

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1476

H. P. 1252

House of Representatives, March 25, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Tarbell of Bangor.

Cosponsor: Representative Hobbins of Saco.

STATE OF MAINE

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

AN ACT to Create an Appellate Division of the Workers' Compensation Commission.

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

Sec. 1. 39 MRSA § 91, first ¶, first sentence, as repealed and replaced by PL 1979, c. 548, § 2, is amended to read: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~~ 8 members, not more than ~~5~~ 6 of whom shall be persons learned in the law and members of good standing of the bar of this State.

Sec. 2. 39 MRSA § 103, as last amended by PL 1979, c. 132, § 1, is repealed.

Sec. 3. 39 MRSA §§ 103-A, 103-B and 103-C are enacted to read:

§ 103-A. Appellate Division created

There is created the Appellate Division of the Workers' Compensation Commission. It shall be composed of at least 2 panels, each consisting of not less than 2 full-time commissioners. The members of the 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.

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

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 thereof 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.

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

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.

Costs of appeal, including reasonable attorneys' fees shall be allowed 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 shall be liable in a court suit to pay damages to the client equal to 2 times the fee charged that client.

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

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 thereof 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.

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

The Law Court may, at its discretion, grant or deny the petition for appellate review of a decision of the division. If the petition for appellate review is denied, then the decision of the division shall be final.

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 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.

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.

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1982-83

WORKERS' COMPENSATION COMMISSION

Positions (3)

Personal Services \$25,410

To provide salaries from February 8, 1983, to June 30, 1983, for a full-time commissioner, a law clerk and a clerk typist III.

Sec. 5. Effective date. Sections 2, 3 and 4 of this bill are effective when 6 appointed members of the Workers' Compensation Commission are full-time commissioners appointed pursuant to the Revised Statutes, Title 39, section 91-A. Section 1 of this bill is effective on February 8, 1983.

STATEMENT OF FACT

For more than the past 2 years, the number of Workers' Compensation appeals heard by the Law Court has been growing. This has meant delays to the litigants in getting decisions and an increased burden on the Law Court in terms of devoting time to the many other areas in appellate work that are presented to it. It has reached the point that more than one out of every 5 civil appeals are Workers' Compensation cases. The time expended by the Law Court in disposal of these administrative appeals has reduced the ability of the court to deal with the ever increasing case load, which is now in excess of one new appeal for each calendar day. The court has recently been charged with the responsibility to hear direct appeals from the Probate Court, Title 18-A, section 1-308, which will serve to increase demands on the court's time. The nature of the decisions on Workers' Compensation matters suggest that, in a substantial number of cases, decisions are 4 pages or less, do not add anything by way of legislative precedent to the field of Workers' Compensation and take substantial time and expense on the part of the litigants, only to wind up with the conclusion that there was no error of law and that the evidence supported the factual conclusion of the Workers' Compensation Commission.

An intermediary Appellate Division of the commission would serve to provide an appellate forum from the litigants and to provide a group of experienced judges. It would be made up of commissioners who were already familiar with the

law and the procedures. It would serve to provide a prompt and inexpensive appeal and decision presumably based primarily on briefs without oral argument, although the procedure would be left up to the appellate division judges. The bill increases the number of full-time commissioners to 6, effective February 8, 1983, when the last part-time commissioner's term expires. The cost created by the bill would result from the additional full-time commissioner, a law clerk and a clerk typist III. The Appellate Division would be created when the 6th full-time commissioner was appointed.