

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 620

S.P. 236

In Senate, February 17, 2009

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**An Act To Ensure the Workers' Compensation Board's Regulatory  
Oversight of the Maine Insurance Guaranty Association**

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Reference to the Committee on Labor 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 BARTLETT of Cumberland.  
Cosponsored by Representative TUTTLE of Sanford and  
Senators: BRYANT of Oxford, JACKSON of Aroostook, President MITCHELL of Kennebec,  
Representatives: BUTTERFIELD of Bangor, DRISCOLL of Westbrook, Speaker PINGREE of  
North Haven.

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 2005, c. 603, §1, is  
3 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 all penalties payable to a claimant under the  
11 Maine Workers' Compensation Act of 1992, or unearned premium under workers'  
12 compensation insurance coverage;

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

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

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

27               **Sec. 2. 24-A MRSA §4438, sub-§1, ¶H**, as enacted by PL 1969, c. 561, is  
28 amended to read:

29               H. Pay the other expenses of the association authorized by this subchapter; and

30               **Sec. 3. 24-A MRSA §4438, sub-§1, ¶I** is enacted to read:

31               I. Pay all penalties, sanctions, forfeitures and fines provided for under the Maine  
32 Workers' Compensation Act of 1992 including penalties payable to the Workers'  
33 Compensation Board and the General Fund, except the penalty provided for in Title  
34 39-A, section 359, subsection 2.

35               **Sec. 4. 39-A MRSA §205, sub-§3**, as enacted by PL 1991, c. 885, Pt. A, §8 and  
36 affected by §§9 to 11, is amended to read:

37               **3. Penalty for delay.** When there is not an ongoing dispute, if weekly compensation  
38 benefits or accrued weekly benefits are not paid by the employer or insurance carrier  
39 within 30 days after becoming due and payable, \$50 per day must be added and paid to  
40 the worker for each day over 30 days in which the benefits are not paid. Not more than

1 \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking,  
2 daily charges paid under this subsection do not constitute elements of loss. For purposes  
3 of this subsection, "employer or insurance carrier" includes the Maine Insurance  
4 Guaranty Association under Title 24-A, chapter 57, subchapter 3.

5 **Sec. 5. 39-A MRSA §205, sub-§4**, as amended by PL 2007, c. 218, §1, is further  
6 amended to read:

7 **4. Payment of bills for medical or health care services.** When there is no ongoing  
8 dispute, if bills for medical or health care services are not paid within 30 days after the  
9 carrier has received notice of nonpayment by certified mail from the provider of the  
10 medical or health care services or, if the bill was paid by the employee, from the  
11 employee who paid for the medical or health care services, \$50 or the amount of the bill  
12 due, whichever is less, must be added and paid to the provider of the medical or health  
13 care services or, if the bill was paid by the employee, to the employee who paid for the  
14 medical or health care services for each day over 30 days in which the bills for medical or  
15 health care services are not paid. Not more than \$1,500 in total may be added pursuant to  
16 this subsection. For purposes of this subsection, "carrier" includes the Maine Insurance  
17 Guaranty Association under Title 24-A, chapter 57, subchapter 3.

18 **Sec. 6. 39-A MRSA §313, sub-§4**, as enacted by PL 1991, c. 885, Pt. A, §8 and  
19 affected by §§9 to 11, is amended to read:

20 **4. Cooperation; sanctions.** The parties shall cooperate with the mediator assigned  
21 to the case. The assigned mediator shall report to the board the failure of a party to  
22 cooperate or to produce requested material. The board may impose sanctions against a  
23 party who does not cooperate or produce requested materials, including the following:

24 A. Assessment of costs and attorney's fees;

25 B. Reductions of attorney's fees; or

26 C. If the party is the moving party, suspension of proceedings until the party has  
27 cooperated or produced the requested material.

28 For purposes of this subsection, "party" includes the Maine Insurance Guaranty  
29 Association under Title 24-A, chapter 57, subchapter 3.

30 **Sec. 7. 39-A MRSA §313, sub-§5**, as enacted by PL 1991, c. 885, Pt. A, §8 and  
31 affected by §§9 to 11, is amended to read:

32 **5. Duties of employer or representative of the employee, employer or insurer.**  
33 The employer or representative of the employee, employer or insurer who participates in  
34 mediation must be familiar with the employee's claim and has authority to make decisions  
35 regarding the claim. The board may assess a forfeiture in the amount of \$100 against any  
36 employer or representative of the employee, employer or insurer who participates in  
37 mediation without full authority to make decisions regarding the claim. If a  
38 representative of the employer, insurer or employee participates in mediation or any other  
39 proceeding of the board, the representative shall notify the employer, insurer or employee  
40 of all actions by the representative on behalf of the employer, insurer or employee and  
41 any other actions at the proceeding.

1 For purposes of this subsection, "employer or representative of the employee, employer  
2 or insurer" includes the Maine Insurance Guaranty Association under Title 24-A, chapter  
3 57, subchapter 3.

4 **Sec. 8. 39-A MRSA §324, sub-§1**, as amended by PL 2007, c. 240, Pt. JJJ, §6  
5 and c. 311, §3, is further amended to read:

6 **1. Order or decision.** The employer or insurance carrier shall make compensation  
7 payments within 10 days after the receipt of notice of an approved agreement for payment  
8 of compensation or within 10 days after any order or decision of the board awarding  
9 compensation. If the board enters a decision awarding compensation and an appeal is  
10 filed with the Law Court pursuant to section 322, payments may not be suspended while  
11 the appeal is pending. The employer or insurer may recover from an employee payments  
12 made pending appeal to the Law Court if and to the extent that the Law Court has decided  
13 that the employee was not entitled to the compensation paid. The board has full  
14 jurisdiction to determine the amount of overpayment, if any, and the amount and schedule  
15 of repayment, if any. The board, in determining whether or not repayment should be  
16 made and the extent and schedule of repayment, shall consider the financial situation of  
17 the employee and the employee's family and may not order repayment that would work  
18 hardship or injustice. The board shall notify the Commissioner of Health and Human  
19 Services within 10 days after the receipt of notice of an approved agreement for payment  
20 of compensation or within 10 days after any order or decision of the board awarding  
21 compensation identifying the employee who is to receive the compensation. For  
22 purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance  
23 Guaranty Association under Title 24-A, chapter 57, subchapter 3.

24 **Sec. 9. 39-A MRSA §324, sub-§2**, as amended by PL 2007, c. 265, §1, is further  
25 amended to read:

26 **2. Failure to pay within time limits.** An employer or insurance carrier who fails to  
27 pay compensation, as provided in this section, is penalized as follows. For purposes of  
28 this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty  
29 Association under Title 24-A, chapter 57, subchapter 3.

30 A. Except as otherwise provided by section 205, if an employer or insurance carrier  
31 fails to pay compensation as provided in this section, the board may assess against the  
32 employer or insurance carrier a fine of up to \$200 for each day of noncompliance. If  
33 the board finds that the employer or insurance carrier was prevented from complying  
34 with this section because of circumstances beyond its control, a fine may not be  
35 assessed.

36 (1) The fine for each day of noncompliance must be divided as follows: Of each  
37 day's fine amount, the first \$50 is paid to the employee to whom compensation is  
38 due and the remainder must be paid to the board and be credited to the Workers'  
39 Compensation Board Administrative Fund.

40 (2) If a fine is assessed against any employer or insurance carrier under this  
41 subsection on petition by an employee, the employer or insurance carrier shall  
42 pay reasonable costs and attorney's fees related to the fine, as determined by the  
43 board, to the employee.

1 (3) Fines assessed under this subsection may be enforced by the Superior Court  
2 in the same manner as provided in section 323.

3 B. Payment of a fine assessed under this subsection is not considered an element of  
4 loss for the purpose of establishing rates for workers' compensation insurance.

5 **Sec. 10. 39-A MRSA §359, sub-§1**, as amended by PL 2005, c. 603, §4, is  
6 further amended to read:

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

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

19 **Sec. 11. 39-A MRSA §360, sub-§6** is enacted to read:

20 **6. Maine Insurance Guaranty Association.** The provisions of this section apply to  
21 the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.

22 **SUMMARY**

23 This bill ensures that the Maine Insurance Guaranty Association is responsible for all  
24 penalties under the Maine Workers' Compensation Act of 1992 and any rules adopted  
25 pursuant to the Maine Workers' Compensation Act of 1992 with the exception of the  
26 penalty under the Maine Revised Statutes, Title 39-A, section 359, subsection 2.