

MAINE STATE LEGISLATURE

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STATE OF MAINE
AUGUSTA, MAINE

124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1305

H.P. 908

House of Representatives, March 31, 2009

**An Act To Provide for Prompt Resolution of Insurance Claims by
Providing for a Direct Remedy by Consumers**

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BERRY of Bowdoinham.
Cosponsored by Senator PERRY of Penobscot.

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 amended to read:

4 **8. Insurer's duty.** This section may not be construed as abridging an insurer's duty
5 to its insured or altering policy provisions. ~~This section may not be construed to create or~~
6 ~~imply a private cause of action for violation of this section.~~

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

8 **10. Private action.** A person injured by an unfair claim practice may bring an action
9 in Superior Court or District Court pursuant to this subsection.

10 A. A person who has been injured by an insurer's use or employment of an unfair
11 claim practice pursuant to this section may bring an action in Superior Court, either
12 by an original complaint, counterclaim, cross-claim or 3rd-party action, for damages
13 and such equitable relief, including an injunction, as the court considers necessary
14 and proper.

15 (1) At least 30 days prior to the filing of any such action, a written demand for
16 relief must be mailed or delivered to any prospective respondent. The demand
17 must identify the claimant and reasonably describe the unfair claim practice and
18 the injury suffered by the claimant. The demand requirements of this paragraph
19 do not apply if the claim is asserted by way of counterclaim or cross-claim, or if
20 the prospective respondent does not maintain a place of business or does not keep
21 assets within this State; however, that respondent may otherwise employ the
22 provisions of this section by making a written offer of relief and paying the
23 rejected tender to the court as soon as practicable after receiving notice of an
24 action commenced under this subsection.

25 (2) If a respondent receiving a demand for relief makes a written tender of
26 settlement within 30 days of the mailing or delivery of the demand for relief, and
27 that tender of settlement is rejected by the claimant, the respondent may in any
28 subsequent action file the written tender and an affidavit concerning its rejection
29 and thereby limit any recovery to the relief tendered if the court finds that the
30 relief tendered was reasonable in relation to the injury actually suffered by the
31 claimant.

32 (3) Except as provided in subparagraph (2), if the court finds for the claimant,
33 recovery is limited to the amount of actual damages or \$25, whichever is greater.
34 If the court finds that the use or employment of the act or practice was a willful
35 or knowing violation by the respondent or that the refusal to grant relief upon
36 demand was made in bad faith with knowledge or reason to know that the act or
37 practice complained of violated this section, the court shall award not less than 2
38 times the actual damages nor more than 3 times the actual damages. For the
39 purposes of this paragraph, the amount of actual damages to be multiplied by the
40 court is the amount of the judgment on all claims arising out of the same and
41 underlying transaction or occurrence, regardless of the existence or nonexistence
42 of insurance coverage available in payment of the claim.

1 (4) In addition to the award under subparagraph (2) or (3), the court shall award
2 such other equitable relief, including an injunction, as the court considers
3 necessary and proper.

4 B. A person may assert a claim under this section in a District Court by way of
5 original complaint, counterclaim, cross-claim or 3rd-party action for money damages
6 only. All the provisions of paragraph A apply to a claim brought in District Court,
7 except that the District Court Judge may not grant equitable relief.

8 If the court finds in an action commenced under this subsection that there has been a
9 violation of this section, the court shall award the claimant, in addition to other relief
10 provided for by this subsection and irrespective of the amount in controversy, reasonable
11 attorney's fees and costs incurred in connection with the action, except that the court shall
12 deny recovery of attorney's fees and costs that are incurred after the rejection of a
13 reasonable written offer of settlement made within 30 days of the mailing or delivery of
14 the written demand for relief required by this subsection.

15 A person entitled to bring an action under this subsection is not required to initiate,
16 pursue or exhaust a remedy established by regulation, administrative procedure, local,
17 state or federal law or statute or the common law in order to bring an action under this
18 section or to obtain injunctive relief or recover damages or attorney's fees or costs or
19 other relief as provided in this subsection and the failure to exhaust administrative
20 remedies is not a defense to a proceeding under this subsection.

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

22 **§2454. Direct action against insurer**

23 **1. Required insurance policy or contract provisions.** A policy or contract of
24 property or casualty insurance may not be issued or delivered in this State unless it
25 contains provisions to the effect that:

26 A. The insolvency or bankruptcy of the insured does not release the insurer from the
27 payment of damages for injuries sustained or losses occasioned during the existence
28 of the policy;

29 B. A judgment rendered against the insured for which the insurer is liable and that
30 has become executory is considered prima facie evidence of the insolvency of the
31 insured; and

32 C. An action may be maintained within the terms and limits of the policy against the
33 insurer by the injured person or the injured person's survivors or heirs.

34 **2. Right of direct action.** An injured person or the survivors or heirs of that injured
35 person may pursue a right of direct action against the insurer within the terms and limits
36 of the policy; this action may be brought against both the insured and insurer jointly. The
37 action may be brought against the insurer alone only when:

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

41 B. The insured is insolvent;

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

2 D. The cause of action is for damages as a result of an offense or quasi-offense
3 between children and their parents or between married persons;

4 E. The insurer is an uninsured motorist carrier; or

5 F. The insured is deceased.

6 This right of direct action granted pursuant to this subsection exists regardless of whether
7 the policy of insurance sued upon was written or delivered in this State and regardless of
8 whether that policy contains a provision forbidding such direct action as long as the
9 accident or injury occurred within this State.

10 3. Effect on policy or contract. This section may not be construed to affect the
11 provisions of a policy or contract if those provisions are not in violation of the laws of
12 this State. An action brought under this section is subject to all of the lawful conditions
13 of the policy or contract and the defenses that could be urged by the insurer to a direct
14 action brought by the insured as long as the terms and conditions of that policy or
15 contract are not in violation of the laws of this State.

16 SUMMARY

17 This bill provides a private remedy for consumers who are victims of an unfair claim
18 practice. This bill also allows an injured party to bring a direct action against an insurer
19 under certain circumstances.