

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1288

S.P. 391

In Senate, February 27, 1997

**An Act to Adopt a Uniform Policy on Treatment of Medical Liens in
Personal Injury Litigation.**

Reference to the Committee on Banking and Insurance suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

Sec. 1. 24-A MRSA §2910-A is enacted to read:

§2910-A. Limits on priority liens; medical payments

A medical payment provision in a casualty insurance contract may not provide for reimbursement of any sum paid out on behalf of the insured in the event the insured is entitled to receive payment from any other person as a result of legal action or claim, except as provided in this section.

A policy may contain a provision that allows a reimbursement if that provision is approved by the superintendent, requires the prior written approval of the insured and allows payments only on a just and equitable basis and not on the basis of a priority lien. For the purposes of this section, a "just and equitable basis" means that any factors that diminish the potential value of the insured's legal action or claim reduces the share in the claim for the issuer of the casualty insurance contract claiming reimbursement. The factors include, but are not limited to:

1. Legal defenses. Questions of liability and comparative negligence or other legal defenses;

2. Exigencies of trial. Exigencies of trial that reduce a settlement or award in order to resolve the claim; and

3. Limits of coverage. Limits on the amount of applicable insurance coverage that reduce the claim to an amount recoverable by the insured member.

In the event of a dispute as to the application of any provision or the amount available for payment to the issuer of the casualty insurance contract claiming reimbursement, the dispute must be determined, if the action is pending, before the court in which it is pending or, if no action is pending, by filing an action in a court for determination of that dispute. In no case may the 3rd-party liability carrier withhold or escrow funds on behalf of or directly reimburse the insured's medical payments carrier for disbursements made on behalf of the insured without the insured's consent.

SUMMARY

The purpose of this bill is to expand the protection afforded insureds under the Maine Revised Statutes, Title 24-A, sections 2729-A and 2836 pertaining to limits of priority liens under group and health insurance policies to the medical payment provisions of an automobile insurance policy.