FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document **No. 1034**

S. P. 359 In Senate, February 26, 1981

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

MAY M. ROSS, Secretary of the Senate

Presented by Senator C. Sewall of Lincoln.

STATE OF MAINE

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

AN ACT to Standardize Death Benefits under the Workers' Compensation Laws.

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

Sec. 1. 39 MRSA § 58, as last amended by PL 1975, c. 770, § 217, is further amended to read:

§ 58. Death benefit; apportionment

If death results from the injury, the employer shall pay the dependents of the employee, dependent upon his earnings for support at the time of his injury, a weekly payment equal to 2/3 his average ~~gross~~ weekly wages, earnings or salary, but not more than **200% of the state** average weekly wage ~~in the State of Maine as computed by the Employment Security Commission; 133 1/3% of such average weekly wage as of July 1, 1977; 166 2/3% of such average weekly wage as of July 1, 1979; and 200% of such average weekly wage as of July 1, 1981;~~ , nor less than ~~$25~~ **$50** weekly; from the date of death, until such time as provided for in the following paragraph. Such weekly compensation shall be adjusted annually on July 1st so that it continues to bear the same percentage relationship to the **state** average weekly wage ~~in the State of Maine as computed by the Employment Security Commission~~ as it did at the time of the injury.

If the dependent of the employee to whom compensation will be payable upon ~~his~~ **the employee's** death is the ~~widow~~ **surviving spouse** of such empoyee, upon ~~her~~ **the surviving spouse's** death or at the time ~~she~~ **the surviving spouse** becomes a dependent of another person, compensation to ~~her~~ **the surviving spouse** shall cease and the compensation to which ~~she~~ **the surviving spouse** would have been entitled therefter, but for such death or dependency, shall be paid to the child or children, if any, of the deceased employee, including adopted and step-children, under the age of 18 years, or over that age but physically or mentally incapacitated from earning, who are dependent upon the ~~widow~~ **surviving spouse** at the time of ~~her~~ **the surviving spouse's** death or dependency. ~~If the dependent is the widower, upon his death or at the time he becomes a dependent of another person, the remainder of the compensation which would otherwise have been payable to him shall be payable to the children above specified, if any, who at the time thereof are dependent upon him~~ In case there is more than one child thus dependent, the compensation shall be divided equally among them. Except in the case of dependents who are physically or mentally incapacitated from earning, compensation payable to any dependent child under the age of 18 years shall cease upon such child's reaching the age of 18 years or upon marriage.

Notwithstanding any other provision contained in this section, the surviving spouse, the employer or insurance carrier, or, if there are children of the deceased entitled to compensation under this section, then such children may petition the commission for an order that the death benefits provided in this section be paid in one lump sum in an amount equal to 500 times the state average weekly wage at the time of the employee's death minus such compensation as then paid. The commission shall issue its order directing such payment and, when paid, the employer shall be discharged from all further liability on account of the death and be entitled to a duly executed release.

If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents, **for a period of 5 years from the employee's death,** a weekly compensation equal to the same proportion of the weekly payments provided in this section for the benefit of persons dependent, as the total amount contributed by the employee, to such partial dependents for their support during the year prior to his injury, bears to the earnings of the employee during said period.

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

Such petition may be granted where it is shown to the satisfaction of the commission that the payment of a lump sum in lieu of future ~~weekly~~ payments, or as an agreed compromise settlement of a disputed claim, will be for the best interests of the person or persons receiving or claiming such compensation, or that the continuance of ~~weekly~~ payments will, as compared with a lump sum payment, entail undue expense or hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States.

Sec. 3. 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 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 shall be discharged of record, and the ~~employee~~ **person** accepting the lump sum settlement shall receive no further compensation or other benefits on account of said injury or death under this Act.

STATEMENT OF FACT

Section 1 of the bill raises the minimum amount of compensation payments from $25 weekly to $50 weekly, updates current law by eliminating phased-in provisions which have already taken place and eliminates reference to the widow by using the phrase "surviving spouse." In addition, section 1 adds a new paragraph to the Workers' Compensation Act death provisions so as to allow either the dependent or the employer to petition the commission for a final settlement figure equal to 500 times the state average weekly wage at the time of the death, minus compensation paid to date. And finally, benefits payable to partial dependents are limited to 5 years.

Sections 2 and 3 are housekeeing provisions which authorize the commission to consider all future payments rather than merely weekly payments.