

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (New Draft of H.P. 771, L.D. 1063)

3 FIRST REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 1634

9 H.P. 1127

House of Representatives, May 31, 1985

10 Reported by Representative Tammaro from the Committee on Labor and
11 printed under Joint Rule 2. Original bill sponsored by Speaker Martin of
12 Eagle Lake. Cosponsored by President Pray of Penobscot, Representative
Telow of Lewiston and Representative Gwadosky of Fairfield.

EDWIN H. PERT, Clerk

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-FIVE
18

19 AN ACT to Improve the Workers' Compensation
20 System and Reform the Rate-making Process.
21

22 **Emergency preamble.** Whereas, Acts of the Legis-
23 lature do not become effective until 90 days after
24 adjournment unless enacted as emergencies; and

25 Whereas, the State has recognized the public ben-
26 efit resulting from requiring employers within the
27 State to provide compensation for their employees'
28 work-related injuries but the costs to Maine employ-
29 ers for providing that compensation have become pro-
30 hibitively high, discouraging investment in Maine
31 businesses and the location of new business in the
32 State; and

33 Whereas, the prompt restriction of rising work-
34 ers' compensation costs to employers in the State is

1 necessary to maintain the competitiveness of Maine
2 business and industry and to thereby preserve jobs
3 and stimulate the creation of new employment opportu-
4 nities in the State; and

5 Whereas, the State has a high rate of occupation-
6 al injury and disability and there is an immediate
7 need for comprehensive programs to provide for
8 greater safety education and training and for low in-
9 terest loans to business to improve safety and pro-
10 mote healthful working conditions in Maine's factor-
11 ies, workshops and workplaces; and

12 Whereas, the Legislature recognizes that one of
13 the primary purposes of workers' compensation should
14 be to restore the injured worker to good health and
15 gainful employment, and the Legislature further rec-
16 ognizes that the State's present workers' compensa-
17 tion rehabilitation system is inadequate and requires
18 substantial and time-consuming revisions; and

19 Whereas, in the judgment of the Legislature,
20 these facts create an emergency within the meaning of
21 the Constitution of Maine and require the following
22 legislation as immediately necessary for the preser-
23 vation of the public peace, health and safety; now,
24 therefore,

25 Be it enacted by the People of the State of Maine as
26 follows:

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

30 7. Range 83. The salaries of the following
31 state officials and employees shall be within salary
32 range 83:

33 A. Rehabilitation Administrator, Office of Em-
34 ployment Rehabilitation.

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

36 §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-§8, ¶A, sub-¶(26) is
10 enacted to read:

11 (26) Labor Occupational Safety Expenses 26 MRSA §63
12 Loan Review Panel Only

13 Sec. 4. 5 MRSA §12004, sub-§10, ¶A, sub-¶¶ (79)
14 and (80) are enacted to read:

15 (79) Workers' Apportionment Expenses 39 MRSA §57-B
16 Compen- Review Panel only
17 sation

18 (80) Workers' Employment Expenses 39 MRSA §88
19 Compen- Rehabilita- only
20 sation tion Adviso-
21 ry Board

22 Sec. 5. 26 MRSA §1, sub-§§1-A and 2-A are en-
23 acted to read:

24 1-A. Loan fund. "Loan fund" means the Occupa-
25 tional Safety Loan Fund.

26 2-A. Safety fund. "Safety fund" means the Safe-
27 ty Education and Training Fund.

28 Sec. 6. 26 MRSA §42-A is enacted to read:

29 §42-A. Safety education and training programs

30 1. Department to establish programs. The de-
31 partment shall establish and supervise programs for
32 the education and training of employers, owners, em-
33 ployees, educators and students in the recognition,
34 avoidance and prevention of unsafe or unhealthful
35 working conditions in employment. The department

1 shall consult with and advise employers, owners, em-
2 ployees and organizations representing employers,
3 owners and employees as to effective means of pre-
4 venting occupational injuries and illnesses.

5 2. Safety education and training program func-
6 tions. The functions of the safety education and
7 training program shall include:

8 A. The development and application of a state-
9 wide safety education and training program to fa-
10 miliarize employers, supervisors, employees and
11 union leaders with techniques of accident inves-
12 tigation and prevention;

13 B. The development and utilization of consulta-
14 tive educational techniques to achieve long-range
15 solutions to occupational safety and health prob-
16 lems;

17 C. The acquisition, development and distribution
18 of occupational safety and health pamphlets,
19 booklets, brochures and other appropriate safety
20 and health media as may be useful to accomplish
21 the objectives of this section;

22 D. The development and administration of a pro-
23 gram for employers, with special emphasis on
24 small business employers, providing technical and
25 educational assistance on matters of occupational
26 safety and health;

27 E. The development and implementation of a
28 training and education program for department
29 staff engaged in the administration and enforce-
30 ment of this section; and

31 F. The conduct of other activities as necessary
32 for the implementation of an effective safety ed-
33 ucation and training program.

34 3. Programs provided upon request. The depart-
35 ment shall provide safety training programs, upon re-
36 quest, for employees and employers. Priority for the
37 development of safety training programs shall be in
38 those occupations which pose the greatest hazard to
39 the safety and health of employees.

1 and the balance of the safety fund as of June 30th of
2 each year.

3 2. Source of funds. The commissioner shall an-
4 nually assess a levy based on the total actual annual
5 workers' compensation paid losses, excluding medical
6 payments, paid in the previous calendar year by em-
7 ployers under Title 39, the Workers' Compensation
8 Act. As soon as practicable after July 1, 1985, the
9 commissioner shall assess upon and collect from each
10 insurance carrier licensed to do workers' compensa-
11 tion business in the State, and from each
12 self-insured employer authorized to make workers'
13 compensation payments directly to their employees, an
14 amount equal to 1/4 of 1% of the total workers' com-
15 ensation benefits, exclusive of medical payments,
16 paid by the insurance carrier or self-insured employ-
17 er during the previous calendar year. As soon as
18 practicable after July 1, 1986, and each year there-
19 after, the commissioner shall assess upon and collect
20 from each carrier and self-insured employer a sum
21 equal to that proportion of the current fiscal year's
22 appropriation, exclusive of any federal funds, for
23 the safety education and training division which the
24 total workers' compensation benefits, exclusive of
25 medical payments, paid by each carrier or each
26 self-insured employer, bears to the total of the ben-
27 efits paid by all carriers and self-insured employ-
28 ers, during the previous calendar year, except that
29 the total amount levied annually may not exceed 1/4
30 of 1% of the total of the compensation benefits paid
31 by all carriers and self-insured employers during the
32 previous calendar year.

33 3. Notice of assessments. The Commissioner of
34 Labor shall send notice of the assessments by certi-
35 fied mail to each carrier and self-insured employer.
36 Payment of assessments shall be received in the prin-
37 cipal office of the Department of Labor before a date
38 specified in the notice, but not more than 90 days
39 after the date of the mailing.

40 4. Assessments constitute element of loss. The
41 levy assessment shall constitute an element of loss
42 for the purpose of establishing rates for workers'
43 compensation insurance. Funds derived from this levy
44 shall be deposited in the safety fund and shall be

1 appropriated by the Legislature for the operation of
2 this division.

3 §62. Occupational Safety Loan Fund

4 1. Establishment of fund. There is established
5 in the State Treasury a special fund known as the Oc-
6 cupational Safety Loan Fund, for the sole purpose of
7 making loans in accordance with section 63, and of
8 providing funds for the administration of that sec-
9 tion. The loan fund shall be administered by the
10 commissioner. The department shall have authority
11 over the loan fund and may do all things necessary or
12 convenient in the administration of the loan fund and
13 shall formulate and adopt rules pursuant to the Maine
14 Administrative Procedure Act, Title 5, chapter 375,
15 governing the administration, maintenance, loan dis-
16 bursements and loan repayments and collections of the
17 loan fund, and perform all other functions which the
18 laws of this State specifically authorize or which
19 are necessary or appropriate. All money and securi-
20 ties in the loan fund shall be held in trust by the
21 Treasurer of State for the purposes of the loan pro-
22 gram established under section 63 and shall not be
23 money or property for the general use of the State.
24 The Treasurer of State shall invest the money of the
25 fund in accordance with law. The fund shall not
26 lapse.

27 2. Loans from fund. The loan fund is authorized
28 to make loans in accordance with section 63.

29 3. Source of fund. The loan fund shall be es-
30 ablished and maintained by funds received from the
31 following:

32 A. Repayments of loans made by the loan fund and
33 accrued interest on those loans;

34 B. Interest, income and dividends from invest-
35 ments made by the Treasurer of State under sub-
36 section 1; and

37 C. Payments pursuant to subparagraph (1).

38 (1) The commissioner shall assess a levy
39 based on the total actual workers' compen-

1 sation premiums paid in 1984 by employers
2 under Title 39, the Workers' Compensation
3 Act. As soon as practicable after July 1,
4 1985, the commissioner shall assess upon and
5 collect from each insurance carrier licensed
6 to do workers' compensation business in the
7 State an amount equal to 1/2 of 1% of the
8 total workers' compensation insurance premi-
9 ums paid to that insurance carrier during
10 1984 by employers in the State. The levy
11 assessment shall constitute an element of
12 loss for the purpose of establishing rates
13 for workers' compensation insurance.

14 (a) The Commissioner of Labor shall
15 send notice of the assessments by cer-
16 tified mail to each carrier and
17 self-insured employer. Payment of as-
18 sessments must be received in the prin-
19 cipal office of the Department of Labor
20 before a date specified in the notice,
21 but not more than 90 days after the
22 date of the mailing.

23 §63. Occupational safety loans

24 The department may administer a statewide program
25 to make low interest loans to improve safety and pro-
26 mote healthful working conditions in factories, work-
27 shops and workplaces in this State. This program
28 shall be known as the Occupational Safety Loan Pro-
29 gram.

30 1. Loan criteria. The department shall promul-
31 gate rules to implement the Occupational Safety Loan
32 Program which shall include, but not be limited to,
33 the following loan criteria:

34 A. The purpose of the loan shall be to improve,
35 install or erect equipment which reduces hazards
36 to and promotes the health and safety of workers;

37 B. No more than a total of \$350,000 may be
38 loaned from the fund in each fiscal year;

39 C. No loan may be made in an amount in excess of
40 \$15,000 to any single applicant, nor at a fixed

1 interest rate in excess of a rate equal to 2 per-
2 centage points below the prime rate in effect in
3 the Boston metropolitan area;

4 D. A majority vote of the loan review panel
5 shall be necessary to recommend approval of a
6 loan which shall then be transmitted to the de-
7 partment for final disposition in accordance with
8 the policies adopted by the department;

9 E. Loan applications shall be reviewed by both
10 the loan review panel and the department for fea-
11 sibility, such as, for the general reasonableness
12 and safety need for the proposal, whether the ap-
13 plicant has sufficient capital, whether an ade-
14 quate safety analysis or other counseling re-
15 quirement has been completed, whether the appli-
16 cant is credit worthy within the scope of this
17 program and whether the collateral offered to se-
18 cure the loan is adequate;

19 F. Loans are not insured or guaranteed by the
20 State, but the department shall require collater-
21 al in the form of security for the loan, if
22 available, and may, in appropriate cases, take a
23 mortgage on real estate;

24 G. Loan applications shall be on forms and ac-
25 companied by additional information as required
26 by the department. Loan applicants may be re-
27 quired to submit whatever personal or business
28 related financial information as may be necessary
29 to determine eligibility for the Occupational
30 Safety Loan Program; and

31 H. Loans shall not be approved without a prior
32 safety inspection by the division of industrial
33 safety and a recommendation by the division for
34 the installation of the safety device.

35 2. Loan review panel. The Occupational Safety
36 Loan Review Panel as established by Title 5, section
37 12004, subsection 8, shall consist of 6 members of
38 which 5 shall be appointed by the Governor. Of the
39 5 appointed members of the panel, one shall represent
40 employers; one shall represent employees; one shall
41 represent an insurance company licensed to insure

1 workers' compensation within the State; and 2 shall
2 represent the public. The 6th member of the board
3 shall be the commissioner. The term of office for
4 the appointed members shall be 4 years. In the first
5 appointment, 2 shall be appointed for a term of 2
6 years, 2 shall be appointed for a term of 3 years and
7 one shall be appointed for a term of 4 years. The
8 chairman shall be elected biennially by the members
9 of the board. Each member shall hold office until
10 his successor is duly appointed and qualified.

11 In case of a vacancy in board membership, the Gover-
12 nor shall appoint a member of the proper classifica-
13 tion to fill the unexpired term of the absent member.

14 The board shall meet at least twice yearly at the
15 State Capitol or any other place designated by the
16 chairman.

17 The 5 appointed members of the board shall be compen-
18 sated according to Title 5, chapter 379. The chair-
19 man of the board shall approve and countersign all
20 vouchers for expenditures under this section.

21 3. Administration. The department may contract
22 with the Finance Authority of Maine to assist in the
23 administration of the program, with compensation to
24 the Finance Authority of Maine to be paid out of
25 amounts in the loan fund.

26 §64. Coverage

27 1. Application of chapter. This chapter applies
28 to all employers, employees and places of employment
29 in the State except employees of the Federal Govern-
30 ment.

31 2. Construction. Nothing in this chapter may be
32 construed to supersede or in any manner affect any
33 workers' compensation law or to enlarge, diminish or
34 affect in any manner common law or statutory rights,
35 duties or liabilities of employers or employees under
36 any law with respect to injuries, diseases or death
37 of employees arising out of and in the course of em-
38 ployment.

39 Sec. 8. 39 MRSA §2, sub-§10, as enacted by PL
40 1975, c. 701, section 23-A, is amended to read:

1 10. Dependent of another person. For purposes of
2 the payment or the termination of compensation ~~pursu-~~
3 ~~ant te~~ under section 58 58-A, a widow or widower of a
4 deceased employee shall be the dependent of another
5 person when over half of his or her support during a
6 calendar year was provided by the other person.

7 Sec. 9. 39 MRSA §51-B, sub-§3, as amended by PL
8 1983, c. 682, §1, is further amended to read:

9 3. Compensation for incapacity. The first pay-
10 ment of compensation for incapacity under section 54
11 54-A or 55 55-A is due and payable within 14 days af-
12 ter the employer has notice or knowledge of the in-
13 jury or death. In cases where the employee did not
14 lose time from work within 5 scheduled work days fol-
15 lowing the injury, compensation for incapacity under
16 section 54 54-A or 55 55-A is due and payable within
17 14 days of the date the employee asserts to the em-
18 ployer that that lost time is related to the injury.
19 Subsequent incapacity compensation benefit payments
20 shall be made weekly and in a timely fashion.

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

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

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

40 Sec. 11. 39 MRSA §52, 6th ¶, as amended by PL
41 1977, c. 278, §1, is repealed.

1 Sec. 12. 39 MRSA §52, sub-§§1 and 2 are re-
2 pealed.

3 Sec. 13. 39 MRSA §52, sub-§3, as amended by PL
4 1977, c. 696, §405, is repealed.

5 Sec. 14. 39 MRSA §52, 7th ¶, as amended by PL
6 1977, c. 278, §2, is further amended to read:

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

15 Sec. 15. 39 MRSA §53-A is enacted to read:

16 §53-A. Maximum benefit levels

17 The maximum weekly benefit payable under section
18 54-A, 55-A or 58-A is \$447.92. Beginning on July 1,
19 1988, this maximum benefit level shall be adjusted
20 annually so that it continues to bear the same per-
21 centage relationship to the state average weekly
22 wage, as computed by the Employment Security Commis-
23 sion, as it did on July 1, 1987.

24 Sec. 16. 39 MRSA §54, as amended by PL 1983, c.
25 479, §8, is repealed.

26 Sec. 17. 39 MRSA §54-A is enacted to read:

27 §54-A. Compensation for total incapacity

28 While the incapacity for work resulting from the
29 injury is total, the employer shall pay the injured
30 employee a weekly compensation equal to 2/3 his aver-
31 age gross weekly wages, earnings or salary, but not
32 more than the maximum benefit under section 53-A, nor
33 less than \$25 weekly. This weekly compensation shall
34 be adjusted annually so that it continues to bear the
35 same percentage relationship to the state average
36 weekly wage, as computed by the Employment Security
37 Commission, as it did at the time of the injury, but

1 in no case shall the annual adjustment exceed the
2 lesser of 5% or the actual percentage increase in the
3 state average weekly wage for the previous year.

4 In the following cases it shall, for the purpose
5 of this Act, be conclusively presumed that the injury
6 resulted in permanent total incapacity: The total and
7 irrevocable loss of sight of both eyes; the loss of
8 both hands at or above the wrist; the loss of both
9 feet at or above the ankle; the loss of one hand and
10 one foot; an injury to the spine resulting in perma-
11 nent and complete paralysis of the arms or legs; or
12 an injury to the skull resulting in incurable
13 inbecility or insanity. In the event of such perma-
14 nent total incapacity, the employer shall pay the em-
15 ployee a weekly compensation equal to 2/3 his average
16 gross weekly wages, earnings or salary, but not more
17 than the maximum benefit under section 53-A, nor less
18 than \$25 weekly. This weekly compensation shall be
19 adjusted annually so that it continues to bear the
20 same percentage relationship to the state average
21 weekly wage, as computed by the Employment Security
22 Commission, as it did at the time of the injury, but
23 in no case shall the annual adjustment exceed the
24 lesser of 5% or the actual percentage increase in the
25 state average weekly wage for the previous year. If
26 the totally incapacitated employee dies, as a result
27 of this injury, leaving dependents who were dependent
28 upon his earnings at the time of his injury, then
29 payments shall be made to the dependents in accord-
30 ance with section 58-A.

31 The annual adjustment required by this section
32 shall be made on the anniversary date of the injury,
33 except that where the effect of the maximum under
34 section 53-A is to reduce the amount of compensation
35 to which the claimant would otherwise be entitled,
36 the adjustment shall be made annually on July 1st.

37 1. Sheltered workshops. The \$25 weekly minimum
38 compensation limitation under this section does not
39 apply to a handicapped individual who is employed by
40 a sheltered workshop, as that term is defined in Ti-
41 tle 5, section 1816, subsection 11, paragraph A, sub-
42 paragraph (2), and who claims compensation under this
43 section.

1 Sec. 18. 39 MRSA §55, as amended by PL 1983, c.
2 479, §9, is repealed.

3 Sec. 19. 39 MRSA §55-A is enacted to read:

4 §55-A. Compensation for partial incapacity

5 While the incapacity for work resulting from the
6 injury is partial, the employer shall pay the injured
7 employee a weekly compensation equal to 2/3 the dif-
8 ference, due to the injury, between his average gross
9 weekly wages, earnings or salary before the injury
10 and the weekly wages, earnings or salary which he is
11 able to earn after the injury, but not more than the
12 maximum benefit under section 53-A. This weekly com-
13 pensation shall be adjusted annually so that it con-
14 tinues to bear the same percentage relationship to
15 the state average weekly wage, as computed by the Em-
16 ployment Security Commission, as it did at the time
17 of the injury, but in no case shall the annual ad-
18 justment exceed the lesser of 5% or the actual per-
19 centage increase in the state average weekly wage for
20 the previous year. The annual adjustment required by
21 this section shall be made on the anniversary date of
22 the injury, except that where the effect of the maxi-
23 mum under section 53-A is to reduce the amount of
24 compensation to which the claimant would otherwise be
25 entitled, the adjustment shall be made annually on
26 July 1st.

27 Sec. 20. 39 MRSA §56, as amended by PL 1979, c.
28 541, Pt. A, §§279 and 280, is further amended to
29 read:

30 §56. Compensation for particular injuries; permanent
31 impairment

32 In addition to the benefits provided for in sec-
33 tions 54 and 55 54-A and 55-A, when an employee sus-
34 tains an injury which is included in the following
35 schedule, the incapacity in each case shall be deemed
36 to be total for the period specified and the injured
37 employee shall receive a lump sum payment for said
38 that injury which shall be determined by multiplying
39 the an amount to which he would be entitled weekly
40 for total incapacity as determined under section 54,
41 equal to 2/3 of the state average weekly wage as com-

1 puted by the Employment Security Commission by the
2 period of presumed total incapacity set forth in this
3 section. The specific periods of presumed total in-
4 capacity because of injuries specified in this sec-
5 tion shall be are as follows:

6 For the loss of a thumb, 50 weeks.

7 For the loss of the first finger, commonly called
8 the index finger, 32 weeks.

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

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

13 For the loss of the 4th finger, commonly called
14 the little finger, 17 weeks.

15 The loss of the distal (second) phalanx of the
16 thumb or the distal (third) phalanx of any finger
17 shall be considered to be equal to the loss of
18 1/2 of said thumb or finger, and the compensation
19 therefor shall be 1/2 the amount above specified.
20 The loss of more than one phalanx shall be con-
21 sidered as the loss of the entire thumb or fin-
22 ger. In no case shall the amount received for the
23 loss of a thumb and more than one finger of the
24 same hand exceed the amount specified in this
25 schedule for the loss of a hand.

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

27 For the loss of one of the toes other than the
28 great toe, 10 weeks.

29 For the loss of the distal (second) phalanx of
30 the great toe or of the distal (third) phalanx of
31 any other toe shall be considered to be equal to
32 the loss of 1/2 of said great toe or any other
33 toe, and the compensation therefor shall be 1/2
34 the amount above specified. The loss of more than
35 one phalanx shall be considered as the loss of
36 the entire toe.

37 For the loss of a hand, 165 weeks.

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

3 For the loss of a foot, 165 weeks.

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

6 For the loss of an eye, or the reduction of the
7 sight of an eye, with glasses, to 1/10 of the
8 normal vision, or for diplopia, 100 weeks.

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

12 For the total and permanent loss of hearing in
13 one ear, 50 weeks.

14 For the total and permanent loss of hearing in
15 both ears, 200 weeks.

16 In all other cases of injury to the above-
17 mentioned members, eyes or hearing where the useful-
18 ness of any physical function thereof is permanently
19 impaired, the specific compensable periods for pre-
20 sumed total incapacity on account ~~thereof~~ of the
21 injury shall bear ~~such the same~~ relation to the peri-
22 ods ~~above~~ specified above as the percentage of perma-
23 nent impairment due to the injury to such members,
24 eyes or hearing ~~shall bear~~ bears to the total loss
25 thereof. The commission upon petition ~~therefor~~ by ei-
26 ther party shall determine ~~such~~ this percentage. A
27 petition for determination of the percentage of per-
28 manent hearing impairment due to an injury shall be
29 filed with the commission within 2 years from the
30 date of the injury.

31 The commission may award proper and equitable
32 compensation for serious facial or head disfigurement
33 not to exceed \$7,500 2/3 of the state average weekly
34 wage, as computed by the Employment Security Commis-
35 sion, multiplied by 50, including a disfigurement
36 continuous in length which is partially in the facial
37 area and also extends into the neck region. The com-
38 mission, if in its opinion the earning capacity of an
39 employee has been or may in the future be impaired,

1 may award compensation for any serious disfigurement
2 in the region above the sterno clavicular articula-
3 tions anterior to and including the region of the
4 sterno cleido mastoid muscles on either side, but no
5 award for the total disfigurement as set forth shall,
6 in the aggregate, exceed $\$7,500 \frac{2}{3}$ of the state av-
7 erage weekly wage, as computed by the Employment Se-
8 curity Commission, multiplied by 50. Notwithstanding
9 any other provision hereof, 2 or more serious
10 disfigurements, not continuous in length, resulting
11 from the same injury, if partially in the facial area
12 and partially in the neck region as described in the
13 preceding sentence, shall be deemed to be a facial
14 disfigurement.

15 Sec. 21. 39 MRSA §56-A, as amended by PL 1973,
16 c. 392, §2, is further amended to read:

17 §56-A. -- Injuries

18 In addition to the benefits provided for in sec-
19 tions ~~54 and 55~~ 54-A and 55-A, when an employee sus-
20 tains an injury which is included in the following
21 schedule, the incapacity in each case shall be deemed
22 to be total for the period specified and the injured
23 employee shall receive a lump sum payment for ~~said~~
24 that injury which shall be determined by multiplying
25 ~~the an amount to which he would be entitled weekly~~
26 ~~for total incapacity as determined under section 54,~~
27 equal to $\frac{2}{3}$ of state average weekly wage as computed
28 by the Employment Security Commission by the period
29 of presumed total incapacity set forth in this sec-
30 tion. The specific periods of presumed total incapac-
31 ity because of injuries specified in this section
32 shall be are as follows:

33 Total loss of function of
34 Neck: 100 weeks
35 Back: 200 weeks
36 Jaw: 40 weeks
37 Genito-urinary organs: 100 weeks

1 In all other cases of injury to the above-
2 mentioned parts of the body where the usefulness of
3 any physical function thereof is permanently im-
4 paired, the specific compensable periods for presumed
5 total incapacity on account ~~thereof~~ of the injury
6 shall bear ~~such~~ the same relation to the periods
7 ~~above~~ specified above as the percentage of permanent
8 impairment due to the injury to such parts of the
9 body ~~shall bear~~ bears to the total loss thereof. The
10 commission upon petition ~~therefor~~ by either party
11 shall determine ~~such~~ this percentage.

12 ~~Such~~ The determination by the commission ~~shall~~
13 must be based upon reasonably demonstrable medical or
14 clinical findings.

15 Sec. 22. 39 MRSA §57, sub-§8 is enacted to read:

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

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

22 §57-B. Employment Rehabilitation Fund

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

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

32 B. The Governor shall select one member to serve
33 as chairman.

34 C. Members shall serve without compensation, ex-
35 cept for reimbursement for travel and actual ex-
36 penses necessarily incurred in performance of
37 their duties.

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

4 E. The panel's recommendation shall be by major-
5 ity vote.

6 2. Payment for certain injuries. If an employee
7 who has completed an approved rehabilitation program
8 under section 83, subsequently sustains a personal
9 injury arising out of and in the course of employment
10 and that injury, in combination with the prior in-
11 jury, results in a reduction in earning capacity
12 which is substantially greater in duration or degree,
13 or both, than that which would have resulted from the
14 subsequent injury alone, taking into account the age,
15 education, employment opportunities and other factors
16 related to the employee, the employer at the time of
17 the subsequent injury is entitled to reimbursement
18 from the Employment Rehabilitation Fund as provided
19 in this section. An employer is not entitled to re-
20 imbursement from the fund in the event of subsequent
21 injury if an injured employee returns to his
22 preinjury job with the same employer without the pro-
23 vision of significant rehabilitation services or sig-
24 nificant modification of the workplace.

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

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

36 B. A commissioner shall order a reduction, sus-
37 pension or termination of reimbursement of an em-
38 ployer under this section if the commissioner
39 finds that the employer has not made a bona fide
40 effort to return the employee to continuing gain-
41 ful employment.

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

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

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

19 6. Hiring incentive; wage credit. If an employ-
20 er hires an employee after the employee has completed
21 an approved rehabilitation program under section 83,
22 that subsequent employer may apply for a wage credit
23 under this subsection. For the purposes of this sub-
24 section, the term "employer" does not include the in-
25 surer of a subsequent employer or the same employer
26 for whom an employee worked when he sustained the in-
27 jury for which he received rehabilitation.

28 A. The subsequent employer shall file an appli-
29 cation for a wage credit by providing the admin-
30 istrator, within 2 weeks after the close of the
31 first 90 days of employment of the employee, with
32 a statement of the total direct wages, earnings
33 or salary he paid to the employee for the first
34 90 days of employment along with such verifica-
35 tion as may be required by rule of the commis-
36 sion. Within 2 weeks after the close of the
37 first 180 days of employment, the subsequent em-
38 ployer shall provide to the administrator a sup-
39 plemental report of the direct wages, earnings
40 and salary for the 2nd 90-day period, along with
41 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 most recent 60-day period in which he
12 did receive benefits preceding his hiring by the
13 employer.

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

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

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

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

1 E. Wage credits shall apply to trial work peri-
2 ods with a subsequent employer under a rehabili-
3 tation plan.

4 (1) Total wage credit payments under a plan
5 may not exceed a period of 180 days, not in-
6 cluding periods subject to refunds under
7 paragraph C.

8 (2) The commission shall inform subsequent
9 employers of the number of days of wage
10 credits available, if it is less than 180
11 days.

12 F. Wage credit payments shall not be dependent
13 on the receipt by the fund of payments from an
14 insurer or self-insurer.

15 7. Jurisdiction. The commission has jurisdic-
16 tion over all claims brought against the Employment
17 Rehabilitation Fund.

18 A. The fund shall not be bound as to any ques-
19 tion of law or fact by reason of any award or any
20 adjudication to which it was not a party or in
21 relation to which it was not notified, at least
22 21 days prior to the award or adjudication, that
23 it might be subject to liability for the injury
24 or death.

25 B. An employer shall notify the commission of
26 any possible claim for subsequent injury reim-
27 bursement against the Employment Rehabilitation
28 Fund as soon as practicable, but in no event la-
29 ter than one year after the injury or death.
30 Failure to provide timely notice shall bar the
31 claim.

32 8. Legal representation. The Attorney General
33 shall provide legal representation for any claim made
34 under this section.

35 A. The reasonable expense of prosecution or de-
36 fense by the Attorney General of claims against
37 the Employment Rehabilitation Fund shall, subject
38 to the approval of the commission, be payable out
39 of the Employment Rehabilitation Fund.

1 B. The Attorney General shall not defend the Em-
2 ployment Rehabilitation Fund against any claim
3 brought by the State. The commission may hire,
4 using money from the Employment Rehabilitation
5 Fund, private counsel for this purpose.

6 9. Effect on obligations of prior employ-
7 ers. The availability of reimbursement under this
8 section does not limit or reduce the obligation of
9 any previous employer to provide benefits under this
10 Act to the employee.

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

23 The Treasurer of State may disburse money from the
24 fund only upon written order of the chairman of the
25 commission. The Treasurer of State shall invest the
26 money of the fund in accordance with law. Interest,
27 income and dividends from the investments shall be
28 credited to the fund.

29 11. Freedom from liability. The State is not
30 liable for any claim against the Employment Rehabili-
31 tation Fund that is in excess of the fund's current
32 ability to pay. If any employer's claim against the
33 fund is denied due to an inadequate fund balance,
34 that employer's claim is entitled to priority over
35 later claims when an adequate balance is restored.

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

39 13. Applicability. Reimbursement under this
40 section is available solely with respect to employees
41 who are injured and rehabilitated after the effective

1 date of this section. If reimbursement is available
2 from the Employment Rehabilitation Fund under this
3 section, reimbursement shall not be available from
4 the Second Injury Fund under section 57.

5 §57-C. Assessment

6 1. Rate of assessment. There is levied and im-
7 posed an assessment on each insurer at the rate of
8 1/2% in 1986, and 1% thereafter, of its actual paid
9 losses during the previous calendar quarter.

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

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

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

23 B. If so notified, the State Tax Assessor shall
24 immediately notify each insurer that the assess-
25 ment is waived for that quarter.

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

38 5. Appropriation of money received. The State
39 Tax Assessor shall pay all receipts from that assess-

1 ment to the Treasurer of State daily. The Treasurer
2 of State shall deposit all receipts as received in
3 the Employment Rehabilitation Fund.

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

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

10 B. Notwithstanding any other provision of law,
11 inspect any records or reports filed by an insurer
12 with the Superintendent of Insurance; and

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

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

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

30 Sec. 24. 39 MRSA §58, as amended by PL 1983, c.
31 479, §10, is repealed.

32 Sec. 25. 39 MRSA §58-A is enacted to read:

33 §58-A. Death benefits; apportionment

34 If death results from the injury, the employer
35 shall pay the dependents of the employee, dependent
36 upon his earnings for support at the time of his in-
37 jury, a weekly payment equal to 2/3 his average gross

1 weekly wages, earnings or salary, but not more than
2 the maximum benefit under section 53-A, nor less than
3 \$25 weekly from the date of death until the time pro-
4 vided for in subsection 2. This weekly compensation
5 shall be adjusted annually so that it continues to
6 bear the same percentage relationship to the State
7 average weekly wage, as computed by the Employment
8 Security Commission, as it did at the time of the in-
9 jury, but in no case may the annual adjustment exceed
10 the lesser of 5% or the actual percentage increase in
11 the State average weekly wage for the previous year.
12 The annual adjustment required by this section shall
13 be made on the anniversary date of the injury, except
14 that, where the effect of the maximum under section
15 53-A is to reduce the amount of compensation to which
16 the claimant would otherwise be entitled, the adjust-
17 ment shall be made annually on July 1st.

18 1. Sheltered workshops. The \$25 weekly minimum
19 compensation limitation under this section does not
20 apply to a handicapped individual who is employed by
21 a sheltered workshop, as that term is defined in Ti-
22 tle 5, section 1816, subsection 11, paragraph A, sub-
23 paragraph (2), and who claims compensation under this
24 section.

25 2. Determination of recipients. If the depen-
26 dent of the employee to whom compensation will be
27 payable upon his death is the widow of the employee,
28 upon her death or at the time she becomes a dependent
29 of another person, compensation to her shall cease
30 and the compensation which would otherwise have been
31 payable to her shall be paid to the child or chil-
32 dren, if any, of the deceased employee, including
33 adopted and step-children under the age of 18 years,
34 or over that age but physically or mentally incapac-
35 itated from earning, who are dependent upon the widow
36 at the time of her death or dependency. If the de-
37 pendent is a widower, upon his death or at the time
38 he becomes a dependent of another person, the remain-
39 der of the compensation which would otherwise have
40 been payable to him shall be payable to the children
41 specified in this subsection, if any, who are depen-
42 dent upon him at the time of his death or dependency.
43 If there is more than one dependent child, the com-
44 pensation shall be divided equally among them. Ex-
45 cept in the case of dependents who are physically or

1 mentally incapacitated from earning, compensation
2 payable to any dependent child under the age of 18
3 years shall cease upon that child's reaching the age
4 of 18 years or upon marriage.

5 3. Partial dependency. If the employee leaves
6 dependents only partly dependent upon his earnings
7 for support at the time of his injury, the employer
8 shall pay those dependents a weekly compensation
9 equal to the same proportion of the weekly payments
10 provided in this section for the benefit of dependent
11 persons, as the total amount contributed by the em-
12 ployee to those partial dependents for their support
13 during the year before his injury bears to the earn-
14 ings of the employee during that period.

15 Sec. 26. 39 MRSA §62-B is enacted to read:

16 §62-B. Coordination of benefits

17 1. Application. This section applies when weekly
18 compensation is payable to an employee under sec-
19 tion 54-A or 55-A for any period for which he is re-
20 ceiving or has received old age insurance benefit
21 payments under the United State Social Security Act,
22 United States Code, Title 42, Sections 301 to 1397f,
23 or payments under an employee benefit plan.

24 2. Definitions. As used in this section, unless
25 the context otherwise indicates, the following terms
26 have the following meanings.

27 A. "After tax amount" means the gross weekly
28 amount of any old age insurance benefit or bene-
29 fit under an employee benefit plan, reduced by
30 the prorated weekly amount which would have been
31 paid, if any, in social security, federal income
32 and state income taxes, calculated on an annual
33 basis. The after tax amount of any benefits sub-
34 ject to income taxes shall be determined by using
35 the maximum number of dependents' allowances to
36 which the employee is entitled and the standard
37 deduction or zero bracket amount applicable to
38 the employee's filing status. The chairman of
39 the commission shall, by rule, adopt and publish
40 tables governing the determination of after tax
41 amounts under this subsection.

1 B. "Employee benefit plan" means a self-
2 insurance disability plan, wage continuation
3 plan, disability insurance plan and a pension or
4 retirement plan which is funded or paid for by
5 the employer in whole or in part. It does not
6 include disability insurance under the United
7 States Social Security Act.

8 3. Coordination of benefits. Benefit payments
9 subject to this section shall be reduced in accord-
10 ance with the following provisions.

11 A. The employer's obligation to pay weekly com-
12 penensation under section 54-A or 55-A shall be re-
13 duced by:

14 (1) Fifty percent of the amount of old age
15 insurance benefits received or being re-
16 ceived under the United States Social Secu-
17 rity Act;

18 (2) The after tax amount of the payments
19 received or being received under an employee
20 benefit plan provided by the same employer
21 by whom benefits under section 54-A or 55-A
22 are payable if the employee did not contrib-
23 ute directly to the plan; and

24 (3) The proportional amount, based upon the
25 ratio of the employer's contributions to the
26 total contributions, of the after tax amount
27 of the payments received or being received
28 by the employee under an employee benefit
29 plan provided by the same employer by whom
30 benefits under section 54-A or 55-A are pay-
31 able if the employee did contribute directly
32 to the plan.

33 B. No reduction in weekly compensation may be
34 made if benefits received under an employee bene-
35 fit plan are required to be reduced to reflect
36 the receipt of benefits under this Act.

37 C. No reduction in weekly compensation may be
38 made as a result of any increase granted by the
39 United States Social Security Administration as a
40 cost-of-living adjustment.

1 D. Weekly compensation may be reduced to no less
2 than 10% of the amount due to the employee under
3 section 54-A or 55-A or to a minimum weekly pay-
4 ment of \$7 after reduction under this section,
5 whichever is greater.

6 4. Release of information. Within 14 days after
7 the date of the first payment of compensation under
8 section 54-A or 55-A or 14 days after the date of ap-
9 plication for any benefits subject to coordination
10 under this section, whichever is later, the employee
11 shall, upon request, provide the employer with a cer-
12 tificate authorizing the employer to obtain any bene-
13 fit information necessary to comply with this sec-
14 tion. If, at any subsequent time, the employer is
15 required to submit a new certificate in order to re-
16 ceive that information, a new certificate shall be
17 provided upon request within 14 days. All certifi-
18 cates for the release of information shall be in a
19 form prescribed by the commission. If the employee
20 fails to provide a properly executed certificate, the
21 employer may, with the approval of the commission,
22 suspend all benefit payments until the certificate is
23 provided. Any benefits so withheld shall be paid to
24 the employee once the required certificate is pro-
25 vided, subject to any reductions authorized by this
26 section.

27 5. Reports. Any employer making a reduction under
28 this section shall immediately report to the com-
29 mission the amount of the reduction to be taken and,
30 as required by the commission, furnish satisfactory
31 proof of the basis for the reduction.

32 Sec. 27. 39 MRSA §66-A, 6th ¶, as enacted by PL
33 1981, c. 474, §3, is amended to read:

34 If any injured employee refuses to accept an offer
35 of suitable work, the employer or insurer may, in
36 addition to exercising any other rights it may have,
37 file a petition for a reduction of benefits. If,
38 after hearing, the commission finds that an employee
39 refused to accept the offer and the position offered
40 was suitable to his physical condition, it shall order
41 the reduction of all benefits payable under sec-
42 tions ~~54~~ 54-A and ~~55~~ 55-A. The reduction shall be in
43 an amount equal to the difference between the

1 employee's weekly benefit and the benefits he would
2 have been entitled to receive if he had accepted the
3 offer. The order reducing benefits shall remain in
4 effect only as long as the employee fails to accept
5 the offer of suitable work.

6 Sec. 28. 39 MRSA §66-A, as amended by PL 1983,
7 c. 647, is further amended by adding at the end a new
8 paragraph to read:

9 All obligations under this section shall be sus-
10 pended during the implementation of a rehabilitation
11 plan under subchapter III-A.

12 Sec. 29. 39 MRSA c. 1, sub-c. III-A is enacted
13 to read:

14 SUBCHAPTER III-A

15 REHABILITATION

16 §81. Purpose; rules

17 The purpose of this subchapter is restoration of
18 the injured employee to gainful employment. To fur-
19 ther that purpose, it is the shared responsibility of
20 all parties involved to cooperate in developing a re-
21 habilitation process designed to promote reemployment
22 at a level of earnings commensurate with the
23 employee's ability to perform under present condi-
24 tions, consistent with the priorities of section 86.

25 The chairman may adopt rules, subject to section
26 92, subsection 1, to carry out the purposes of this
27 subchapter.

28 §82. Office of Employment Rehabilitation; Rehabili-
29 tation Administrator

30 1. Office of Employment Rehabilitation; appoint-
31 ment. An Office of Employment Rehabilitation shall
32 be maintained under the direction of a rehabilitation
33 administrator, in this subchapter referred to as the
34 "administrator." The chairman may appoint and remove
35 the administrator and assistant administrators with
36 the concurrence of the commission. The administrator
37 shall report to and be directed by the chairman and

1 shall carry out the duties assigned to the adminis-
2 trator in this Act.

3 2. Qualifications. The rehabilitation adminis-
4 trator must be certified as a certified rehabilita-
5 tion counselor by the Commission on Rehabilitation
6 Counselor Certification or must become certified as
7 such within 10 months after the date of hiring, must
8 be qualified by training or by experience in manage-
9 ment of rehabilitation evaluation services and must
10 be familiar with the workers' compensation system.

11 3. Powers and duties. In addition to any other
12 provisions made in this chapter, the administrator
13 shall have the following powers and duties.

14 A. The administrator is responsible for the re-
15 ceipt of reports and other information required
16 under this subchapter and may require supplemen-
17 tary information needed to fulfill the purposes
18 of this subchapter.

19 B. The administrator shall monitor rehabilita-
20 tion cases and cases where rehabilitation appears
21 to be appropriate, and shall encourage agreement
22 and attempt to conciliate differences on rehabil-
23 itation issues.

24 C. The administrator shall approve agreements
25 regarding rehabilitation if he finds that they
26 are consistent with the purpose and requirements
27 of this subchapter and the rules of the commis-
28 sion.

29 D. The administrator shall assist the chairman
30 in developing rules pursuant to section 92, sub-
31 section 1, regarding rehabilitation, including,
32 but not limited to, rules governing minimum stan-
33 dards for providers of rehabilitation services,
34 the types of services each category of provider
35 is qualified to provide and procedures for reha-
36 ilitation cases.

37 E. The commission shall not provide direct reha-
38 ilitation services. Rehabilitation services un-
39 der this subchapter shall be provided by private
40 and public rehabilitation counselors, governmen-

1 tal agencies, in-house rehabilitation counselors
2 and others approved by the administrator as qual-
3 ified to provide rehabilitation services under
4 the commission's rules. The administrator shall
5 consider a rehabilitation counselor's rate of
6 successfully placing rehabilitated employees in
7 jobs relative to the placement rates of other
8 counselors in the State as fundamental in decid-
9 ing whether to approve the counselor as quali-
10 fied. The administrator shall compile annually a
11 list of approved providers of rehabilitation ser-
12 vices, except that in-house rehabilitation coun-
13 selors shall not appear on the list, and shall
14 make this list available to the parties.

15 F. The administrator shall develop fee schedules
16 for providers of rehabilitation services, listing
17 the maximum allowable fees for testing, evalua-
18 tions of suitability, development of rehabilita-
19 tion plans and other rehabilitation services.

20 (1) In setting a fee, the administrator
21 shall take into account the usual fee
22 charged to provide that service in the State
23 and the reasonable and necessary costs of
24 providing the service.

25 (2) The administrator may grant prior ap-
26 proval of a fee higher than the maximum in
27 the rate schedule in exceptional circum-
28 stances.

29 (3) Fee schedules developed under this par-
30 agraph do not apply to services provided by
31 in-house providers of rehabilitation ser-
32 vices.

33 G. The administrator shall make efforts to edu-
34 cate and disseminate information to all persons
35 interested in the rehabilitation process.

36 §83. Rehabilitation services

37 Except as provided in section 84, the following
38 rehabilitation services are appropriate in the fol-
39 lowing circumstances.

1 1. Reports. Within 120 days following an injury
2 which gives rise to a claim under this Act, or within
3 120 days following the first day of a subsequent pe-
4 riod of incapacity due to that injury, where an em-
5 ployee has not returned to his previous employment,
6 the employer shall submit a report to the administra-
7 tor to assist in the early identification of those
8 employees who may need rehabilitation to achieve job
9 placement.

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

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

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

24 D. If the employer reports that the employee is
25 likely to return to his previous employment, the
26 employer shall include in the report the date by
27 which he expects the employee to return to work
28 and the basis for selecting that date.

29 E. In either instance, the employer shall file a
30 supplemental report under this subsection on or
31 before that date unless the administrator re-
32 quires otherwise.

33 2. Evaluation of suitability. An evaluation of
34 the suitability of rehabilitation for the employee
35 shall be submitted to the administrator within 30
36 days after the administrator makes an order of evalu-
37 ation under section 85, subsection 1.

38 A. The evaluation of suitability shall be done
39 by a provider of rehabilitation services selected
40 by the employee from the list of approved

1 providers maintained by the administrator.

2 B. If the employer objects to the employee's se-
3 lection, he may request within 10 business days
4 after notification of that selection that the ad-
5 ministrator schedule a meeting within 10 business
6 days between the employer, the employee and the
7 administrator for the purpose of discussing which
8 provider may be mutually acceptable.

9 C. The employee shall have the final decision on
10 which approved provider shall be utilized.

11 3. Development of plan. A rehabilitation plan
12 shall be developed and submitted to the administrator
13 within 60 days after the administrator makes an order
14 of plan development under section 85, subsection 2.

15 A. The plan shall be developed by a provider of
16 rehabilitation services selected by the employee
17 from the list of approved providers maintained by
18 the administrator.

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

22 (1) His work history;

23 (2) His interests;

24 (3) His aptitude;

25 (4) His education;

26 (5) His skills;

27 (6) His work life expectancy;

28 (7) The locality of employment; and

29 (8) The likelihood of reemployment.

30 C. A plan shall include a job placement strategy
31 and a specific program of proposed actions de-
32 signed and likely to achieve job placement for
33 the employee.

1 (1) The plan development shall consider and
2 the plan may include a provision for trial
3 work periods not to exceed 3 months with the
4 employer or subsequent employer.

5 (2) The administrator may approve trial
6 work periods as part of a plan.

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 are suspended if a trial work period under
23 section 100-A is instituted at any time during
24 the schedule of rehabilitation services established
25 under this section. If the trial work period termi-
26 nates within the agreed upon period, the schedule of
27 rehabilitation services established under this sec-
28 tion shall be resumed at the same point at which it
29 was suspended.

30 6. Representation. The administrator shall en-
31 sure that competent technical staff from the Office
32 of Employment Rehabilitation is available to provide
33 advice and assistance to the employee.

34 7. Counsel. If the employer or insurer elects
35 to be represented by legal counsel at any stage of
36 the rehabilitation process under this subchapter pri-
37 or to an appeal under section 88, the employee is en-
38 titled to be similarly represented by legal counsel
39 of his choice, with all reasonable attorney fees to
40 be assessed against the employer. If no adverse par-

1 ty elects to be so represented, the employee retains
2 the right to secure legal counsel at his own expense.

3 §84. In-house rehabilitation programs

4 1. Applicability. This section applies to all
5 employers in the State which maintain, on January 1,
6 1986, a certified rehabilitation counselor on
7 premises to provide rehabilitation services that meet
8 the requirements of this subchapter. These services
9 must be provided only to their own employees.

10 In-house providers of rehabilitation services under
11 this section must be approved by the rehabilitation
12 administrator under section 82, subsection 3, para-
13 graph E. For the purposes of this section, the term
14 "employer" does not include an insurance carrier.

15 2. In-house rehabilitation procedure. The pro-
16 visions of this section shall be followed instead of
17 any inconsistent provisions under section 83 for any
18 rehabilitation efforts undertaken by an in-house
19 provider of rehabilitation services. Provisions of
20 this subchapter not inconsistent with this section
21 also apply to in-house rehabilitation efforts.

22 A. Instead of the employee choosing his own
23 provider of rehabilitation services, an in-house
24 provider of rehabilitation services may conduct
25 the suitability evaluation and develop a rehabil-
26 itation plan as required under section 83 for any
27 injured employee of the employer. If the in-
28 house provider does not provide both of these
29 services to an employee, rehabilitation of that
30 employee shall proceed as otherwise provided un-
31 der section 83.

32 B. If the parties do not agree to the implemen-
33 tation of the plan, an informal conference shall
34 be held under section 83, subsection 4, paragraph
35 A. If no agreement can be reached between the
36 parties, the administrator shall determine if the
37 plan meets the requirements and purposes of this
38 subchapter. If he finds that it does, and that
39 it is in the employee's best interests, he shall
40 order the implementation of the plan for a period
41 of 30 days. At the end of this period, the em-

1 ployee shall notify the administrator within 10
2 days that he chooses to either continue with the
3 plan or terminate the plan and resume the reha-
4 bilitation process with the provider of rehabili-
5 tation services of his choice at the plan devel-
6 opment stage under section 83, subsection 3.

7 3. Reimbursement. Reimbursement from the Em-
8 ployment Rehabilitation Fund under section 87, sub-
9 section 6, is not available to employers for in-house
10 rehabilitation efforts.

11 §85. Orders

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

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

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

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

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

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

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

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

5 E. The employer and employee agree on the pro-
6 posed plan suspension, termination or modifica-
7 tion.

8 4. Reinstatement of benefits. If the adminis-
9 trator orders the suspension or termination of a
10 plan, he may also order the reinstatement of the
11 employee's weekly benefits in the amount being paid
12 prior to the commencement of the plan if that termi-
13 nation or suspension is for the reasons given under
14 subsection 3, paragraph A, B, D or E.

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

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

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

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

38 D. The running of the time for appeal under sec-
39 tion 88 is stopped by a timely motion made under

1 this section. The full time for this appeal
2 recommences on the receipt of notice of the fil-
3 ing of those findings, conclusions or revised or-
4 der.

5 §86. Rehabilitation priorities

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

15 1. Former job. Return of the employee to his
16 preinjury job with the same employer;

17 2. Modified job. Return of the employee to his
18 preinjury job with the same employer and with modifi-
19 cation of tasks or of the workplace;

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

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

24 5. New employer. Employment with a new employ-
25 er;

26 6. On-the-job training. On-the-job training
27 with a new employer; or

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

30 §87. Rights and duties of parties

31 1. Medical examinations. The provisions of sec-
32 tion 65 shall apply during any period of rehabilita-
33 tion.

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

1 A. Reasonable rehabilitation diagnosis and plan
2 preparation;

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

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

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

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

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

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

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

35 5. Employer refusal; sanctions. Refusal of the
36 employer to comply with a requirement, determination
37 or order of the commission, this chapter or a rule
38 promulgated thereto, or with the terms of an approved
39 plan or agreement under this subchapter, shall be

1 deemed a failure to pay compensation subject to sec-
2 tion 104-A, subsection 2. The commissioner or the
3 employee may seek enforcement under section 103-E.

4 6. Reimbursement. Reimbursement may not be or-
5 dered for any payments which the employer would oth-
6 erwise be obligated to make regardless of the exis-
7 tence of the plan; except that the administrator
8 shall order reimbursement from the Employment Reha-
9 bilitation Fund for the actual direct costs to the
10 employer of providing rehabilitation services during
11 the implementation of a rehabilitation plan under
12 this subchapter, 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 §88. 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 and 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 who prevails before the commission
21 may recover any fee from that client for that repre-
22 sentation. Any attorney who violates this subsection
23 shall lose his fee and is liable in a court suit to
24 pay damages to the client equal to 2 times the fee
25 charged that client.

26 §89. 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 9
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 Governor shall select one mem-
2 ber to serve as chairman.

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

7 §90. Applicability

8 1. Employees covered. The provisions of this
9 subchapter apply only to employees injured after the
10 effective date of this subchapter, unless otherwise
11 agreed by the parties and approved by the administra-
12 tor. Notwithstanding any such agreement, the provi-
13 sions of section 87, subsection 6, shall not be con-
14 strued to permit reimbursement for any rehabilitation
15 services provided prior to the effective date of this
16 subchapter.

17 2. Sunset. This subchapter is repealed, effec-
18 tive July 1, 1988, except that the chairman may by
19 rule provide for a transition period of employment
20 for the administrator of up to 3 years and for the
21 disposition according to this subchapter of cases
22 arising out of injuries suffered during the period in
23 which this subchapter is effective. The money in the
24 Employment Rehabilitation Fund shall remain in that
25 fund until all obligations against that fund under
26 this subchapter have been paid, and thereafter the
27 balance remaining shall be paid to the Second Injury
28 Fund.

29 3. Report to Legislature. The chairman shall
30 report to the Second Regular Session of the 113th
31 Legislature concerning the effectiveness of this sub-
32 chapter in accomplishing the purpose stated in sec-
33 tion 81. The chairman may seek the assistance of the
34 administrator, the Superintendent of Insurance and
35 others in assembling data which would provide the
36 Legislature with a meaningful basis for evaluating
37 the costs and benefits of this subchapter to all par-
38 ticipants in the process and the public as a whole.

39 Sec. 30. 39 MRS §92, sub-§6, as enacted by PL
40 1983, c. 479, §16, is amended to read:

1 6. Office of Employee Assistants. The chairman
2 shall provide adequate funding for an Office of Em-
3 ployee Assistants and shall, subject to the Personnel
4 Law, appoint the assistants to staff the Augusta of-
5 fice and district offices. Assistants are not attor-
6 neys, but should demonstrate a level of expertise
7 roughly equivalent to that of insurance claims' ana-
8 lysts. The purpose of employee assistants is to pro-
9 vide advice and assistance to employees under this
10 Act, and particularly to assist employees in prepar-
11 ing for and assisting at informal conferences under
12 section 94-B. In addition, if an employer appeals a
13 decision of the commission or institutes any proceed-
14 ing against an employee under this Act, the Office of
15 Employee Assistants shall, upon request, advise an
16 employee how to best prepare for and proceed with his
17 case.

18 No employee of the Office of Employee Assistants may
19 represent before the commission any insurer, self-
20 insurer, group self-insurer, adjusting company or
21 self-insurance company for a period of 2 years after
22 terminating employment with the office.

23 The chairman shall appoint 6 employee assistants. Af-
24 ter January 1, 1984, the chairman may appoint up to 4
25 additional assistants if, in the chairman's judgment,
26 the additional assistants are necessary to effectuate
27 the purposes of this subsection.

28 Employee assistants shall be paid a salary equal to
29 that paid to state employees in professional and
30 technical range 21.

31 Sec. 31. 39 MRSA §92, sub-§§8 and 9 are enacted
32 to read:

33 8. Office of Employment Rehabilitation. The
34 chairman shall provide adequate funding for an Office
35 of Employment Rehabilitation and shall appoint a Re-
36 habilitation Administrator pursuant to section 82.
37 The chairman shall, subject to the Personnel Law, ap-
38 point such personnel as are necessary to carry out
39 the functions of the office.

40 9. Abuse investigation unit. The chairman shall
41 provide adequate funding for a Unit of Abuse Investi-
42 gation.

1 A. He shall, subject to the Personnel Law, ap-
2 point at least 2 abuse investigators for this
3 unit. Investigators must be qualified by experi-
4 ence and training to perform their duties.

5 B. The unit shall, at the direction of the
6 chairman, investigate all complaints or allega-
7 tions of fraud, illegal or improper conduct or
8 violation of this Act or rules of the commission
9 relating to workers' compensation insurance, ben-
10 efits or programs, including those acts by em-
11 ployers, employees or insurers.

12 C. Each employer or employee, and each state,
13 county, municipal or quasi-governmental agency
14 shall cooperate fully with the unit and provide
15 any information requested by it.

16 D. The unit shall report all its findings to the
17 chairman.

18 E. Whenever the chairman determines that a
19 fraud, attempted fraud or violation of this Act
20 or rules may have occurred, he shall report in
21 writing all information concerning it to the At-
22 torney General or his delegate for appropriate
23 action, including a civil action for recovery of
24 funds and criminal prosecution by the Attorney
25 General.

26 Sec. 32. 39 MRSA §93, sub-§3, as amended by PL
27 1979, c. 109, is further amended to read:

28 3. Proceedings before Workers' Compensation Com-
29 mission. In all proceedings before the Workers' Com-
30 mission Commission, all forms of discovery availa-
31 ble in civil actions in the Superior Court under the
32 Maine Rules of Civil Procedure, as amended, shall be
33 are available to any of the parties in the proceed-
34 ings except that a Workers' Compensation Commission
35 Commissioner, rather than a Superior Court Justice,
36 the chairman may, by rule adopted under section 92,
37 prescribe different time periods for the completion
38 of discovery in cases where it is necessary to ensure
39 that hearings may be held within the time periods
40 prescribed by this Act. A commissioner shall rule on
41 all objections; and a Workers' Compensation Commis-

1 sion Commissioner is empowered to and may enforce
2 this subsection in the same manner and to the same
3 extent as a Superior Court Justice may enforce com-
4 pliance with the Maine Rules of Civil Procedure, as
5 amended, with regard to discovery, except that the
6 commissioner shall does not have the power of con-
7 tempt.

8 Prior to the award of the 3rd period of up to 52
9 weeks of vocational rehabilitation as provided by
10 section 52, the employer shall have the right of dis-
11 covery and subpoena power in regard to all persons,
12 including any private or public agent, to determine
13 the suitability of such employee for such further re-
14 habilitation.

15 Signed statements by a medical doctor or osteopathic
16 physician relating to medical questions, by a psy-
17 chologist relating to psychological questions or by a
18 chiropractor relating to chiropractic questions,
19 shall be are admissible in workers' compensation
20 hearings before the Workers' Compensation Commission,
21 providing that notice of that testimony to be used is
22 given and service of a copy of the letter or report
23 is made on the opposing counsel 14 days before the
24 scheduled hearing to enable that counsel to depose or
25 subpoena and cross-examine that medical doctor,
26 osteopathic physician, psychologist or chiropractor
27 if he so chooses.

28 Sec. 33. 39 MRSA §94, 2nd ¶, as amended by PL
29 1973, c. 788, §232, is repealed.

30 Sec. 34. 39 MRSA §94-A, sub-§3, as enacted by PL
31 1983, c. 479, §19, is repealed and the following en-
32 acted in its place:

33 3. Construction. In interpreting this Act, the
34 commission shall construe it so as to ensure the ef-
35 efficient delivery of compensation to injured workers
36 at a reasonable cost to employers. All workers' com-
37 penensation cases shall be decided on their merits and
38 the rule of liberal construction shall not apply to
39 those cases. Accordingly, this Act is not to be
40 given a construction in favor of the employee, nor
41 are the rights and interests of the employer to be
42 favored over those of the employee.

1 Sec. 35. 39 MRSA §100, sub-§1, as enacted by PL
2 1981, c. 514, §4, is amended to read:

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

8 A. Increase, decrease, restoration or discontin-
9 uance of compensation; ~~or.~~

10 B. ~~Extension, reduction, restoration or discon-~~
11 ~~tinuance of vocational rehabilitation.~~

12 Sec. 36. 39 MRSA §100, sub-§2, ¶A, as enacted by
13 PL 1981, c. 514, §4, is amended to read:

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

25 Sec. 37. 39 MRSA §100, sub-§3-A is enacted to
26 read:

27 3-A. Petitions during rehabilitation. A peti-
28 tion may not be brought during the development or im-
29 plementation of a rehabilitation plan under section
30 83, subsection 3 or 4, except in the event of sub-
31 stantial change in the employee's medical condition.

32 Sec. 38. 39 MRSA §100, sub-§4, as amended by PL
33 1983, c. 479, §24, is further amended to read:

34 4. Payments pending hearing and decision. If the
35 employee is receiving payments ~~or vocational~~
36 ~~rehabilitation~~ at the time of the petition, the pay-
37 ments ~~or rehabilitation~~ may not be decreased or sus-
38 pended pending the hearing and final decision upon

1 the petition, except in the following circumstances:

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

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

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

9 (2) The employee's whereabouts are unknown;
10 or

11 (3) The employee has resumed work.

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

15 §100-A. Orders or agreements for trial work periods

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

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

27 A. Termination of the first trial work period;
28 or

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

34 The provisions on restoration also apply to a trial
35 work period under section 83.

1 Sec. 40. 39 MRSA §103-B, sub-§4, as enacted by
2 PL 1981, c. 514, §6, is amended to read:

3 4. Costs. ~~Costs~~ If the employee prevails, costs
4 of appeal shall be allowed, including the record, and
5 including reasonable attorneys' fees as provided for
6 under section 110. No attorney who represents an em-
7 ployee who prevails in an appeal before the division
8 may recover any fee from that client for that repre-
9 sentation. Any attorney who violates this paragraph
10 shall lose his fee and is liable in a court suit to
11 pay damages to the client equal to 2 times the fee
12 charged that client.

13 Sec. 41. 39 MRSA §103-C, sub-§4, as enacted by
14 PL 1981, c. 514, §6, is amended to read:

15 4. Costs. In all cases of appeal to the Law
16 Court in which the employee prevails, it may order a
17 reasonable allowance to be paid to the employee by
18 the employer for expenses incurred in the proceedings
19 of the appeal, including the record, but not includ-
20 ing expenses incurred in other proceedings in the
21 case. Reasonable attorneys' fees shall be allowed as
22 provided for under section 110. No attorney who
23 represents an employee who prevails in an appeal be-
24 fore the court may recover any fee from that client
25 for that representation. Any attorney who violates
26 this paragraph shall lose his fee and is liable in a
27 court suit to pay damages to the client equal to 2
28 times the fee charged that client.

29 Sec. 42. 39 MRSA §106, first ¶, as amended by PL
30 1975, c. 293, §4, is further amended to read:

31 Whenever any employee has reported to an employer
32 under the Act any injury arising out of and in the
33 course of his employment which has caused the employ-
34 ee to lose a day's work or has required the services
35 of a physician, or whenever the employer has knowl-
36 edge of any such injury, every such employer shall
37 within 7 days after said notice or knowledge make re-
38 port thereof to the commission, with the average
39 weekly wages or earnings of such employee, together
40 with such other particulars as the commission may re-
41 quire; and shall report whenever the injured employee
42 shall resume his employment, and the amount of his

1 wages or earnings at such time. If at the end of a
2 period of 6 months following the date of injury or
3 the date of amputation of any member, or the date of
4 loss of one or both eyes or the loss of hearing in
5 one or both ears, the employee is still incapacitated,
6 every such employer shall make a report there-
7 of to the commission, on such form as the commission
8 shall prescribe, giving full information as to the
9 date and nature of the original injury and a descrip-
10 tion of the physical handicap resulting from such in-
11 jury. Upon receipt of such notice from the employer,
12 or upon any knowledge or notice received prior to
13 such notice, the commission shall forthwith refer
14 such case to the Division of Vocational Rehabilita-
15 tion of the Department of Human Services, or in cases
16 of blindness to the Division of Eye Care and Special
17 Services of the Department of Human Services, and may
18 thereafter cooperate and work with these divisions in
19 the matter of rehabilitation of the injured employee.
20 Any employer who willfully neglects or refuses to
21 make any report required by this section shall be
22 subject to a penalty of not more than \$100 for each
23 such neglect or refusal, to be enforced by the com-
24 mission in a civil action in the name of the State.
25 In the event the employer has sent the report to the
26 insurance carrier for transmission by such insurance
27 carrier to the commission, the insurance carrier
28 willfully neglecting or refusing to transmit the re-
29 port shall be liable for the said penalty.

30 Sec. 43. 39 MRSA §110, as amended by PL 1983, c.
31 479, §30, is repealed and the following enacted in
32 its place.

33 §110. Witness and attorneys' fees allowable

34 If an employee prevails in any proceeding involv-
35 ing a controversy under this Act, the commission or
36 commissioner may assess the employer costs of a rea-
37 sonable attorney's fee and witness fees whenever the
38 witness was necessary for the proper and expeditious
39 disposition of the case.

40 The employer may not be assessed costs of an at-
41 torney's fee attributable to services rendered prior
42 to one week after the informal conference under sec-
43 tion 94-B or, if the informal conference is waived,

1 services rendered prior to the date of that waiver,
2 unless a party adverse to the employee was so repre-
3 sentated at that stage.

4 No attorney representing an employee who prevails
5 in a proceeding under this Act may receive any fee
6 from that client for an appearance before the commis-
7 sion, including preparation for that appearance, ex-
8 cept as provided in section 94-B, subsection 3. Any
9 attorney who violates this paragraph shall lose his
10 fee and be liable in a court suit to pay damages to
11 his client equal to 2 times the fee charged for that
12 client.

13 1. "Prevail" defined. For the purposes of this
14 section, "prevail" means to obtain or retain more
15 compensation or benefits under the Act than were of-
16 fered to the employee by the employer in writing be-
17 fore the proceeding was instituted. If no such offer
18 was made, "prevail" means to obtain or retain compen-
19 sation or benefits under the Act.

20 2. Disclosure of fees. Any employee, employer
21 or insurance carrier involved in any proceeding in-
22 volving a controversy under this Act shall report to
23 the commission, on forms provided by the commission,
24 any amounts that he has paid for legal assistance in
25 that proceeding, including any amount paid for an
26 employee's legal fees under this section.

27 Sec. 44. 39 MRSA §112, as amended by PL 1977, c.
28 696, §409, is repealed.

29 Sec. 45. 39 MRSA §112-A is enacted to read:

30 §112-A. Inadmissible statements

31 No statement of any kind made by the injured em-
32 ployee to any investigator, employer or employer's
33 representative, whether oral or written, recorded or
34 unrecorded, may be admitted into evidence or consid-
35 ered in any way in any proceeding under this Title,
36 if it was obtained by means of duress on the part of
37 the investigator, employer or employer's representa-
38 tive.

1 1. Duress defined. For the purpose of this sec-
2 tion, duress is not limited to its common law defini-
3 tion, but includes:

4 A. Implied or expressed threats relating to the
5 employment of the employee or the employment of a
6 relative of the employee;

7 B. Implied or expressed threats of extensive
8 litigation and appeals of the employee's claim;

9 C. Misleading, false or incomplete statements of
10 law or any misleading, false or incomplete legal
11 opinion given to the employee relating to his el-
12 igibility for benefits under this Act;

13 D. Misleading, false or incomplete statements of
14 fact knowingly made to the employee;

15 E. Taking unfair advantage of an employee's
16 physical, mental or economic problems or short-
17 comings; and

18 F. Interrogations or investigations conducted
19 under such circumstances as to be severely intim-
20 idating to the employee.

21 This section does not apply to agreements for the
22 payment of compensation made under the Workers' Com-
23 ensation Act or to the admissibility of statements
24 to show compliance with the notice requirements of
25 sections 63 and 64.

26 Sec. 46. 39 MRSA §188, as amended by PL 1977, c.
27 696, §413, is further amended to read:

28 §188. Partial incapacity

29 Compensation shall be payable for partial inca-
30 capacity due to occupational diseases as provided in
31 section 55 ~~55-A~~ of the Workers' Compensation Act.

32 Sec. 47. 39 MRSA §189, as amended by PL 1971, c.
33 376, is further amended to read:

34 §189. Compensation limits

1 Compensation for partial or total incapacity or
2 death from occupational disease shall be payable in
3 the same manner and amounts as provided in sections
4 54, 55 and 58 54-A, 55-A and 58-A. Compensation shall
5 not be payable for incapacity by reason of occupa-
6 tional diseases unless such incapacity results within
7 3 years after the last injurious exposure to such
8 disease in the employment.

9 Sec. 48. 39 MRSA §194-B, sub-§8, ¶¶B and C, as
10 enacted by PL 1983, c. 428, §2, is amended to read:

11 B. If an employee is determined to be entitled
12 to compensation for periods of total or partial
13 incapacity occurring on or after October 1, 1983,
14 or if a dependent of an employee is determined to
15 be entitled to full or partial death benefits for
16 periods occurring on or after October 1, 1983,
17 and the employee became incapacitated or died on
18 or after January 1, 1972, and before October 1,
19 1983, then the initial weekly compensation paid
20 shall be equal to the compensation that would
21 have been paid had compensation payments begun at
22 the time the employee became incapacitated or
23 died and that compensation had been adjusted an-
24 nually as provided in former sections 54, 55 and
25 58, whichever section is applicable. This sub-
26 section shall not be interpreted as providing for
27 any adjustment for inflation in excess of the ad-
28 justment provided in former sections 54, 55 and
29 58.

30 C. If an employee becomes incapacitated or dies
31 on or after October 1, 1983, but before June 30,
32 1985, then compensation shall be payable in the
33 same manner and amounts as provided in former
34 sections 54, 55 and 58. If an employee becomes
35 incapacitated or dies on or after June 30, 1985,
36 then compensation shall be payable in the same
37 manner and amounts as provided in sections 54-A,
38 55-A and 58-A.

39 Sec. 49. Loan fund report. The Commissioner of
40 Labor and the Treasurer of State shall report to the
41 Legislature on January 1, 1987 describing in detail:

1 1. Who had received loans under the Occupational
2 Safety Loan Program established by the Maine Revised
3 Statutes, Title 26, chapter 4;

4 2. The amount of money each loan had been for;

5 3. What the loan money had been used by that
6 person for;

7 4. Who had applied for and not received loans;

8 5. The methods used to prioritize loan requests,
9 if any; and

10 6. The current status of the Occupational Safety
11 Loan Fund and the rates of loan repayment and de-
12 fault.

13 The commissioner shall also report on the contin-
14 ued need and demand for the loan program, whether the
15 program requires additional funding and possible
16 methods of providing any additional funds, if neces-
17 sary.

18 **Sec. 50. Medical cost study.** The Joint Standing
19 Committee on Labor is directed to conduct a study of
20 the effects of medical and other health-treatment
21 fees on the cost of providing workers' compensation
22 coverage in the State. The study shall be completed
23 by March 31, 1986, and shall include suggested legis-
24 lation to be presented to the Second Regular Session
25 of the 112th Legislature or suggested rules to be
26 adopted by the Chairman of the Workers' Compensation
27 Commission.

28 Study is needed to determine if rising medical
29 and other health-treatment fees related to the treat-
30 ment of employment injuries are a contributing factor
31 to rising workers' compensation costs as a whole and,
32 if so, what specific aspects of treatment or fees are
33 responsible for that increase. If medical and other
34 health-treatment fees appear to the committee to be a
35 contributing cause of rising workers' compensation
36 costs, the committee shall study methods of limiting
37 the cost increases due to those fees. The committee
38 shall study the feasibility of set fee schedules lim-
39 iting the amount of payment for specific medical ser-

1 vices and the feasibility of a peer-review panel of
2 physicians and other health-care providers to review
3 treatment of injured workers in contested cases. If
4 either of these methods, or any other method, appears
5 useful to the committee in limiting cost increases,
6 the committee shall study and recommend specific
7 methods of implementing those programs by rule of the
8 commission or by legislation, if necessary. The
9 study committee shall be composed of 5 members of the
10 Joint Standing Committee on Labor who shall work with
11 the Workers' Compensation Commission and other inter-
12 ested groups or associations. The study committee
13 may contract with individuals or organizations for
14 research or related work to be done regarding the
15 study.

16 **Sec. 51. Workplace safety study.** There is es-
17 tablished a Commission on Safety in the Maine
18 Workplace, to consist of knowledgeable citizens who
19 will examine safety attitudes, programs and proce-
20 dures in Maine's workplaces; and identify initiatives
21 to reduce frequency, severity and cost of
22 work-related accidents and illnesses; and to promote
23 and improve best-practice safety programs.

24 The Governor shall appoint the members of the
25 commission, which shall consist of not more than 12
26 members, including:

27 1. Three members with expertise and professional
28 qualifications in the field of occupational safety
29 and health;

30 2. Two members representing workers and 2 mem-
31 bers representing private employers, all of whom must
32 be knowledgeable in the area of workplace safety; and

33 3. Such other members as are deemed by the Gov-
34 ernor to be necessary and appropriate to carry out
35 the purposes of this section.

36 The Governor shall appoint the chairman of the
37 commission and the Commissioner of Labor shall serve
38 as vice-chairman. The commission shall actively seek
39 information and involvement from organized labor, the
40 professional safety community, the various state and
41 federal agencies concerning with safety and inter-
42 ested private citizens, groups and organizations.

1 The commission shall address the following is-
2 sues, conduct studies and hold public meetings as
3 necessary to develop findings and recommendations re-
4 specting each. The commission shall:

5 1. Evaluate the effectiveness of current worker
6 safety efforts, practices and programs in the State
7 and the attitudes of employers and workers toward
8 safety;

9 2. Identify best-practice safety programs in the
10 State and elsewhere whose wide-spread adoption would
11 reduce the incidence, severity and cost of workplace
12 accidents and illnesses;

13 3. Identify emerging occupational safety and
14 health issues that will be of importance in the fu-
15 ture and assess their policy implications; and

16 4. Determine if existing statistical information
17 on accidents and illnesses is reliable and adequate
18 to monitor trends and to support effective safety re-
19 habilitation and compensation programs.

20 The commission shall make recommendations on a
21 continuing basis to include:

22 1. Specific recommendations for action by the
23 Legislature, the Governor, educators, the safety pro-
24 fession, employers and workers which will reduce the
25 frequency, severity and costs of work-related acci-
26 dents and illnesses and which will enhance, promote
27 and improve safety in Maine's workplaces; and

28 2. Recommendations for actions that will improve
29 employer, worker and public attitudes toward safety
30 in the workplace and that will create a continuing
31 public-private, employer-employee partnership in the
32 area of job safety.

33 The Department of Labor shall provide administra-
34 tive, clerical and technical support to the commis-
35 sion and act as its fiscal agent. All agencies of
36 the State shall cooperate fully with the commission.

37 **Sec. 52. Appropriation.** The following funds are
38 appropriated from the General Fund to carry out the
39 purposes of this Act.

| | <u>1985-86</u> | <u>1986-87</u> |
|----|---|----------------|
| 1 | | |
| 2 | <u>WORKERS' COMPENSATION COMMISSION</u> | |
| 3 | (20) | (20) |
| 4 | Personal Services | \$435,713 |
| 5 | All Other | 119,600 |
| 6 | Capital Expenditures | - |
| 7 | Provides funds | |
| 8 | for the new of- | |
| 9 | fice of Employ- | |
| 10 | ment Rehabilita- | |
| 11 | tion. | |
| 12 | | |
| 13 | Total | \$555,313 |
| 14 | <u>LEGISLATURE</u> | |
| 15 | All Other | \$15,000 |
| 16 | Provides funds | |
| 17 | to study the im- | |
| 18 | pact of medical | |
| 19 | costs on rising | |
| 20 | workers' compen- | |
| 21 | sation expenses. | |
| 22 | <u>LABOR, DEPARTMENT OF</u> | |
| 23 | Commission on Safety | |
| 24 | in the Maine Workplace | |
| 25 | All Other | \$11,000 |
| 26 | Provides funds | |
| 27 | to cover the ex- | |
| 28 | penses of the | |
| 29 | Commission on | |
| 30 | Safety in the | |
| 31 | Maine Workplace. | |
| 32 | Bureau of Labor Standards | |
| 33 | All Other | \$ 5,000 |
| 34 | These funds will | |
| 35 | cover the | |
| 36 | start-up costs, | |
| 37 | necessary to | |
| 38 | initiate the | |
| 39 | collection of | |

1 dedicated revenues.
 2 The
 3 \$5,000 appropriation is to be
 4 reimbursed from
 5 the dedicated
 6 revenues to be
 7 collected for
 8 the Safety Education
 9 and
 10 Training
 11 Fund.

12 Total \$16,000 \$11,000

13 Sec. 53. Allocation of the Safety Education and
 14 Training Fund. Income to the Safety Education and
 15 Training Fund for the next 2 fiscal years, from July
 16 1, 1985, to June 30, 1986, and from July 1, 1986, to
 17 June 30, 1987, shall be segregated, apportioned and
 18 disbursed as designated in the following schedule.

19 1985-86 1986-87

20 LABOR, DEPARTMENT OF

| | | | |
|----|---------------------------|---------------|---------------|
| 21 | Bureau of Labor Standards | | |
| 22 | Positions | (3 1/2) | (3 1/2) |
| 23 | Personal Services | \$ 71,075 | \$ 74,628 |
| 24 | All Other | 100,000 | 100,000 |
| 25 | Capital Expenditures | <u>15,000</u> | <u>15,000</u> |
| 26 | Total | \$186,075 | \$189,628 |

27 The above funds
 28 shall be used to
 29 carry out the
 30 safety education
 31 and training
 32 programs under
 33 the Maine Re-
 34 vised Statutes,
 35 Title 26, sec-
 36 tion 42-A.

37 Sec. 54. Allocation of the Occupational Safety
 38 Loan Fund. Income to the Occupational Safety Loan
 39 Fund for the next 2 fiscal years, from July 1, 1985,
 40 to June 30, 1986, and from July 1, 1986, to June 30,

1 1987, shall be segregated, apportioned and disbursed
2 as designated in the following schedule.

3 1985-86 1986-87

4 LABOR, DEPARTMENT OF

5 Occupational Safety Loan
6 Program
7 All Other \$350,000 \$350,000

8 Occupational Safety Loan
9 Program - Administration
10 All Other 20,000 20,000

11 Provides funds
12 to cover the De-
13 partment of
14 Labor's adminis-
15 trative costs in
16 conjunction with
17 the Occupational
18 Safety Loan Pro-
19 gram and to al-
20 low the Depart-
21 ment of Labor to
22 contract with
23 the Finance Au-
24 thority of Maine
25 for the loan ap-
26 plication, dis-
27 bursement and
28 collection pro-
29 cess.

30
31 TOTAL \$370,000 \$370,000

32 **Emergency clause.** In view of the emergency cited
33 in the preamble, sections 3, 5 to 9, 15 to 21, 24 to
34 27, 30, 32, 34, 40, 41 and 43 to 53 of this Act shall
35 take effect on June 30, 1985, and shall apply only as
36 to injuries occurring on and after that date. The
37 remainder of this Act shall take effect on January 1,
38 1986, and shall apply only as to injuries occurring
39 on and after January 1, 1986.

1

FISCAL NOTE

2 Enactment of this Act is expected to raise ap-
3 proximately \$250,000 to the Safety Education and
4 Training Fund in each year of the biennium.

5 The one-time assessment on insurers licensed to
6 sell workers' compensation coverage is expected to
7 raise \$750,000 for the Occupational Safety Loan Fund.

8

STATEMENT OF FACT

9 This new draft is intended to accomplish 3 broad
10 goals. They are:

11 1. Reduce the costs to employers of providing
12 workers' compensation for their employees without un-
13 fairly removing the protections offered to those em-
14 ployees under the Workers' Compensation Act;

15 2. Create a comprehensive rehabilitation program
16 to facilitate the return of injured workers to pro-
17 ductive employment; and

18 3. Create a program to assist employers and em-
19 ployees to reduce the incidence and severity of
20 work-related injuries.

21 In order to accomplish these goals, several
22 changes in the Workers' Compensation Act were made
23 and additional provisions added to the statutes.
24 These are described by section as follows.

25 Section 1 of the new draft sets the salary for
26 the Rehabilitation Administrator within salary range
27 83.

28 Section 2 establishes the position of Rehabilita-
29 tion Administrator as a major policy-influencing po-
30 sition under the Maine Revised Statutes, Title 5,
31 section 953.

1 Sections 3 and 4 add the Occupational Safety Loan
2 Review Panel, the Apportionment Review Panel and the
3 Employment Rehabilitation Advisory Board to the list
4 of advisory boards in the Maine Revised Statutes, Ti-
5 tle 5, section 12004, subsection 10, paragrpah A.

6 Section 5 defines the terms "loan fund" and
7 "safety fund."

8 Section 6 requires the Department of Labor to es-
9 tablish and supervise programs for employers, owners,
10 employees, educators and students to aid in the rec-
11 ognition, avoidance and prevention of unsafe and un-
12 healthful work conditions. Several specific methods
13 to be used by the department in accomplishing those
14 goals are listed in this new draft. Additionally,
15 the Department of Labor is directed to provide safety
16 training programs to employers or employees whenever
17 requested. The department will prioritize these re-
18 quests based on the degree of the hazard present to
19 the employees. The department will also conduct re-
20 search into methods of improving occupational safety
21 and will provide consulting services to any employer
22 or employee group that requests those services. The
23 department may contract with others to perform the
24 functions required under this section.

25 Section 7 enacts a new Maine Revised Statutes,
26 Title 26, chapter 4, dealing with occupational health
27 and safety. The section deals with 2 major areas:
28 Providing funding for the safety training and educa-
29 tional programs mandated in section 6 of the new
30 draft and establishing and funding a safety loan pro-
31 gram. To provide funding for the safety educational
32 and training programs, a nonlapsing special fund is
33 established in the State Treasury, known as the Safe-
34 ty Education and Training Fund. The fund is adminis-
35 tered by the Commissioner of Labor. The initial
36 source of revenue for the safety fund is an assess-
37 ment in the amount of 1/4 of 1% of the total benef-
38 fits, excluding medical payments, paid by insurance
39 carriers or self-insured employers during 1984. Af-
40 ter the initial year, the amount of the assessment
41 will be tied to the amount allocated by the Legisla-
42 ture for this program, but never more than 1/4 of 1%.

1 Since in many instances it is inaccessability to
2 capital which inhibits the installation of appropriate
3 safety devices in Maine workplaces, particularly
4 in the case of small businesses, section 7 of the new
5 draft establishes the Occupational Safety Loan Fund.
6 This is also a nonlapsing fund established in the
7 State Treasury and administered by the Commissioner
8 of Labor.

9 A statewide program of low-interest loans is es-
10 tablished within the Department of Labor to improve
11 safety and promote healthful working conditions in
12 Maine's workplaces. Up to \$350,000 may be loaned
13 from the fund in each fiscal year. Individual loans
14 are limited to a maximum of \$15,000 to any single ap-
15 plicant and must bear an interest rate at least 2
16 points below the prime rate in the Boston Metropoli-
17 tan Area. The loans will be made solely to improve
18 or install equipment which reduces hazards to and
19 promotes the health and safety of workers. The loans
20 are not insured or guaranteed by the State, but the
21 department may require collateral for the loans, if
22 it is available, and may, in appropriate cases, take
23 a mortgage on the applicant's real estate. The loans
24 will be approved only if a safety inspection by the
25 Division of Industrial Safety results in a recommen-
26 dation for the installation of the safety equipment
27 for which the loan is being applied. Loans are sub-
28 ject to approval by a special loan review panel made
29 up of 6 members, including the Commissioner of Labor
30 and 5 gubernatorial appointees. In addition, the de-
31 partment may contract with the Finance Authority of
32 Maine to assist in the administration of the program.
33 The Finance Authority of Maine has expertise in ana-
34 lyzing loan applications, structuring and reviewing
35 collateral for loans and will be able to assist the
36 department in making loans and protecting the fund.

37 The Occupational Safety Loan Fund will be funded
38 from a one-time assessment at the rate of 1/2 of 1%
39 on the actual workers' compensation premiums paid to
40 each licensed workers' compensation insurance carrier
41 in 1984 by employers in the State. Additional fund-
42 ing will come from the return upon investments made
43 with fund money by the Treasurer of State and the re-
44 payment of loans made from the fund.

1 Section 7 also contains a provision clarifying
2 the scope of this section of the new draft by provid-
3 ing that the Maine Revised Statutes, Title 26, chap-
4 ter 4, applies to all employers, employees and places
5 of employment in the State, except employees of the
6 Federal Government. A savings clause is also provid-
7 ed to ensure that nothing in that chapter will su-
8 persede or in any manner affect any workers' compen-
9 sation law or any common law or statutory rights, du-
10 ties or liabilities of employers and employees under
11 any law with respect to injuries, diseases or death
12 of employees arising out of and in the course of em-
13 ployment.

14 Sections 8 and 9 simply change references to sec-
15 tions which have been renumbered to make them con-
16 sistent.

17 Section 10 substitutes the Employment Rehabilita-
18 tion Fund for the Second Injury Fund as the recipient
19 of penalty fines for the late payment of compensa-
20 tion.

21 Sections 11 to 14 repeal language referring to
22 the prior rehabilitation system.

23 Section 15 enacts a new Maine Revised Statute,
24 Title 39, section 53-A, regulating maximum benefit
25 levels for weekly compensation under sections 54-A,
26 55-A or 58-A of the Workers' Compensation Act. The
27 maximum weekly benefit level is \$447.92, which will
28 be adjusted annually to keep pace with the previous
29 year's change in the State's average weekly wage be-
30 ginning on July 1, 1988. This results in a 3-year
31 "freeze" on the maximum benefit levels presently
32 available under the Workers' Compensation Act.

33 Sections 16 and 17 repeal and replace the Maine
34 Revised Statutes, Title 39, section 54, of the Work-
35 ers' Compensation Act with section 54-A. The new
36 section deletes language referring to the maximum al-
37 lowable benefit since it is covered under the new
38 section 53-A. In addition, a 5% cap has been placed
39 on the annual adjustment for inflation of an individ-
40 ual benefit recipient's compensation under this sec-
41 tion. The individual's compensation continues to be
42 adjusted as under prior law, but it may not be ad-

1 justed by more than 5% or the actual percentage in-
2 crease in the State average weekly wage in the prior
3 year, whichever is less. Finally, a new subsection 1
4 has been added to exempt employees of sheltered work-
5 shops from the \$25 minimum weekly benefit under the
6 section. This will allow their workers' compensation
7 insurance rates to reflect their actual wages and re-
8 duce their insurance payments.

9 Sections 18 and 19 repeal and replace the Maine
10 Revised Statutes, Title 39, section 55, of the Work-
11 ers' Compensation Act with section 55-A. The new
12 section deletes language referring to the maximum al-
13 lowable benefit since it is covered under the new
14 section 53-A. In addition, a 5% cap has been placed
15 on the annual adjustment for inflation of an individ-
16 ual benefit recipient's compensation under this sec-
17 tion. The individual's compensation continues to be
18 adjusted as under prior law, but it may not be ad-
19 justed by more than 5% or the actual percentage in-
20 crease in the State average weekly wage in the prior
21 year, whichever is less. In making this change, the
22 Legislature expresses no opinion as to the required
23 method of calculating the annual adjustment under re-
24 pealed section 55. The change contained in this new
25 draft is not intended to affect the method of calcu-
26 lation for pending or future cases, but only to re-
27 strict the amount of the adjustment in future cases
28 to the lesser of 5% or the actual annual increase.

29 Sections 20 and 21 amend the Maine Revised Stat-
30 utes, Title 39, sections 56 and 56-A, of the Workers'
31 Compensation Act respectively, to require compensa-
32 tion under those sections to be calculated by multi-
33 plying the presumed periods of incapacity contained
34 in the schedules under those sections by 2/3 of the
35 State average weekly wage. Since benefits under
36 these sections are intended as compensation for the
37 loss of bodily function, not as wage replacements,
38 compensation under the Workers' Compensation Act
39 should be the same for every individual who suffers
40 the same loss. In addition, the maximum benefit al-
41 lowable for serious facial or head disfigurement un-
42 der section 56 is expressed in those same terms to
43 retain consistency within the section and to provide
44 inflation protection.

1 Section 22 ensures that there will be no dupli-
2 cate payments for subsequent injuries under both the
3 Employment Rehabilitation Fund and the Second Injury
4 Fund. If reimbursement is available under the Em-
5 ployment Rehabilitation Fund, no reimbursement may be
6 made under the Second Injury Fund.

7 Section 23 establishes the Employment Rehabilita-
8 tion Fund and the Apportionment Review Panel, and
9 provides for funding for the fund. The Employment
10 Rehabilitation Fund will be administered by the
11 Chairman of the Workers' Compensation Commission. It
12 is intended to be used to reimburse employers who in-
13 cur additional workers' compensation liability as a
14 result of a subsequent injury to a rehabilitated
15 worker hired or put back to work by that employer and
16 to reimburse employers for their implementation ex-
17 penses in unsuccessful rehabilitation efforts. The
18 fund will also be used to pay wage credits to a sub-
19 sequent employer in the amount of up to 50% of an
20 employee's average weekly direct wages for 2 consec-
21 utive 90-day periods after the employer has hired a
22 rehabilitated worker. The fund will be reimbursed
23 for this payment by the original employer or insurer
24 who was responsible for paying the injured employee's
25 compensation before his rehiring. If the employee is
26 discharged without good cause within 12 months after
27 commencing employment, all money paid to the employer
28 must be returned to the fund. This prevents employers
29 from hiring rehabilitated employees simply to take
30 advantage of the wage subsidy and then discharging
31 them after their wage credits run out.

32 The Employment Rehabilitation Fund will be funded
33 by an assessment against each worker's compensation
34 insurer or self-insurer in the State at the rate of
35 1/2% in 1986, and 1% thereafter, of its actual paid
36 losses in the previous calendar quarter. No assess-
37 ment will be levied if the balance in the fund equals
38 or exceeds the previous quarter's assessment.

39 Sections 24 and 25 repeal and replace the Maine
40 Revised Statutes, Title 39, section 58, of the Work-
41 ers' Compensation Act with section 58-A. The new
42 section deletes language referring to the maximum al-
43 lowable benefit since it is covered under the new
44 section 53-A. In addition, a 5% cap has been placed

1 on the annual adjustment for inflation of an individ-
2 ual benefit recipient's compensation under this sec-
3 tion. The individual's compensation continues to be
4 adjusted as under prior law, but it may not be ad-
5 justed by more than 5% or the actual percentage in-
6 crease in the State average weekly wage in the prior
7 year, whichever is less. Finally, a new subsection 1
8 has been added to exempt employees of sheltered work-
9 shops from the \$25 minimum weekly benefit under the
10 section. This will allow their workers' compensation
11 insurance rates to reflect their actual wages and re-
12 duce their insurance payments.

13 Section 26 provides for the coordination of work-
14 ers' compensation benefits with other
15 employer-financed benefits. Under this section, an
16 employee's benefits under the Maine Revised Statutes,
17 Title 39, section 54-A or 55-A, will be reduced by
18 50% of the amount of old age social security insur-
19 ance benefits received by the employee to reflect the
20 employer's share of social security taxes paid. In
21 addition, an employee's benefits will also be reduced
22 by an amount proportional to the employer's paid
23 share of any after-tax benefits received by the em-
24 ployee under an employee benefit plan. If the bene-
25 fit plan was funded entirely by the employer, 100% of
26 after-tax benefits received by the employee under
27 that plan will be deducted from his workers' compen-
28 sation benefits. If the plan was funded 25% by em-
29 ployer contributions and 75% by employee contribu-
30 tions, then 25% of the after-tax benefits will be de-
31 ducted. No deduction is made if the employee benefit
32 plan requires a reduction in benefits paid under that
33 plan to reflect the employee's receipt of workers'
34 compensation benefits, nor is any reduction to be
35 made when social security benefits are increased as a
36 cost-of-living adjustment, and in no case may work-
37 ers' compensation weekly benefits be reduced under
38 this section below a minimum of \$7 or 10% of the
39 amount due to the employee under section 54-A or
40 55-A, whichever is greater. The section further re-
41 quires employees to release information regarding
42 benefits being received from other sources to their
43 employer for the purpose of calculating benefit reduc-
44 tions under this section.

1 Section 27 simply changes references to sections
2 which have been renumbered to make them consistent.

3 Section 28 releases employees and employers from
4 their obligations regarding transfers to suitable
5 work while a rehabilitation plan is being imple-
6 mented. This ensures that rehabilitation plans may
7 be implemented smoothly without fear of interruptions
8 caused by the obligations under the Maine Revised
9 Statutes, Title 39, section 66-A, to find and accept
10 suitable work for an injured employee while retaining
11 the option of providing suitable work for an injured
12 employee without the provision of rehabilitation ser-
13 vices before the plan is actually implemented.

14 Section 29 enacts the major portion of the reha-
15 bilitation program which is designed to help injured
16 employees return to gainful employment and thereby
17 reduce compensation payments. The Maine Revised
18 Statutes, Title 39, section 81, states the purpose of
19 the rehabilitation subchapter and authorizes the
20 Chairman of the Workers' Compensation Commission to
21 adopt rules to carry out that expressed purpose.
22 Section 82 establishes the Office of Employment Reha-
23 bilitation under the Workers' Compensation Commis-
24 sion. It is headed by an administrator selected by
25 the chairman of the commission. The administrator,
26 who must be a certified rehabilitation counselor, has
27 various duties under section 82, including monitoring
28 rehabilitation cases, maintaining a list of qualified
29 and approved rehabilitation service providers and de-
30 veloping a fee schedule for rehabilitation services
31 provided to injured employees under this new draft.

32 The actual rehabilitation procedures are laid out
33 in detail in the Maine Revised Statutes, Title 39,
34 sections 83 to 90 of the Workers' Compensation Act.
35 The new draft requires a mandatory suitability evalu-
36 ation and plan development for every injured employee
37 as soon as it is determined that he is unable to re-
38 turn to his previous job. These services are done by
39 the rehabilitation provider selected by the employee
40 from the list of approved providers supplied by the
41 administrator and are paid for by the employer or his
42 insurer. After this, further participation on the
43 part of the employee and employer is voluntary. The
44 employee, employer and administrator must all agree

1 before the plan will be implemented. The plan must
2 be calculated to return the employee to productive
3 employment, with preference given to returning to
4 work with his prior job or employer. Once imple-
5 mented, a plan may be modified, suspended or termi-
6 nated by the administrator upon a showing of good
7 cause. If a rehabilitation plan proves unsuccessful,
8 the employer's costs for implementing the plan will
9 be reimbursed through the Employment Rehabilitation
10 Fund.

11 This rehabilitation process is modified for em-
12 ployees of employers which maintain, on January 1,
13 1986, an approved on-premises rehabilitation counsel-
14 or to provide rehabilitation services to those em-
15 ployees. The initial suitability evaluation and plan
16 development for these individuals may be conducted by
17 the in-house rehabilitation provider. If the parties
18 do not agree to the implementation of the plan, the
19 administrator will decide if the plan meets the re-
20 quirements and purposes of the rehabilitation program
21 and, if it does and it is in the best interest of the
22 employee, will order its implementation for a 30-day
23 trial period. After this trial period is up, the em-
24 ployee may choose to either remain with the program
25 or resume rehabilitation with a provider of his
26 choice.

27 The rehabilitation subchapter contains a sunset
28 provision calling for its repeal on July 1, 1988.
29 The Chairman of the Workers' Compensation Commission
30 is also directed to report on the effectiveness of
31 this subchapter to the Second Regular Session of the
32 113th Legislature. These provisions will ensure a
33 comprehensive review of the system's effectiveness
34 after 2 years of actual operation.

35 Section 30 directs the Office of Employee Assist-
36 ants to advise employees how to prepare for actions
37 which are instituted against the employee by an em-
38 ployer since attorneys' fees will now be awarded to
39 the employee only if he eventually prevails in the
40 action.

41 Section 31 authorizes the creation of the Office
42 of Employment Rehabilitation, as well as an abuse in-
43 vestigation unit, composed of at least 2 investiga-

1 tors, to look into allegations of fraud, illegal or
2 improper conduct and abuse occurring within the work-
3 ers' compensation system. The investigation unit will
4 report to the commissioner on patterns and areas of
5 abuse by employees, employers and insurers within the
6 workers' compensation system.

7 Section 32 allows the Chairman of the Workers'
8 Compensation Commission to set, by rule, different
9 time periods for discovery in workers' compensation
10 actions than those contained in the Maine Rules of
11 Civil Procedure where it is necessary to avoid delay
12 in holding hearings under the Workers' Compensation
13 Act. This will avoid the problems caused by using
14 discovery rules calculated to serve the time require-
15 ments of the court system, rather than the workers'
16 compensation hearing schedules.

17 Section 33 repeals language referring to the pri-
18 or rehabilitation system.

19 Section 34 repeals the rule of liberal construc-
20 tion. It is based on a Minnesota law and requires the
21 commission and courts to favor neither employees nor
22 employers in their construction of the Workers' Com-
23 pensation Act, but to decide each case upon its mer-
24 its. The commission is further directed to construe
25 the Workers' Compensation Act to ensure the efficient
26 delivery of compensation to injured workers at a rea-
27 sonable cost to employers.

28 Sections 35 and 36 repeal language referring to
29 the prior rehabilitation system.

30 Section 37 limits petitions for review brought
31 during the development or implementation of a reha-
32 bilitation plan to only those based on a substantial
33 change in the employee's medical condition to avoid
34 unnecessary interference with a rehabilitation plan.

35 Section 38 repeals language referring to the pri-
36 or rehabilitation system.

37 Section 39 suspends all obligations under the
38 Maine Revised Statutes, Title 39, chapter 1, subchap-
39 ter III-A if a trial work period is begun.

1 Sections 40 and 41 limit the award of attorneys'
2 fees to employees to only those cases in which an em-
3 ployee prevails before the commission or the Law
4 Court.

5 Section 42 repeals language referring to the pri-
6 or rehabilitation system.

7 Section 43 limits the award of attorneys' fees to
8 employees to only those cases in which the employee
9 prevails and further requires employees, employers
10 and insurers to report to the commission any amounts
11 paid for legal assistance in a workers' compensation
12 proceeding. An employee prevails in a proceeding if
13 he obtains or retains more benefits or compensation
14 than was offered in writing by the employer before
15 the proceeding began.

16 Sections 44 and 45 repeal and replace the Maine
17 Revised Statutes, Title 39, section 112, of the Work-
18 ers' Compensation Act with section 112-A. The re-
19 pealed section had the effect of excluding almost all
20 employee statements to their employers from evidence
21 in any proceeding under the Workers' Compensation
22 Act. Section 45 of the new draft excludes these
23 statements only if they were made to an investigator,
24 employer or employer's representative and were ob-
25 tained by means of duress on the part of those per-
26 sons. The term "duress" includes not only its common-
27 law meaning, but also includes the specific examples
28 set out in the section.

29 Sections 46 to 48 amend Maine's Occupational Dis-
30 ease Law to correspond to the new benefit levels un-
31 der this new draft.

32 Section 49 requires the Commissioner of Labor and
33 the Treasurer of State to report to the Legislature
34 on January 1, 1987, describing in detail the opera-
35 tion of the safety loan program and the status of the
36 loan fund.

37 Section 50 provides for a study to be conducted
38 by a subcommittee of the Joint Standing Committee on
39 Labor regarding the impact of medical fees on work-
40 ers' compensation costs and possible methods of re-
41 stricting any inflationary effect caused by those
42 fees.

1 Section 51 establishes the Commission on Safety
2 in the Maine Workplace to investigate and study the
3 subject of occupational safety and to make recommen-
4 dations on how best to improve workplace safety in
5 the State.

6 Sections 52, 53 and 54 add appropriation and al-
7 location sections for the safety and loan funds cre-
8 ated in this new draft.

9 The new draft contains 2 effective dates. The re-
10 habilitation portions of the new draft take effect
11 January 1, 1986, and apply only to injuries occurring
12 on or after that date. Persons injured before that
13 date and their employers may agree to take advantage
14 of the rehabilitation process established by the new
15 draft, but reimbursement under the Maine Revised
16 Statutes, Title 39, section 57-B, for subsequent in-
17 juries and reimbursement for rehabilitation services
18 provided before January 1, 1986, under section 87
19 will not be available to them. The remainder of the
20 new draft takes effect July 1, 1985, and applies only
21 to persons injured on or after that date. Persons
22 injured before that date will continue to be governed
23 by prior law since their substantive rights were de-
24 termined at the time of injury.

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