

MAINE STATE LEGISLATURE

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D. OF R.

1

L.D. 1634

2

(Filing No. S-230)

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STATE OF MAINE

4

SENATE

5

112TH LEGISLATURE

6

FIRST REGULAR SESSION

7

SENATE AMENDMENT "D" to H.P. 1127, L.D. 1634,
8 Bill, "AN ACT to Improve the Workers' Compensation
9 System and Reform the Rate-making Process."

10

Amend the bill in section 23, in that part design-
11 nated "§57-B." by striking out all of subsection 5
12 and inserting in its place the following:

13

'5. Employer knowledge. An employer is entitled
14 to reimbursement under this section if the employer
15 has knowledge at the time of hire that the employee
16 had incurred the prior injury.'

17

Further amend the bill in section 23, in that
18 part designated "§57-C." by striking out all of sub-
19 section 1 and inserting in its place the following:

20

'1. Rate of assessment. There is levied and im-
21 posed an assessment on each insurer at the rate of
22 1/2% in 1986 and thereafter 1/4 of 1%, of its actual
23 paid losses during the previous calendar quarter.'

24

Further amend the bill in section 29, in that
25 part designated "§83." in subsection 1, by inserting
26 after paragraph E the following:

27

'F. "Previous employment" includes employment
28 with the same employer in the same job, a modi-
29 fied job or a new job.'

30

Further amend the bill in section 29, in that
31 part designated "§83." in subsection 2, by striking
32 out all of paragraphs B and C and inserting in their
33 place the following:

34

'B. If the parties do not agree, the commission
35 shall, after appropriate notice and hearing, or-

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1 der the implementation of a rehabilitation plan
2 upon the petition of either of the parties either
3 as requested in the petition or as modified if it
4 finds the plan as ordered is likely to lead to
5 suitable employment and that in the absence of
6 the plan, suitable employment is unlikely to be
7 achieved and it further finds the plan is incon-
8 sistent with the purposes and requirements of
9 this subchapter and in the employee's best inter-
10 est.

11 C. If the employer objects to the employee's se-
12 lection, he may request within 10 business days
13 after notification of that selection that the ad-
14 ministrator schedule a meeting within 10 business
15 days between the employer, the employee and the
16 administrator for the purpose of discussing which
17 provider may be mutually acceptable.

18 D. The employee has the final decision on which
19 approved provider will be utilized.

20 E. Compensation shall be paid for total disabil-
21 ity unless the employee is capable of and engages
22 in part-time employment on a basis not to inter-
23 fere with the rehabilitation plan during the
24 course of the rehabilitation plan.'

25 Further amend the bill in section 37, in subsec-
26 tion 3-A, in the last line (page 47, lines 30 and 31
27 in L.D.) by inserting after the underlined word
28 "substantial" the underlined words 'and
29 unanticipated'

30 STATEMENT OF FACT

31 The purpose of this amendment is to remove the
32 need for vocational rehabilitation study and expendi-
33 ture and bureaucratic involvement when the injured
34 worker has been or is likely to be reemployed in any

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1 suitable capacity by his employer at the time of in-
2 jury.

3 Rehabilitation is the key to real workers' com-
4 pensation reform. Effective rehabilitation is essen-
5 tial not only to saving money but to restoring human
6 lives. This amendment requires an employer or insur-
7 ance carrier and employee to participate not only in
8 rehabilitation evaluation but in an actual rehabili-
9 tation when that is the only practical way to return
10 the injured employee to work. No state in the United
11 States having vocational rehabilitation in its work-
12 ers' compensation system fails to make it a right of
13 the injured worker under defined circumstances.
14 Without this amendment, Maine's rehabilitation ap-
15 proach would be unique - uniquely weak. Approximate-
16 ly half of the 40 states that provide for vocational
17 rehabilitation in their workers' compensation law
18 make it a duty under defined circumstances for the
19 injured worker to participate in vocational rehabili-
20 tation. This amendment makes vocational rehabilita-
21 tion, under defined circumstances where it is neces-
22 sary for the restoration of employment, both a right
23 and a duty.

24 Section 2 of this amendment restores the concept
25 of the Speaker's Select Committee on the essential
26 nature of the worker's free choice of vocational re-
27 habilitation counselor. A guaranteed choice of voca-
28 tional rehabilitation counselor available to the
29 worker is necessary to build a worthwhile and produc-
30 tive relationship. Excepting certain large employers
31 is clearly discriminatory. Large employers in fact
32 do engage in vocational placement of injured workers
33 by replacing them in their former job or placing them
34 in new or modified jobs. This can be done and is now
35 being done with the cost of vocational rehabilitation
36 counseling or formal study.

37 The bill leaves unclear whether an injured worker
38 who is only partially physically disabled, it is or-
39 dinarily not productive investment to attempt to

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1 train someone who is totally physically disabled, re-
2 ceives only partial as opposed to total disability
3 while undertaking a vocational rehabilitation plan.
4 A vocational rehabilitation plan ideally should be
5 undertaken early in a secure environment with finan-
6 cial worries removed. Thus, if the vocational reha-
7 bilitation plan is to work and litigation is to be
8 avoided, the rule should be the payment of total dis-
9 ability during the vocational rehabilitation period
10 with the understanding that vocational rehabilitation
11 will be pursued on substantially a full-time basis.
12 If that is not possible for unusual reasons, then
13 partial disability may be paid in appropriate cases.

14 The amendment allows an insurance carrier to pe-
15 tition the commission to reduce or eliminate a
16 worker's benefits during a period of vocational reha-
17 bilitation if there is substantial change in his med-
18 ical condition. A worker who starts rehabilitation
19 early, say within a month after surgery, may have
20 substantial change in the form of surgical healing
21 and restoration of function in a month or 2 following
22 the beginning of the rehabilitation plan but that an-
23 ticipated interference of the vocational rehabilita-
24 tion plan. If that rule were to be employed, no pru-
25 dent worker would undertake a vocational rehabilita-
26 tion plan until he had fully physically recovered.
27 In order to be fair, avoid gamesmanship, encourage
28 rehabilitation and discourage litigation, the amend-
29 ment provides that benefits may be reduced or elimi-
30 nated during a rehabilitation period only if there is
31 both a substantial and unanticipated change in the
32 employee's medical condition.

33 The amendment contains the costs of the system
34 reducing the assessment on insurers or employers and
35 self-insurers from 1% per quarter or 4% per year of
36 benefits paid to 1/4 of 1% per quarter or 1% per year
37 of benefits paid. This savings is achieved in part
38 by eliminating unnecessary rehabilitation evaluation
39 costs when the injured worker has or is likely to re-
40 turn to work with the same employer. Additional sav-

D. Or ...

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1 ings comes from focusing the subsidy provided to new
2 employers of previously injured workers to situations
3 where the new employer had knowledge of the prior
4 work injury and rehabilitation at the time of hire.

5 4161060585

6 (Sen. Gauvreau)
7 SPONSORED BY: Paul Gauvreau

8 COUNTY: Androscoggin

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