

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 1801

S.P. 718

In Senate, December 30, 2005

An Act To Amend the Maine Insurance Guaranty Association Act

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 28, 2005. Referred to the Committee on Insurance and Financial Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 218.

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

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator SULLIVAN of York.
Cosponsored by Representative PERRY of Calais and
Representatives: GLYNN of South Portland, McKANE of Newcastle, PILON of Saco,
VAUGHAN of Durham.

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

Sec. 1. 24-A MRSA §4438, sub-§1, ¶C, as amended by PL 1995, c. 289, §15, is further amended to read:

C. Allocate claims paid and expenses incurred among the 3 accounts separately; and assess member insurers separately for each account in amounts necessary to pay:

(1) The obligations of the association under paragraph A, subsequent to an insolvency, the obligations of the accounts for shortfalls under section 4440-A, and for preinsolvency assessments, if required by section 4440, subsection 3, paragraph B, and the obligations of the association under paragraph A-1;

(2) The expenses of handling covered claims subsequent to an insolvency;

(3) The cost of examinations under section 4445 and audits under section 4453; and

(4) Other expenses authorized by this subchapter;

Sec. 2. 24-A MRSA §4448, as amended by PL 1973, c. 585, §12, is further amended to read:

§4448. Immunity

There ~~shall-be~~ is no liability on the part of and no cause of action of any nature ~~shall~~ may arise against any member insurer, the association or its agents or employees, the board of directors, or the superintendent or ~~his~~ the superintendent's representatives for any action taken or any failure to act by them in the performance of their powers and duties under this subchapter. This section provides no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

Sec. 3. 24-A MRSA §4453 is enacted to read:

§4453. Audits of association

The association is subject to audit by the Workers' Compensation Board, created by Title 39-A, section 151 and referred to in this section as "the board," as provided in this section.

1. Audit by board. The board may audit a claim arising under a workers' compensation policy that covers an individual in the State to determine whether the association:

2 A. Has paid covered claims in a reasonably timely manner
4 after the association has received information adequate to
 determine that the claims are within the association's
 obligations under this subchapter;

6 B. Is unreasonably contesting claims that are within the
8 association's statutory payment obligations; and

10 C. Has complied with reporting requirements established
12 pursuant to subsection 2.

14 2. Annual reporting requirement. Subject to the applicable
 requirements of the Maine Administrative Procedure Act, the
16 superintendent shall establish by rule an annual reporting
 requirement for the association with respect to the association's
18 payment of workers' compensation claims and the termination of
 payments.

20 3. Cooperation. The association shall cooperate fully with
 the board and provide the information required by the rules
22 established by the superintendent.

24 4. Confidentiality. Audit working papers are confidential
 and may not be disclosed to any person outside of the board
26 except the association. For purposes of this subsection, "audit
 working papers" means all documentary and other information
28 acquired, prepared or maintained by the board during the conduct
 of an audit of the association under this section, including all
30 intra-agency and interagency communications relating to an audit
 and draft reports or any portion of a draft report. The final
32 draft report, including the underlying reconciled information, is
 not confidential.

34 5. Opportunity for hearing. Prior to issuing a final audit
36 report under this section, the board shall provide the
 association an opportunity for a hearing, at which the
38 association may respond to the board's findings.

40 6. Regulatory penalty. If as a result of an audit and
 subsequent hearing pursuant to subsection 5 the board determines
42 that the association has engaged in a pattern of questionable
 claims-handling techniques or unreasonably contesting claims, the
44 board shall certify its determination to the superintendent, who
 shall take appropriate action to halt that practice. The
46 superintendent has sole authority to impose any regulatory
 penalty.

48 7. Rulemaking. Rules adopted pursuant to this section are

2 routine technical rules as defined in Title 5, chapter 375,
3 subchapter 2-A.

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5 **SUMMARY**

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7 The bill permits the Workers' Compensation Board to audit
8 the workers' compensation claims administered by the Maine
9 Insurance Guaranty Association for the purpose of reviewing the
10 timeliness of claims payments and whether the association is
11 unreasonably contesting claims. Under current law, the Workers'
12 Compensation Board does not have that authority.