

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 867

S.P. 271

In Senate, March 8, 2011

An Act To Amend the Laws Governing Insurance as They Relate to Civil Penalties Imposed for Violations of Those Laws

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

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator SNOWE-MELLO of Androscoggin.
Cosponsored by Senator: SULLIVAN of York.

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

2 **Sec. 1. 24-A MRSA §12-A, sub-§1**, as amended by PL 2005, c. 41, §1, is further
3 amended to read:

4 **1. Civil penalty.** Civil penalties may be assessed against any person who:

5 A. Violates any provision of this Title, Title 24 or any other law enforced by the
6 superintendent;

7 B. Violates any rule lawfully adopted by the superintendent; or

8 C. Violates any lawful order of the superintendent that has not been stayed by order
9 of the superintendent or the Superior Court.

10 The Superior Court, upon an action brought by the Attorney General, may assess a civil
11 penalty of not less than \$500 and not more than \$5,000 for each violation, subject to an
12 aggregate maximum of \$50,000, in the case of an individual and not less than \$2,000 and
13 not more than \$15,000, subject to an aggregate maximum of \$100,000, for each violation
14 in the case of a corporation or other entity other than an individual, unless the applicable
15 law specifies a different civil penalty.

16 The superintendent, following an adjudicatory hearing, may assess a civil penalty of up to
17 \$500 for each violation in the case of an individual, subject to an aggregate maximum of
18 \$5,000, unless the bureau proves by clear and convincing evidence that the violations
19 were both intentional and with the intent to defraud consumers and that consumers in fact
20 sustained material loss or damage, and a civil penalty of up to \$10,000 for each violation
21 in the case of a corporation or other entity other than an individual, subject to an
22 aggregate maximum of \$50,000, unless the bureau proves by clear and convincing
23 evidence that the violations were both intentional and with the intent to defraud
24 consumers and that consumers in fact sustained material loss or damage, unless the
25 applicable law specifies a different civil penalty. The superintendent shall notify the
26 Attorney General or the Attorney General's designee of any such adjudicatory hearing at
27 the time that the notice of hearing is issued by the superintendent. The superintendent
28 may not assess a civil penalty if the Attorney General notifies the superintendent that the
29 Attorney General intends to pursue an action in Superior Court to seek civil penalties for
30 the same conduct. If the Attorney General elects to pursue the noticed action in Superior
31 Court, the Attorney General shall notify the superintendent of that decision no later than 7
32 days prior to the hearing. If the Attorney General elects to pursue the noticed action in
33 Superior Court, the Superior Court may impose damages only in accordance with the
34 standards established in this subsection.

35 **SUMMARY**

36 This bill amends the laws governing insurance in relation to the assessment of civil
37 penalties based upon multiple violations of these laws. It sets caps on the civil penalties
38 that the Superior Court may assess in an action brought by the Attorney General. It also
39 sets caps on the civil penalties that the Superintendent of Insurance may assess following
40 an adjudicatory hearing except in cases in which the Department of Professional and
41 Financial Regulation, Bureau of Insurance proves by clear and convincing evidence that

1 the violations were intentional and with the intent to defraud consumers and that
2 consumers in fact sustained material loss or damage.