

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1063

6
7 H.P. 771

House of Representatives, March 20, 1985

8 Reference to the Committee on Labor suggested and 2,500 ordered
9 printed.

10 EDWIN H. PERT, Clerk

Presented by Speaker Martin of Eagle Lake.

11 Cosponsored by President Pray of Penobscot, Representative Telow of
Lewiston, and Representative Gwadosky of Fairfield.

12 STATE OF MAINE
13

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

17 AN ACT to Improve the Workers' Compensation
18 System and Reform the Rate-making Process.
19

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

22 Sec. 1. 2 MRSA §6, sub-§7, as repealed and re-
23 placed by PL 1981, c. 705, Pt. L, §§1 to 3, is
24 amended to read:

25 7. Range 83. The salaries of the following
26 state officials and employees shall be within salary
27 range 83:

28 A. Rehabilitation Administrator, Office of Em-
29 ployment Rehabilitation.

30 Sec. 2. 5 MRSA §953 is enacted to read:

31 §953. Workers' Compensation Commission

1 1. Major policy-influencing positions. The fol-
2 lowing positions are major policy-influencing posi-
3 tions within the Workers' Compensation Commission.
4 Notwithstanding any other provision of law, these po-
5 sitions and their successor positions shall be sub-
6 ject to this chapter:

7 A. Rehabilitation Administrator, Office of Em-
8 ployment Rehabilitation.

9 Sec. 3. 5 MRSA §12004, sub-§10, ¶A, sub-¶¶ (79)
10 and (80) are enacted to read:

11 (79) Workers' Apportionment Expenses 39 MRSA §57-B
12 Compen- Review Panel only
13 sation

14 (80) Workers' Employment Expenses 39 MRSA §88
15 Compen- Rehabilita- only
16 sation tion Adviso-
17 ry Board

18 Sec. 4. 39 MRSA §51-B, sub-§10, as enacted by PL
19 1983, c. 479, §7, is amended to read:

20 10. Penalty for nonpayment. If a claim to com-
21 penensation has not been controverted and any payment
22 of compensation payable without an award is not paid
23 within 7 days after it becomes due, the commission
24 shall assess a penalty equal to 10% of the amount
25 due.

26 The penalties provided in this subsection shall be
27 assessed against the insurer or self-insurer, which-
28 ever the case may be. The penalties shall be paid to
29 the ~~Second Injury~~ Employment Rehabilitation Fund cre-
30 ated by section 57 ~~57-B~~. No penalty under this sub-
31 section may be assessed where it is shown to the com-
32 mission that the delay in payment or filing resulted
33 from conditions over which the insurer or self-
34 insurer has no control if the insurer or self-insurer
35 proves that it acted in good faith and with reason-
36 able diligence.

37 Sec. 5. 39 MRSA §52, 6th ¶, as amended by PL
38 1977, c. 278, §1, is repealed.

1 Sec. 6. 39 MRSA §52, sub-§§1 and 2 are repealed.

2 Sec. 7. 39 MRSA §52, sub-§3, as amended by PL
3 1977, c. 696, §405, is repealed.

4 Sec. 8. 39 MRSA §52, 7th ¶, as amended by PL
5 1977, c. 278, §2, is further amended to read:

6 Whenever there is any disagreement as to the
7 proper costs of the services or aids, or the periods
8 during which they shall be furnished, or as to the
9 apportionment thereof among the parties, any inter-
10 ested person may file a petition with the commission
11 for the determination thereof. ~~The term "educational~~
12 ~~rehabilitation" includes post-secondary, college and~~
13 ~~university instruction.~~

14 Sec. 9. 39 MRSA §54, 2nd ¶, as amended by PL
15 1977, c. 278, §3, is repealed.

16 Sec. 10. 39 MRSA §56, as amended by PL 1979, c.
17 541, Pt. A, §§279 and 280, is further amended to
18 read:

19 §56. Compensation for particular injuries; permanent
20 impairment

21 In addition to the benefits provided for in sec-
22 tions 54 and 55, when an employee sustains an injury
23 which is included in the following schedule, the in-
24 capacity in each case shall be deemed to be total for
25 the period specified and the injured employee shall
26 receive a lump sum payment for ~~said that~~ injury which
27 shall be determined by multiplying ~~the an~~ amount ~~to~~
28 ~~which he would be entitled weekly for total incapaci-~~
29 ~~ty as determined under section 54, equal to 75% of~~
30 ~~the average weekly wage in the State as computed by~~
31 ~~the Maine Unemployment Insurance Commission by the~~
32 period of presumed total incapacity set forth in this
33 section. The specific periods of presumed total in-
34 capacity because of injuries specified in this sec-
35 tion shall be as follows:

36 For the loss of a thumb, 50 weeks.

37 For the loss of the first finger, commonly called
38 the index finger, 32 weeks.

1 For the loss of the 2nd finger, commonly called
2 the middle finger, 28 weeks.

3 For the loss of the 3rd finger, commonly called
4 the ring finger, 20 weeks.

5 For the loss of the 4th finger, commonly called
6 the little finger, 17 weeks.

7 The loss of the distal (second) phalanx of the
8 thumb or the distal (third) phalanx of any finger
9 shall be considered to be equal to the loss of
10 1/2 of said thumb or finger, and the compensation
11 therefor shall be 1/2 the amount above specified.
12 The loss of more than one phalanx shall be con-
13 sidered as the loss of the entire thumb or fin-
14 ger. In no case shall the amount received for the
15 loss of a thumb and more than one finger of the
16 same hand exceed the amount specified in this
17 schedule for the loss of a hand.

18 For the loss of the great toe, 25 weeks.

19 For the loss of one of the toes other than the
20 great toe, 10 weeks.

21 For the loss of the distal (second) phalanx of
22 the great toe or of the distal (third) phalanx of
23 any other toe shall be considered to be equal to
24 the loss of 1/2 of said great toe or any other
25 toe, and the compensation therefor shall be 1/2
26 the amount above specified. The loss of more than
27 one phalanx shall be considered as the loss of
28 the entire toe.

29 For the loss of a hand, 165 weeks.

30 For the loss of an arm, or any part thereof above
31 the wrist, 200 weeks.

32 For the loss of a foot, 165 weeks.

33 For the loss of a leg, or any part thereof above
34 the ankle, 200 weeks.

35 For the loss of an eye, or the reduction of the
36 sight of an eye, with glasses, to 1/10 of the

1 normal vision, or for diplopia, 100 weeks.

2 For the loss of both eyes, or the reduction of
3 the sight of both eyes, with glasses, to 1/10 of
4 the normal vision, or for diplopia, 300 weeks.

5 For the total and permanent loss of hearing in
6 one ear, 50 weeks.

7 For the total and permanent loss of hearing in
8 both ears, 200 weeks.

9 In all other cases of injury to the above-
10 mentioned members, eyes or hearing where the useful-
11 ness of any physical function thereof is permanently
12 impaired, the specific compensable periods for pre-
13 sumed total incapacity on account thereof shall bear
14 such relation to the periods above specified as the
15 percentage of permanent impairment due to the injury
16 to such members, eyes or hearing shall bear to the
17 total loss thereof. The commission upon petition
18 therefor by either party shall determine such per-
19 centage. A petition for determination of the percent-
20 age of permanent hearing impairment due to an injury
21 shall be filed with the commission within 2 years
22 from the date of the injury.

23 The commission may award proper and equitable
24 compensation for serious facial or head disfigurement
25 not to exceed ~~\$7,500~~ 50 weeks, including a disfigure-
26 ment continuous in length which is partially in the
27 facial area and also extends into the neck region.
28 The commission, if in its opinion the earning capaci-
29 ty of an employee has been or may in the future be
30 impaired, may award compensation for any serious dis-
31 figurement in the region above the sterno clavicular
32 articulations anterior to and including the region of
33 the sterno cleido mastoid muscles on either side, but
34 no award for the total disfigurement as set forth
35 shall, in the aggregate, exceed ~~\$7,500~~ 50 weeks. Not-
36 withstanding any other provision hereof, 2 or more
37 serious disfigurements, not continuous in length, re-
38 sulting from the same injury, if partially in the fa-
39 cial area and partially in the neck region as de-
40 scribed in the preceding sentence, shall be deemed to
41 be a facial disfigurement.

1 Sec. 11. 39 MRSA §56-A, first ¶, as enacted by
2 PL 1971, c. 465, §1, is amended to read:

3 In addition to the benefits provided for in sec-
4 tions 54 and 55, when an employee sustains an injury
5 which is included in the following schedule, the inca-
6 pacity in each case shall be deemed to be total for
7 the period specified and the injured employee shall
8 receive a lump sum payment for ~~said~~ the injury which
9 shall be determined by multiplying ~~the~~ an amount ~~to~~
10 ~~which he would be entitled weekly for total incapaci-~~
11 ~~ty as determined under section 54, equal to 75% of~~
12 the average weekly wage in the State as computed by
13 the Maine Unemployment Insurance Commission by the
14 period of presumed total incapacity set forth in this
15 section. The specific periods of presumed total inca-
16 capacity because of injuries specified in this section
17 shall be as follows:

18 Sec. 12. 39 MRSA §57, sub-§8 is enacted to read:

19 8. Applicability. This section is not applica-
20 ble to cases in which reimbursement is available from
21 the Employment Rehabilitation Fund under section
22 57-B.

23 Sec. 13. 39 MRSA §§57-B and 57-C are enacted to
24 read:

25 §57-B. Employment Rehabilitation Fund

26 1. Panel. The Apportionment Review Panel, as
27 established by Title 5, chapter 379, shall be com-
28 posed of 2 employee representatives, 2 employer or
29 insurer representatives and one member representing
30 medical or rehabilitation professionals.

31 A. The members shall be appointed by the Gover-
32 nor for terms of 3 years, except that initially
33 one shall be appointed for a term of one year, 2
34 for terms of 2 years and 2 for terms of 3 years.

35 B. The members of the panel shall select one
36 member to serve as chairman.

37 C. Members shall serve without compensation, ex-
38 cept for reimbursement for travel and actual ex-

1 penses necessarily incurred in performance of
2 their duties.

3 D. If a matter with which a member has any con-
4 nection comes before the panel, that member shall
5 excuse himself from hearing the matter.

6 E. The panel's recommendation shall be by major-
7 ity vote.

8 2. Payment for certain injuries. If an employee
9 who has completed a rehabilitation program pursuant
10 to an approved plan, as provided in section 83, sub-
11 sequently sustains a personal injury arising out of
12 and in the course of employment and that injury, in
13 combination with the prior injury, results in a re-
14 duction in earning capacity which is substantially
15 greater in duration or level of disability, or both,
16 than that which would have resulted from the subse-
17 quent injury alone, taking into account the age, edu-
18 cation, employment opportunities and other factors
19 related to the employee, the employer at the time of
20 the subsequent injury shall be entitled to reimburse-
21 ment from the Employment Rehabilitation Fund as pro-
22 vided in this section. An employer shall not be en-
23 titled to reimbursement from the fund in the event of
24 subsequent injury if an injured employee returns to
25 his preinjury job with the same employer without the
26 provision of significant rehabilitation services or
27 significant modification of the workplace.

28 3. Reimbursement. The employer shall be reim-
29 bursed at least quarterly from the Employment Reha-
30 bilitation Fund for any weekly wage replacement bene-
31 fits for which he is liable pursuant to section 54,
32 55 or 58, and which are paid by that employer.

33 A. An employer entitled to reimbursement under
34 this section remains liable to the employee for
35 all payments otherwise required from him by this
36 Act and remains responsible for carrying out the
37 rehabilitation efforts required by subchapter
38 III-A as a result of the subsequent injury.

39 B. A commissioner shall order a reduction, sus-
40 pension or termination of reimbursement of an em-
41 ployer under this section if the commissioner

1 finds that the employer has not made a bona fide
2 effort to return the employee to continuing gain-
3 ful employment.

4 4. Apportionment. Reimbursement under this sec-
5 tion shall be reduced by the amount of any contribu-
6 tion paid to the employer by any other employer for
7 wage replacement benefits on the basis of apportioned
8 liability under section 104-B.

9 A. If insurers disagree on the apportionment of
10 liability in a case under this section, the mat-
11 ter shall be considered by the Apportionment Re-
12 view Panel before an insurer may file a petition
13 under section 104-B. The panel shall encourage
14 agreement between the insurers and, if agreement
15 cannot be achieved, shall make a recommendation
16 on the apportionment of liability.

17 5. Employer knowledge. An employer otherwise
18 entitled to reimbursement under this section is enti-
19 tled to that reimbursement regardless of whether the
20 employer has knowledge at any time that the employee
21 had completed an approved rehabilitation plan.

22 6. Hiring incentive; wage credit. If an employ-
23 er hires an employee subsequent to the employee's
24 completion of a rehabilitation program pursuant to an
25 approved plan and agreement as provided in section
26 83, that subsequent employer shall be entitled to ap-
27 ply for a wage credit under this subsection. For
28 purposes of this subsection, the term "employer" does
29 not include the insurer of a subsequent employer.

30 A. The subsequent employer shall file an appli-
31 cation for a wage credit by providing the admin-
32 istrator, within 2 weeks after the close of the
33 first 90 days of employment of the employee, with
34 a statement of the total direct wages, earnings
35 or salary he paid to the employee for the first
36 90 days of employment along with such verifica-
37 tion as may be required by rule of the commis-
38 sion. Within 2 weeks after the close of the
39 first 180 days of employment, the subsequent em-
40 ployer shall provide to the administrator a sup-
41 plemental report of the direct wages, earnings
42 and salary for the 2nd 90-day period, along with
43 the required verification.

1 B. The administrator shall compute the wage
2 credit which shall consist of a sum equal to 50%
3 of the average weekly direct wages, earnings or
4 salary for the 90-day period listed in the subse-
5 quent employer's application or statement, but
6 not to exceed the amount of workers' compensation
7 benefits which the employee did not receive be-
8 cause of the employment, but would have been en-
9 titled to for the wage credit period, based on
10 the average weekly workers' compensation benefits
11 during the 60-day period immediately preceding
12 his hiring by the employer.

13 (1) On adequate verification of the appli-
14 cation or statement, the administrator shall
15 pay the amount for each 90-day period in a
16 lump sum to the subsequent employer within
17 30 days of receiving the application or
18 statement.

19 (2) The administrator shall bill these sums
20 to the insurer or self-insurer that was re-
21 sponsible for payment of the compensation
22 received by the employee immediately preced-
23 ing his hiring by the subsequent employer.
24 When the sum is received from the insurer or
25 self-insurer, the administrator shall depos-
26 it it in the Employment Rehabilitation Fund.

27 C. If the employment with the subsequent employ-
28 er is terminated by the employer without good
29 cause before the completion of 12 consecutive
30 months of employment, the subsequent employer
31 shall return to the administrator all wage cred-
32 its received by him for that employee and all
33 sums paid into the Employment Rehabilitation Fund
34 by the insurer or self-insurer shall be returned
35 to that insurer or self-insurer.

36 D. When the wage credit is paid from the fund to
37 an employer, the insurer or self-insurer who paid
38 the sum into the fund has no further obligation
39 to pay any sums into the fund for any future re-
40 employment of that employee, except as provided
41 in paragraph E.

1 E. An employee's weekly compensation benefits
2 shall be reinstated in the amount being paid pri-
3 or to the commencement of the plan or agreement,
4 if his employment is terminated:

5 (1) Before completion of 12 consecutive
6 months of employment; and

7 (2) The termination is:

8 (a) By his employer without good
9 cause; or

10 (b) By himself for good cause based on
11 his inability to perform the duties of
12 the employment because of the prior
13 compensable injury.

14 An employer or insurer who considers the rein-
15 statement to be unjustified may file a notice of
16 controversy with the administrator for determina-
17 tion thereof.

18 F. Wage credit payments shall not be dependent
19 on the receipt by the fund of payments from an
20 insurer or self-insurer.

21 7. Jurisdiction. The commission has jurisdic-
22 tion over all claims brought against the Employment
23 Rehabilitation Fund.

24 A. The fund shall not be bound as to any ques-
25 tion of law or fact by reason of any award or any
26 adjudication to which it was not a party or in
27 relation to which it was not notified, at least
28 21 days prior to the award or adjudication, that
29 it might be subject to liability for the injury
30 or death.

31 B. An employer shall notify the commission of
32 any possible claim against the Employment Reha-
33 bilitation Fund as soon as practicable, but in no
34 event later than one year after the injury or
35 death.

36 8. Legal representation. The Attorney General
37 shall provide legal representation for any claim made
38 under this section.

1 A. The reasonable expense of prosecution or de-
2 defense by the Attorney General of claims against
3 the Employment Rehabilitation Fund shall, subject
4 to the approval of the commission, be payable out
5 of the Employment Rehabilitation Fund.

6 B. The Attorney General shall not defend the Em-
7 ployment Rehabilitation Fund against any claim
8 brought by the State. The commission may hire,
9 using money from the Employment Rehabilitation
10 Fund, private counsel for this purpose.

11 9. Effect on obligations of prior employ-
12 ers. The availability of reimbursement under this
13 section does not limit or reduce the obligation of
14 any previous employer to provide benefits under this
15 Act to the employee.

16 10. Fund administration and contribu-
17 tions. There is established a special fund, known as
18 the Employment Rehabilitation Fund, for the sole pur-
19 pose of making payments in accordance with this chap-
20 ter. The fund shall be administered by the chairman
21 of the commission. The Treasurer of State shall be
22 the custodian of the fund. All money and securities
23 in the fund shall be held in trust by the Treasurer
24 of State for the purpose of making payments under
25 this chapter and shall not be money or property for
26 the general use of the State. The fund shall not
27 lapse.

28 The Treasurer of State may disburse money from the
29 fund only upon written order of the chairman of the
30 commission. The money of the fund shall be invested
31 by him in accordance with law. Interest, income and
32 dividends from the investments shall be credited to
33 the fund.

34 11. Freedom from liability. The State is not
35 liable for any claim against the Employment Rehabili-
36 tation Fund that is in excess of the fund's current
37 ability to pay.

38 12. Rulemaking. The chairman may adopt rules,
39 subject to section 92, subsection 1, to carry out the
40 purposes of this section.

1 13. Applicability. Reimbursement under this
2 section shall be available solely with respect to em-
3 ployees who are injured after the effective date of
4 this section. If reimbursement is available from the
5 Employment Rehabilitation Fund under this section,
6 reimbursement shall not be available from the Second
7 Injury Fund under section 57.

8 §57-C. Assessment

9 1. Rate of assessment. There is levied and im-
10 posed an assessment on each insurer at the rate of 3
11 1/2% of its actual paid losses during the previous
12 calendar quarter.

13 2. Due date. The assessment imposed by this
14 section shall be due on or before the 60th day after
15 the close of the calendar quarter.

16 3. Assessment waived. If, at the end of a cal-
17 endar quarter, the amount of deposit in the Employ-
18 ment Rehabilitation Fund is equal to or exceeds the
19 amount derived from the last assessment, the assess-
20 ment for that quarter shall be waived and not levied
21 or imposed.

22 A. The Treasurer of State shall notify the State
23 Tax Assessor on the day after the end of the cal-
24 endar quarter, if the fund equals or exceeds that
25 amount.

26 B. If so notified, the State Tax Assessor shall
27 immediately notify each insurer that the assess-
28 ment is waived for that quarter.

29 4. Records and reports. Every insurer shall
30 keep as part of his permanent records a record of the
31 amount of each loss paid and its date, and the
32 records shall be open for inspection at all times.
33 Every insurer shall, on or before the 60th day fol-
34 lowing the end of a calendar quarter, render a report
35 to the State Tax Assessor stating the amount of
36 losses paid by him during the preceding calendar
37 quarter. That report shall contain any further in-
38 formation the State Tax Assessor shall prescribe by
39 rule. With that report, each insurer shall forward
40 payment of the assessment amount due.

1 5. Appropriation of money received. The State
2 Tax Assessor shall pay all receipts from that assess-
3 ment to the Treasurer of State daily. The Treasurer
4 of State shall deposit all receipts as received in
5 the Employment Rehabilitation Fund.

6 6. Inspections. The State Tax Assessor or his
7 duly authorized agent, for the purpose of determining
8 the truth or falsity of any statement or return made
9 by the insurer, may:

10 A. Enter any place of business of an insurer to
11 inspect any books or records of the insurer;

12 B. Notwithstanding any other provision of law,
13 inspect any records or reports filed by an insur-
14 er with the Superintendent of Insurance; and

15 C. Delegate these powers to the Superintendent
16 of Insurance, his deputies, agents or employees.

17 7. Civil action. Whenever any insurer fails to
18 pay any assessment due under this section within the
19 time limit, the Attorney General shall enforce pay-
20 ment by civil action against that insurer for the
21 amount of the assessment in the Superior Court in and
22 for the county or the District Court in the division
23 in which that insurer has his place of business, or
24 in the Superior Court of Kennebec County.

25 8. Definition. For the purposes of this sec-
26 tion, "insurer" means an insurance company or associ-
27 ation which does business or collects premiums for
28 workers' compensation insurance in this State or an
29 individual or group self-insurer under this Act, in-
30 cluding the State and other public or governmental
31 authority.

32 Sec. 14. 39 MRSA §62-B is enacted to read:

33 §62-B. Reduction of benefits due to other income

34 1. Reduction for other income. Compensation
35 paid under this Act, except for lump-sum payments un-
36 der sections 56 and 56-A and lump-sum settlements, to
37 any employee for any period or injury with respect to
38 which he is receiving or has received other disabili-

1 ty or pension payments, shall be reduced by the
2 amount of the employer's share of those benefits.
3 Compensation may not be reduced if those other bene-
4 fits have been reduced to reflect receipt of benefits
5 under this Act.

6 2. Other disability or pension benefits. Other
7 disability or pension benefits include any payments
8 due an employee under a public or private disability
9 insurance or benefit plan or pension funded in whole
10 or part by employer contributions. It does not in-
11 clude any wholly public supported welfare or assist-
12 ance benefits.

13 3. Employer's share of other disability or pen-
14 sion benefits. The amount of reduction shall be
15 equal to that portion of other disability or pension
16 benefits attributable to the employer's contributions
17 to provide those benefits, calculated on a weekly ba-
18 sis. The total accrued reduction for that injury may
19 not exceed the total employer's uncredited contribu-
20 tion for those benefits.

21 Sec. 15. 39 MRSA §66-A, as amended by PL 1983,
22 c. 647, is further amended by adding at the end a new
23 paragraph to read:

24 All obligations under this section shall be sus-
25 pending during the implementation of a rehabilitation
26 plan under subchapter III-A.

27 Sec. 16. 39 MRSA c. 1, sub-c. III-A is enacted
28 to read:

29 SUBCHAPTER III-A

30 REHABILITATION

31 §81. Purpose; rules

32 The purpose of this subchapter is restoration of
33 the injured employee to gainful employment. To fur-
34 ther that purpose, it is the shared responsibility of
35 all parties involved to cooperate in developing a re-
36 habilitation process designed to promote reemployment
37 at a level of earnings commensurate with the
38 employee's ability to perform under present condi-

1 tions, consistent with the priorities of section 85.

2 The chairman may adopt rules, subject to section
3 92, subsection 1, to carry out the purposes of this
4 subchapter.

5 §82. Office of Employment Rehabilitation; Rehabili-
6 tation Administrator

7 1. Office of Employment Rehabilitation; appoint-
8 ment. An Office of Employment Rehabilitation shall
9 be maintained under the direction of a rehabilitation
10 administrator, in this subchapter referred to as the
11 "administrator." The chairman may appoint and remove
12 the administrator and assistant administrators with
13 the concurrence of the commission. The administrator
14 shall report to and be directed by the chairman and
15 shall carry out the duties assigned to the adminis-
16 trator in this Act.

17 2. Qualifications. The rehabilitation adminis-
18 trator must be certified as a certified rehabilita-
19 tion counselor by the Commission on Rehabilitation
20 Counselor Certification or must become certified as
21 such within 10 months after the date of hiring, must
22 be qualified by training or by experience in manage-
23 ment of rehabilitation evaluation services and must
24 be familiar with the workers' compensation system.

25 3. Powers and duties. In addition to any other
26 provisions made in this chapter, the administrator
27 shall have the following powers and duties.

28 A. The administrator is responsible for the re-
29 ceipt of reports and other information required
30 under this subchapter and may require supplemen-
31 tary information needed to fulfill the purposes
32 of this subchapter.

33 B. The administrator shall monitor rehabilita-
34 tion cases and cases where rehabilitation appears
35 to be appropriate, and shall encourage agreement
36 and attempt to conciliate differences on rehabil-
37 itation issues.

38 C. The administrator shall approve agreements
39 regarding rehabilitation and reemployment if he

1 finds that they are consistent with the purpose
2 and requirements of this subchapter and the rules
3 of the commission.

4 D. The administrator shall assist the chairman
5 in developing rules pursuant to section 92, sub-
6 section 1, regarding rehabilitation, including,
7 but not limited to, rules governing minimum stan-
8 dards for providers of rehabilitation services,
9 the types of services each category of provider
10 is qualified to provide and procedures for reha-
11 ilitation cases.

12 E. The commission shall not provide direct reha-
13 ilitation services. Rehabilitation services under
14 this subchapter shall be provided by private
15 rehabilitation counselors, governmental agencies
16 and others approved by the administrator as qual-
17 ified to provide rehabilitation services under
18 the commission's rules. The administrator shall
19 consider a rehabilitation counselor's rate of
20 successfully placing rehabilitated employees in
21 jobs relative to the placement rates of other
22 counselors in the State as fundamental in decid-
23 ing whether to approve the counselor as quali-
24 fied. The administrator shall compile annually a
25 list of approved providers of rehabilitation ser-
26 vices and shall make this list available to the
27 parties.

28 F. The administrator shall develop fee schedules
29 for providers of rehabilitation services, listing
30 the maximum allowable fees for testing, evalua-
31 tions of suitability, development of rehabilita-
32 tion plans and other rehabilitation services.

33 (1) In setting a fee, the administrator
34 shall take into account the usual fee
35 charged to provide that service in the State
36 and the reasonable and necessary costs of
37 providing the service.

38 (2) The administrator may grant prior ap-
39 proval of a fee higher than the maximum in
40 the rate schedule in exceptional circum-
41 stances.

1 G. The administrator shall make efforts to edu-
2 cate and disseminate information to all persons
3 interested in the rehabilitation process.

4 §83. Rehabilitation services

5 The following rehabilitation services are appro-
6 priate in the following circumstances.

7 1. Reports. Within 120 days following an injury
8 giving rise to a claim under this Act where an em-
9 ployee has not returned to employment or following a
10 subsequent 120-day period of incapacity, the employer
11 shall submit a report to the administrator to assist
12 in the early identification of those employees who
13 may need rehabilitation to achieve job placement.

14 A. The report shall be in the form prescribed by
15 rule of the commission and shall include informa-
16 tion to the best of the employer's knowledge on
17 whether the employee is likely to return to his
18 previous employment and any other information re-
19 quired by the rule.

20 B. The report shall be forwarded to the adminis-
21 trator and a copy provided to the employee.

22 C. If the employer is unable to determine wheth-
23 er the employee is likely to return to his previ-
24 ous employment, the employer shall include in the
25 report a date by which he expects this determina-
26 tion to be made and the basis for selecting that
27 date.

28 D. If the employer reports that the employee is
29 likely to return to his previous employment, the
30 employer shall include in the report the date by
31 which he expects the employee to return to work
32 and the basis for selecting that date.

33 E. In either instance, the employer shall file a
34 supplemental report under this subsection on or
35 before that date unless the administrator re-
36 quires otherwise.

37 2. Evaluation of suitability. An evaluation of
38 the suitability of rehabilitation for the employee

1 shall be submitted to the administrator within 30
2 days after the administrator makes an order of evalu-
3 ation under section 84, subsection 1.

4 A. The evaluation of suitability shall be done
5 by a provider of rehabilitation services selected
6 by the employee from the list of approved
7 providers maintained by the administrator.

8 B. If the employer objects to the employee's se-
9 lection, he may request that the administrator
10 schedule a meeting between the employer, the em-
11 ployee and the administrator for the purpose of
12 discussing which provider may be mutually accept-
13 able.

14 C. The employee shall have the final decision on
15 which approved provider shall be utilized.

16 3. Development of plan. A rehabilitation plan
17 shall be developed and submitted to the administrator
18 within 60 days after the administrator makes an order
19 of plan development under section 84, subsection 2.

20 A. The plan shall be developed by a provider of
21 rehabilitation services selected by the employee
22 from the list of approved providers maintained by
23 the administrator.

24 B. In developing any plan, consideration shall
25 be given to the employee's qualifications, in-
26 cluding, but not limited to:

27 (1) His work history;

28 (2) His interests;

29 (3) His aptitude;

30 (4) His education;

31 (5) His skills;

32 (6) His work life expectancy;

33 (7) The locality of employment; and

1 (8) The likelihood of reemployment.

2 C. A plan shall include a job placement strategy
3 and a specific program of proposed actions de-
4 signed and likely to achieve job placement for
5 the employee. It may also include an employment
6 agreement.

7 4. Implementation of plan. The administrator
8 shall approve a plan if all parties agree on the plan
9 and he finds it is consistent with the purpose and
10 requirements of this subchapter and in the employee's
11 best interests.

12 A. If the parties do not agree on a plan, an in-
13 formal conference shall be held within 21 days
14 after the submission of the rehabilitation plan
15 under subsection 3, at which the administrator
16 shall make every effort to encourage agreement
17 and conciliate any differences or
18 misunderstandings between the parties.

19 B. All obligations under section 66-A shall be
20 suspended during the implementation of the plan.

21 5. Trial work periods. The time requirements of
22 this section shall be suspended if a trial work peri-
23 od under section 100-A is instituted at any time dur-
24 ing the schedule of rehabilitation services estab-
25 lished under this section. If the trial work period
26 terminates, the schedule of rehabilitation services
27 established under this section shall be resumed at
28 the same point at which it was suspended.

29 6. Employment agreement. If, during the course
30 of the implementation of a rehabilitation plan, the
31 employee returns to employment in an employment posi-
32 tion for which a wage credit may be paid under sec-
33 tion 57-B, prior to that reemployment, an employment
34 agreement shall be prepared and signed by the coun-
35 selor, employee and subsequent employer and submitted
36 to the administrator for his review.

37 A. An employment agreement shall contain at
38 least the following:

1 (1) A job description and a statement of
2 the conditions, wages and benefits of the
3 position;

4 (2) A statement by the employee that he is
5 willing to take the position;

6 (3) The following statements by the coun-
7 selor:

8 (a) That it is substantially unlikely
9 that the employee would be able to re-
10 turn to his former employment position
11 in the foreseeable future;

12 (b) That the offered position is
13 suited to the employee's abilities,
14 qualifications and limitations; and

15 (c) That the new position is different
16 from the employee's prior position, or
17 that the prior position has been sub-
18 stantially modified to conform to the
19 employee's limitations; and

20 (4) A statement from the new employer:

21 (a) That the offered position will
22 continue for the foreseeable future;
23 and

24 (b) That the wages, benefits, hours
25 and working conditions of the position
26 are substantially the same as compara-
27 ble positions.

28 B. The administrator shall approve an agreement
29 if it meets the requirements set forth under sub-
30 section 4, and conforms to the requirements and
31 goals of the rehabilitation plan. He may refuse
32 to approve an agreement if the employer named in
33 that agreement has previously demonstrated a pat-
34 tern of nonconformity or disregard of the re-
35 quirements of this subchapter.

36 7. Representation. The administrator shall as-
37 sure that competent technical staff from the Office

1 of Employment Rehabilitation is available to provide
2 advice and assistance to the employee.

3 8. Counsel. If the employer or insurer elects
4 to be represented by legal counsel at any stage of
5 the rehabilitation process under this subchapter pri-
6 or to an appeal under section 87, the employee is en-
7 titled to be similarly represented by legal counsel
8 of his choice, with all reasonable attorney fees to
9 be assessed against the employer. If no adverse par-
10 ty elects to be so represented, the employee retains
11 the right to secure legal counsel at his own expense.

12 §84. Orders

13 It is appropriate for the administrator to issue
14 the following orders in the following circumstances.

15 1. Order of evaluation. When a compensable in-
16 jury exists, and when the parties agree to an evalua-
17 tion or the report required under section 83, subsec-
18 tion 1, indicates that the employee is not likely to
19 return to his previous employment, the administrator
20 shall order an evaluation of the suitability of reha-
21 bilitation for the employee.

22 2. Order of plan development. When the adminis-
23 trator finds that rehabilitation is suitable for the
24 employee following the submission of an evaluation of
25 suitability under section 83, subsection 2, he shall
26 order the parties to develop a rehabilitation plan.

27 3. Order of plan review or modification. Upon
28 request of a party or the administrator, reports of
29 an employee's progress under a rehabilitation plan
30 shall be made by the provider of rehabilitation ser-
31 vices to all the parties and the administrator. The
32 administrator, upon request of any party or on his
33 own motion, may order the suspension, termination or
34 modification of a plan upon a showing of good cause
35 therefor, including, but not limited to:

36 A. A changed physical condition which does not
37 allow the employee to continue pursuing the reha-
38 bilitation plan;

39 B. The employee's performance level indicates he
40 cannot complete the plan level successfully;

1 C. An employee does not cooperate with a plan;
2 or

3 D. A change in the economic conditions that ex-
4 isted when plan implementation began renders the
5 plan unfeasible.

6 4. Reinstatement of benefits. If the adminis-
7 trator orders the suspension or termination of a
8 plan, he may also order the reinstatement of the
9 employee's weekly benefits in the amount being paid
10 prior to the commencement of the plan if that termi-
11 nation or suspension is through no fault of the em-
12 ployee.

13 5. Procedures. The administrator shall make any
14 order under this subchapter within 30 days. Resolu-
15 tions shall be based on adequate information and ar-
16 rived at in a summary manner.

17 A. The administrator shall not be bound by the
18 Maine Rules of Evidence or the Maine Rules of
19 Civil Procedure, except to the extent that may be
20 provided in the commission's rules to protect the
21 interests of the parties.

22 B. The order shall be filed in the office of the
23 commission, and a copy of the order attested by
24 the clerk of the commission mailed forthwith to
25 all parties interested or to the attorney of
26 record of each party.

27 C. The administrator shall, upon the request of
28 a party made as a motion within 20 days after no-
29 tice of the order, or may upon his own motion
30 find the facts specially and state separately his
31 conclusions of law thereon. Those findings and
32 conclusions shall be filed in the office of the
33 commission, and a copy of the findings and con-
34 clusions shall be mailed forthwith to all inter-
35 ested parties.

36 D. The running of the time for appeal under sec-
37 tion 87 is terminated by a timely motion made
38 pursuant to this section. The full time for this
39 appeal recommences on the receipt of notice of
40 the filing of those findings, conclusions or re-
41 vised order.

1 §85. Rehabilitation priorities

2 The following priorities shall be used in evalu-
3 ating alternative rehabilitation plans. No higher
4 numbered priority may be utilized unless all lower
5 numbered priorities have been determined by the reha-
6 ilitation counselor to be unlikely to result in a
7 suitable job placement for the employee. If a lower
8 number priority is clearly inappropriate for the em-
9 ployee, the next higher numbered priority shall be
10 utilized as follows:

11 1. Former job. Return of the employee to his
12 preinjury job with the same employer;

13 2. Modified job. Return of the employee to his
14 preinjury job with the same employer and with modifi-
15 cation of tasks or of the workplace;

16 3. New job. Return to employment with the
17 preinjury employer in a different position;

18 4. On-the-job training. Return to employment
19 with the preinjury employer for on-the-job training;

20 5. New employer. Employment with a new employ-
21 er;

22 6. On-the-job training. On-the-job training
23 with a new employer; or

24 7. Retraining. A goal-oriented period of formal
25 retraining which is designed to lead to employment.

26 §86. Rights and duties of parties

27 1. Medical examinations. The provisions of sec-
28 tion 65 shall apply during any period of rehabilita-
29 tion.

30 2. Plan costs. A plan may provide for any or
31 all of the following services and costs:

32 A. Reasonable rehabilitation diagnosis and plan
33 preparation;

1 B. Physical rehabilitation, counseling and other
2 services and supplies necessary for the implemen-
3 tation of the plan;

4 C. Tuition, books and fees, and a sum each week
5 for sustenance and travel not to exceed 25% of
6 the statewide average weekly wage, as may be de-
7 termined by the administrator during the period
8 of rehabilitation;

9 D. Reasonable moving and relocation expenses,
10 not to exceed \$3,000, that are necessary to
11 achieve reemployment;

12 E. Compensation up to the amount payable for to-
13 tal incapacity during the course of a rehabilita-
14 tion plan; and

15 F. Reasonable and proper rehabilitation ser-
16 vices, which in some cases may extend over long
17 periods of time, and the nature and anticipated
18 duration shall be defined during the process of
19 plan development and included in the plan.

20 3. Notice of controversy. An employer who con-
21 siders the costs of rehabilitation services to be un-
22 reasonable may file a notice of controversy with the
23 administrator for determination thereof.

24 4. Employee refusal, sanctions. Refusal by the
25 employee to comply with a requirement, determination
26 or order of the commission, this chapter or a rule
27 promulgated pursuant thereto, or with the terms of an
28 approved plan or agreement under this subchapter,
29 shall result in the suspension of benefits for a pe-
30 riod no longer than the length of the refusal. These
31 sanctions may only be ordered by a commissioner after
32 notice and a hearing.

33 5. Employer refusal; sanctions. Refusal of the
34 employer to comply with a requirement, determination
35 or order of the commission, this chapter or a rule
36 promulgated thereto, or with the terms of an approved
37 plan or agreement under this subchapter, shall be
38 deemed a failure to pay compensation subject to sec-
39 tion 104-A, subsection 2, provided that the fine un-
40 der that section may be increased to a maximum of 3

1 times the amount of any wage credits received by that
2 employer under that agreement. The commissioner or
3 the employee may seek enforcement under section
4 103-E.

5 6. Reimbursement. Reimbursement may not be or-
6 dered for any payments which the employer would oth-
7 erwise be obligated to make regardless of the exis-
8 tence of the plan; except that the administrator may
9 order reimbursement from the Employment Rehabilita-
10 tion Fund for the actual direct costs to the employer
11 of providing rehabilitation services under this sub-
12 chapter, if:

13 A. He finds that:

14 (1) The parties have complied with the re-
15 quirements of this subchapter;

16 (2) The employee has completed an approved
17 rehabilitation plan; and

18 (3) The employee has been unable to secure
19 the employment contemplated by the plan or
20 other suitable employment within 6 months or
21 such longer period as contained in the plan
22 or ordered by the administrator; or

23 B. He finds that:

24 (1) The employee has not completed an ap-
25 proved rehabilitation plan; and

26 (2) The parties have otherwise complied
27 with the requirements of this subchapter.

28 §87. Appeal from a decision of the administrator

29 1. Procedure. An appeal may be taken from an
30 order of the administrator by filing a copy of the
31 order, together with any papers in connection there-
32 with required by rule of the commission, with a sin-
33 gle commissioner within 20 days after receipt of no-
34 tice of the filing of the order. The failure of an
35 appellant who timely notifies the commission of his
36 desire to appeal to provide a copy of the order ap-
37 pealed from shall not affect the jurisdiction of the

1 division to determine the appeal on its merits, un-
2 less the appellee shows substantial prejudice from
3 that failure.

4 2. Automatic stay; stay upon appeal. No pro-
5 ceedings may be taken to enforce an order of the ad-
6 ministrator until the time for appeal from the order
7 has expired. The taking of an appeal from an order
8 shall operate as a stay of execution upon the order
9 during the pendency of the appeal.

10 3. Action. The commissioner, after due consid-
11 eration, may uphold or modify the administrator's de-
12 cision or reverse the decision and remand the matter
13 to the administrator for reconsideration in accord-
14 ance with his instructions. The written decision of
15 the commissioner shall be filed with the commission
16 and mailed to the parties or their counsels.

17 4. Costs. Costs of appeal shall be allowed, in-
18 cluding the record and reasonable attorneys' fees as
19 provided for in section 110. No attorney who repre-
20 sents an employee before the commission may recover
21 any fee from that client for that representation.
22 Any attorney who violates this subsection shall lose
23 his fee and is liable in a court suit to pay damages
24 to the client equal to 2 times the fee charged that
25 client.

26 §88. Employment Rehabilitation Advisory Board

27 The Employment Rehabilitation Advisory Board, as
28 established by Title 5, chapter 379, shall advise the
29 chairman and the administrator as they carry out the
30 purposes of this subchapter.

31 1. Membership. The board shall consist of 8
32 members with knowledge of and experience in workers'
33 compensation and rehabilitation issues, including
34 equal representation of employer and employee
35 viewpoints; and one member representing the public.

36 2. Appointment. The members shall be appointed
37 by the Governor for terms of 3 years, except that
38 initially 3 shall be appointed for terms of one year,
39 3 for terms of 2 years and 3 for terms of 3 years.

1 3. Chairman. The members of the board shall select one member to serve as chairman.

3 4. Compensation. Members shall serve without compensation, except for reimbursement for travel and actual expenses necessarily incurred in performance of their duties.

7 §89. Applicability

8 1. Employees covered. The provisions of this subchapter shall apply only to employees injured after the effective date of this subchapter, unless otherwise agreed by the parties and approved by the administrator. Notwithstanding any such agreement, the provisions of section 86, subsection 5, shall not be construed to permit reimbursement for any rehabilitation services provided prior to the effective date of this subchapter.

17 2. Sunset. This subchapter is repealed, effective December 31, 1988, except that the chairman may by rule provide for a transition period of employment for the administrator of up to 3 years, and for the disposition according to this subchapter of cases arising out of injuries suffered during the period in which this subchapter is effective. The money in the Employment Rehabilitation Fund shall remain in that fund until all obligations against that fund under this subchapter have been paid, and thereafter the balance remaining shall be paid to the Second Injury Fund.

29 3. Report to Legislature. The chairman shall report to the Second Regular Session of the 113th Legislature concerning the effectiveness of this subchapter in accomplishing the purpose stated in section 81. The chairman may seek the assistance of the administrator, the Superintendent of Insurance and others in assembling data which would provide the Legislature with a meaningful basis for evaluating the costs and benefits of this subchapter to all participants in the process and the public as a whole.

39 Sec. 17. 39 MRSA §92, sub-§2, as enacted by PL 1983, c. 479, §16, is amended to read:

1 2. Employees. The chairman shall appoint, su-
2 pervise and direct, subject to the Personnel Law, a
3 director of administrative services, ~~full-time or~~
4 ~~part-time reporters,~~ and such legal and clerical as-
5 sistance as may be necessary.

6 Sec. 18. 39 MRSA §92, sub-§§8 and 9 are enacted
7 to read:

8 8. Office of Employment Rehabilitation. The
9 chairman shall provide adequate funding for an Office
10 of Employment Rehabilitation and shall appoint a Re-
11 habilitation Administrator pursuant to section 82.
12 The chairman shall, subject to the Personnel Law, ap-
13 point such personnel as are necessary to carry out
14 the functions of the office.

15 9. Fraud investigation unit. The chairman shall
16 provide adequate funding for a Unit of Fraud Investi-
17 gation.

18 A. He shall, subject to the Personnel Law, ap-
19 point at least 2 fraud investigators for this
20 unit. Investigators shall be qualified by expe-
21 rience and training to perform their duties.

22 B. The unit shall, at the direction of the
23 chairman, investigate all complaints or allega-
24 tions of fraud, illegal or improper conduct or
25 violation of this Act or rules of the commission
26 relating to workers' compensation insurance, ben-
27 efits or programs, including those acts by em-
28 ployers, employees or insurers.

29 C. Each employer or employee, and each state,
30 county, municipal or quasi-governmental agency
31 shall cooperate fully with the unit and provide
32 any information requested by it.

33 D. The unit shall report all its findings to the
34 chairman.

35 E. Whenever the chairman determines that a
36 fraud, attempted fraud or violation of this Act
37 or rules may have occurred, he shall report in
38 writing all information concerning it to the At-
39 torney General or his delegate for appropriate

1 action, including a civil action for recovery of
2 funds and criminal prosecution by the Attorney
3 General.

4 Sec. 19. 39 MRSA §93, sub-§3, as amended by PL
5 1979, c. 109, is further amended to read:

6 3. Proceedings before Workers' Compensation Com-
7 mission. In all proceedings before the Workers' Com-
8 pensation Commission, ~~all forms of discovery availa-~~
9 ~~ble in civil actions in the Superior Court under the~~
10 ~~Maine Rules of Civil Procedure, as amended, shall be~~
11 ~~available as provided by rule to any of the parties~~
12 ~~in the proceedings except that a Workers' Compensa-~~
13 ~~tion Commission and a Commissioner, rather than a Su-~~
14 ~~perior Court Justice, shall rule on all objections,~~
15 ~~and a Workers' Compensation Commission. A commissioner~~
16 ~~is empowered to may enforce this subsection in the~~
17 ~~same manner and to the same extent as a Superior~~
18 ~~Court Justice may enforce compliance with the Maine~~
19 ~~Rules of Civil Procedure, as amended, with regard to~~
20 ~~discovery, except that the commissioner shall not~~
21 ~~have the power of contempt.~~

22 ~~Prior to the award of the 3rd period of up to 52~~
23 ~~weeks of vocational rehabilitation as provided by~~
24 ~~section 52, the employer shall have the right of dis-~~
25 ~~covery and subpoena power in regard to all persons,~~
26 ~~including any private or public agent, to determine~~
27 ~~the suitability of such employee for such further re-~~
28 ~~habilitation.~~

29 Signed statements by a medical doctor or osteopathic
30 physician relating to medical questions, by a psy-
31 chologist relating to psychological questions or by a
32 chiropractor relating to chiropractic questions,
33 shall be admissible in workers' compensation hearings
34 before the Workers' Compensation Commission, provid-
35 ing that notice of that testimony to be used is given
36 and service of a copy of the letter or report is made
37 on the opposing counsel 14 days before the scheduled
38 hearing to enable that counsel to depose or subpoena
39 and cross-examine that medical doctor, osteopathic
40 physician, psychologist or chiropractor if he so
41 chooses.

1 Sec. 20. 39 MRSA §94, 2nd ¶, as amended by PL
2 1973, c. 788, §232, is repealed.

3 Sec. 21. 39 MRSA §100, sub-§1, as enacted by PL
4 1981, c. 514, §4, is amended to read:

5 1. Relief available. Upon the petition of either
6 party, a single commissioner shall review any compen-
7 sation payment scheme required by this Act for the
8 purposes of ordering the following relief, as the
9 justice of the case may require:

10 A. Increase, decrease, restoration or discontin-
11 uance of compensation; ~~or.~~

12 B. ~~Extension, reduction, restoration or discon-~~
13 ~~tinuance of vocational rehabilitation.~~

14 Sec. 22. 39 MRSA §100, sub-§2, ¶A, as enacted by
15 PL 1981, c. 514, §4, is amended to read:

16 A. On the first petition for review brought by a
17 party to an action, the commissioner shall deter-
18 mine the appropriate relief, if any, under this
19 section by determining the employee's present de-
20 gree of incapacity ~~or need of vocational~~
21 ~~rehabilitation.~~ For purposes of a first petition
22 brought under this section, evidence of the
23 employee's medical condition at the time of an
24 earlier determination or approved agreement is
25 relevant only if it tends to prove the present
26 degree of incapacity.

27 Sec. 23. 39 MRSA §100, sub-§3-A is enacted to
28 read:

29 3-A. Petitions during rehabilitation. A peti-
30 tion may not be brought during the development or im-
31 plementation of a rehabilitation plan under section
32 83, subsection 3 or 4, except in the event of sub-
33 stantial change in the employee's medical condition.

34 Sec. 24. 39 MRSA §100, sub-§4, as amended by PL
35 1983, c. 479, §24, is further amended to read:

36 4. Payments pending hearing and decision. If the
37 employee is receiving payments ~~or vocational~~

1 ~~rehabilitation~~ at the time of the petition, the pay-
2 ~~ments or rehabilitation~~ may not be decreased or sus-
3 pended pending the hearing and final decision upon
4 the petition, except in the following circumstances:

5 A. The employer and the employee file an agree-
6 ment with the commission; or

7 B. The employer or his insurance carrier files a
8 certificate with the commission stating that:

9 (1) The employee has left the State for
10 reasons other than returning to his perma-
11 nent residence at the time of injury;

12 (2) The employee's whereabouts are unknown;
13 or

14 (3) The employee has resumed work.

15 Sec. 25. 39 MRSA §100-A, as amended by PL 1983,
16 c. 479, §25, is repealed and the following enacted in
17 its place:

18 §100-A. Orders or agreements for trial work periods

19 The commission may approve an agreement of the
20 parties to a trial work period at a specified job for
21 a period not to exceed 3 months. During this trial
22 work period and the payment of wages therefor, the
23 payment of compensation under a compensation payment
24 scheme and all obligations under subchapter III-A
25 shall be suspended.

26 1. Restoration of benefits. That suspension
27 shall cease and weekly compensation shall be restored
28 in the amount being paid prior to the commencement of
29 the trial work period immediately upon:

30 A. Termination of the first trial work period;
31 or

32 B. With the second or subsequent trial work pe-
33 riod, the filing of a petition by the employee
34 stating that he has attempted a trial work period
35 and was unable to adequately perform during the
36 period.

1 Sec. 26. 39 MRSA §106, first ¶, as amended by PL
2 1975, c. 293, §4, is further amended to read:

3 Whenever any employee has reported to an employer
4 under the Act any injury arising out of and in the
5 course of his employment which has caused the employ-
6 ee to lose a day's work or has required the services
7 of a physician, or whenever the employer has knowl-
8 edge of any such injury, every such employer shall
9 within 7 days after said notice or knowledge make re-
10 port thereof to the commission, with the average
11 weekly wages or earnings of such employee, together
12 with such other particulars as the commission may re-
13 quire; and shall report whenever the injured employee
14 shall resume his employment, and the amount of his
15 wages or earnings at such time. If at the end of a
16 period of 6 months following the date of injury or
17 the date of amputation of any member, or the date of
18 loss of one or both eyes or the loss of hearing in
19 one or both ears, the employee is still incapacitated,
20 every such employer shall make a report there-
21 of to the commission, on such form as the commission
22 shall prescribe, giving full information as to the
23 date and nature of the original injury and a descrip-
24 tion of the physical handicap resulting from such in-
25 jury. Upon receipt of such notice from the employer,
26 or upon any knowledge or notice received prior to
27 such notice, the commission shall forthwith refer
28 such case to the Division of Vocational Rehabilita-
29 tion of the Department of Human Services, or in cases
30 of blindness to the Division of Eye Care and Special
31 Services of the Department of Human Services, and may
32 thereafter cooperate and work with these divisions in
33 the matter of rehabilitation of the injured employee.
34 Any employer who willfully neglects or refuses to
35 make any report required by this section shall be
36 subject to a penalty of not more than \$100 for each
37 such neglect or refusal, to be enforced by the com-
38 mission in a civil action in the name of the State.
39 In the event the employer has sent the report to the
40 insurance carrier for transmission by such insurance
41 carrier to the commission, the insurance carrier
42 willfully neglecting or refusing to transmit the re-
43 port shall be liable for the said penalty.

44 Sec. 27. 39 MRSA §110, as amended by PL 1983, c.
45 479, §30, is repealed and the following enacted in
46 its place.

1 §110. Witness and attorneys' fees allowable

2 When the commission or commissioner finds that an
3 employee has instituted a proceeding under this chap-
4 ter and has substantially prevailed in that proceed-
5 ing, or that the employer through or under his insur-
6 ance carrier has instituted a proceeding under this
7 chapter, the commission or commissioner may assess
8 the employer a reasonable attorney's fee, when in
9 the commission's judgment or commissioner's judgment
10 the services of the attorney were necessary to the
11 proper and expeditious disposition of the case. The
12 employer may not be assessed costs of an attorney's
13 fee attributable to services rendered prior to one
14 week after the informal conference under section 94-B
15 or, if the informal conference is waived, services
16 rendered prior to the date of that waiver, unless a
17 party adverse to the employee was so represented at
18 that stage. Attorney's fee attributable to services
19 rendered in any proceeding under subchapter III-A
20 prior to an appeal under section 87, shall be as-
21 essed as provided under section 83, subsection 8.

22 1. Costs. The commission or commissioner, in
23 any proceeding, may assess the employer costs, in-
24 cluding transcript costs, medical evaluation costs or
25 witness fees, when those costs, in the commission's
26 judgment or commissioner's judgment, were necessary
27 to the proper and expeditious disposition of the
28 case.

29 2. Reasonable fees. In determining reasonable
30 attorneys' fees, the commission or commissioner shall
31 consider the following factors:

32 A. The experience of employee's counsel;

33 B. The difficulty of the case;

34 C. The quality of representation;

35 D. The time the counsel has expended;

36 E. The fact that the counsel is prohibited from
37 receiving fees from the employee;

38 F. The importance of the issues in controversy;
39 and

1 G. The customary or prevailing fees paid to pri-
2 vately retained counsel in similar general civil
3 matter.

4 3. Employee payment prohibited. No attorney
5 representing an employee in a proceeding under this
6 Act may receive any fee from that client for an ap-
7 pearance before the commission, including preparation
8 for that appearance, except as provided in section
9 83, subsection 8, or section 94-B, subsection 3. Any
10 attorney who violates this subsection shall lose his
11 fee and shall be liable in a court suit to pay dam-
12 ages to the client equal to 2 times the fee charged
13 for that client.

14 4. Agreements. Notwithstanding any other provi-
15 sion of this section, the employer may be assessed a
16 reasonable attorney's fee for services rendered to
17 the employee in executing an agreement under section
18 100, subsection 4, paragraph A.

19 Sec. 28. Effective date. Sections 1, 2, 3, 4
20 and 6 of this Act, the Maine Revised Statutes, Title
21 39, sections 82 and 88, and section 17 of this Act
22 shall take effect 90 days after the recess of the
23 First Regular Session of the 112th Legislature. The
24 remaining sections of this Act shall take effect on
25 January 1, 1986.

26 Sec. 29. Appropriation. The following funds are
27 appropriated from the General Fund to carry out the
28 purposes of this Act.

	<u>1985-86</u>	<u>1986-87</u>
29		
30	<u>WORKERS' COMPENSATION COMMISSION</u>	
31	Positions	(20)
32	Personal Services	(20)
33	All Other	\$319,210
34	Capital Expenditures	\$435,713
35	Provides funds	215,860
36	for the new of-	119,600
37	fice of Employ-	-
38	ment Rehabilita-	
39	tion.	

1	Positions		(-6)
2	Personal Services		(\$79,680)
3	All Other		<u>(10,000)</u>
4	Reflects the re-		
5	ductions in		
6	costs caused by		
7	the change from		
8	Court Reporters		
9	to Clerk Steno		
10	III's.		
11	All Other	<u>\$10,000</u>	
12	These funds		
13	shall be used to		
14	fund all or part		
15	of a study spon-		
16	sored by the		
17	Workers' Compens-		
18	ation Commis-		
19	sion of the med-		
20	ical costs asso-		
21	ciated with the		
22	Workers' Compens-		
23	ation System.		
24	Total	\$780,823	\$465,633
25			

26 STATEMENT OF FACT

27 This bill is the result of 2 years of study of
28 the Workers' Compensation System and the considera-
29 tion of numerous and diverse proposals for changes in
30 the system by the Speaker's Select Committee on Work-
31 ers' Compensation. That committee was composed of a
32 number of prominent citizens from diverse backgrounds
33 and with diverse viewpoints on the problems with the
34 present Workers' Compensation System. As a result of
35 this concerted study, this bill was produced.

36 The bill contains basic improvements in the work-
37 ers' compensation laws, including a comprehensive
38 system for rehabilitation of injured workers, an active
39 role for the Workers' Compensation Commission in
40 overseeing practical and effective private rehabili-
41 tation programs, mandatory evaluation and screening
42 of all lost time injuries, development of rehabilita-

1 tion and retraining programs for willing injured
2 workers, incentives for employers to participate in
3 rehabilitation and to hire retrained workers, and ad-
4 equate funding for the Second Injury and Employee Re-
5 habilitation Funds.

6 In addition to the committee concepts, the bill
7 establishes the base figure for the calculation of
8 the amount of the lump-sum permanent impairment award
9 on the basis of 75% of the State's average weekly
10 wage, rather than on the employee's weekly wage.

11 It also provides that weekly wage loss compensa-
12 tion under present law will be reduced by the employ-
13 er's portion of any other disability and pension ben-
14 efits received at the same time.

15 The bill also removes the requirement that the
16 commission hire court reporters to transcribe pro-
17 ceedings, and allows the use of recording machines
18 and clerk-typists, at a considerable savings.

19 The bill also provides relief in the area of at-
20 torneys' fees, by setting out specific standards to
21 be applied in awarding fees and by removing employer
22 paid fees when an employee initiates a proceeding and
23 then loses.

24 It creates a new administrative function in the
25 commission to investigate and report on any apparent
26 or reported fraud or illegal or unethical conduct re-
27 lated to the system by any employee, employer, self-
28 insurer or insurance company.

29 Finally, the bill provides for a study by the
30 commission on the medical costs of the system.

31 This bill will correct the present faults in
32 Maine's Workers' Compensation System, without unnec-
33 essarily penalizing any particular group or interest.
34 It should provide for a less expensive and more re-
35 sponsive system for the benefit of all Maine citi-
36 zens, including both employers and employees.

37 0320031385