

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 590

S.P. 172

In Senate, February 8, 2001

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**An Act to Strengthen the Authority of the Bureau of Insurance.**

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator TREAT of Kennebec.  
Cosponsored by Speaker SAXL of Portland and  
Senators: BROMLEY of Cumberland, DAGGETT of Kennebec, LaFOUNTAIN of York,  
President MICHAUD of Penobscot, Representatives: COLWELL of Gardiner, HUTTON of  
Bowdoinham, MAYO of Bath, O'NEIL of Saco.

2  
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 24-A MRSA §12-A, sub-§1**, as repealed and replaced by  
5 PL 1997, c. 634, Pt. B, §1, is amended to read:

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

8  
9 A. Violates any provision of this Title, Title 24 or any  
10 other law enforced by the superintendent;

11 B. Violates any rule lawfully adopted by the  
12 superintendent; or

13 C. Violates any lawful order of the superintendent that has  
14 not been stayed by order of the superintendent or the  
15 Superior Court.

16  
17 The Superior Court, upon an action brought by the Attorney  
18 General, may assess a civil penalty of not less than \$500 and not  
19 more than \$5,000 for each violation in the case of an individual  
20 and not less than \$2,000 and not more than ~~\$15,000~~ \$25,000 for  
21 each violation in the case of a corporation or other entity other  
22 than an individual, unless the applicable law specifies a  
23 different civil penalty.

24  
25 The superintendent, following an adjudicatory hearing, may assess  
26 a civil penalty of up to \$500 for each violation in the case of  
27 an individual and a civil penalty of up to ~~\$2,000~~ \$25,000 for  
28 each violation in the case of a corporation or other entity other  
29 than an individual, unless the applicable law specifies a  
30 different civil penalty. The superintendent may assess a civil  
31 penalty only if the Attorney General elected not to pursue an  
32 action in Superior Court to seek civil penalties. The Attorney  
33 General shall notify the superintendent in writing whether or not  
34 the Attorney General elects to pursue an action in Superior Court  
35 within 90 days after receiving a request from the superintendent  
36 for such an action.

37  
38 **Sec. 2. 24-A MRSA §205-A** is enacted to read:

39 **§205-A. Bureau mission; assistance to consumers**

40  
41 **1. Mission.** The mission of the bureau is to promote and  
42 protect the welfare of consumers and the public and to promote  
43 fair competition in the insurance marketplace through the  
44 licensing and examination of all authorized insurance companies  
45 and regulated workers' compensation self-insurers; through the  
46 licensing of producers, consultants and adjusters; through the  
47 review of rates, rules and policy forms to be used in the State;  
48  
49  
50

2 and through providing information and assistance to consumers of  
3 insurance products. The bureau shall dedicate its resources to  
4 support and advance its mission.

6 2. **Advocacy panel.** In any proceeding regarding a rate  
7 filing affecting the interests of more than 100 policyholders or  
8 certificate holders or in any proceeding regarding an application  
9 for licensure by an insurer, nonprofit hospital and medical  
10 service organization, nonprofit health care service organization  
11 or health maintenance organization, the bureau shall impanel an  
12 advocacy panel to represent the interests of consumers and the  
13 public. The bureau may contract for the services of an advocacy  
14 panel if existing staff resources are not adequate to represent  
15 the interests of consumers and the public. The insurer,  
16 nonprofit hospital and medical service organization, nonprofit  
17 health care service organization or health maintenance  
18 organization making the rate filing or application for licensure  
19 shall pay the cost of participation of the advocacy panel.

20 3. **Intervenor funding.** Intervenor funding may be provided as  
21 follows.

22  
23 A. In any bureau proceeding regarding a rate filing or in  
24 any proceeding regarding an application for licensure by an  
25 insurer, nonprofit hospital and medical service  
26 organization, nonprofit health care service organization or  
27 health maintenance organization, the superintendent may  
28 order the insurer, nonprofit hospital and medical service  
29 organization, nonprofit health care service organization or  
30 health maintenance organization to compensate an intervenor  
31 in the proceeding for reasonable attorney's fees, expert  
32 witness fees or other reasonable costs incurred in  
33 preparation and advocacy of the intervenor's position. The  
34 superintendent may order compensation to an intervenor if  
35 the superintendent finds that:

36  
37 (1) The position of the intervenor is not adequately  
38 represented by an advocacy panel;

39  
40 (2) The intervenor has substantially contributed to  
41 the approval, in whole or in part, of a position  
42 advocated by the intervenor in the proceeding, except  
43 that, if an advocacy panel is not appointed to a  
44 proceeding, the intervenor must have contributed  
45 substantially to the conduct of the proceeding and  
46 assisted in the resolution of the issues raised in the  
47 proceeding; and

48  
49 (3) The participation of the intervenor in the  
50 proceeding without compensation would impose a  
significant financial hardship on the intervenor.

2           B. In any proceeding in which the bureau significantly  
4           modified or denied a rate filing or application for  
6           licensure, the superintendent may compensate the intervenor  
8           for reasonable attorney's fees, expert witness fees and  
10           other reasonable costs incurred in preparation and advocacy  
12           of the intervenor's position whenever the superintendent  
14           finds that the requirements of paragraph A, subparagraphs  
16           (1) and (3) are satisfied. Compensation may be provided  
18           from the bureau's regulatory fund, filing fees or  
20           assessments, subject to availability of funds.

22           C. A determination that an intervenor is eligible for an  
24           award of compensation pending the outcome of a proceeding  
26           must be made by the superintendent at the earliest  
28           practicable time in the bureau proceeding.

30           4. Rules. The bureau, after notice and hearing, may adopt  
32           rules to implement this section. Rules adopted pursuant to this  
34           section are routine technical rules as defined in Title 5,  
36           chapter 375, subchapter II-A.

38           **Sec. 3. 24-A MRSA §216, sub-§2, as amended by PL 1997, c. 314,**  
40           **§1, is further amended to read:**

42           2. All records of the bureau are subject to public  
44           inspection, except as otherwise expressly provided by law as to  
46           particular matters; and except that records, correspondence and  
48           reports of investigation in connection with actual or claimed  
50           violations of this Title or prosecution or disciplinary action  
          for those violations are confidential. The confidential nature  
          of any such record, correspondence or report may not limit or  
          affect use of the same by the superintendent in any such  
          prosecution or action. This subsection does not preclude  
          participation by the superintendent in the establishment of an  
          interstate complaint handling system that may involve the sharing  
          of information with insurance regulatory officials in other  
          jurisdictions and with the National Association of Insurance  
          Commissioners, as long as the names of the complainant and  
          insured remain confidential. This subsection does not preclude  
          the dissemination of aggregate ratios of substantiated consumer  
          complaints to the public by the superintendent. Only complaints  
          received in writing are included in the calculation of the  
          complaint ratio. A complaint received by electronic means is  
          considered a written complaint. ~~A--substantiated--consumer~~  
          ~~complaint--includes--any--matter--in--which--the--resolution--results--in~~  
          ~~a--favorable--outcome--to--the--consumer,--including,--but--not--limited~~  
          ~~to,--the--recovery--of--premium--refunds,--additional--amounts--paid--on~~  
          ~~claims--or--policy--reinstatements,--A--matter--in--which--the--actions~~  
          ~~of--an--insurer--are--in--violation--of--this--Title--is--deemed--a~~

2 ~~substantiated-complaint.~~ The superintendent shall adopt rules  
3 necessary to define the method for calculating complaint ratios.  
4 Rules adopted pursuant to this subsection are major substantive  
5 rules as defined in Title 5, chapter 375, subchapter II-A.

6 **Sec. 4. 24-A MRSA §221, sub-§5** is enacted to read:

7 **5. Market conduct examinations; reports.** Notwithstanding  
8 any other provision of this section, the bureau shall conduct a  
9 minimum of 3 market conduct examinations at random per year,  
10 including at least one insurer writing coverage under each of the  
11 following bureau divisions: property and casualty insurance;  
12 life and disability insurance; and health insurance. The  
13 examined insurer shall pay the costs of the market conduct  
14 examination. On an annual basis, the bureau shall report the  
15 number of complaints filed against insurers, the number of  
16 enforcement actions taken against insurers and the number of  
17 market conduct examinations completed. The report must also  
18 include an overview of the issues underlying the complaints filed  
19 against insurers and the steps being taken by the bureau to  
20 address those issues. On or before March 15th of each year, the  
21 bureau shall submit the report to the public and to the joint  
22 standing committee of the Legislature having jurisdiction over  
23 insurance matters.

24  
25 **Sec. 5. 24-A MRSA §2774, sub-§2**, as enacted by PL 1989, c.  
26 556, Pt. C, §2, is amended to read:

27  
28 **2. Action against licensee.** The superintendent is  
29 authorized to take appropriate action against a licensee which  
30 that fails to meet the standards of this chapter or any rules  
31 adopted by the superintendent, or who fails to respond in a  
32 timely manner to corrective actions ordered by the  
33 superintendent. The superintendent may impose a civil penalty  
34 ~~not to exceed \$1,000 for each violation,~~ as permitted by section  
35 12-A, or may deny, suspend or revoke the license.

36  
37 **Sec. 6. 24-A MRSA §4321, sub-§4, ¶¶B and D**, as enacted by PL  
38 1997, c. 792, §3, are amended to read:

39  
40 **B.** Providing information to consumers regarding health care  
41 plan options and obtaining health care coverage and  
42 services, including a chart comparing health plans offered  
43 by carriers. The division may contract with a 3rd party for  
44 the development of the comparison chart. The division may  
45 not make any specific recommendations regarding commercially  
46 offered products;

47  
48 **D.** Providing information to consumers on health care plan  
49 performance, including information on complaints made  
50 against carriers, by distributing published materials and

utilizing existing resources relating to health care plan performance and complaints;

## SUMMARY

This bill does the following.

1. It increases the maximum civil penalty for violations of the Maine Insurance Code by corporate entities to \$25,000.

2. It describes the mission of the Department of Professional and Financial Regulation, Bureau of Insurance and requires that the bureau dedicate its resources to supporting its mission.

3. It requires that the bureau appoint an advocacy panel to represent the interests of consumers in any rate filing affecting the interests of more than 100 policyholders or certificate holders or in any proceeding regarding an application for licensure by an insurer, nonprofit hospital and medical service organization, nonprofit health care service organization or health maintenance organization.

4. It allows the Superintendent of Insurance to order an insurer, nonprofit hospital and medical service organization, nonprofit health care service organization or health maintenance organization to compensate an intervenor in a proceeding for reasonable attorney's fees, expert witness fees or other reasonable costs. The superintendent may order compensation upon a finding that the position of the intervenor is not adequately represented by an advocacy panel, that the intervenor has substantially contributed to the approval, in whole or in part, of a position advocated by the intervenor in the proceeding and that the participation of the intervenor in the proceeding without compensation would impose a significant financial burden on the intervenor. The bill also allows the Superintendent of Insurance to order compensation for an intervenor from Bureau of Insurance funds if the position of the intervenor is not adequately represented by an advocacy panel and if participation of the intervenor without compensation would impose a significant financial burden on the intervenor.

5. It requires the bureau to conduct on an annual basis at least one market conduct examination of insurers writing business in each of its divisions: property and casualty insurance; life and disability insurance; and health insurance.

2           6. It removes the requirement that only substantiated  
complaints are included in the complaint ratios compiled by the  
Bureau of Insurance.

4

6           7. It requires the Bureau of Insurance, Consumer Health  
Care Division to publish a chart comparing health plans offered  
by carriers and allows the division to contract for those  
8 services. It also requires the division to publish information  
relating to complaints against carriers.