

# MAINE STATE LEGISLATURE

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L.D. 1634

(Filing No. S-247)

STATE OF MAINE  
SENATE  
112TH LEGISLATURE  
FIRST REGULAR SESSION

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

Amend the bill in section 23, in that part design-  
ated "§57-B." by striking out all of subsection 5  
(page 20, lines 14 to 18 in L.D.) and inserting in  
its place the following:

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

Further amend the bill in section 23, in that  
part designated "§57-C." by striking out all of sub-  
section 1, (page 24, lines 6 to 9 in L.D.) and in-  
serting in its place the following:

'1. Rate of assessment. There is levied and im-  
posed an assessment on each insurer at the rate of  
1/2 of 1% of 1986 and thereafter 1/4 of 1% of its ac-  
tual paid losses during the previous calendar quar-  
ter.'

Further amend the bill in section 29, in that  
part designated "§83." in subsection 1, by adding at  
the end the following:

'F. Previous employment includes employment with  
the same employer in the same job, a modified job  
or a new job.'

Further amend the bill in section 29, in that  
part designated "§83." in subsection 2, by adding af-  
ter paragraph A the following:

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1 'B. If the parties do not agree, the commission  
2 shall, after appropriate notice and hearing, or  
3 der the implementation of a rehabilitation plan  
4 upon the petition of either of the parties, ei-  
5 ther as requested in the petition or as modified,  
6 if it finds the plan as ordered is likely to lead  
7 to suitable employment and that, in the absence  
8 of the plan, suitable employment is unlikely to  
9 be achieved and it further finds the plan is con-  
10 sistent with the purposes and requirements of  
11 this subchapter and in the employee's best inter-  
12 est.'

13 Further amend the bill in section 29, in that  
14 part designated "§83." in subsection 2, by  
15 relettering paragraphs B and C to be C and D.

16 Further amend the bill in section 29, in that  
17 part designated "§83." in subsection 2, by adding at  
18 the end the following:

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

24 Further amend the bill in section 37, in the last  
25 2 lines (page 47, lines 30 and 31 in L.D.) by insert-  
26 ing after the underlined word "substantial" the un-  
27 derlined words 'and unanticipated'

28

STATEMENT OF FACT

29 This amendment removes the need for vocational  
30 rehabilitation study and expenditure and bureaucratic  
31 involvement when the injured worker has been or is  
32 likely to be reemployed in any suitable capacity by  
33 his employer at the time of injury.

D. O.F.R.

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

22           Section 2 of this amendment restores the concept  
23           of the Speaker's Select Committee on the essential  
24           nature of the worker's free choice of vocational re-  
25           habilitation counselor. A dictated choice of voca-  
26           tional rehabilitation counselor imposed upon the  
27           worker interferes with a worthwhile and productive  
28           relationship. Creating a special exception from the  
29           rule of worker choice of vocational rehabilitation  
30           counselor for certain large employers is clearly dis-  
31           criminatory. Large employers in fact do engage in  
32           vocational placement of injured workers by replacing  
33           them in their former jobs or placing them in modified  
34           or new jobs. This can be done and is now being done  
35           without the cost of vocational rehabilitation coun-  
36           seling or study or bureaucratic involvement.

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  
40           train someone who is totally physically disabled) re-

## SENATE AMENDMENT " F " to H.P. 1127, L.D. 1634

1 ceives only partial as opposed to total disability  
2 compensation while undertaking a vocational rehabili-  
3 tation plan. A vocational rehabilitation plan ideal-  
4 ly should be undertaken early in a secure environment  
5 with financial worries removed. Thus, if the voca-  
6 tional rehabilitation plan is to work and litigation  
7 is to be avoided, the rule should be the payment of  
8 total disability during the vocational rehabilitation  
9 period with the understanding that vocational reha-  
10 bilitation will be pursued on substantially a full-  
11 time basis. If that is not possible for unusual rea-  
12 sons, partial disability may be paid in appropriate  
13 cases.

14 Legislative Document 1634 allows an insurance  
15 carrier to petition the commission to reduce or elim-  
16 inate a worker's weekly benefits during a period of  
17 vocational rehabilitation if there is substantial  
18 change in his medical condition. An injured worker  
19 who starts rehabilitation early, say within a month  
20 after surgery, may have substantial change in the  
21 form of surgical healing and the restoration plan,  
22 but that anticipated medical improvement is not a  
23 fair basis for interference with the vocational reha-  
24 bilitation plan and the worker's support during the  
25 plan period. If that rule were to be employed, no  
26 prudent worker would undertake a vocational rehabili-  
27 tation plan until he had fully physically recovered.  
28 In order to be fair, to avoid gamesmanship, to en-  
29 courage rehabilitation and to discourage litigation,  
30 the amendment provides that benefits may be reduced  
31 or eliminated during a rehabilitation period only if  
32 there is both a substantial and unanticipated change  
33 in the employee's medical condition.

34 The amendment contains the cost of the system re-  
35 ducing the assessment on insurers or employers and  
36 self-insurers from 1% per quarter or 4% per year of  
37 benefits paid to 1/4 of 1% per quarter or 1% per year  
38 of benefits paid. This savings is achieved in part  
39 by eliminating unnecessary rehabilitation costs when  
40 the injured worker has returned or is likely to re-

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1 turn to work with the same employer. Additional sav-  
2 ings come from focusing the prior injury subsidy pro-  
3 vided to new employers of previously injured workers  
4 to situations where the new employer had knowledge of  
5 the prior work injury and rehabilitation at the time  
6 of hire.

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(Sen. Gauvreau)

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NAME:

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COUNTY: Androscoggin

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