

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

SECOND REGULAR SESSION-2006

Legislative Document

No. 2068

H.P. 1463

House of Representatives, March 14, 2006

An Act Regarding the Maine Insurance Guaranty Association

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SMITH of Van Buren. (GOVERNOR'S BILL)
Cosponsored by Senator STRIMLING of Cumberland.

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

2 **Sec. 1. 24-A MRSA §4438, sub-§1, ¶A**, as amended by PL 2001, c. 478, §8 and
3 affected by §11, is further amended to read:

4 A. Be obligated to pay covered claims existing prior to the determination of the
5 insolvency or arising within 30 days after the determination of insolvency, or before
6 the policy expiration date if less than 30 days after the determination of insolvency,
7 or before the insured replaces the policy or causes its cancellation, if within 30 days
8 of the determination. The obligation must be satisfied by paying to the claimant:

9 (1) Except as provided in this paragraph, the full amount of a covered claim for
10 benefits, including interest and penalties, or unearned premium under workers'
11 compensation insurance coverage;

12 (2) An amount not exceeding \$25,000 per policy for a covered claim for the
13 return of an unearned premium; or

14 (3) An amount not exceeding \$300,000 per claim for all other covered claims.

15 In no event is the association obligated to pay a claimant an amount in excess of the
16 obligation of the insolvent insurer under the policy or coverage from which the claim
17 arises. The association shall pay only that amount of unearned premium in excess of
18 \$50. Notwithstanding any other provisions of this subchapter, a covered claim does
19 not include any claim filed with the association after the earlier of 24 months after the
20 date of the order of liquidation or the final date set by the court for the filing of
21 claims against the liquidator or receiver of an insolvent insurer. The association, in
22 its discretion, may accept a late filed claim as a covered claim when the claimant
23 demonstrates good cause. The demonstration of good cause by a claimant includes
24 showing that the existence of the claim was not known to the claimant prior to the bar
25 date and that the claimant filed the claim within 60 days of learning of the claim;

26 **Sec. 2. 24-A MRSA §4445**, as amended by PL 1973, c. 585, §12, is further
27 amended by adding at the end a new paragraph to read:

28 The association is also subject to audit, enforcement and monitoring by the Workers'
29 Compensation Board with respect to workers' compensation claims as provided for in the
30 Maine Workers' Compensation Act of 1992. Notwithstanding any other provision of law,
31 the association is liable for the payment of any compensation, interest, penalty or other
32 obligation determined to be due by the Workers' Compensation Board as provided for in
33 the Maine Workers' Compensation Act of 1992.

34 **Sec. 3. 39-A MRSA §153, sub-§9**, as amended by PL 1999, c. 354, §2, is further
35 amended to read:

36 **9. Audit and enforcement.** The executive director shall establish an audit,
37 enforcement and monitoring program by July 1, 1998, to ensure that all obligations under
38 this Act are met, including the requirements of section 359. The functions of the audit
39 and enforcement program include, but are not limited to, auditing timeliness of payments
40 and claims handling practices of insurers, self-insurers, the Maine Insurance Guaranty
41 Association and 3rd-party administrators; determining whether insurers, self-insurers, the
42 Maine Insurance Guaranty Association and 3rd-party administrators are unreasonably

1 contesting claims; and ensuring that all reporting requirements to the board are met.
2 When auditing the Maine Insurance Guaranty Association, the program shall consider
3 when the Maine Insurance Guaranty Association obtained the records of an insolvent
4 insurer. The program must be coordinated with the abuse investigation unit established
5 by section 153, subsection 5 as appropriate. The program must monitor activity and
6 conduct audits pursuant to a schedule developed by the deputy director of benefits
7 administration. Audit working papers are confidential and may not be disclosed to any
8 person outside of the board except the audited entity. For purposes of this subsection
9 "audit working papers" means all documentary and other information acquired, prepared
10 or maintained by the board during the conduct of an audit or investigation, including all
11 intra-agency and interagency communications relating to an audit or investigation and
12 draft reports or any portion of a draft report. The final audit report, including the
13 underlying reconciled information, is not confidential. At the end of each calendar
14 quarter, the executive director shall prepare a compliance report summarizing the results
15 of the audits and reviews conducted pursuant to this subsection. The executive director
16 shall submit the quarterly compliance reports to the board, the Bureau of Insurance and
17 the Director of the Bureau of Labor Standards within the Department of Labor. An
18 annual summary must be provided to the Governor and to the joint standing committees
19 of the Legislature having jurisdiction over labor and banking and insurance matters by
20 February 15th of each year. The quarterly compliance reports and the annual summaries
21 must be made available to the public following distribution.

22 **Sec. 4. 39-A MRSA §359, sub-§1**, as enacted by PL 1991, c. 885, Pt. A, §8 and
23 affected by §§9 to 11, is amended to read:

24 **1. Audits.** The board shall audit claims, including insurer, self-insurer, Maine
25 Insurance Guaranty Association and 3rd-party administrator claim files, on an ongoing
26 basis to determine whether insurers, self-insured employers, the Maine Insurance
27 Guaranty Association and 3rd-party administrators have met their obligations under this
28 Act and to identify the disputes that arose, the reasons for the disputes, the method and
29 manner of their resolution, the costs incurred, the reasons for attorney involvement and
30 the services rendered by the attorneys.

31 If as a result of an examination and after providing the opportunity for a hearing the board
32 determines that any compensation, interest, penalty or other obligation is due and unpaid
33 to an employee, dependent or service provider, the board shall issue a notice of
34 assessment detailing the amounts due and unpaid in each case and shall order the amounts
35 paid to the unpaid party or parties.

36 **Sec. 5. 39-A MRSA §359, sub-§2**, as enacted by PL 1991, c. 885, Pt. A, §8 and
37 affected by §§9 to 11, is amended to read:

38 **2. Penalty.** In addition to any other penalty assessment permitted under this Act,
39 the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing,
40 that an employer, an insurer, the Maine Insurance Guaranty Association or a 3rd-party
41 administrator for an employer has engaged in a pattern of questionable claims-handling
42 techniques or repeated unreasonably contested claims. The board shall certify its findings
43 to the Superintendent of Insurance, who shall take appropriate action so as to bring any
44 such practices to a halt. This certification by the board is exempt from the provisions of
45 the Maine Administrative Procedure Act.

1

SUMMARY

2 This bill specifically provides that the Workers' Compensation Board may engage in
3 audit, enforcement and monitoring of the Maine Insurance Guaranty Association and the
4 Maine Insurance Guaranty Association's existing obligation to pay interest and penalties
5 determined to be due pursuant to the Maine Workers' Compensation Act of 1992. This
6 bill also establishes that the board, when auditing the Maine Insurance Guaranty
7 Association, shall consider when the Maine Insurance Guaranty Association obtained the
8 records of an insolvent insurer.