

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1783

H.P. 1256

House of Representatives, April 14, 1997

An Act to Clarify the Laws Concerning Claims Settlement Practices.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative VIGUE of Winslow.
Cosponsored by Senator JENKINS of Androscoggin and
Representatives: BODWELL of Brunswick, WHEELER of Eliot, WRIGHT of Berwick.

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

PART A

Sec. A-1. 24-A MRSA §2164-D, as enacted by PL 1987, c. 291, §1, is repealed and the following enacted in its place:

§2164-D. Unfair claims practices

1. Definition. As used in this section, "insurer" means any person, reciprocal exchange, Lloyd's insurer, fraternal benefit society and any other legal entity engaged in the business of insurance, including, but not limited to, producers, adjusters and 3rd-party administrators. "Insurer" also means nonprofit hospital or medical service organizations, as described in Title 24, section 2301.

2. Prohibited activities. It is an unfair claims practice for any domestic, foreign or alien insurer transacting business in this State to commit any act under subsection 3 if:

A. It is committed in conscious disregard of this section and any rules adopted under this section; or

B. It has been committed with such frequency as to indicate a general business practice to engage in that type of conduct.

3. Unfair practices. Any of the following acts by an insurer, if committed in violation of subsection 2, constitutes an unfair claims practice:

A. Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions related to coverages at issue;

B. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

C. Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

D. Failing to develop and maintain documented claim files supporting decisions made regarding liability;

E. Refusing to pay claims without conducting a reasonable investigation;

2 F. Notwithstanding the right of the insurer to reserve
4 appropriate defenses, failing to affirm coverage or deny
6 coverage of claims within a reasonable time after having
8 completed its investigation related to the claim or claims;

10 G. Attempting to settle or settling claims for less than
12 the amount to which a reasonable person believes the insured
14 or beneficiary was entitled to receive according to written
16 or printed advertising material accompanying or made part of
18 an application;

20 H. Attempting to settle or settling claims on the basis of
22 an application that was materially altered without notice
24 to, or knowledge or consent of, the insured;

26 I. Making claim payments to an insured or beneficiary
28 without indicating the coverage under which each payment is
30 being made;

32 J. Unreasonably delaying the investigation or payment of
34 claims by requiring both a formal proof of loss and
36 subsequent verification when subsequent verification would
38 result in duplication of information appearing in the formal
40 proof of loss;

42 K. Failing, in the case of claims denials or offers of
44 compromise settlement, to promptly provide a reasonable and
46 accurate explanation of the basis for those actions;

48 L. Failing to provide forms, accompanied by reasonable
explanations for their use, necessary to present claims
within 15 calendar days of such a request; or

M. Failing to adopt and implement reasonable standards to
ensure that the repairs of a repairer owned by or required
to be used by the insurer are performed in a professional
manner.

4. Compelling insureds to institute suits. It is an unfair
claims practice for any domestic, foreign or alien insurer
transacting business in this State to compel insureds to
institute suits to recover amounts due under its policies by
offering substantially less than the amounts ultimately recovered
in suits brought by them with such frequency as to indicate a
general business practice; except that this provision does not
apply when the insurer has a reasonable basis to contest
liability or dispute the amount of any damages or the extent of
any injuries claimed.

2 Rules adopted pursuant to this section are routine technical
3 rules as defined in Title 5, chapter 375, subchapter II-A.

4 **PART C**

6 **Sec. C-1. 24-A MRSA §12-A, sub-§1**, as enacted by PL 1989, c.
7 269, §3, is repealed and the following enacted in its place:

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

12 A. Violates any provision of this Title, Title 24 or any
13 other law enforced by the superintendent;

14 B. Violates any rule lawfully adopted by the superintendent;

16 C. Violates any lawful order of the superintendent that has
17 not been stayed by order of the superintendent or the
18 Superior Court; or

20 D. Commits any other unlawful act in the course of that
21 person's duties under a license issued by the superintendent
22 or in the course of unlicensed transaction of business for
23 which this Title requires licensure by the superintendent.

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

34 The superintendent, following an adjudicatory hearing, may assess
35 a civil penalty of up to \$500 for each violation in the case of
36 an individual and a civil penalty of up to \$2,000 for each
37 violation in the case of a corporation or other entity other than
38 an individual, unless the applicable law specifies a different
39 civil penalty. The superintendent may assess a civil penalty
40 only if the Attorney General elected not to pursue an action in
41 Superior Court to seek civil penalties. The Attorney General
42 shall notify the superintendent in writing whether or not the
43 Attorney General elects to pursue an action in Superior Court
44 within 90 days after receiving a request from the superintendent
45 for such an action.

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48 **SUMMARY**

49 This bill does the following.
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2 Part A sets forth those practices of insurers that would
3 constitute unfair claims practices under the Maine Insurance
4 Code. Part A is based in part on the 1990 Unfair Claims
5 Settlement Practices Model Act of the National Association of
6 Insurance Commissioners. The intent of the law is to provide a
7 regulatory framework for the Bureau of Insurance to act in those
8 cases where unfair claim practices arise. The law does not
9 create a private right of action nor is it intended to create an
10 alternate mechanism to adjudicate disputed claims. Under Part A,
11 the Superintendent of Insurance is required to adopt rules that
12 are major and substantive in nature to carry out the provisions
13 of this law. Penalties, notice and hearing provisions of current
14 law remain in effect.

16 Part B authorizes the Superintendent of Insurance to make
17 public aggregate ratios of substantiated consumer complaints
18 against insurance companies. Only those complaints determined by
19 the Bureau of Insurance to be valid are included in the
20 development of these ratios.

22 Part C clarifies the jurisdictional and penalty provisions
23 of the enforcement section of the Maine Insurance Code and gives
24 the superintendent concurrent disciplinary jurisdiction when
25 insurers or insurance professionals violate laws outside the
26 Maine Insurance Code, such as workers' compensation or general
criminal laws, in the course of their insurance business.