

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 704

S.P. 253

In Senate, March 11, 1987

Reference to the Committee on Labor suggested and ordered printed

JOY J. O'BRIEN, Secretary of the Senate  
Presented by Senator GAUVREAU of Androscoggin.

Cosponsored by Representative BEGLEY of Waldoboro,  
Representative ZIRNKILTON of Mount Desert, Representative RAND  
of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT Relating to Notices of Controversy  
under the Workers' Compensation Act.

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

Sec. 1. 39 MRSA §51-B, sub-§7, as amended by PL 1983, c. 682, §5, is further amended to read:

7. Notice of controversy. If the employer, prior to making payments under subsection 3, controverts the claim to compensation, he shall file with the commission, within 14 days after an event which gives rise to an obligation to make payments under subsection 3, a notice of controversy in a form prescribed by the commission. If the employer, prior to making payments under subsection 4, controverts the claim to compensation, he shall file with the commission,

1 within 90 days after an event which gives rise to an  
2 obligation to make payments under subsection 4, a notice  
3 of controversy in a form prescribed by the commission.  
4 The notice shall indicate the name of the  
5 claimant, name of the employer, date of the alleged  
6 injury or death and the grounds upon which the claim  
7 to compensation is controverted. The employer shall  
8 promptly furnish the employee with a copy of the notice.  
9

10 If, at the end of the 14-day period in subsection 3  
11 or the 90-day period in subsection 4, the employer  
12 has not filed the notice required by this subsection,  
13 he shall begin payments as required under those subsections.  
14 In the case of compensation for incapacity  
15 under subsection 3, he may cease payments and file  
16 with the commission a notice of controversy, only as  
17 provided in this subsection, no later than 44 days  
18 after an event which gives rise to an obligation to  
19 make payments under subsection 3. Failure to file the  
20 required notice of controversy prior to the expiration  
21 of the 44-day period, in the case of compensation  
22 under subsection 3, constitutes acceptance by  
23 the employer of the compensability of the injury or  
24 death. Failure to file the required notice of contro-  
25 versy prior to the expiration of the 90-day period  
26 under subsection 4 constitutes acceptance by the em-  
27 ployer of the extent of impairment claimed or the  
28 reasonableness of the medical services claimed. Prior  
29 to the expiration of the 44-day period, the commis-  
30 sion may, for cause shown, extend the time for filing  
31 a notice of controversy for an additional period of  
32 not more than 90 days.

33 Failure to file the required notice of controversy  
34 prior to the expiration of the 44-day period or any  
35 extended period set by the commission, in the case of  
36 compensation under subsection 3, constitutes accept-  
37 ance by the employer of the compensability of the in-  
38 jury or death. Failure to file the required notice of  
39 controversy prior to the expiration of the 90-day pe-  
40 riod under subsection 4 constitutes acceptance by the  
41 employers of the extent of impairment claimed or the  
42 reasonableness of the medical services claimed.

43 Failure to file the required notice of controversy  
44 shall not constitute such an acceptance by the em-

1 ployer where it is shown that the failure was due to  
2 fraud or excusable neglect. The commission may also  
3 relieve any employer from such an acceptance upon the  
4 grounds of newly discovered evidence which, by due  
5 diligence, could not have been discovered prior to  
6 the expiration of the applicable period for filing a  
7 notice of controversy.

8 If, at the end of the 44-day period the employer has  
9 not filed a notice of controversy, or if, pursuant to  
10 a proceeding before the commission, the employer is  
11 required to make payments, the payments may not be  
12 decreased or suspended, except as provided in section  
13 100.

14 Sec. 2. 39 MRSA §51-B, sub-§8, as amended by PL  
15 1983, c. 682, §6, is further amended to read:

16 8. Effect of payment. If, within the 44-day pe-  
17 riod or any extended period established in subsection  
18 7 and after the payment of compensation for incapaci-  
19 ty without an award, the employer elects to contro-  
20 vert the claim to compensation for incapacity, the  
21 payment of compensation shall not be considered to be  
22 an acceptance of the claim or an admission of liabil-  
23 ity. Notwithstanding the provisions of section 99-C,  
24 the acceptance of compensation in any case, except by  
25 decision or agreement, by the injured employee or his  
26 dependents shall not be considered an admission by  
27 the employee or his dependents as to the nature and  
28 scope of the employer's liability or a waiver of the  
29 right to question the amount of compensation or the  
30 duration of the same or the nature of the injury and  
31 its consequences.

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STATEMENT OF FACT

2 Present law establishes rigid time periods for  
3 disputing workers' compensation claims. It requires  
4 an employer to either pay benefits or dispute the  
5 claim within 14 days after notice of the injury. It  
6 also provides a limited exception. In order to give  
7 the employer more time to investigate difficult  
8 claims, it allows the employer an additional 30 days  
9 to dispute the claim if the employer makes voluntary  
10 payments of compensation during that period. If the  
11 employer fails to file a notice of controversy at the  
12 end of that so-called "44-day period," 14 plus 30  
13 days, the employer is automatically "locked in" to  
14 paying compensation.

15 This rule has resulted in unnecessary controversy  
16 and hardship in some cases. In many cases an employer  
17 is unable to obtain the medical information necessary  
18 to make an informed decision with the 44-day period.  
19 The employer is confronted with a difficult choice in  
20 those and similar cases. He must either contest the  
21 claim or become locked in to paying compensation, po-  
22 tentially for the lifetime of the claimant. Often the  
23 employer must dispute the claim to preserve his  
24 rights while awaiting the needed information. The re-  
25 sult is that an adversary process and litigation is  
26 triggered which could have been avoided if the em-  
27 ployer had more time to investigate.

28 This bill addresses that problem in a couple of  
29 ways. First, it provides the commission with the au-  
30 thority to extend the time period for up to 90 days.  
31 During this period, the employee's interests are pro-  
32 tected as it also requires the employer to continue  
33 benefit payments during that extended period. Second,  
34 it relieves the employer from being locked in to pay-  
35 ing compensation in cases of fraud or where newly  
36 discovered evidence is found to exist. Together these  
37 changes should reduce unnecessary controversy.

38 This bill also addresses a very practical prob-  
39 lem, the lack of any exceptions to the lock-in rule  
40 for failure to file a notice of controversy. In even  
41 the best administered programs, mistakes can occur.  
42 Notices may not be filed due to clerical errors, ill-

1       ness of the responsible person or for other reason.  
2       While timely filing should be encouraged, this should  
3       not be done by awarding benefits to individuals who  
4       are not entitled to them. That is precisely the ef-  
5       fect of the current law. If the employer fails to  
6       file on time, even by mistake, he is locked in to  
7       paying benefits potentially for the lifetime of the  
8       claimant. This bill addresses that problem by permit-  
9       ting the commission to excuse a late filing on a  
10      showing of excusable neglect.

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