



Janet T. Mills
Governor

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

Eric A. Cioppa
Superintendent

TESTIMONY OF BENJAMIN YARDLEY
SENIOR STAFF ATTORNEY
BUREAU OF INSURANCE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION

In opposition to L.D. 612

**“An Act To Recognize Occupational Licenses and Certifications from
Other States To Attract New Residents and Businesses to Maine”**

Presented by Representative John Andrews

**Before the Joint Standing Committee on Innovation, Development,
Economic Advancement and Business**

March 16, 2021 at 9:30 a.m.

Senator Curry, Representative Roberts, and members of the Committee, I am Senior Staff Attorney for the Maine Bureau of Insurance Ben Yardley. I am here today to testify in opposition to L.D. 612.

This bill creates a framework for the certification or licensure of persons seeking a Maine certification or license using out-of-state credentials. The bill summary indicates that this bill is intended to allow persons with out-of-state credentials to more quickly qualify to work in Maine. The Bureau supports the bill's intent. We license approximately 177,000 insurance agents, of whom nearly 170,000 do not live in Maine. However, I am testifying in opposition because these



PRINTED ON RECYCLED PAPER

OFFICES LOCATED AT 76 NORTHERN AVENUE, GARDINER, MAINE 04345
www.maine.gov/insurance

Phone: (207) 624-8475

TTY: Please call Maine Relay 711

Consumer Assistance: 1-800-300-5000

Fax (207) 624-8599

goals are already met under existing provisions of Title 24-A, the Maine Insurance Code. This bill would have the unintended effect of making obtaining an individual Maine insurance license harder for nonresidents. And, because the Bureau licenses insurance professionals on a reciprocal basis with all 50 states and the District of Columbia, the bill could make it more difficult for a Maine resident licensee to obtain nonresident insurance licenses in those jurisdictions.

The Maine Bureau of Insurance issues individual occupational licenses to insurance producers (also known as agents), insurance adjusters, and consultants in accordance with the Maine Insurance Code, Chapter 16. We do not issue government certifications as defined in the bill. Applicants are not subject to any pre-licensing or Maine-specific experience requirements under current law.¹ Maine resident² applicants must pass an examination, submit an application that includes background questions, and pay a fee. Nonresident applicants licensed in their resident state wishing to do business in Maine and individuals who move to Maine with a nonresident license are may obtain a Maine license through statutory reciprocity. This means that nonresident applicants licensed in their home states do not have to take and pass a Maine examination and may receive a nonresident license in Maine if there is not a uniform ground for denial³ and their home states award nonresident licenses to Maine residents on the same basis.⁴ An individual

¹ Consultant applicants who take the Maine examination must have five years of relevant insurance experience, but that may be satisfied by experience acquired in Maine or out of state. 24-A M.R.S. § 1410(5).

² An individual resident is defined in the Maine Insurance Code to include an individual who is domiciled in this State and who is not licensed elsewhere as a resident producer, consultant or adjuster or an individual whose principal place of business is located in this State and who is not licensed elsewhere as a resident producer, consultant or adjuster. 24-A M.R.S. § 1402(12).

³ An individual application may be denied for the reasons established at 24-A M.R.S. § 1420-K(1) and include, among other things, having been convicted of a certain criminal offenses, having admitted to or been found to have committed any insurance unfair trade practice or fraud, and having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory.

⁴ 24-A M.R.S. §§ 1420-G, 1427-A, 1477.

who moves to Maine with a nonresident license in good standing may obtain a Maine *resident* license without an examination.⁵

Generally speaking, the states regulate insurance in the United States, and Congress codified this authority in 1945.⁶ Because each state was able to establish its own licensing requirements, licensees doing business in multiple states could be subjected to each state's nonresident licensing requirements. State regulators were aware of this burden and the potential for future federal intervention, so they sought to coordinate their oversight activities through the National Association of Insurance Commissioners (NAIC).⁷ The NAIC, which is made up of all of the state insurance regulators, works with its membership to develop standards and provide best practices for regulatory uniformity and enhance state consumer protections. The NAIC's efforts to improve licensing uniformity and efficiency were ongoing; however, inefficiencies still existed for nonresidents seeking to do business in multiple states.

In 1999, Congress passed the Gramm-Leach-Bliley Act of 1999 (GLBA) which included a provision seeking to streamline national producer licensing by requiring a majority of states to adopt uniform laws or reciprocity with respect to nonresident licensing. Although the GLBA reaffirmed that states should regulate the business of insurance, Congress declared that a failure to achieve uniformity or reciprocity by November 2002 would result in federal preemption. In response, the

⁵ 24-A M.R.S. §§ 1420-H(1), 1427-A.

⁶ See the McCarran-Ferguson Act of 1945 (15 U.S.C. § 1011 et seq).

⁷ The NAIC was originally formed in 1871 and is governed by chief insurance regulators from the states, the District of Columbia, and five U.S. territories.

NAIC and its members finalized the Producer Licensing Model Act (PLMA) as a reciprocity model that would allow states to avoid preemption.

Maine's current reciprocal licensing structure comes from its 2001 adoption of the PLMA. The PLMA establishes standard licensing criteria that facilitate the licensure of nonresident producer applicants based on reciprocity.⁸ Through the adoption of uniform standards and licensing requirements, nonresidents are able to apply in Maine with a valid home state license and receive a Maine insurance license within as few as 24 hours.

As I have described, the substance of L.D. 612's provisions already exist in current law; however, this bill includes criteria and language that would be inconsistent with the NAIC model and would make Maine *less* uniform in its licensure of nonresident applicants.

For example, requiring a nonresident applicant to have one year of licensure in their home state before being eligible for a reciprocal license in Maine would be a significant disruption in a licensing process that has existed for two decades. Applicants that otherwise would be eligible for a license under Maine's reciprocal licensing framework would be required to wait a year to receive a license in Maine. In addition, the requirement that an applicant not be the subject of an open investigation or complaint is not a prerequisite for licensure under current law. State agency complaints that involve a finding of licensee wrongdoing usually result in administrative actions. Applicants must disclose those actions to the Bureau, and they provide the basis for denial of an application. Many licensee

⁸ By operation of other statutory provisions in Chapter 16, reciprocal licensing applies to insurance adjusters and consultants as well. See 24-A M.R.S. § 1427-A.

investigations do not result in a finding of wrongdoing and, depending upon the complexity of the issues, an investigation could take months to conclude. If the Bureau were to investigate each applicant's complaint status with their home state, it would be a manual process involving significant staff resources. For reference, the Bureau issued approximately 21,000 individual nonresident producer licenses in 2020.

A critical part of the current reciprocal licensing framework is the benefit it provides to Maine resident licensees when they are seeking to work in other states. The PLMA's reciprocity hinges on the home state awarding nonresident producer licenses to residents of this State on the same basis. If Maine enacts nonuniform licensing standards, such as the one-year experience requirement, this could result in other states determining that Maine resident licensees do not qualify for reciprocal licensing. This could subject Maine resident licensees to each state's examination and pre-licensing requirements which is exactly what the GLBA sought to avoid.

The Bureau also notes that the bill appears intended only to apply to individuals; however, as drafted, this could apply to business entities licensed by the Bureau. This would create an even greater impact on the Bureau's licensing authority, as we license many different types of insurance entities subject to various existing regulatory requirements. While the Bureau believes that we should be exempted from this bill altogether, if the Committee believes that this bill should apply to the Bureau of Insurance, I respectfully request that its scope be limited to individuals.

Thank you, I would be glad to answer any questions now or at the work session.