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

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

Sec. 1. 24-A MRSA §4438, sub-§1, ¶A, as amended by PL 2005, c. 603, §1, is further amended to read:

A. Be obligated to pay covered claims existing prior to the determination of the insolvency or arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination of insolvency, or before the insured replaces the policy or causes its cancellation, if within 30 days of the determination. The obligation must be satisfied by paying to the claimant:

- (1) Except as provided in this paragraph, the full amount of a covered claim for benefits, including interest and all penalties payable to a claimant under the Maine Workers' Compensation Act of 1992, or unearned premium under workers' compensation insurance coverage;
- (2) An amount not exceeding \$25,000 per policy for a covered claim for the return of an unearned premium; or
- (3) An amount not exceeding \$300,000 per claim for all other covered claims.

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

Sec. 2. 24-A MRSA §4438, sub-§1, ¶F, as amended by PL 1973, c. 585, §12, is further amended to read:

F. Handle claims through its employees or through one or more insurers licensed in the State or other persons using employees licensed as adjusters in the State designated as servicing facilities. Designation of a servicing facility is subject to the approval of the superintendent, but designation of a member insurer as a servicing facility may be declined by such insurer;

Sec. 3. 24-A MRSA §4438, sub-§1, ¶H, as enacted by PL 1969, c. 561, is amended to read:

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

Sec. 4. 24-A MRSA §4438, sub-§1, ¶I is enacted to read:

I. Pay all penalties, sanctions, forfeitures and fines provided for under the Maine Workers' Compensation Act of 1992 including penalties payable to the Workers' Compensation Board and the General Fund, except the penalty provided for in Title 39-A, section 359, subsection 2. No penalty, fine, forfeiture, attorney's fees or other sanction may be imposed on the association if:

(1) The Workers' Compensation Board finds that the association was prevented from complying with the Maine Workers' Compensation Act of 1992 because the association was unable in the exercise of reasonable diligence to obtain the records of the insolvent insurer; or

(2) The Workers' Compensation Board finds that the association was prevented from complying with the Maine Workers' Compensation Act of 1992 because of circumstances beyond its reasonable control.

Sec. 5. 39-A MRSA §205, sub-§3, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

3. Penalty for delay. When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid by the employer or insurance carrier within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss. For purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.

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

4. Payment of bills for medical or health care services. When there is no ongoing dispute, if bills for medical or health care services are not paid within 30 days after the carrier has received notice of nonpayment by certified mail from the provider of the medical or health care services or, if the bill was paid by the employee, from the employee who paid for the medical or health care services, \$50 or the amount of the bill due, whichever is less, must be added and paid to the provider of the medical or health care services or, if the bill was paid by the employee, to the employee who paid for the medical or health

care services for each day over 30 days in which the bills for medical or health care services are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of this subsection, "carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.

Sec. 7. 39-A MRSA §313, sub-§4, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

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

- A. Assessment of costs and attorney's fees;
- B. Reductions of attorney's fees; or
- C. If the party is the moving party, suspension of proceedings until the party has cooperated or produced the requested material.

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

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

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

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

Sec. 9. 39-A MRSA §324, sub-§1, as amended by PL 2007, c. 240, Pt. JJJ, §6 and c. 311, §3, is further amended to read:

1. Order or decision. The employer or insurance carrier shall make compensation payments within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation. If the board enters a decision awarding compensation and an appeal is filed with the Law Court pursuant to section 322, payments may not be suspended while the appeal is pending. The employer or insurer may recover from an employee payments made pending appeal to the Law Court if and to the extent that the Law Court has decided

that the employee was not entitled to the compensation paid. The board has full jurisdiction to determine the amount of overpayment, if any, and the amount and schedule of repayment, if any. The board, in determining whether or not repayment should be made and the extent and schedule of repayment, shall consider the financial situation of the employee and the employee's family and may not order repayment that would work hardship or injustice. The board shall notify the Commissioner of Health and Human Services within 10 days after the receipt of notice of an approved agreement for payment of compensation or within 10 days after any order or decision of the board awarding compensation identifying the employee who is to receive the compensation. For purposes of this subsection, "employer or insurance carrier" includes the Maine Insurance Guaranty Association under Title 24-A, chapter 57, subchapter 3.

Sec. 10. 39-A MRSA §324, sub-§2, as amended by PL 2007, c. 265, §1, is further amended to read:

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

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

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

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

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

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

Sec. 11. 39-A MRSA §359, sub-§1, as amended by PL 2005, c. 603, §4, is further amended to read:

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

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

Sec. 12. 39-A MRS §360, sub-§6 is enacted to read:

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

Sec. 13. Application. This Act applies only to acts or omissions occurring on or after the effective date of this Act.

Effective September 12, 2009