

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1389

H.P. 981

House of Representatives, March 13, 2007

An Act To Provide for Prompt Resolution of Insurance Claims

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BRAUTIGAM of Falmouth.

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

2 **Sec. 1. 24-A MRSA §2164-D, sub-§8**, as enacted by PL 1997, c. 634, Pt. A, §1,
3 is repealed.

4 **Sec. 2. 24-A MRSA §2164-D, sub-§10** is enacted to read:

5 **10. Authority for private cause of action.** A person who has been injured by an
6 insurer's use of unfair claims practices in violation of this section or any rule adopted
7 pursuant to subsection 7 may bring an action in accordance with this subsection.

8 A. An action under this subsection may be filed in Superior Court for damages and
9 equitable relief as provided in this subsection. An action may be filed as an original
10 complaint, counterclaim, cross-claim or 3rd-party action.

11 B. At least 30 days prior to the filing of any action under this subsection, the person
12 filing the claim shall mail or deliver to the insurer a written demand for relief that
13 identifies the insured or other 3rd-party claimant and reasonably describes the unfair
14 claims practice relied upon and the injury suffered.

15 C. An insurer that receives a written demand for relief under paragraph B who,
16 within 30 days of the mailing or delivery of the demand for relief, makes a written
17 tender of settlement that is rejected by the claimant may, in any subsequent action,
18 file the written tender and an affidavit concerning its rejection and thereby limit any
19 recovery to the relief tendered if the court finds that the relief tendered was
20 reasonable in relation to the injury actually suffered by the petitioner.

21 D. In all other cases, if the court finds for the petitioner, recovery must be in the
22 amount of actual damages or \$25, whichever is greater; or up to 3 but not less than 2
23 times such amount if the court finds that the use or employment of the act or practice
24 was a willful or knowing violation or that the refusal to grant relief upon demand was
25 made in bad faith with knowledge or reason to know that the act or practice
26 complained of violated this section. For the purposes of this subsection, the amount
27 of actual damages to be multiplied by the court must be the amount of the judgment
28 on all claims arising out of the same and underlying transaction or occurrence,
29 regardless of the existence or nonexistence of insurance coverage available in
30 payment of the claim.

31 E. In addition to damages, the Superior Court may award such other equitable relief,
32 including an injunction, as the court determines to be necessary and proper.

33 F. The demand requirements of paragraph A do not apply if the claim is asserted by
34 way of counterclaim or cross-claim, or if the insurer does not maintain a place of
35 business or does not keep assets within the State, except that an insurer who does not
36 maintain a place of business or keep assets within the State may employ the
37 provisions of paragraph C by making a written offer of relief and paying the rejected
38 tender into court as soon as practicable after receiving notice of an action commenced
39 under this section.

40 G. A person may file a claim under this subsection in District Court for monetary
41 damages only and is not entitled to equitable relief. The District Court may award

1 double or treble damages, attorney's fees and costs, as provided in this subsection.
2 The demand requirements and provision for tender of offer of settlement provided in
3 paragraph C apply to any District Court action brought under this paragraph.

4 H. If the court finds in any cause of action brought under this subsection that an
5 insurer has committed an unfair claims practice in violation of this section, the
6 claimant shall, in addition to other relief provided for in this subsection and
7 irrespective of the amount in controversy, be awarded reasonable attorney's fees and
8 costs, except that the court shall deny recovery of attorney's fees and costs that are
9 incurred after the rejection of a reasonable written offer of settlement made pursuant
10 to paragraph C.

11 I. A person entitled to bring an action under this subsection may not be required to
12 initiate, pursue or exhaust any remedy established by any state or federal law or
13 common law or any rule or administrative procedure in order to bring an action under
14 this subsection or to obtain injunctive relief or recover damages or attorney's fees or
15 costs or other relief as provided in this subsection. The failure to exhaust
16 administrative remedies is not an affirmative defense to any cause of action filed
17 pursuant to this subsection.

18 **Sec. 3. 24-A MRS §2454** is enacted to read:

19 **§2454. Direct action against insurer**

20 **1. Contract provision; insolvency or bankruptcy of insured.** A policy or contract
21 of property or casualty insurance may not be issued or delivered in this State unless it
22 contains a provision stating that the insolvency or bankruptcy of the insured does not
23 release the insurer from the payment of damages for injuries sustained or loss occasioned
24 during the existence of the policy and any judgment rendered against the insured for
25 which the insurer is liable that has become executory is prima facie evidence of the
26 insolvency of the insured. The policy or contract must also include a provision stating
27 that an action may thereafter be maintained within the terms and limits of the policy by
28 the injured person or the injured person's survivors or heirs against the insurer.

29 **2. Direct action.** An injured person or the injured person's survivors or heirs, at
30 their option, have a right of direct action against an insurer within the terms and limits of
31 the policy and may bring an action against the insurer only or against both the insured and
32 insurer jointly except that an action must be brought against an insurer only when:

33 A. The insured has been adjudged a bankrupt by a court of competent jurisdiction or
34 when proceedings to adjudge an insured a bankrupt have been commenced before a
35 court of competent jurisdiction;

36 B. The insured is insolvent;

37 C. Service of citation or other process cannot be made on the insured;

38 D. When the cause of action is for damages as a result of an offense or quasi-offense
39 between children and their parents or between married persons;

40 E. When the policy sued upon is for uninsured motorist coverage; or

1 F. The insured is deceased.

2 3. Application. The right of direct action authorized under this section applies
3 whether or not the policy of insurance sued upon was written or delivered in this State
4 and whether or not the policy contains a provision barring such direct action as long as
5 the accident or injury occurred within this State. This section may not be construed to
6 affect any provisions of a policy or contract if those provisions are not in violation of the
7 laws of this State.

8 4. Terms and conditions of policy apply. An action brought under this section is
9 subject to all of the lawful terms and conditions of the policy or contract and the defenses
10 that could be urged by the insurer to a direct action brought by the insured as long as the
11 terms and conditions of the policy or contract are not in violation of the laws of this State.

12

SUMMARY

13 This bill provides a private cause of action for consumers who are victims of unfair
14 claims practices of insurance companies.

15 The bill also amends the Maine Insurance Code to provide for direct actions against
16 insurance companies in specific instances.