

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1037

7 H.P. 797

House of Representatives, March 4, 1983

8 On Motion of Representative Hobbins of Saco, referred to the Committee
9 on Judiciary. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Kelleher of Bangor.

Cosponsor: Representative Bost of Orono.

11 STATE OF MAINE
12
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Regarding the Investment of
18 Workers' Compensation Settlements.
19

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

22 39 MRSA §71, as amended by PL 1977, c. 437, §3,
23 is further amended by adding at the end 2 new para-
24 graphs to read:

25 The commission may order and, at a later time,
26 upon petition under changed circumstances, modify
27 that all or a portion of the proceeds of a lump-sum
28 settlement be invested according to certain invest-
29 ment plans or devices, including, but not limited to,
30 trusts, annuities, bank accounts, mutual funds and
31 business investments.

32 Attorneys' fees in the case of a lump-sum settle-
33 ment shall be paid by the employer to the claimant's

1 attorney and shall pose an obligation upon the attorney
2 to advise and assist the claimant and draft
3 appropriate legal documents in terms of carrying out
4 the orders of the commission. Except for litigation,
5 the claimant's attorney shall charge no fee to the
6 claimant for these services. All of the claimant's
7 attorneys' fees, if not agreed upon by the claimant
8 and employer, shall be set by the commission and
9 shall not be less than 10% of the amount of the settle-
10 ment or more than 15% of the amount of the settle-
11 ment, depending on the settlement obtained, the
12 efforts put forth by the claimant's attorney to
13 achieve the settlement, the subtlety and difficulty
14 of the case, skill and background of the claimant's
15 attorney, and likely obligation of the claimant's
16 attorney hereunder to provide additional services to
17 the claimant.

18 STATEMENT OF FACT

19 The purpose of this bill is to clarify the
20 authority of the commission to oppose and modify prudent
21 investment requirements on lump-sum settlements.
22 Because of an absence of express statutory language,
23 there is doubt in some quarters regarding the authority
24 of the commission to condition its approval of a
25 lump-sum settlement on the employment of specific
26 investment devices because settlements are often in
27 substantial amounts and reflect substantial and long-
28 term loss of wage incapacity. It is important that
29 the commission be authorized to protect the claimant
30 and his family, considering that injured workers are
31 often without substantial advice in the investment
32 area. Likewise, it is necessary, once an investment
33 device is erected, to authorize the commission to
34 modify the investment device appropriately upon a
35 change of circumstances from those that prevailed at
36 the time advice was initially ordered.

37 Because of the continuing nature of the duty of
38 the claimant's attorney, particularly when the
39 investment advice is imposed by the commission, it is
40 desirable that the attorney be ordered to provide
41 these services without further fee and in order to
42 avoid any temptation from employers, insurance carriers,
43 and claimants' attorneys to negotiate "good

1 fees and bad settlements" and to prohibit the carrier
2 from "punishing" a zealous and effective advocacy by
3 claimants' attorneys. Standards are arranged for
4 fees as appropriate. The range of fees suggested
5 here is at the lower end of fees that prevail in
6 similar circumstances throughout the United States.

7

1846021983