

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 428

H. P. 312

House of Representatives, February 7, 1979

Referred to the Committee on Labor. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Cunningham of New Gloucester.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Amend the Workers' Compensation Laws.

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

Sec. 1. 39 MRSA § 100, first ¶, as amended by PL 1969, c. 309, is further amended to read:

While compensation is being paid or vocational rehabilitation is being provided under any agreement, award or decree, the incapacity of the injured employee due to the injury, the need or progress of the vocational rehabilitation may from time to time be reviewed by a single commissioner upon the petition of either party upon the grounds that such incapacity has subsequently increased, diminished or ended or that the need of the continuation of vocational rehabilitation has ended. Pending a hearing and final decision upon such petition for review, and except in such cases as the employer and employee may reach a new agreement under section 94, the payment of compensation shall not be decreased or suspended unless and until a certificate of the employer or his insurance carrier is filed with the commission stating that the employee has left the State for reasons other than returning to his permanent residence at the time of injury or that his present whereabouts are unknown, or that he has resumed work, **or unless a certificate of a physician or surgeon is filed with the commission stating that in his opinion from an examination made not more than 30 days prior to the filing of the petition, the employee is able to resume his prior employment**

or specified employment described hereafter. The certificate of a physician or surgeon shall be accompanied by the certificate of the employer stating that the employee's former employment is available to him or stating that the employer has or knows of work available to the employee in or near the community in which the employee lives and specifying the type and location of, and the employer having, that work. 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. If the employee refuses to submit to such examination, or if after examination such physician or surgeon certifies to the commission that in his opinion the employee is able to resume work, the payment of compensation may be decreased or suspended pending final decision on the petition for review. The fee for such impartial examination shall be paid by the petitioner.

Sec. 2. 39 MRSA § 104-A, sub-§ 2, 2nd ¶, as last repealed and replaced by PL 1977, c. 349, is amended to read:

This section shall not apply to claims involving employees of the State or the political subdivisions of the State.

Sec. 3. 39 MRSA § 110, as amended by PL 1965, c. 489, § 9, is repealed and the following enacted in its place:

§ 110. Witness and attorney's fees allowable

The commission or commissioner may assess the employer costs of witness fees and a reasonable attorney's fee in proceedings instituted under this chapter in which the employee has prevailed either before the commission or on appeal. For the purposes of this section each petition filed with the commission shall be deemed to be a separate proceeding.

STATEMENT OF FACT

The purpose of the first section of this bill is to permit the decrease or suspension of Workers' Compensation benefits pending a hearing and final decision upon a petition for review of incapacity where a physician or surgeon has certified that the employee is able to work and the employer has certified that suitable work is available to the employee.

The purpose of the 2nd section is to exempt the political subdivisions of the State which are self-insured for purposes of the Workers' Compensation Act from the requirements and penalties of section 104-A.

The purpose of the 3rd section is to limit the assessment of witness fees and attorney's fees against employer to those proceedings in which the employee has prevailed either before the Workers' Compensation Commission or on appeal.