

MAINE STATE LEGISLATURE

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L.D. 1476

STATE OF MAINE
HOUSE OF REPRESENTATIVES (Filing No. H-514)
110TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to H.P. 1252, L.D. 1476, Bill,
"AN ACT to Create an Appellate Division of the Workers'
Compensation Commission."

Amend the Bill by striking out all of the title and
inserting in its place the following: 'AN ACT to Create an
Appellate Division of the Workers' Compensation Commission,
to Require the Commission to Conduct a Data Systems Study and
to Expedite the Filing of Medical Reports.'

Further amend the Bill by striking out everything after
the enacting clause and inserting in its place the following:

'Sec. 1. 36 MRSA §2511, as last amended by PL 1975,
c. 241, is further amended by adding at the end 2 new paragraphs
to read:

Every insurance company, association or group self-
insurer issuing workers' compensation insurance policies covering
the payment of compensation and benefits as provided for in
Title 39 shall pay an additional tax of .05% upon all gross
direct premiums written whether in cash or in notes absolutely
payable on contracts made in the State for workers' compensation,
less return premiums thereon and less all dividends paid to
policyholders. This tax shall be payable only for the calendar
year 1982.

Every individual self-insurer which self-insures the
payment of compensation and benefits as provided for in Title 39
shall pay a tax of .05%, payable only for the calendar year
1982. This tax shall be based on the premium rate which would
have been payable for each \$100 of salary.

Sec. 2. 39 MRSA §52-A is enacted to read:

§52-A. Medical information

1. Certificate of authorization. Any employee who makes any claim for compensation, enters into any agreement for compensation or is receiving compensation shall, upon request by the employer, execute a certificate, in a form prescribed by the commission, authorizing the employer to obtain, after payment of a reasonable fee, in writing, from any physician, osteopath, chiropractor or any other health care provider any/written information which is or has been obtained in connection with the examination or treatment of the employee and which relates to any injury or disease for which compensation is claimed.

If any employee fails, after request, to execute such a certificate, the employer may petition the commission for the following relief:

A. As to any employee who is making a claim for compensation, an order suspending any action on the employee's claim, without interest under section 72, until the certificate is executed; and

B. As to any employee who is receiving compensation or who has entered into an agreement for the payment of compensation, an order suspending the payment of compensation until the certificate is executed.

2. Duties of health care providers. Upon payment of a reasonable fee, all/written information which relates to an injury or disease for which compensation is claimed shall, within 10 days

after written request by the employer or the employee, be made available to the party making the request. In the case of a request by the employer, the request shall be accompanied by a copy of a certificate of authorization as described in subsection 1.

Sec. 3. 39 MRSA §91, first sentence, as repealed and replaced by PL 1979, c. 548, §2, is amended to read:

The Workers' Compensation Commission, as heretofore established, shall consist of not more than 7 9 members, not more than 5 7 of whom shall be persons learned in the law and members of good standing of the bar of this State.

Sec. 4. 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. Sections 96 to 99 apply to petitions brought under this section.

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

the
B. After/hearing the commissioner finds that the petition was properly filed and decrees that compensation cease.

Sec. 5. 39 MRSA §103, as repealed and replaced by PL 1981, c. 199, §7, is repealed.

Sec. 6. 39 MRSA §103-A, 103-B, 103-C and 103-D are enacted to read:

§103-A. Appellate Division created

1. Composition. There is created the Appellate Division of the Workers' Compensation Commission. It shall be composed

of panels consisting of not less than 2 full-time commissioners. The members of each panel shall be appointed by the Chairman of the Workers' Compensation Commission from those currently serving as full-time commissioners of the Workers' Compensation Commission. No commissioner may be a member of a panel which reviews his decision. A commissioner may be a member of more than one panel at the discretion of the chairman of the commission.

2. Rules. The division shall establish uniform rules of procedure calculated to provide a prompt and inexpensive review of a decision by the commission.

§103-B. Appeal from commission decision

1. Procedure. An appeal shall be taken from the commission decision by filing a certified copy of the decision, order or agreement, with the division within 20 days after receipt of notice of the filing of the ^{decision} by the commission or commissioner.

Any party in interest may present copies, certified by the clerk of the commission, of any order, decision or agreement to the clerk of the division.

2. Basis. There shall be no appeal upon questions of fact found by the commission or by any commissioner.

3. Action. The division, after due consideration, may reverse or modify any decree of the commission and shall issue a written decision. The written decision of the division shall be filed with the commission and mailed to the parties or their counsel.

4. Costs. Costs of appeal shall be allowed, including the record, and including reasonable attorneys' fees as provided for

under section 110. No attorney who represents an employee before the division may recover any fee from that client for that representation. Any attorney who violates this paragraph shall lose his fee and is liable in a court suit to pay damages to the client equal to 2 times the fee charged that client.

5. Publication of decisions. The division shall biennially publish its significant decisions and make them available to the public at such cost as is required to pay for suitable publication. Copies of all written decisions shall be distributed to the State Law Library and the county law libraries.

§103-C. Appeal from a decision of the division

1. Procedures. Any party in interest may present a copy of the decision of the division, certified by the clerk of the division to the clerk of the Law Court within 20 days after receipt of notice of the filing of the decision by the division. Within 20 days after the certified copy is filed with the Law Court, the party seeking review by the Law Court must file a petition seeking appellate review with the Law Court, setting forth a brief statement of the facts, the error or errors of law which are alleged to exist and legal authority supporting the position of the appellant.

2. Rules. The Law Court shall establish and publish procedures for the review of petitions for appellate review of decisions of the division.

3. Discretionary appeal; action. Upon the approval of 3 or more members of a panel consisting of no less than 5 justices of the Law Court, the petition for appellate review may be granted. If the petition for appellate review is denied, then

the decision of the division shall be final. The petition shall be considered on written briefs only.

If the petition for appellate review is granted, then the clerk of the Law Court shall notify the parties of the briefing schedule consistent with the ^{Maine} Rules of Civil Procedure, and in all respects the appeal before the Law Court shall be treated as an appeal in an action in which equitable relief has been sought. The Law Court may, after due consideration, reverse, modify or affirm any decision of the division.

4. Costs. In all cases of appeal to the Law Court, it may order a reasonable allowance to be paid to the employee by the employer for expenses incurred in the proceedings of the appeal, including the record, but not including expenses incurred in other proceedings in the case. Reasonable attorneys' fees shall be allowed as provided for under section 110. No attorney who represents an employee before the court may recover any fee from that client for that representation. Any attorney who violates this paragraph shall lose his fee and is liable in a court suit to pay damages to the client equal to 2 times the fee charged that client.

§103-D. Report to the Law Court

Decisions of the division may be reported directly to the Law Court pursuant to the Maine Rules of Civil Procedure, Rule 72.

§103-E. Enforcement of division

Any decision of the commissioners or the division shall be enforceable by the Superior Court by any suitable process

including execution against the goods, chattel and real estate and including proceedings for contempt for willful failure or neglect to obey the orders or decrees of the court, or in any other manner that decrees for equitable relief may be enforced.

Sec. 7. Study. The Workers' Compensation Commission shall cause a feasibility study to be conducted on a data input and retrieval system for the commission. The study shall be done during the fiscal year 1981 and the commission shall report back to the joint standing committee of the Legislature having jurisdiction over labor with the results of the study during the Second Regular Session of the 110th Legislature.

Sec. 8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<u>1981-82</u>
WORKERS' COMPENSATION COMMISSION	
All Other	\$50,000'

Statement of Fact

This amendment adds provisions for a data systems study and expedited medical reports to the bill as additional steps toward improving the workers' compensation system. The amendment also makes changes in the Appellate Division proposed by adding 2 full-time commissioners, allowing reports of cases to the Law Court and making certain drafting changes. Finally, the amendment abrogates the comparative medical evidence

standard on petitions for review, thus ameliorating a major cost of litigation.

Filed by Mrs. Beaulieu of Portland.
Reproduced and distributed under the direction of the Clerk
of the House.

6/2/81

(Filing No. H-514)