

MAINE STATE LEGISLATURE

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O.F.R.

1 L.D. 1634
2 (Filing No. S- 257)

3 STATE OF MAINE
4 SENATE
5 112TH LEGISLATURE
6 FIRST REGULAR SESSION

7 SENATE AMENDMENT "I " 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 by inserting after section 43 the
11 following:

12 'Sec. 44. 39 MRSA §111-A, as amended by PL 1977,
13 c. 696, §408, is further amended to read:

14 §111-A. Provisional payment of certain disability
15 benefits

16 1. No delay of benefits. If an employee is due
17 benefits from an employer under an insured disability
18 plan or insured medical payments plan because of a
19 personal injury or disease, the employer shall not
20 delay or refuse payment of those benefits because the
21 employee filed a workers' compensation claim based on
22 the same personal injury or disease.

23 At the informal conference, if the employee has not
24 been paid benefits for the entire period of claimed
25 disability under this Act, the employer shall explain
26 to the commissioner when payments were commenced un-
27 der this section and, if payments have not been com-
28 enced, the justification for any delay under section
29 111-B.

30 2. Repayment. If an employee has received bene-
31 fits, as described in subsection 1, because of a per-
32 sonal injury or disease and has later prevailed on a
33 workers' compensation claim based on the same person-
34 al injury or disease, the value of all such benefits
35 may be offset by the employer or respective insurance
36 carriers against the payments of workers' compensa-

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tion benefits, and, if not offset, the employee shall repay to the employer, within 30 days of receiving the initial payment of workers' compensation benefits, the value of all the benefits received under subsection 1.

3. Failure to make repayment in timely fashion. If an employee is not paid benefits within one week of the conclusion of the informal conference and later recovers benefits under this Act, and as a result of the delay in receiving benefits the employee or his dependents suffer a loss of housing through eviction for nonpayment of rent, mortgage foreclosure or threat thereof, or similar reason; suffer loss of personal property including household goods and motor vehicles for nonpayment repossession or threat thereof, or cancellation of insurance; when such nonpayment was caused or contributed to by the failure of the employer to pay workers' compensation benefits in a timely fashion within one week of the informal conference, in addition to other benefits due under the Act, the employer shall pay the full direct and indirect financial loss suffered by the employee and his dependents as a result of the employer's failure to pay benefits within one week of the informal conference.

The commission may enforce this section and after the hearing shall issue appropriate decrees and orders. The orders shall include financial compensation for losses to date with authority to issue continuing orders with the purpose of making whole the injured worker and his family.

Further amend the bill by renumbering the sections to read consecutively.

STATEMENT OF FACT

The essential promise of the Workers' Compensa-

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1 tion Act to the injured worker was that benefits
2 would be speedy and automatically paid. Unfortunately,
3 70 years after the enactment of the Workers' Compensation
4 Act, this promise of speedy and automatic
5 payment is still often breached. Delays in contro-
6 verted cases run from a minimum of 4 or 5 months to
7 periods in excess of a year. An injured worker who
8 waits for a long period for his benefits undergoes
9 tremendous financial and human suffering. The suf-
10 fering has been such that suicide has occurred, di-
11 vorces are common, as are mortgage foreclosures and
12 personal property repossessions. The most serious
13 cases with prolonged disability are the very cases
14 which insurance companies are most likely to fully
15 controvert.

16 There is some provision in existing law, the
17 Maine Revised Statutes, Title 39, section 111-A, to
18 provide for the payment of some nonoccupational dis-
19 ability benefits while the legal squabbles go on, but
20 that obligation is also often subject to breach and
21 delay. Thus, specific provision is made in this
22 amendment that a commissioner at the informal confer-
23 ence should inquire as to payments under section
24 111-A to provide minimal relief for the injured work-
25 er and his family.

26 It should be noted that no insurer will incur any
27 liability under this amendment if the compensation
28 benefits were paid within the confines of the Early
29 Pay System, which means within a time frame of ap-
30 proximately 45 to 85 days from the date of the in-
31 jury. If benefits are not paid within that time and
32 if the injured worker or his family suffers severe
33 loss, being loss of housing, personal property or
34 medical insurance, and the injured worker ultimately
35 wins his workers' compensation case and if he had had
36 the workers' compensation benefits in a timely fash-
37 ion, the loss of housing, personal property or medi-
38 cal conditions are met, the injured worker has a
39 right to recover, in addition to his workers' compen-
40 sation benefits, for the financial damage done to him

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1 and his family by the delay in payment of benefits.

2 The ultimate purpose of this amendment is to en-
3 courage compliance by employer or insurance carriers
4 with the Early Pay System for quick and realistic
5 evaluation and payment of cases and to avoid needless
6 and unjustified controversy regarding workers' com-
7 pensation cases. These legal constroversies should
8 be avoided particularly where, due to the seriousness
9 of the injury and the long-term nature of the dis-
10 ability, the interruption in income will be so long
11 as to cause the worker and his family to lose their
12 housing, motor vehicles, personal property and medi-
13 cal coverage.

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15 (Sen. Usher)

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