

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 726

H.P. 571

House of Representatives, February 13, 2001

An Act to Clarify the Medical Payments Subrogation Statute.

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

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative RICHARDSON of Brunswick.

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

2
4 **Sec. 1. 24-A MRSA §2910-A, sub-§1**, as enacted by PL 1997, c. 369, §2, is amended to read:

6 **1. Policy requirements.** A casualty insurance policy
8 subject to this chapter may not provide for subrogation or
10 medical or surgical services or of any expenses paid or
12 reimbursed under the medical payments coverage in the policy in
14 the event the insured is entitled to receive payment or
reimbursement from any other person as a result of legal action
or claim, except as provided in this section.

~~The coverage may contain a provision that allows the payments if
that provision is approved by the superintendent and if that
provision required the prior written approval of the insured and
provides that the insurer's subrogation right is subject to
subtraction to account for the pro rata share of the insured's
attorney's fees incurred in obtaining the recovery from another
source.~~

22 The coverage may contain a provision that allows the payments if:

24 A. That provision is approved by the superintendent;

26 B. That provision requires the prior written approval of
28 the insured after notice to the insured;

30 C. Approval of the insured is obtained within 30 days prior
32 to any action by the insurer to recover medical payments
from any source other than through the insured's action for
34 recovery; and

36 D. That provision provides that the insurer's subrogation
right is subject to subtraction to account for the pro rata
38 share of the insured's attorney's fees incurred in obtaining
the recovery from another source.

40 **Sec. 2. 24-A MRSA §2910-A, sub-§3**, as enacted by PL 1997, c.
42 369, §2, is amended to read:

44 **3. Exception.** Nothing in this section prevents an insurer
46 from exercising its subrogation rights directly against any
48 person legally responsible for the insured's injury. In the
event that the insurer pursues its subrogation rights directly
against such a person, the insurer's subrogation right is not
subject to any subtraction to account for attorney's fees and the
insurer is entitled to full recovery. This section does preclude
50 an insurer from exercising its subrogation rights against the

2 insurer of any person legally responsible for the insured's
3 injury prior to a recovery by the insured of damages through
4 settlement or a judgment entered in a legal action or claim.

6
8 **SUMMARY**

10 This bill provides that casualty insurers providing medical
11 payments coverage may not institute any action to recover
12 payments made to an insured from an insurer of a person legally
13 responsible for the insured's injury prior to the insured
14 obtaining a recovery, either through settlement or through trial,
15 without the prior written consent of the insured obtained after
16 the insurer notifies its insured of its desire to take such
action.