

# MAINE STATE LEGISLATURE

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New Draft: S. P. 218, L. D. 605  
FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 1626**

S. P. 621

In Senate, May 18, 1981

Reported by Six Members from the Committee on Labor and Printed under  
Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

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**AN ACT to Establish a Direct Payment System under the Workers' Compensation  
Law.**

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

Sec. 1. 39 MRSA § 56-B is enacted to read:

**§ 56-B. Payment of compensation**

1. **Prompt and direct payment.** Compensation under this Act shall be paid promptly and directly to the person entitled thereto, without an award, except where the claim to compensation is controverted by the employer.

2. **First payment due.** The first payment of compensation, other than compensation for impairment under sections 56 and 56-A, shall become due within 15 days after the employer has notice or knowledge of the injury or death, on which date all compensation then due shall be paid. Subsequent payments of periodic compensation shall be paid timely and when due and within 7 days after the employer has notice of any subsequent period of disability.

3. **Compensation for impairment.** Compensation for impairment under sections 56 and 56-A shall not be payable prior to the date on which the injured employee reaches the stage of maximum medical improvement. It shall become due and payable within 15 days after the employer has notice that the maximum medical improvement has been attained. For the purpose of this subsection,

maximum medical improvement means the date after which further recovery and further restoration of function can no longer be reasonably anticipated based upon reasonable medical probability.

4. Notification of payment. Upon making the first payment of compensation or upon making a payment of compensation for impairment, the employer shall immediately notify the commission that compensation has been paid. This notification shall state with specificity, on a form prescribed by the commission, the names of the employee, employer and insurance carrier, date of injury, circumstances of the injury, nature of the injury, average weekly wage, compensation benefits, whether the disability is total or partial, the duration of disability or, in the case of continuing disability, that disability commenced on a certain date, and the appropriate rate of compensation.

5. Notice of controversy. If the employer controverts the claim to compensation, it shall file with the commission within 21 days after the employer has notice or knowledge of the injury or death or, in the case of subsequent periods of disability, within 7 days after notice of the subsequent period of disability, a notice of controversy on a form prescribed by the commission. The notice shall indicate the name of the claimant, name of the employer, nature of the injury, duration and extent of the disability, date of the injury or death and, with specificity and subject to the penalties of perjury, the particular basis on which the claim for compensation or disability is controverted. The notice of controversy shall affirmatively state, subject to penalties for perjury, that it is not interposed for delay, but is made in good faith and upon reasonable grounds. The employer shall, contemporaneous with filing the notice of controversy with the commission, deliver a copy to the employee or mail it by first class mail, postage prepaid, to the employee's last known address.

6. Payment without filing notice of controversy. If the employer pays compensation for more than 30 days' disability without filing a notice of controversy, notice of payment filed by it shall be as to it an adjudication of compensability of the injury and the degree and duration of the disability and other matters set forth in it, except that payments made under a notice of payment shall, within the first 30 days after notice of injury or the first 14 days after notification of a subsequent period of disability, be made without prejudices.

The commission may, for good cause, in response to a written application by the employer and on a form prescribed by the commission, allow payments without controversy for up to 30 additional days, both in cases of initial and subsequent periods of disability. The commission shall timely advise the parties in writing when such action is taken.

7. Election to controvert after payment of compensation. If, after payment of compensation without an award is made and subject to the time limitations prescribed in subsection 6, the employer elects to controvert the claim to compensation, the payment of compensation shall not be considered to be an acceptance of the claim or an admission of liability. The acceptance of

compensation by the injured employee or his dependents shall not be considered an admission as to the nature and scope of the employer's liability or a waiver of the right to question the amount of compensation.

8. Commission to take action upon notice of controversy. Upon receipt of information from any person claiming entitlement to compensation, or from the employer, that the claim to compensation is controverted, or that payment of compensation has been suspended or reduced, the commission shall, whether or not a petition for award has been filed, promptly take any action it considers necessary to protect the rights of all parties.

9. Penalty for nonpayment. If a claim to compensation has not been controverted and any payment of compensation payable without an award is not paid within 7 days after it becomes due, the commission shall assess a penalty equal to 10% of the amount due. If a claim of compensation has been controverted and a notice of controversy is not filed within the time prescribed within subsection 5, the commission shall assess a penalty of \$25 for each day of noncompliance. The penalties provided in this subsection shall be assessed against either the employer or insurer, depending on who was at fault in causing the delay. They shall be paid directly to the person entitled to compensation. No penalty under this subsection may be assessed where it is shown to the commissioner that the delay in payment of filing resulted from conditions over which the employer or insurer had no control. In determining fault, the commissioner shall consider the protective nature of the Workers' Compensation Act and its concern for injured workers and the degree and knowledge of the Act and claims attributable to workers' compensation insurers, self-insurers and group self-insurers. No penalty assessed against an insurer under this subsection may be recovered by any insurer or self-insurer in the rate base, premium or in any rate filing. No insurer or self-insurer under the terms of a workers' compensation policy or self-insurance agreement may be required to pay a penalty which is assessed against an employer under this subsection.

The provisions of this subsection pertaining to penalties for nonpayment shall be enforced by the Workers' Compensation Commission, and the provisions of this subsection providing for matters affecting the status of insurers and self-insurers and rate bases, premiums and rate filings shall be enforced by the Superintendent of Insurance.

The Workers' Compensation Commission shall maintain and report to the Legislature annually records regarding chronic or substantial violations of this section and penalties assessed against violators.

Sec. 2. 39 MRSA § 68, 2nd ¶, first sentence, as repealed and replaced by PL 1969, c. 84, is amended to read:

If the injured employee elects to claim compensation and benefits under this Act, any employer having paid such compensation or benefits or having become liable therefor under any decree or ~~approval agreement~~ shall have a lien for the

value of compensation paid on any damages subsequently recovered against the third person liable for the injury.

Sec. 3. 39 MRSA § 69 is amended to read:

**§ 69. Preference of claims**

A claim for compensation under this Act, and any decree ~~or approved agreement~~ therefor, shall be entitled to a preference over the unsecured debts of the employer to the same amount as the wages of labor are preferred by the laws of this State. Nothing herein shall be construed as impairing any lien which the employee may have acquired.

Sec. 4. 39 MRSA § 71, 2nd ¶ is amended to read:

Upon payment of any lump sum approved by the commission, the employer shall be discharged from all further liability on account of ~~said the~~ injury or death and be entitled to a duly executed release; upon filing which, or other due proof of payment, the liability of such employer under ~~any agreement, award or decree~~ **this Act** shall be discharged of record, and the employee accepting the lump sum settlement shall receive no further compensation or other benefits on account of ~~said the~~ injury or death under this Act.

Sec. 5. 39 MRSA § 91, as last amended by PL 1979, c. 548, §§ 2, 3 and 4, is further amended by adding at the end a new paragraph to read:

**Any petitions filed under the Act shall be heard and decided as promptly as possible. No class of petitions may be given preference for hearing, but in determining preference for hearing the commission may decide the financial standing of the parties and the consequent need for a prompt hearing.**

Sec. 6. 39 MRSA § 92, as amended by PL 1979, c. 548, § 6, is further amended by adding at the end a new paragraph to read:

**The commission shall assume an active and forceful role in the administration of this Act to ensure that the system operates efficiently and with maximum benefit to both employers and employees. It shall prescribe rules and notices to ensure that both employers and employees are fully informed as to their rights and responsibilities under this Act. It shall continually monitor individual compensation cases to ensure that injured employees or their dependents receive the full amount of compensation to which they are entitled under this Act.**

Sec. 7. 39 MRSA § 94, first ¶, as last amended by PL 1977, c. 709, § 3, is repealed and the following enacted in its place:

**In the event of a controversy as to the responsibility of an employer for the payment of compensation, any party in interest may file in the office of the commission a petition for determination of the right to compensation on a form prescribed by the commission and setting forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the knowledge of the employer or notice of the occurrence thereof, the character and**

extent of the injury and the claims of the petitioner with reference thereto; together with such other facts as may be necessary and proper for the determination of the rights of the petitioner. No petition as provided for in this paragraph may be heard unless a controversy exists between the parties.

Sec. 8. 39 MRSA § 95, first sentence, as last amended by PL 1975, c. 372, is repealed and the following enacted in its place:

Any employee's claim for compensation under this Act shall be barred unless a petition, as provided in section 94, is filed within 2 years after the date of the injury or, if the employee is paid by the employer or the insurer, without the filing of any petition, within 10 years of any payment by such employer or insurer for benefits otherwise required by this Act.

Sec. 9. 39 MRSA § 100, as last amended by PL 1971, c. 420, is repealed and the following enacted in its place:

**§ 100. Petitions for review**

1. Relief available. Upon the petition of either party, a single commissioner shall review any compensation payment scheme required by this Act for the purposes of ordering the following relief, as the justice of the case may require:

- A. Increase, decrease, restoration or discontinuance of compensation; or
- B. Extension, reduction, restoration or discontinuance of vocational rehabilitation.

2. Standard for review. The basis for granting relief under this section is as follows.

A. On the first petition for review brought by a party to an action, the commissioner shall determine the appropriate relief, if any, under this section by determining the employee's present degree of incapacity or need of vocational rehabilitation. For purposes of a first petition brought under this section, evidence of the employee's medical condition at the time of an earlier determination or approved agreement is relevant only if it tends to prove the present degree of incapacity.

B. Once a party has sought and obtained a determination under this section, it is the burden of that party in all proceedings on his subsequent petitions under this section to prove by comparative medical evidence that the employee's earning incapacity attributable to the work-related injury has changed since that determination.

3. Petition procedure. The provisions of sections 96 to 99 apply to petitions brought under this section. In any case in which compensation is being paid without an award under section 56-B, any petition for review of incapacity filed by the employer shall be heard within 30 days after receipt of the petition by the commission.

4. **Payments pending hearing and decision.** If the employee is receiving payments or vocational rehabilitation at the time of the petition, the payments or rehabilitation may not be decreased or suspended pending the hearing and final decision upon the petition except in the following circumstances:

- A. The employer and employee reach a new agreement under section 94; or
- B. The employer or his insurance carrier files a certificate with the commission stating that:
  - (1) The employee has left the State for reasons other than returning to his permanent residence at the time of injury;
  - (2) The employee's whereabouts are unknown; or
  - (3) The employee has resumed work.

5. **Medical examination.** Upon the request of the petitioner, the commission shall order the employee to submit to examination by an impartial physician or surgeon designated by the commission from the geographical area where the employee resides. The fee for the examination shall be paid by the employer. Payment of compensation may be decreased or suspended by the commissioner pending final decision on the petition if:

- A. The physician or surgeon certifies to the commission after examination that in his opinion the employee is able to resume work; or
- B. The employee refuses to submit to an examination.

6. **Recovery of overpayments.** Compensation paid by the employer after the employee has resumed work may be recovered from the employee in a legal action brought by the employer if:

- A. At the time of his filing a petition under this section, the employer also filed a certificate that the employee had resumed work; and
- B. After hearing, the commissioner finds that the petition was properly filed and decrees that compensation cease.

Sec. 10. 39 MRSA § 101, as last amended by PL 1977, c. 709, § 4, is repealed and the following enacted in its place:

**§ 101. Stipulations; decree as affected by subsequent stipulation**

If, after any petition, except for lump sum settlement under section 71, has been filed, the parties themselves reach a stipulation as to payment of compensation or medical benefits under section 52, the memorandum of which is approved by the commission, the commission shall dismiss the pending petition and enter an award or decree in accordance with the approved memorandum. The weekly rate of compensation payable for actual incapacity under any decree may be modified at any time by an approved stipulation between the parties as to subsequent periods of incapacity. Upon approval of the stipulation, the commission shall enter a decree in accordance with the stipulation.

Sec. 11. 39 MRSA § 104-A, sub-§ 1, first sentence, as repealed and replaced by PL 1977, c. 333, is repealed and the following enacted in its place:

**Within 10 days after any order or decision of the commission awarding compensation.**

Sec. 12. 39 MRSA § 106, 2nd ¶, is repealed and the following enacted in its place:

**Whenever any settlement is made with an injured employee, either by the employer or insurance company, for compensation covering any specified period under a decree, or covering any period of incapacity, total or partial, that has ended, a duplicate copy of the settlement receipt or agreement signed by the employee showing the total amount of money paid to him for the period or periods shall be filed with the commission, but shall not be binding without its approval.**

Sec. 13. 39 MRSA § 106-A, as amended by PL 1979, c. 541, Pt. A, § 283, is further amended to read:

**§ 106-A. Notice by the commission**

**Within 90 15 days of receipt of an employer's notice of injury, as required by section 106, unless it has received a petition for award ~~or approved an agreement for~~ of compensation relating to the injured employee, the commission shall take reasonable steps to notify the employee that ~~unless the employer disputes the claim, he is required to pay compensation within 15 days after notice of the injury;~~ that a petition of award may be filed; that section 110 of the Act provides for the payment of attorney's fees under certain circumstances; and that rights under the Act may not be protected unless a petition of award ~~or approved agreement~~ is on file with the commission within 2 years of the injury.**

Sec. 14. **Appropriation.** The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1981-82	1982-83
<b>WORKERS' COMPENSATION COMMISSION</b>		
Personal Services	\$104,536	\$139,381
All other	26,550	35,400
Capital Expenditures	7,067	—
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<b>TOTAL</b>	<b>\$138,153</b>	<b>\$174,781</b>

**STATEMENT OF FACT**

This new draft is intended to create a direct payment system of workers' compensation which will not result in arbitrary cut-offs of benefits to the employer or substantial prejudice to the right of either party to controvert legitimate questions.