents, frequency, timing and means of required disclosures from the program to covered employees, participants, other individuals eligible to participate in the program, covered employers and other interested parties. These disclosures must include, but are not limited to, the following:

(1) The benefits and risks associated with tax-favored retirement saving under the program;

(2) The potential advantages and disadvantages associated with contributing to a Roth IRA and, if applicable, a traditional IRA under the program;

(3) The eligibility rules for a Roth IRA and, if applicable, a traditional IRA;

(4) That the individual and not the employer, the State, the board, any board member or other state official or the program is solely responsible for determining whether, and, if so, how much, the individual is eligible to contribute on a tax-favored basis to an IRA;

(5) The penalty for excess contributions to an IRA and the method of correcting excess contributions;

(6) Instructions for enrolling, opting out of participation, making contributions and making withdrawals, including the possibility of contributing to an IRA, whether offered under the program or not, by means other than automatic enrollment in a payroll deduction IRA;

(7) Instructions for opting out of each of the Roth IRA, the default contribution rate and the default investment if the covered employee prefers a traditional IRA, including the possibility of contributing to a traditional IRA, if offered as an option under the program, a higher or lower contribution rate or different investment alternatives;

(8) The potential availability of a saver's tax credit, including the eligibility conditions for the credit and instructions on how to claim it;

(9) That employees seeking tax, investment or other financial advice should contact appropriate professional advisors and that covered employers are not in a position to provide such advice and are not liable for decisions individuals make in relation to the program;

(10) That the payroll deduction IRA is intended not to be an employer-sponsored retirement plan and that the program is not an employer-sponsored retirement plan;

(11) The potential implications of account balances under the program for the application of asset limits under certain public assistance programs;

(12) That the participant is solely responsible for investment performance, including market gains and losses, and that IRAs and rates of return are not guaranteed by any employer, the State, the board, any board member or state official or the program;

(13) Additional information about retirement and saving and other information designed to promote financial literacy and capability, which may take the form of links to, or explanations of how to obtain, such information; and

(14) How to obtain additional information about the program.

§175. Protection from liability

1. Employer protection from liability. A covered employer or other employer is not and may not be considered a fiduciary in relation to the program or enterprise fund or any other arrangement under the program. A covered employer or other employer is not and may not be liable for and does not and may not bear responsibility for:

A. An employee's decision to participate in or opt out of the program;

B. Investment decisions of the board or any participant;

C. The administration, investment, investment returns or investment performance of the program, including without limitation any interest rate or other rate of return on any contribution or account balance;

D. The program design or the benefits paid to participants;

E. An individual's awareness of or compliance with the conditions and other provisions of the tax laws that determine which individuals are eligible to make tax-favored contributions to an IRA, in what amount and in what time frame and manner; or

F. Any loss, deficiency, failure to realize any gain or any other adverse consequences, including without limitation any adverse tax consequences or loss of favorable tax treatment, public assistance or other benefits, incurred by any person as a result of participating in the program.

2. Protection for the State and others. The State, the board, each member of the board or other state official and any other state board, commission or agency, and any member, officer or employee of any of these entities, and the program:

A. Have no responsibility for compliance by individuals with the conditions and other provisions of the Internal Revenue Code that determine which individuals are eligible to make tax-favored contributions to IRAs, in what amount and in what time frame and manner;

B. Have no duty, responsibility or liability to any party for the payment of any benefits under the program, regardless of whether sufficient funds are available under the program to pay such benefits;

C. Do not and may not guarantee any interest rate or other rate of return on or investment performance of any contribution or account balance; and

D. Are not and may not be liable or responsible for any loss, deficiency, failure to realize any gain or any other adverse consequences, including without limitation any adverse tax consequences or loss of favorable tax treatment, public assistance or other benefits, incurred by any person as a result of participating in the program.

3. Debts, contracts and obligations. The debts, contracts and obligations of the program or the board are not the debts, contracts and obligations of the State, and the faith and credit or the taxing power of the State is not pledged directly or indirectly to the payment of the debts, contracts and obligations of the program or the board.

4. Immunity of board members. The board and its staff are immune from suit on any and all tort claims seeking recovery of damages to the same extent as governmental entities under the Maine Tort Claims Act.

5. Legal representation and defense of board. The Attorney General is legal counsel to the board and shall represent and defend the board, as a group and individually, in connection with any claim, suit or action at law arising out of the performance or nonperformance of any actions related to the program under this chapter to the same extent as provided for governmental entities in the Maine Tort Claims Act.

§176. Confidentiality of account information

1. Individual account information. Individual account information for accounts under the program, including, but not limited to, names, residential addresses, e-mail

addresses, telephone numbers, personal identification information, amounts contributed and earnings on amounts contributed, is confidential and must be maintained as confidential except to the extent necessary to administer the program in a manner consistent with this chapter, the tax laws of this State and the Internal Revenue Code or unless the person who provides the information or is the subject of the information expressly agrees in writing that the information may be disclosed.

2. Restriction on use of personal information. An individual or organization that has access to personal information of participants solely because of its contracts or agreements with the board to provide services or support to the program, including plan administration, may not use that information to market its products or services not associated with the program to participants unless the participant affirmatively consents to receive such information.

§177. Intergovernmental collaboration and cooperation

The board may enter into an intergovernmental agreement or memorandum of understanding with the State and any agency or instrumentality of the State to receive outreach, technical assistance, enforcement and compliance services, collection or dissemination of information pertinent to the program, subject to such obligations of confidentiality as may be agreed to or required by law, or other services or assistance. The State and any agencies or instrumentalities of the State that enter into such agreements or memoranda of understanding shall collaborate to provide the outreach, assistance, information and compliance or other services or assistance to the board. The agreements or memoranda of understanding may cover the sharing of costs incurred in gathering and disseminating information and the reimbursement of costs for any enforcement activities or assistance.

§178. Maine Retirement Savings Program Enterprise Fund

1. Fund established. The Maine Retirement Savings Program Enterprise Fund is established as an enterprise fund. The board shall use funds deposited in the enterprise fund in accordance with this section. The enterprise fund may receive grants, gifts, donations, appropriations, loans or other funds designated for administrative expenses or otherwise transferred to the enterprise fund from or deposited in the enterprise fund by the State or a unit of federal, state or local government or any other person, firm, partnership or corporation, including appropriations to the enterprise fund by the Legislature and funds from the payment of application, account, administrative or other fees and the payment of other funds due the board. Interest or other investment earnings or returns that are attributable to funds in the enterprise fund must be deposited into or retained in the enterprise fund. The enterprise fund may not lapse but must be carried forward to carry out the purposes of this chapter. The board shall amortize any amounts appropriated to the enterprise fund by the Legislature to ensure that those amounts are paid back to the funding sources based on an amortization schedule determined by the board, but no later than 5 years after the program is fully implemented.

2. Borrowing. To enable or facilitate the start-up and continuing operation, maintenance, administration and management of the program until the program accumulates sufficient balances and can generate sufficient funding through fees assessed on program accounts for the program to become financially self-sustaining, the board may borrow from the State, any unit of federal, state or local government or any other person,

firm, partnership or corporation working capital funds and other funds as may be necessary for this purpose, as long as such funds are borrowed in the name of the program and board only and that any such borrowing is repaid solely from the revenues of the program. The board may not borrow from the retirement system for any purpose. The board may enter into long-term procurement contracts with one or more financial or service providers that provide a fee structure that would assist the program in avoiding or minimizing the need to borrow or to rely upon general assets of the State.

3. Administrative costs. Subject to appropriation by the Legislature, the State may pay administrative costs associated with the creation, maintenance, operation and management of the program and provide funding for the program until sufficient assets are available in the enterprise fund for that purpose. Thereafter, all administrative costs of the enterprise fund, including any repayment of start-up funds provided by the State, must be repaid only out of money on deposit in the enterprise fund. However, private funds or federal funding received in order to implement the program until the enterprise fund is self-sustaining may not be repaid unless those funds were offered contingent upon the promise of such repayment.

4. Use of enterprise fund. The board shall use the money in the enterprise fund solely to pay the administrative costs and expenses of the program and the administrative costs and expenses the board incurs in the performance of its duties under this chapter.

§179. Accounting and annual report

1. Account; audit. The board shall cause an accurate account of all of the program's, enterprise fund's and board's activities, operations, receipts and expenditures to be maintained on a calendar year basis. A full audit of the books and accounts of the board pertaining to those activities, operations, receipts and expenditures must be conducted by a certified public accountant, including, but not limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors and any other persons who are not state employees for the administration of the program. For the purposes of the audit, the auditors must have access to the properties and records of the program and board and may prescribe methods of accounting and the rendering of periodic reports in relation to projects undertaken by the program.

2. Submission of report. Beginning February 1, 2024 and annually thereafter, the board shall submit to the Governor, the Treasurer of State and the Legislature an audited financial report, prepared in accordance with generally accepted accounting principles, detailing the activities, operations, receipts and expenditures of the program and board during the preceding calendar year. The report must include the number of participants, the investment options and their rates of return and other information regarding the program and must also include projected activities of the program for the current calendar year.

Sec. 2. 5 MRSA §12004-G, sub-§33-G is enacted to read:

33-G.

Treasurer of State	Maine Retirement Savings Board	Legislative Per Diem and Expenses	5 MRSA §172

Sec. 3. Implementation of Maine Retirement Savings Program. Except as provided in this section, the Maine Retirement Savings Board shall establish the Maine

Retirement Savings Program as required under this Act so that individuals may begin making contributions under the program no later than April 1, 2023.

1. Phase in of program; implementation. The board shall phase in the program with regard to covered employers and accept contributions from covered employees employed by those covered employers as required under this Act and may in its discretion phase in the program for individuals who are not employees, such as self-employed individuals or independent contractors, except that any implementation schedule set by the board must be such that all individuals may begin making contributions under the program no later than January 1, 2025. The board may not implement the program if and to the extent that the board determines that the program is preempted by the federal Employee Retirement Income Security Act of 1974, as amended, 29 United States Code, Section 1001 et seq. If and to the extent that the board determines that a portion or aspect of the program is preempted by the federal Employee Retirement Income Security Act of 1974, the board may not implement that portion or aspect of the program but shall proceed to implement the remainder of the program to the extent practicable.

2. Effect of federal Employee Retirement Income Security Act of 1974 on program. If the board determines that some but not all of the payroll deduction individual retirement account arrangements or other arrangements under the program are or would be employee benefit plans under the federal Employee Retirement Income Security Act of 1974, the board shall implement the program with respect to the other arrangements under the program to the extent practicable and may not implement the program with respect to plans covered by the federal Employee Retirement Income Security Act of 1974 or the board shall proceed to implement the program with respect to plans covered by the federal Employee Retirement Income Security Act of 1974 on a basis reflecting their status or possible status as such, as long as such actions do not create an undue risk of causing the federal Employee Retirement Income Security Act of 1974 to preempt state law with respect to other portions of the program or causing other arrangements under the program to be treated as plans covered by the federal Employee Retirement Income Security Act of 1974.

Sec. 4. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 5, section 172, subsection 3, with regard to the original appointments of the members of the Maine Retirement Savings Board, the Governor shall appoint one member for a one-year term, 2 members for a 2-year term, 3 members for a 3-year term and any other member for a 4-year term. The Governor shall appoint the initial members of the board no later than April 1, 2022.

Sec. 5. Transfer of settlement funds; fiscal year 2021-22. Notwithstanding any provision of law to the contrary, no later than February 1, 2022, the State Controller shall transfer $1,600,000 of the funds received pursuant to the multistate settlement agreement in The Matter of Moody's Corporation, Moody's Investors Services, Inc. and Moody's Analytics, Inc. signed February 3, 2017 to the Maine Retirement Savings Program Enterprise Fund established in the Maine Revised Statutes, Title 5, section 178. Funds transferred pursuant to this section must be used solely for consumer and antitrust activities identified in the court decree and approved by the Attorney General with the consent of the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate and the Minority Leader of the House of Representatives.

Sec. 6. Appropriations and allocations. The following appropriations and allocations are made.

MAINE RETIREMENT SAVINGS BOARD

Maine Retirement Savings Program N347

Initiative: Allocates funds to the Maine Retirement Savings Program Enterprise Fund to be used in accordance with the Maine Revised Statutes, Title 5, chapter 7-A.

MAINE RETIREMENT SAVINGS PROGRAM ENTERPRISE FUND	**2021-22**	**2022-23**
All Other	$1,600,000	$500
MAINE RETIREMENT SAVINGS PROGRAM ENTERPRISE FUND TOTAL	$1,600,000	$500