

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND EIGHTH LEGISLATURE
AT THE

SECOND REGULAR SESSION

January 4, 1978 to April 6, 1978

FIRST SPECIAL SESSION

(No laws enacted)

September 6, 1978 to September 15, 1978

SECOND SPECIAL SESSION

October 18, 1978

THIRD SPECIAL SESSION

December 6, 1978

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of either the National Formulary or the United States Pharmacopoeia and provided that no check mark (✓) has been handwritten in the box in the right-hand lower corner.”

Any pharmacist receiving a prescription in which no check mark (✓) is found in the box provided is authorized to substitute a generic or chemically equivalent drug for the drug specified on the prescription, provided that the substituted drug is listed in the current edition of either the National Formulary or the United States Pharmacopoeia that the substituted drug is distributed by a business entity doing business in the United States and is subject to suit and the service of legal process in the United States and that the price of the substituted drug does not exceed the price of the drug specified by the prescribing physician, osteopath or dentist.

Effective July 6, 1978

CHAPTER 612

AN ACT to Change the Name of the Industrial Accident Commission to Workers' Compensation Commission.

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

Sec. 1. 39 MRSA § 2, sub-§ 3, as repealed and replaced by PL 1975, c. 480, § 2 is amended to read:

3. **Commission; commissioner.** “Commission” shall mean the ~~Industrial Accident Workers' Compensation~~ Commission created by section 91. The authority of the commission may be exercised by a single commissioner. “Commissioner” shall mean any member of the commission appointed under section 91 to hear and determine cases. Rule-making powers, however, shall be exercised only by a quorum of all members of the ~~Industrial Accident Workers' Compensation~~ Commission.

Sec. 2. 39 MRSA § 23, sub-§ 2-A, 1st ¶, last sentence, as enacted by PL 1973, c. 559, § 2, is amended to read:

Such group desiring to become a self-insurer shall submit to the Chairman of the ~~Industrial Accident Workers' Compensation~~ Commission, with an application for self-insurance, in a form prescribed by the chairman, the following:

Sec. 3. 39 MRSA § 23, sub-§ 2-A, 2nd ¶, 1st sentence, as enacted by PL 1973, c. 559, § 2, is amended to read:

If, upon examination of the sworn financial statement and other data submitted,

the chairman is satisfied as to the ability of the employer or group to make current compensation payments and that the employer's or group's tangible assets make reasonably certain the payment of all obligations that may arise under the Workmen's Compensation Law, the application shall be granted subject to the terms and conditions setting out the exposure of cash deposits or securities or an acceptable surety bond, all as required by the Chairman of the ~~Industrial Accident Workers' Compensation~~ Commission.

Sec. 4. 39 MRSA § 52, 1st ¶, last sentence, is amended to read:

An injured employee shall have the right to make his own selection of a physician or surgeon authorized to practice as such under the laws of the State from a panel of physicians and surgeons selected by the ~~Industrial Accident Workers' Compensation~~ Commission, for the services set forth.

Sec. 5. 39 MRSA § 52, 2nd ¶, last sentence, as repealed and replaced by PL 1975, c. 148 is amended to read:

A duly licensed chiropractor shall be considered competent to testify before the ~~Industrial Accident Workers' Compensation~~ Commission.

Sec. 6. 39 MRSA § 57, 2nd ¶, as last amended by PL 1975, c. 406, is further amended to read:

In every case of the death of an employee under this Act where there is no person entitled to compensation, the employer shall pay to the ~~Industrial Accident Workers' Compensation~~ Commission a sum equal to 100 times the average weekly wage in the State of Maine as computed by the Employment Security Commission to be deposited with the Treasurer of State for the benefit of said fund, and the commission shall direct the distribution thereof.

Sec. 7. 39 MRSA § 57-A, sub-§ 2, 2nd sentence, as enacted by PL 1975, c. 749, § 6, is amended to read:

The ~~Industrial Accident Workers' Compensation~~ Commission is authorized to hire, using funds from the Second Injury Fund, private counsel to defend any claim brought against the Second Injury Fund by the State.

Sec. 8. 39 MRSA § 72, 1st sentence, as enacted by PL 1975, c. 138, is amended to read:

Upon each award of the ~~Industrial Accident Workers' Compensation~~ Commission, interest shall be assessed from the date on which the last filed petition for award is filed at a rate of 6% per year, provided that if the prevailing party at any time requests and obtains a continuance for a period in excess of 30 days interest will be suspended for the duration of the continuance.

Sec. 9. 39 MRSA § 91, 1st ¶, 1st sentence, as amended by PL 1965, c. 508, § 1, is further amended to read:

The ~~Industrial Accident Workers' Compensation~~ Commission, as heretofore established, shall consist of 6 members, 4 of whom shall be men learned in the law and members in good standing of the bar of this State.

Sec. 10. 39 MRSA § 91, last ¶, is amended to read:

The commission shall have a seal bearing the words "~~Industrial Accident Workers' Compensation~~ Commission of Maine." It shall have its office and keep its records in the Statehouse in Augusta, but may hold sessions at any place within the State.

Sec. 11. 39 MRSA § 93, sub-§ 3, 1st ¶, as repealed and replaced by PL 1969, c. 386, is repealed and the following enacted in its place:

3. Proceedings before Workers' Compensation Commission. In all proceedings before the Workers' Compensation Commission, all forms of discovery available in civil actions in the Superior Court under the Maine Rules of Civil Procedure, as amended, shall be available to any of the parties in the proceedings except that a Workers' Compensation Commission Commissioner, rather than a Superior Court Justice, shall rule on all objections; and a Workers' Compensation Commission Commissioner is empowered to enforce this subsection in the same manner and to the same extent as a Superior Court Justice may enforce compliance with the Maine Rules of Civil Procedure, as amended, with regard to discovery, except that the commissioner shall not have the power of contempt.

Sec. 12. 39 MRSA § 93, sub-§ 3, 3rd ¶, as enacted by PL 1971, c. 319, is amended to read:

Signed statements by a medical doctor or osteopathic physician relating to medical questions shall be admissible in workmen's compensation hearings before the ~~Industrial Accident Workers' Compensation~~ Commission, providing that notice of such testimony to be used is given and service of a copy of the letter or report is made on the opposing counsel 14 days before the scheduled hearing to enable such counsel to depose or subpoena and cross-examine such doctor or physician if he so chooses.

Sec. 13. 39 MRSA § 93, sub-§ 5, 1st ¶, as enacted by PL 1971, c. 544, § 137, is repealed and the following enacted in its place:

5. Contempts before Workers' Compensation Commission. A person shall not, in proceedings before the Workers' Compensation Commission or a single commissioner: Disobey or resist any lawful order, process or writ; misbehave during a hearing or so near the place thereof as to obstruct the same; neglect to produce, after having been ordered to do so, any pertinent document; or refuse to appear after having been subpoenaed or, upon appearing, refuse to be examined according to law.

Sec. 14. 39 MRSA § 112, 1st ¶, as enacted by PL 1973, c. 554, is amended to read:

No statement, except made in proceedings before the ~~Industrial Accident Workers' Compensation~~ Commission, to any investigator or employer's representative, of any kind, oral or written, recorded or unrecorded, made by the injured employee shall be admissible in evidence or considered in any way in any proceeding under this Title unless:

Effective July 6, 1978

CHAPTER 613

AN ACT to Simplify Notice Procedures Required in Workmen's Compensation Cases.

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

Sec. 1. 39 MRSA § 98, 1st sentence, is amended to read:

The whole matter shall then be referred to a single commissioner, who shall fix a time for hearing upon at least a 5 days' notice given to all the parties or to the attorney of record of each party.

Sec. 2. 39 MRSA § 99, 4th sentence, is amended to read:

His decision, findings of fact and rulings of law, and any other matters pertinent to the questions so raised shall be filed in the office of the commission, and a copy thereof attested by the clerk of the commission mailed forthwith to all parties interested or to the attorney of record of each party.

Effective July 6, 1978

CHAPTER 614

AN ACT to Include "Mobile Home" in the Definition of "Homestead" for the Purposes of the Homestead Exemption from Certain Attachments.

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

14 MRSA § 4551, last sentence, as repealed and replaced by PL 1973, c. 512, § 2, is amended to read: