

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

CHAPTER 634

H.P. 1256 - L.D. 1783

**An Act to Clarify the Laws
Concerning Claims Settlement
Practices**

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

PART A

Sec. A-1. 24-A MRSA §2164-D, as enacted by PL 1987, c. 291, §1, is repealed and the following enacted in its place:

§2164-D. Unfair claims practices

1. Definition. As used in this section, "insurer" means any person, reciprocal exchange, Lloyd's insurer, fraternal benefit society and any other legal entity engaged in the business of insurance, including, but not limited to, producers, adjusters and 3rd-party administrators. "Insurer" also means nonprofit hospital or medical service organizations, as described in Title 24, section 2301.

2. Prohibited activities. It is an unfair claims practice for any domestic, foreign or alien insurer transacting business in this State to commit any act under subsection 3 if:

A. It is committed in conscious disregard of this section and any rules adopted under this section; or

B. It has been committed with such frequency as to indicate a general business practice to engage in that type of conduct.

3. Unfair practices. Any of the following acts by an insurer, if committed in violation of subsection 2, constitutes an unfair claims practice:

A. Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions related to coverages at issue;

B. Failing to acknowledge with reasonable promptness pertinent written communications with respect to claims arising under its policies;

C. Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;

D. Failing to develop and maintain documented claim files supporting decisions made regarding liability;

E. Refusing to pay claims without conducting a reasonable investigation;

F. Failing to affirm coverage or deny coverage, reserving any appropriate defenses, within a reasonable time after having completed its investigation related to a claim;

G. Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;

H. Making claim payments to an insured or beneficiary without indicating the coverage under which each payment is being made;

I. Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss and subsequent verification when subsequent verification would result in duplication of information appearing in the formal proof of loss;

J. Failing, in the case of claims denials or offers of compromise settlement, to promptly provide an accurate written explanation of the basis for those actions;

K. Failing to provide forms, accompanied by reasonable explanations for their use, necessary to present claims within 15 calendar days of such a request. This paragraph does not apply when there is an extraordinary loss or series of losses resulting from a catastrophe as determined by the superintendent; or

L. Failing to adopt and implement reasonable standards to ensure that the repairs of a repairer owned by or required to be used by the insurer are performed in a professional manner.

4. Compelling insureds to institute suits. It is an unfair claims practice for any domestic, foreign or alien insurer transacting business in this State to compel insureds to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them with such frequency as to indicate a general business practice; except that this provision does not apply when the insurer has a reasonable basis to contest liability or dispute the amount of any damages or the extent of any injuries claimed.

5. Resolution of claims. It is an unfair claims practice for any domestic, foreign or alien insurer transacting business in this State to fail to deal with insureds in good faith to resolve claims made against policies of insureds without just cause and with such frequency as to indicate a general business practice.

6. Chapter 56-A. The superintendent shall ensure that the provisions of chapter 56-A and any rules adopted pursuant to that chapter are enforced consistent with this section.

7. Rules. The superintendent may adopt rules necessary to carry out the provisions of this section. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

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

9. Applicability. This section does not apply to claims involving workers' compensation, medical malpractice, fidelity, suretyship or boiler and machinery insurance.

PART B

Sec. B-1. 24-A MRSA §12-A, sub-§1, as enacted by PL 1989, c. 269, §3, is repealed and the following enacted in its place:

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

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

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

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

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

The superintendent, following an adjudicatory hearing, may assess a civil penalty of up to \$500 for each violation in the case of an individual and a civil penalty of up to \$2,000 for each violation in the case of a corporation or other entity other than an individual, unless the applicable law specifies a different civil penalty. The superintendent may assess a civil penalty only if the Attorney General elected not to pursue an action in Superior Court to seek civil penalties. The Attorney General shall notify the superintendent in writing whether or not the Attorney General elects to

pursue an action in Superior Court within 90 days after receiving a request from the superintendent for such an action.

See title page for effective date.

CHAPTER 635

S.P. 735 - L.D. 2013

An Act to Broaden the Farm Stand Exemption

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

Sec. 1. 23 MRSA §1903, sub-§§1-C and 10-B are enacted to read:

1-C. Agricultural product. "Agricultural product" means an item under paragraph A, B, C or D if the item is sold in accordance with any applicable state or federal law or rule:

A. Fresh fruit, fresh produce or a fresh horticultural or agronomic commodity and a seasonal product made from that fresh fruit, fresh produce or fresh horticultural or agronomic commodity;

B. Trees and wreaths used for decorative purposes;

C. Maple syrup; and

D. A fresh food product made from an animal raised for the purpose of providing food or from the products of that animal.

10-B. Producer. "Producer" means a person who produces, cultivates, grows or harvests an agricultural product.

Sec. 2. 23 MRSA §1913-A, sub-§2, ¶F, as enacted by PL 1991, c. 387, §2, is repealed.

Sec. 3. 23 MRSA §1913-A, sub-§2, ¶G is enacted to read:

G. Signs erected between May 1st and December 31st by a producer of agricultural products, as long as those signs advertise products that are grown, produced and sold on the producer's premise. A producer that grows, produces and sells an agricultural product from a location with frontage on a numbered state highway may not erect a sign under this paragraph adjacent to that highway. Signs must be directional in nature and may advertise only the agricultural product that is available for immediate purchase. The producer erecting the sign shall remove the sign once the agricultural product advertised on the