

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
SECOND SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1918

S.P. 692

In Senate, October 16, 1987

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JOY J. O'BRIEN, Secretary of the Senate  
Presented by Senator COLLINS of Aroostook.

Cosponsored by Representative WILLEY of Hampden.

STATE OF MAINE

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

1                   AN ACT to Reform the Maine Workers'  
2                   Compensation Act to Assure Coverage for  
3                   Maine Workers.  
4

5                   Emergency preamble. Whereas, Acts of the Legisla-  
6                   ture do not become effective until 90 days after ad-  
7                   journalment unless enacted as emergencies; and

8                   Whereas, there is a statutory requirement that  
9                   all employers in the State provide workers' compensa-  
10                  tion coverage; and

11                  Whereas, most, if not all, of the insurance car-  
12                  riers writing such workers' compensation insurance in  
13                  the State are withdrawing from the business; and

1           Whereas, comprehensive legislative reform is  
2 urgently needed as it is the only possibility for  
3 saving the private insurance market for workers' com-  
4 pensation, without which employers cannot operate;  
5 and

6           Whereas, in the judgment of the Legislature,  
7 these facts create an emergency within the meaning of  
8 the Constitution of Maine and require the following  
9 legislation as immediately necessary for the preser-  
10 vation of the public peace, health and safety; now,  
11 therefore,

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

14           **Sec. 1. 26 MRSA §42**, as amended by PL 1977, c.  
15 615, is further amended to read:

16           §42. Powers and duties

17           The bureau shall collect, assort and arrange sta-  
18 tistical details relating to all departments of labor  
19 and industrial pursuits in the State; to trade unions  
20 and other labor organizations and their effect upon  
21 labor and capital; to the number and character of in-  
22 dustrial accidents and their effect upon the injured,  
23 their dependent relatives and upon the general pub-  
24 lic; to other matters relating to the commercial, in-  
25 dustrial, social, educational, moral and sanitary  
26 conditions prevailing within the State, including the  
27 names of firms, companies or corporations, where lo-  
28 cated, the kind of goods produced or manufactured,  
29 the time operated each year, the number of employees  
30 classified according to age and sex and the daily and  
31 average wages paid each employee; and the exploita-  
32 tion of such other subjects as will tend to promote  
33 the permanent prosperity of the industries of the  
34 State. The director is authorized and empowered, sub-  
35 ject to the approval of the Governor, to accept from  
36 any other agency of government, individual, group or  
37 corporation such funds as may be available in carry-  
38 ing out this section, and meet such requirements with  
39 respect to the administration of such funds, not in-  
40 consistent with this section, as are required as con-  
41 ditions precedent to receiving such funds. An ac-  
42 counting of such funds and a report of the use to

1 which they were put shall be included in the biennial  
2 report to the Governor. Each agency of government  
3 shall cooperate fully with the bureau's efforts to  
4 compile labor and industrial statistics. The director  
5 shall cause to be enforced all laws regulating the  
6 employment of minors and women; all laws established  
7 for the protection of health, lives and limbs of op-  
8 erators in workshops and factories, on railroads and  
9 in other places; all laws regulating the payment of  
10 wages, and all laws enacted for the protection of the  
11 working classes. He shall, on or before the first day  
12 of July, biennially, report to the Governor, and may  
13 make such suggestions and recommendations as he may  
14 deem necessary for the information of the Legisla-  
15 ture. He may from time to time cause to be printed  
16 and distributed bulletins upon any subject that shall  
17 be of public interest and benefit to the State; and  
18 may conduct a program of research, education and pro-  
19 motion to reduce industrial accidents. The director  
20 may review various data, such as worker compensation  
21 records, as well as other applicable information relat-  
22 ing to any public or private employer's safety ex-  
23 perience. When any individual public or private em-  
24 ployer's safety experience is such that causes the  
25 director to question seriously the safe working envi-  
26 ronment of that employer, the director may offer such  
27 safety education and consultation programs to that  
28 employer that may be beneficial in providing a safer  
29 work environment. If the employer refuses such as-  
30 sistance, or is in serious noncompliance which may  
31 lead to injuries or serious threats to worker safety  
32 continue, then the director may communicate his con-  
33 cerns to appropriate agencies such as the United  
34 States Occupational Safety and Health Administration.

35 Sec. 2. 26 MRSA §42-A, sub-§2, 1A, as enacted by  
36 PL 1985, c. 372, Pt. A, §6, is amended to read:

37 A. The development and application of a state-  
38 wide safety education and training program to fa-  
39 miliarize employers, supervisors, employees and  
40 union leaders with techniques of accident inves-  
41 tigation and prevention including education and  
42 training assistance to employers and employees  
43 under sections 1715 and 1720 of the Chemical Sub-  
44 stance Identification Program;

1           Sec. 3. 26 MRSA §51 is enacted to read:

2           §51. Commission on Safety in the Maine Workplace

3           1. Purpose; members. There is established a  
4 Commission on Safety in the Maine Workplace which  
5 will consist of knowledgeable citizens who will exam-  
6 ine safety attitudes, programs and procedures in  
7 Maine's workplaces; identify initiatives to reduce  
8 the frequency, severity and cost of work-related ac-  
9 cidents and illnesses; and promote and improve  
10 best-practice safety programs.

11           A. The Governor shall appoint the members of the  
12 commission, which shall consist of not more than  
13 12 members, including:

14                     (1) Three members with expertise and pro-  
15 fessional qualifications in the field of oc-  
16 cupational safety and health;

17                     (2) Two members representing workers and 2  
18 members representing private employers, all  
19 of whom must be knowledgeable in the area of  
20 workplace safety; and

21                     (3) Other members such as the Governor  
22 deems necessary and appropriate to carry out  
23 the purpose of this section.

24           B. The Governor shall appoint the chairman of  
25 the commission and the Commissioner of Labor  
26 shall serve as vice-chairman. The commision  
27 shall actively seek information and involvement  
28 from organized labor, the professional safety  
29 community, the various state and federal agencies  
30 concerned with safety, and interested private  
31 citizens, groups and organizations.

32           2. Duties. The commission shall conduct studies  
33 and hold public meetings as necessary to develop  
34 findings and recommendations respecting each of the  
35 following issues:

36                     A. Evaluation of the effectiveness of current  
37 worker safety efforts, practices and programs in

1 the State and the attitudes of employers and  
2 workers toward safety;

3 B. Identification of the best-practice safety  
4 programs in the State and elsewhere, whose  
5 wide-spread adoption would reduce the incidence,  
6 severity and cost of workplace accidents and ill-  
7 nesses;

8 C. Identification of emerging occupational safe-  
9 ty and health issues that will be of importance  
10 in the future and assessment of their policy im-  
11 plications;

12 D. Determination of existing statistical infor-  
13 mation on accidents and illnesses and reliability  
14 and adequateness to monitor trends and to support  
15 effective safety rehabilitation and compensation  
16 programs; and

17 E. Review the decision of occupational safety  
18 loan requests as provided for in section 63.

19 3. Recommendations. The commission shall make  
20 recommendations on a continuing basis to include:

21 A. Specific recommendations for action by the  
22 Governor, the Legislature, educators, the safety  
23 profession, employers and workers which will re-  
24 duce the frequency, severity and costs of  
25 work-related accidents and illnesses and which  
26 will enhance, promote and improve safety in  
27 Maine's workplaces; and

28 B. Recommendations for actions that will improve  
29 employer, worker and public attitudes toward  
30 safety in the workplace and that will create a  
31 continuing public-private, employer-employee  
32 partnership in the 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 unless otherwise  
36 provided for. All agencies of the State shall coop-  
37 erate fully with the commission.

1           Sec. 4. 26 MRSA §61, sub-§2, as amended by PL  
2 1985, c. 819, Pt. C, §5, is further amended to read:

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

35           Sec. 5. 26 MRSA §63, sub-§1, §§D and E, as en-  
36 acted by PL 1985, c. 372, Pt. A, §7, are amended to  
37 read:

38           D. A majority vote of the loan-review-panel Com-  
39 mission on Safety in the Maine Workplace is nec-  
40 essary to recommend approval of a loan which  
41 shall then be transmitted to the department for  
42 final disposition in accordance with the policies  
43 adopted by the department;

1 E. Loan applications shall be reviewed by both  
2 the ~~loan-review-panel~~ commission and the depart-  
3 ment for feasibility, such as, for the general  
4 reasonableness and safety need for the proposal,  
5 whether the applicant has sufficient capital,  
6 whether an adequate safety analysis or other  
7 counseling requirement has been completed, wheth-  
8 er the applicant is credit worthy within the  
9 scope of this program and whether the collateral  
10 offered to secure the loan is adequate;

11 Sec. 6. 26 MRSA §63, sub-§2, as enacted by PL  
12 1985, c. 372, Pt. A, §7, is repealed and the follow-  
13 ing enacted in its place:

14 2. Commission on Safety in the Maine Workplace.  
15 The commission shall review loan proposals under this  
16 section.

17 A. The commission shall meet at least twice  
18 yearly at the State Capital or any other place  
19 designated by the chairman.

20 B. The appointed members of the board shall be  
21 compensated according to Title 5, chapter 379.  
22 The commission chairman shall approve and coun-  
23 tersign all vouchers for expenditures under this  
24 section.

25 Sec. 7. 26 MRSA §1720, as amended by PL 1985, c.  
26 170, §1, is further amended to read:

27 §1720. Chemical Information and Training Program

28 1. Assistance to employers. The director shall,  
29 upon request, provide assistance to employers in the  
30 development and conduct of training programs for em-  
31 ployees and local public safety personnel.

32 ~~2.--Chemical-Information-and-Training--Assistance~~  
33 ~~Fund;--The-director-shall-establish-by-rule-a-segre-~~  
34 ~~gated,-nonlapsing-Chemical-Information-and--Training~~  
35 ~~Assistance--Fund--which--shall--be--financed--by-fees~~  
36 ~~levied-on-employers-subject-to-this-chapter;--Reve-~~  
37 ~~nuces-paid-into-the-fund,-including-interest,-shall-be~~  
38 ~~used--exclusively--for--carrying--out--the--purposes--of~~  
39 ~~this-chapter,-including,-but-not-limited-to,-informa-~~



1 tion-and-communication-with-employers,--provision--of  
2 copies-of-the-law, rules, listing-of-hazardous-chemi-  
3 cals--and--the--likelihood-of-the-presence-of-certain  
4 hazardous---chemicals---in---the---various---industry  
5 workplaces,---Expenditures-from-the-fund-shall-be-al-  
6 located-and-approved-by-the-Legislature.

7 2-A. Funds transferred. On the effective date  
8 of this subsection, any funds in the Chemical Infor-  
9 mation and Training Assistance Fund shall be trans-  
10 ferred to the Safety Education and Training Fund es-  
11 tablished in section 61.

12 3.--Fees.--Each employer not otherwise exempt un-  
13 der this chapter shall be assessed an annual fee  
14 based on the employer's annual average number of em-  
15 ployees in accordance with the following schedule:

16	Annual-Average		
17	Number-of-Employees		
18	Equal-to--or	Less	Employer's
19	more-than	Than	Fee
20	0	4	\$ 0
21	4	25	15
22	25	50	50
23	50	100	150
24	100	300	200
25	300	500	250
26	500-or-above		300
27			

28 The-fee-is-payable-prior-to-July-1st-of-each-calendar  
29 year.

30 4.--Waivers-and-exemptions-from-fees.--The direc-  
31 tor shall waive fees under this chapter under the  
32 conditions established in section 1724.--Employers  
33 who have no applicable chemicals in the workplace,  
34 employers employing 3 or fewer employees, and state,  
35 municipal or quasi-municipal governmental organiza-  
36 tions are exempt from fees under this chapter.--Any  
37 employer who pays a fee and is found to be exempt  
38 from that fee shall receive a prompt refund.

39 Sec. 8. 26 MRSA §1724, as amended by PL 1985, c.

1 170, §2, is further amended to read:

2 §1724. Report to Legislature

3 Each year by March 15th the director shall report  
4 to the Legislature on the Bureau of Labor Standard's  
5 Standards' experience under this chapter, including  
6 progress in implementation, the status of the training  
7 assistance program, evidence of improved safety  
8 records, and any ~~recommendation--on--fee-structure~~  
9 ~~recommendations. Any amount of these fees--collected~~  
10 ~~in a year that exceeds the allocation from the Train-~~  
11 ~~ing Assistance Fund for that year shall be applied so~~  
12 ~~as--to--reduce--fees--levied--on--employers--under--this~~  
13 ~~chapter in the succeeding year.~~

14 Sec. 9. 39 MRSA §2, sub-§§14 and 15 are enacted  
15 to read:

16 14. Maximum medical improvement. "Maximum medi-  
17 cal improvement" means the date after which further  
18 recovery and further restoration of function can no  
19 longer be reasonably anticipated, based upon reason-  
20 able medical probability.

21 15. Permanent impairment. "Permanent impairment"  
22 means any anatomic or functional abnormality or loss  
23 existing after the date of maximum medical improve-  
24 ment which results from the injury.

25 Sec. 10. 39 MRSA §22-C, as amended by PL 1987,  
26 c. 206, §1, is repealed.

27 Sec. 11. 39 MRSA §22-D, as amended by PL 1987,  
28 c. 206, §2, is repealed.

29 Sec. 12. 39 MRSA §51-B, sub-§4, as amended by PL  
30 1985, c. 729, §1, is further amended to read:

31 4. Compensation for impairment; compensation for  
32 medical expenses. Compensation for impairment under  
33 sections 56 and 56-A section 56-B shall not be pay-  
34 able prior to the date on which the injured employee  
35 reaches the stage of maximum medical improvement. It  
36 shall become due and payable within 90 days after the  
37 employer has notice that maximum medical improvement  
38 has been attained. ~~For the purpose of this subsec-~~

1 tion,--"maximum-medical-improvement"--means--the--date  
2 after--which--further--recovery--and--further--restoration  
3 of--function--can--no--longer--be--reasonably--anticipated,  
4 based--upon--reasonable--medical--probability. Compensation  
5 for medical expenses, aids and other services  
6 under section 52 is due and payable within 90 days  
7 from the date a request is made for payment of these  
8 expenses.

9       **Sec. 13. 39 MRSA §51-B, sub-§7, as amended by PL**  
10       **1983, c. 682, §5, is further amended to read:**

11       **7. Notice of controversy.** If the employer, pri-  
12 or to making payments under subsection 3, controverts  
13 the claim to compensation, he shall file with the  
14 commission, within 14 days after an event which gives  
15 rise to an obligation to make payments under subsec-  
16 tion 3, a notice of controversy in a form prescribed  
17 by the commission. If the employer, prior to making  
18 payments under subsection 4, controverts the claim to  
19 compensation, he shall file with the commission,  
20 within 90 days after an event which gives rise to an  
21 obligation to make payments under subsection 4, a no-  
22 tice of controversy in a form prescribed by the com-  
23 mission. The notice shall indicate the name of the  
24 claimant, name of the employer, date of the alleged  
25 injury or death and the grounds upon which the claim  
26 to compensation is controverted. The employer shall  
27 promptly furnish the employee with a copy of the no-  
28 tice.

29 If, at the end of the 14-day period in subsection 3  
30 or the 90-day period in subsection 4, the employer  
31 has not filed the notice required by this subsection,  
32 he shall begin payments as required under those sub-  
33 sections. In the case of compensation for incapacity  
34 under subsection 3, he may cease payments and file  
35 with the commission a notice of controversy, only as  
36 provided in this subsection, no later than 44 days  
37 after an event which gives rise to an obligation to  
38 make payments under subsection 3. Failure If the em-  
39 ployer has received written notice of an event which  
40 gives rise to an obligation to make payments, failure  
41 to file the required notice of controversy prior to  
42 the expiration of the 44-day period, calculated from  
43 the employer's receipt of the written notice in the  
44 case of compensation under subsection 3, constitutes

1 acceptance by the employer of the compensability of  
2 the injury or death. ~~Failure~~ If the employer has re-  
3 ceived written notice of an event which gives rise to  
4 an obligation to make payments, failure to file the  
5 required notice of controversy prior to the expira-  
6 tion of the 90-day period under subsection 4 calcu-  
7 lated from the employer's receipt of the written  
8 notice constitutes acceptance by the employer of the  
9 extent of impairment claimed or the reasonableness of  
10 the medical services claimed.

11 If, at the end of the 44-day period the employer has  
12 not filed a notice of controversy, or if, pursuant to  
13 a proceeding before the commission, the employer is  
14 required to make payments, the payments may not be  
15 decreased or suspended, except as provided in section  
16 100.

17 Sec. 14. 39 MRSA §52, as amended by PL 1985, c.  
18 729, §2, is further amended by adding after the 4th  
19 paragraph a new paragraph to read:

20 No employer shall be liable under this Title for  
21 charges for health care services to an injured em-  
22 ployee in excess of those established pursuant to Ti-  
23 tle 24-A, section 2370, except upon petition to the  
24 commission as provided in this section. Charges in  
25 excess of those established pursuant to Title 24-A,  
26 section 2370 shall be allowed against the employer if  
27 the provider satisfactorily demonstrates to an inde-  
28 pendent medical examiner that his services were ex-  
29 traordinary or that he incurred extraordinary costs  
30 in treating the employee as compared to those reason-  
31 ably contemplated for the service provided. The exam-  
32 iner shall be appointed from the list of examiners  
33 maintained by the chairman. An injured employee shall  
34 not be liable for any portion of the cost of medical  
35 services under this chapter.

36 Sec. 15. 39 MRSA §52-A, sub-§1, as enacted by PL  
37 1981, c. 514, §2, is amended to read:

38 1. Certificate of authorization. Any employee  
39 who makes any claim for compensation, enters into any  
40 agreement for compensation or is receiving compensa-  
41 tion shall, upon request by the employer or an inde-  
42 pendent medical examiner, execute a certificate, in a

1 form prescribed by the commission, authorizing the  
2 employer or examiner to obtain, after payment of a  
3 reasonable fee, in writing, from any physician, osteo-  
4 path, chiropractor or any other health care provider  
5 any written information which is or has been obtained  
6 in connection with the examination or treatment of  
7 the employee and which relates to any injury or dis-  
8 ease for which compensation is claimed.

9 If any employee fails, after request, to execute such  
10 a certificate, ~~the employer may petition the commis-~~  
11 ~~sion for the following relief~~ within 20 days:

12 A. As to any employee who is making a claim for  
13 compensation, ~~an order suspending~~ any action on  
14 the employee's claim shall be suspended, without  
15 interest under section 72, until the certificate  
16 is executed; and

17 B. As to any employee who is receiving compensa-  
18 tion or who has entered into an agreement for the  
19 payment of compensation, ~~an order suspending the~~  
20 ~~payment of compensation until the certificate is~~  
21 ~~executed.~~

22 Sec. 16. 39 MRSA §53-A, as amended by PL 1987,  
23 c. 156, §1, is repealed and the following enacted in  
24 its place:

25 §53-A. Maximum benefit levels

26 The maximum weekly benefit payable under section  
27 54-A, 55-A or 58-A is \$447.92. Beginning July 1st in  
28 the year in which this maximum benefit level is equal  
29 to or less than 133 1/3% of the state average weekly  
30 wage as determined by the Maine Unemployment Insur-  
31 ance Commission, it shall be adjusted annually so  
32 that it equals 133 1/3% of the state average weekly  
33 wage as of each July 1st.

34 Sec. 17. 39 MRSA §54-A, as amended by PL 1985,  
35 c. 601, §2, is further amended to read:

36 §54-A. Compensation for total incapacity

37 While the incapacity for work resulting from the  
38 injury is total, the employer shall pay the injured

1 employee a weekly compensation equal to 2/3 his aver-  
2 age gross weekly wages, earnings or salary, but not  
3 more than the maximum benefit under section 53-A, nor  
4 less than \$25 weekly. This Beginning on the 2nd anni-  
5 versary of the injury, this weekly compensation shall  
6 be adjusted annually so-that-it-continues-to-bear-the  
7 same-percentage-relationship--to--the--state--average  
8 weekly--wage,--as--computed-by-the-Maine-Unemployment  
9 Insurance-Commission,--as-it-did-at-the--time--of--the  
10 injury, but in no case may the annual adjustment ex-  
11 ceed the lesser of 5% or the actual percentage in-  
12 crease in the state average weekly wage for the pre-  
13 vious year.

14 In the following cases it shall, for the purpose  
15 of this Act, be conclusively presumed that the injury  
16 resulted in permanent total incapacity: The total and  
17 irrevocable loss of sight of both eyes; the loss of  
18 both hands at or above the wrist; the loss of both  
19 feet at or above the ankle; the loss of one hand and  
20 one foot; an injury to the spine resulting in perma-  
21 nent and complete paralysis of the arms or legs; or  
22 an injury to the skull resulting in incurable  
23 inebcility or insanity. In the event of such perma-  
24 nent total incapacity, the employer shall pay the em-  
25 ployee a weekly compensation equal to 2/3 his average  
26 gross weekly wages, earnings or salary, but not more  
27 than the maximum benefit under section 53-A, nor less  
28 than \$25 weekly. This Beginning on the 2nd anniversa-  
29 ry of the injury, this weekly compensation shall be  
30 adjusted annually so-that-it-continues--to--bear--the  
31 same--percentage--relationship--to--the--state--average  
32 weekly--wage,--as--computed-by--the--Maine--Unemployment  
33 Insurance-Commission,--as--it-did-at-the-time-of-the  
34 injury, but in no case may the annual adjustment ex-  
35 ceed the lesser of 5% or the actual percentage in-  
36 crease in the state average weekly wage for the pre-  
37 vious year. If the totally incapacitated employee  
38 dies, as a result of this injury, leaving dependents  
39 who were dependent upon his earnings at the time of  
40 his injury, then payments shall be made to the depen-  
41 dents in accordance with section 58-A.

42 The annual adjustment required by this section  
43 shall be made on the 2nd and each succeeding anniver-  
44 sary date of the injury, except that where the effect  
45 of the maximum under section 53-A is to reduce the

1 amount of compensation to which the claimant would  
2 otherwise be entitled, the adjustment shall be made  
3 annually on July 1st.

4 Notwithstanding this Act, any employee whose de-  
5 gree of permanent impairment is found, pursuant to  
6 section 56-B, to be equal to or less than 75%, shall  
7 not be eligible for benefits under this section.

8 This section applies only to employees injured on  
9 and after the effective date of this section.

10 1. Sheltered workshops. The \$25 weekly minimum  
11 compensation limitation under this section does not  
12 apply to a handicapped individual who is employed by  
13 a sheltered workshop and who claims compensation un-  
14 der this section. "Sheltered workshop" means a fa-  
15 cility, certified by the United States Department of  
16 Labor regulations covering employment of handicapped  
17 clients, engaged in production or service operation  
18 for the primary purpose of providing gainful employ-  
19 ment for those who cannot be readily absorbed in the  
20 competitive labor market, or of providing interim em-  
21 ployment during such time as employment opportunities  
22 for them in the competitive labor market do not ex-  
23 ist.

24 Sec. 18. 39 MRSA §55-A, as enacted by PL 1985,  
25 c. 372, Pt. A, §19, is repealed and the following en-  
26 acted in its place:

27 §55-A. Compensation for partial incapacity

28 While the incapacity for work resulting from the  
29 injury is partial, the employer shall pay the injured  
30 employee a weekly compensation equal to 2/3 the dif-  
31 ference, due to the injury, between his average gross  
32 weekly wages, earnings or salary before the injury  
33 and the weekly wages, earnings or salary which he is  
34 able to earn after the injury, but not more than the  
35 maximum benefit under section 53-A. Payments shall  
36 not continue subsequent to maximum medical improve-  
37 ment for longer than the number of weeks shown in the  
38 following schedule:

39 Percent of Permanent Impairment      Number of Weeks

1	Less than or equal to 25	400
2	<u>26 to 50</u>	<u>500</u>
3	<u>51 to 75</u>	<u>600</u>
4	<u>76 or more</u>	<u>Lifetime</u>

5        Notwithstanding this section, benefits under this  
6 section shall be reduced by a factor determined by  
7 dividing the number of days the employee has been em-  
8 ployed by any employer during the 12 months immedi-  
9 ately preceding the injury by 250, except when the  
10 employee is a full-time nonseasonal employee. For  
11 purposes of this section, an employee will be consid-  
12 ered as "full-time" if regularly employed for 32 or  
13 more hours a week and "nonseasonal" if the employee's  
14 anticipated total tenure with the employer is 6  
15 months or more.

16        This section applies only to employees injured on  
17 or after the effective date of this section.

18        Sec. 19. 39 MRSA §56, as amended by PL 1985, c.  
19 372, Pt. A, §20, is repealed.

20        Sec. 20. 39 MRSA §56-A, as amended by PL 1985,  
21 c. 372, Pt. A, §21, is repealed.

22        Sec. 21. 39 MRSA §56-B is enacted to read:

23        §56-B. Permanent impairment and injury

24        1. Weekly benefit. In the case of permanent im-  
25 pairment or injury, there shall be paid to the em-  
26 ployee a weekly benefit equal to 2/3 of the state av-  
27 erage weekly wage as computed by the Maine Unemploy-  
28 ment Insurance Commission for the number of weeks  
29 shown in the following schedule:

30        A. Zero weeks for each percent of permanent im-  
31 pairment to the body as a whole from 0 to 14%;

32        B. Three and 1/2 weeks for each percent of per-  
33 manent impairment to the body as a whole from 15%  
34 to 50%;

35        C. Four and 1/2 weeks for each percent of perma-  
36 nent impairment to the body as a whole from 51%  
37 to 85%; and



1           D. Eight weeks for each percent of permanent im-  
2           pairment to the body as a whole greater than 85%.

3           2. Schedules. In order to reduce litigation and  
4           establish more certainty and uniformity in the rating  
5           of permanent impairment, the commission shall estab-  
6           lish and the independent medical examiner, acting in  
7           accordance with section 92-A, shall use a schedule  
8           for determining the existence and degree of permanent  
9           impairment based upon medically or scientifically de-  
10          monstrable findings. The schedule shall be based on  
11          generally accepted medical standards for determining  
12          impairment and may incorporate all or part of any one  
13          or more generally accepted schedules used for such  
14          purpose, such as the American Medical Association's  
15          Guides to the Evaluation of Permanent Impairment.  
16          Pending the adoption by rule of a permanent sched-  
17          ule, Guides to Evaluation of Permanent Impairment,  
18          2nd edition, copyright 1984, by the American Medical  
19          Association, shall be the temporary schedule and  
20          shall be used for the purposes of this subsection.

21          3. Disfigurement. The commission may award prop-  
22          er and equitable compensation for serious facial or  
23          head disfigurement not to exceed 2/3 of the state av-  
24          erage weekly wage, as computed by the Maine Unemploy-  
25          ment Insurance Commission, multiplied by 50, includ-  
26          ing a disfigurement continuous in length which is  
27          partially in the facial area and also extends into  
28          the neck region. The commission, if in its opinion  
29          the earning capacity of an employee has been or may  
30          in the future be impaired, may award compensation for  
31          any serious disfigurement in the region above the  
32          sterno clavicular articulations anterior to and in-  
33          cluding the region of the sterno cleido mastoid mus-  
34          cles on either side, but no award for the total dis-  
35          figurement as set forth may, in the aggregate, exceed  
36          2/3 of the state average weekly wage, as computed by  
37          the Maine Unemployment Insurance Commission, multi-  
38          plied by 50. Notwithstanding this section, 2 or more  
39          serious disfigurements, not continuous in length, re-  
40         >sulting from the same injury, if partially in the fa-  
41          cial area and partially in the neck region as de-  
42          scribed in this subsection, shall be deemed to be a  
43          facial disfigurement.

44          4. Filing of petition. A petition for determina-

1 tion of the percentage of impairment shall be filed  
2 with the commission no earlier than the date of maxi-  
3 mum medical improvement, except that a petition for  
4 the determination of a hearing impairment due to an  
5 injury shall be filed with the commission within 2  
6 years from the date of injury.

7 5. Reduction of benefits. In the event that an  
8 employee sustains an impairment or injury that quali-  
9 fies for benefits under this section and the employee  
10 has received or is receiving total or partial inca-  
11 capacity benefits with respect to the same injury under  
12 section 54-A or 55-A, then benefits payable under  
13 this section shall be reduced by the full amount of  
14 all total and partial incapacity benefits paid since  
15 the date of injury.

16 Sec. 22. 39 MRSA §71, as amended by PL 1983, c.  
17 479, §13, is repealed.

18 Sec. 23. 39 MRSA §71-A is enacted to read:

19 §71-A. Lump sum payments

20 1. Commutation. Subject to the conditions and  
21 limitations of this section, the employer and employ-  
22 ee may by agreement discharge any liability for com-  
23 ensation, in whole or in part, by the payment by the  
24 insurer of an amount to be approved by the commis-  
25 sion. Either the employer, the employee or the  
26 employee's dependents may petition the commission for  
27 an order commuting all payments for future benefits  
28 to a lump sum.

29 2. Medical expenses; prohibition. In no event  
30 may a lump sum payment be allowed in exchange for the  
31 release of an employers' liability for future medical  
32 expenses.

33 3. Review. Prior to approval of any lump sum  
34 settlement, the commissioner shall review the follow-  
35 ing factors with the employee:

36 A. The employee's rights under this Title and  
37 the effect a lump sum settlement would have upon  
38 those rights;

1 B. The purpose for which the settlement is re-  
2 quested;

3 C. The employee's post-injury earnings and pros-  
4 pects, considering all means of support, includ-  
5 ing the projected income and financial security  
6 resulting from proposed employment, self-  
7 employment, business venture or investment and  
8 the prudence of consulting with a financial or  
9 other expert to review the likelihood of success  
10 of such projects; and

11 D. Any other information, including the age of  
12 the employee and of the employee's dependents,  
13 which would bear upon whether the settlement is  
14 in the best interest of the claimant.

15 The Office of Employee Assistants shall initiate the  
16 review within 14 days of its receipt of a request for  
17 a settlement review. The office shall send a report  
18 on the review to the commission within 5 days of its  
19 completion. The office shall not approve any settle-  
20 ment for any employee who fails to attend a scheduled  
21 review without good cause. Nothing in this subsection  
22 may be deemed to create any additional liability on  
23 the part of the State.

24 4. Approval. The commission shall not approve  
25 any lump sum settlement unless, after receiving a re-  
26 port from the Office of Employee Assistants, the com-  
27 mission deems that settlement to be in the employee's  
28 best interest in light of the factors reviewed with  
29 the employee under subsection 3.

30 Sec. 24. 39 MRSA §81, as enacted by PL 1985, c.  
31 372, Pt. A, §29, is amended by adding after the first  
32 paragraph a new paragraph to read:

33 In order to minimize disputes over rehabilitation  
34 issues while insuring that rehabilitation services  
35 appropriate to the employee's needs are provided, de-  
36 terminations of suitability for rehabilitation ser-  
37 vices, development of rehabilitation plans and moni-  
38 toring of rehabilitation services rendered by  
39 providers pursuant to approved plans shall be the re-  
40 sponsibility of the Office of Employment Rehabilita-  
41 tion.

1           Sec. 25. 39 MRSA §82, sub-§1, as enacted by PL  
2 1985, c. 372, Pt. A, §29, is amended to read:

3           1. Office of Employment Rehabilitation; appoint-  
4 ment. An Office of Employment Rehabilitation shall  
5 be maintained under the direction of a rehabilitation  
6 administrator, in this subchapter referred to as the  
7 "administrator." The chairman may appoint and remove  
8 the administrator and a sufficient number of assist-  
9 ant administrators to carry out this subchapter, with  
10 the concurrence of the commission. The administra-  
11 tor shall report to and be directed by the chairman,  
12 shall supervise the assistant administrators and  
13 shall carry out the duties assigned to the adminis-  
14 trator in this Act.

15           Sec. 26. 39 MRSA §82, sub-§3, ¶¶E & F, as en-  
16 acted by PL 1985, c. 372, Pt. A, §29, are amended to  
17 read:

18           E. ~~The commission shall not provide direct reha-~~  
19 ~~bitation services.~~ The administrator and his  
20 staff shall evaluate the suitability of injured  
21 employees for rehabilitation, develop rehabilita-  
22 tion plans when appropriate, monitor the provi-  
23 sion of services to employees under rehabilita-  
24 tion plans and review and modify these plans as  
25 necessary. Rehabilitation services under ~~this~~  
26 subchapter plans developed and approved by the  
27 administrator shall be provided by private and  
28 public rehabilitation counselors, governmental  
29 agencies, in-house rehabilitation counselors and  
30 others approved by the administrator as qualified  
31 to provide rehabilitation services under the com-  
32 mission's rules. The administrator shall consid-  
33 er a rehabilitation counselor's rate of success-  
34 fully placing rehabilitated employees in jobs  
35 relative to the placement rates of other counsel-  
36 ors in the State, taking into account variables  
37 such as geographical area and the difficulty of  
38 case load, as fundamental in deciding whether to  
39 approve the counselor as qualified. The adminis-  
40 trator shall compile annually a list of approved  
41 providers of rehabilitation services, except that  
42 in-house rehabilitation counselors shall not ap-  
43 pear on the list, and shall make this list avail-  
44 able to the parties.

1 F. The administrator shall develop fee schedules  
2 for providers of rehabilitation services, listing  
3 the maximum allowable fees for ~~testing, evalua-~~  
4 ~~tions-of-suitability, development-of--rehabilita-~~  
5 ~~tion-plans-and-other~~ rehabilitation services.

6 (1) In setting a fee, the administrator  
7 shall take into account the usual fee  
8 charged to provide that service in the State  
9 and the reasonable and necessary costs of  
10 providing the service.

11 (2) The administrator may grant prior ap-  
12 proval of a fee higher than the maximum in  
13 the rate schedule in exceptional circum-  
14 stances.

15 (3) Fee schedules developed under this par-  
16 agraph do not apply to services provided by  
17 in-house providers of rehabilitation ser-  
18 vices.

19 Sec. 27. 39 MRSA §83, sub-§2, as enacted by PL  
20 1985, c. 372, Pt. A, §29, is amended to read:

21 2. Evaluation of suitability. An evaluation of  
22 the suitability of rehabilitation for the employee  
23 shall be submitted to the administrator made by an  
24 assistant administrator within 30 days after the ad-  
25 ministrator makes an order of evaluation under sec-  
26 tion 85, subsection 1.

27 A. The evaluation of suitability shall be done  
28 by a provider of rehabilitation services selected  
29 by the employee from the list of approved  
30 providers maintained by the administrator.

31 B. If the employer objects to the employee's se-  
32 lection, he may request within 10 business days  
33 after notification of that selection that the ad-  
34 ministrator schedule a meeting within 10 business  
35 days between the employer, the employee and the  
36 administrator for the purpose of discussing which  
37 provider may be mutually acceptable.

38 C. The employee shall have the final decision on  
39 which approved provider shall be utilized.

1           Sec. 28. 39 MRSA §83, sub-§3, as enacted by PL  
2 1985, c. 372, Pt. A, §29, is amended to read:

3           3. Development of plan. A rehabilitation plan  
4 shall be developed by an assistant administrator and  
5 submitted to the administrator within 60 days after  
6 the administrator makes an order of plan development  
7 under section 85, subsection 2.

8           ~~A. The plan shall be developed by a provider of~~  
9 ~~rehabilitation services selected by the employee~~  
10 ~~from the list of approved providers maintained by~~  
11 ~~the administrator.~~

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

- 15                   (1) His work history;
- 16                   (2) His interests;
- 17                   (3) His aptitude;
- 18                   (4) His education;
- 19                   (5) His skills;
- 20                   (6) His work life expectancy;
- 21                   (7) The locality of employment; and
- 22                   (8) The likelihood of reemployment.

23           C. A plan shall include a job placement strategy  
24 and a specific program of proposed actions de-  
25 signed and likely to achieve job placement for  
26 the employee.

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

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

1           Sec. 29. 39 MRSA §85, sub-§§2 and 3, as enacted  
2 by PL 1985, c. 372, Pt. A, §29, are amended to read:

3           2. Order of plan development. When the adminis-  
4 trator finds that rehabilitation is suitable for the  
5 employee following the submission of an evaluation of  
6 suitability under section 83, subsection 2, he shall  
7 order the ~~parties-to-develop~~ development of a reha-  
8 bilitation plan.

9           3. Order of plan review or modification. Upon  
10 ~~request of a party or the administrator,~~ reports  
11 Reports of an employee's progress under a rehabilita-  
12 tion plan shall be made by the provider of rehabili-  
13 tation services to all the parties and the adminis-  
14 trator. The administrator, upon request of any party  
15 or ~~on his own motion~~ of the assistant administrator  
16 assigned to the case, may order the suspension, ter-  
17 mination or modification of a plan upon a showing of  
18 good cause, including, but not limited to:

19           A. A changed physical condition which does not  
20 allow the employee to continue pursuing the reha-  
21 bilitation plan;

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

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

25           D. A change in the economic conditions that ex-  
26 isted when plan implementation began renders the  
27 plan unfeasible; or

28           E. The employer and employee agree on the pro-  
29 posed plan suspension, termination or modifica-  
30 tion.

31           Sec. 30. 39 MRSA §86, first ¶, as enacted by PL  
32 1985, c. 372, Pt. A, §29, is amended to read:

33           The following priorities shall be used in evalu-  
34 ating alternative rehabilitation plans. No higher  
35 numbered priority may be utilized unless all lower  
36 numbered priorities have been determined ~~by the reha-~~  
37 ~~bilitation counselor~~ to be unlikely to result in a  
38 suitable job placement for the employee. If a lower

1 number priority is clearly inappropriate for the em-  
2 ployee, the next higher numbered priority shall be  
3 utilized as follows:

4       **Sec. 31. 39 MRSA §90, sub-§2, as enacted by PL**  
5       **1985, c. 372, Pt. A, §29, is amended to read:**

6       **2. Sunset.** This subchapter is repealed, effec-  
7 tive July 1, ~~1988~~ 1989, except that the chairman may  
8 by rule provide for a transition period of employment  
9 for the administrator of up to 3 years and for the  
10 disposition according to this subchapter of cases  
11 arising out of injuries suffered during the period in  
12 which this subchapter is effective. The money in  
13 the Employment Rehabilitation Fund shall remain in  
14 that fund until all obligations against that fund un-  
15 der this subchapter have been paid, and thereafter  
16 the balance remaining shall be paid to the Second In-  
17 jury Fund.

18       **Sec. 32. 39 MRSA §92, sub-§9, ¶E, as enacted by**  
19       **PL 1985, c. 372, Pt. A, §31, is amended to read:**

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

28       The chairman may also, after hearing, modify any  
29 benefit award and assess a civil penalty in an  
30 amount not to exceed \$1,000. These remedies are  
31 in addition to any remedies available pursuant to  
32 section 100 and shall be enforceable by the Supe-  
33 rior Court as provided for by section 103-E. Civ-  
34 il penalties assessed under this section shall be  
35 payable to the General Fund.

36       **Sec. 33. 39 MRSA §92, sub-§10 is enacted to**  
37 **read:**

38       10. Independent medical examiners. The chairman  
39 shall establish and maintain a list of physicians and  
40 surgeons willing and able to serve as independent



1 medical examiners, classified by specialty. The  
2 chairman shall adopt rules relating to necessary  
3 qualifications for independent medical examiners,  
4 grounds for removal from the list and fees for ser-  
5 vices to be rendered by the examiners. The indepen-  
6 dent medical examiners shall make all necessary de-  
7 terminations of physical or medical condition as re-  
8 quired pursuant to section 92-A. The independent  
9 medical examiners shall also determine pursuant to  
10 section 52, the propriety of any requests for medical  
11 fees in excess of the maximum reimbursement levels  
12 established pursuant to Title 24-A, section 2370.

13 **Sec. 34. 39 MRSA §92-A is enacted to read:**

14 §92-A. Independent medical examiners, procedures and  
15 standards

16 1. Appointment. Whenever the degree of an in-  
17 jured employee's impairment or suitability for re-  
18 turn to work is at issue in a petition for review,  
19 the commission shall appoint an independent medical  
20 examiner to make these determinations. The examiner  
21 shall be appointed from the list maintained by the  
22 chairman. The examiner appointed in any particular  
23 case shall not be the claimant's personal physician  
24 and shall not have treated the claimant with respect  
25 to the injury for which benefits are being paid. The  
26 examiner appointed shall be the next individual in a  
27 preestablished rotation within the list for the ap-  
28 propriate specialty, if any, and geographical area.

29 2. Examination. Upon appointment, the indepen-  
30 dent medical examiner shall examine the injured em-  
31 ployee and any relevant medical records to determine  
32 whether the employee has reached maximum medical im-  
33 provement, the employee's degree of medical improve-  
34 ment or medical suitability for work as appropriate  
35 in the particular case. The fee for the examination  
36 shall be paid by the commission. The commission  
37 shall assess each fee against the employer and shall  
38 have the ability to institute appropriate legal ac-  
39 tion to recover any unpaid funds.

40 3. Report. Upon completion of his examination  
41 of the employee and review of any relevant medical  
42 records, the examiner shall report his finding to the

1 commission. The report shall contain the examiner's  
2 conclusions as to whether the employee has reached  
3 maximum medical improvement, the percentage of im-  
4 pairment to the body as a whole determined in accord-  
5 ance with section 71-A and the extent to which the  
6 employee's medical condition allows the employee to  
7 return to work, all as required by any particular  
8 case and shall specify the finding supporting these  
9 conclusions.

10 4. Notice of report. The commission shall mail  
11 the examiner's report to the employer and the employ-  
12 ee within 5 business days from its receipt of the re-  
13 port. Post office certificate of mailings to the em-  
14 ployer and employee and their last known addresses  
15 shall be conclusive proof of receipt on the 3rd cal-  
16 endar day after mailing.

17 5. Request for 2nd report. The employer and em-  
18 ployee shall have 20 days from receipt of the notice  
19 of the independent medical examiner's findings from  
20 the commission to request a review of his findings by  
21 a 2nd independent medical examiner. If a request for  
22 a review of the report is not filed, the findings of  
23 the independent medical examiner shall be considered  
24 as binding upon the parties and the commission. If a  
25 request for review is filed, it shall specify wheth-  
26 er, and in what respects, a review of the examiner's  
27 factual findings relating to the employee's condi-  
28 tion, the examiner's conclusions, or both is sought.

29 6. Second report; limitations. Upon receipt of  
30 a request for review of the medical examiner's find-  
31 ings, the chairman shall designate a 2nd independent  
32 medical examiner from the list. The 2nd independent  
33 medical examiner shall review the report of the first  
34 examiner, the medical records available to the first  
35 examiner and may, if the findings of the first exam-  
36 iner relating to the employee's medical condition are  
37 at issue, reexamine the claimant. Upon completion of  
38 his review, the 2nd examiner shall advise the commis-  
39 sion as to whether the first examiner's conclusions  
40 were clearly erroneous and if so, in what respects.  
41 If, and only if, the first medical examiner's report  
42 is found to be clearly erroneous, the 2nd medical  
43 examiner's report shall contain his conclusions and  
44 findings as to whether the employee has reached maxi-

1 imum medical improvement, the percentage of impairment  
2 to the body as a whole determined in accordance with  
3 section 71-A and the extent to which the employee's  
4 medical condition allows the employee to return to  
5 work, as required by the particular case.

6 The findings of the 2nd independent medical examiner  
7 shall be binding upon the commission and the parties.

8 If the 2nd examiner does not find one or more conclu-  
9 sions of the first examiner to be clearly erroneous,  
10 the party requesting the review shall be responsible  
11 for all costs of the 2nd independent medical exami-  
12 ner. In those cases in which one or more of the con-  
13 clusions of the first examiner were determined to be  
14 clearly erroneous, the costs of the 2nd examiner's  
15 review shall be paid by the commission. The commis-  
16 sion shall assess each fee against the employer and  
17 shall have the ability to institute appropriate legal  
18 action to recover any unpaid funds.

19 **Sec. 35. 39 M RSA §100, sub-§2, as amended by PL**  
20 **1985, c. 372, Pt. A, §36, is further amended to read:**

21 **2. Standard for review.** The basis for granting  
22 relief under this section is as follows.

23 **A. ~~On the first~~ a petition for review brought by**  
24 **a party to an action, the commissioner shall de-**  
25 **termine the appropriate relief, if any, under**  
26 **this section paragraph by determining the**  
27 **employee's present degree of incapacity. For**  
28 **purposes of a ~~first~~ petition brought under this**  
29 **section, evidence of the employee's medical con-**  
30 **dition at the time of an earlier determination or**  
31 **approved agreement is relevant only if it tends**  
32 **to prove the present degree of incapacity. Once**  
33 **a party has sought and obtained a determination**  
34 **under this section, a subsequent petition for re-**  
35 **view by that party may not be considered prior to**  
36 **one year after the date of the last annual deter-**  
37 **mination, except as provided in paragraph B.**

38 **~~B. Once a party has sought and obtained a deter-~~**  
39 **~~mination--under--this-section~~ On any petition for**  
40 **review which is not filed pursuant to paragraph**  
41 **A, it is the burden of that the petitioning party**

1 in--all--proceedings--on-his-subsequent-petitions  
2 under-this-section to prove by-comparative--medi-  
3 cal-evidence that the employee's earning incapac-  
4 ity attributable to the work-related injury has  
5 changed since that the most recent previous de-  
6 termination.

7 Sec. 36. 39 MRSA §100, sub-§3, as amended by PL  
8 1981, c. 698, §196, is further amended to read:

9 3. Petition procedure. Sections 92-A and 96-A to  
10 99 apply to petitions brought under this section.

11 Sec. 37. 39 MRSA §100, sub-§4, as amended by PL  
12 1985, c. 372, Pt. A, §38, is repealed and the follow-  
13 ing enacted in its place:

14 4. Payments pending hearing. If the employee is  
15 receiving payments at the time a petition is filed,  
16 the payments may be decreased or suspended pending  
17 the hearing upon the petition, in the following cir-  
18 cumstances:

19 A. The employer and the employee file an agree-  
20 ment with the commission;

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

23 (1) The employee has left the State for  
24 reasons other than returning to his perman-  
25 ent residence at the time of injury;

26 (2) The employee's whereabouts are unknown;  
27 or

28 (3) The employee has resumed work;

29 C. The employee refuses to submit to an examina-  
30 tion; or

31 D. In the case of benefits pursuant to sections  
32 54-A and 55-A;

33 (1) If an independent medical examiner cer-  
34 tifies that the employee is not permanently  
35 impaired and that the employee is able to

1           return to work; or

2           (2) If an employee who is receiving or has  
3 received benefits for permanent impairment  
4 under section 56-B is offered a job, bene-  
5 fits payable under section 54-A or 55-A  
6 shall be reduced to 2/3 of the difference  
7 between his preinjury wage, as determined  
8 under sections 54-A and 55-A, and the gross  
9 weekly wage, earnings or salary of a job of-  
10 fered if:

11                   (a) The employer in good faith offers  
12 the employee any job for which the em-  
13 ployee is reasonably suited by reason  
14 of education, training and experience;  
15 and

16                   (b) The independent medical examiner  
17 certifies that the employee is physi-  
18 cally able to do the job offered.

19           Benefits shall not be suspended or terminated  
20 pending hearing under this paragraph unless the  
21 employer has provided the employee with written  
22 notice that benefits may be decreased or sus-  
23 sended together with a summary of the reasons for  
24 the proposed decrease or suspension and the em-  
25 ployee is given 20 days, after that notice, to  
26 submit to the commission any additional informa-  
27 tion which is relevant to his continued  
28 entitlement to benefits.

29           **Sec. 38. 39 MRSA §100, sub-§5, as enacted by PL**  
30 **1981, c. 514, §4, is repealed and the following en-**  
31 **acted in its place:**

32           5. Medical examination. Upon the request of the  
33 petitioner, the commission shall, within 14 days of  
34 receipt of the petition, order the employee to submit  
35 to examination, as provided under section 92-A, by an  
36 independent medical examiner designated by the com-  
37 mission from the geographical area where the employee  
38 resides. The fee for the examination shall be paid  
39 by the employer.

40           **Sec. 39. 39 MRSA §102-A is enacted to read:**

1     §102-A. Imprisonment of employee

2             In the event that an injured employee becomes in-  
3 carcerated, no incapacity benefits under this Act  
4 shall be paid during the time the employee is in  
5 prison and such compensation shall be forfeited.

6             Sec. 40. 39 MRSA §108, as repealed and replaced  
7 by PL 1979, c. 713, §2, is repealed.

8             Sec. 41. 39 MRSA §108-A is enacted to read.

9     §108-A. Reports

10            1. Annual report. The Director of the Bureau of  
11 Labor shall provide an annual report relating to the  
12 number and character of occupational injuries and  
13 illnesses and their effect, as required under Title  
14 26, section 42.

15            A. The chairman of the commission shall further  
16 assist the Director of the Bureau of Labor to as-  
17 sure that necessary information regarding the ad-  
18 ministrative processes, costs and other factors  
19 related to the Workers' Compensation Act and the  
20 Occupational Disease Law are included in the re-  
21 port. The Superintendent of Insurance shall as-  
22 sist the Director of the Bureau of Labor by pro-  
23 viding the following information on an annual ba-  
24 sis: A tabulation of premium and loss data, on an  
25 accrual accounting basis, regarding those insur-  
26 ance companies authorized by the Bureau of Insur-  
27 ance to write workers' compensation in the State,  
28 together with similar data for self-insurance  
29 worker compensation plans regulated by the Bureau  
30 of Insurance.

31            B. The chairman of the commission, the Director  
32 of the Bureau of Labor and the Superintendent of  
33 Insurance shall provide such further occasional  
34 reports through their joint or individual efforts  
35 as they deem necessary to the improved function  
36 and administration of the Workers' Compensation  
37 Act and the Occupational Disease Law.

38            2. Meeting. The Director of the Bureau of Labor  
39 Standards, the Superintendent of Insurance and the

1 chairman of the Workers' Compensation Commission  
2 shall meet at least 3 times a year with appropriate  
3 staff and other state agencies to review the areas of  
4 data collection pertaining to the workers' compensa-  
5 tion system as well as interpret and coordinate ap-  
6 propriate data collection programs. The director  
7 shall chair this group. The group shall submit an  
8 annual report to the Governor and the Legislature as  
9 to the results of their data collection, as well as a  
10 profile of the workers' compensation program in the  
11 State.

12       Sec. 42. 39 MRSa §110, sub-§2, as amended by PL  
13 1985, c. 431, §2, is further amended to read:

14       2. Injuries on or after effective date of sec-  
15 tion. If an employee prevails in any proceeding in-  
16 volving a controversy under this Act, the commission  
17 or commissioner may assess the employer costs of a  
18 reasonable attorney's fee and witness fees whenever  
19 the witness was necessary for the proper and expedi-  
20 tious disposition of the case. All attorney fees al-  
21 lowable under this section on lump-sum settlements  
22 pursuant to section 71-A shall be based on either a  
23 flat or hourly rate and may not be on a contingency  
24 basis.

25       The employer may not be assessed costs of an attor-  
26       ney's fee attributable to services rendered prior to  
27       one week after the informal conference under section  
28       94-B or, if the informal conference is waived, ser-  
29       vices rendered prior to the date of that waiver, un-  
30       less a party adverse to the employee was so repre-  
31       sented at that stage.

32       No attorney representing an employee who prevails in  
33       a proceeding involving a controversy under this Act  
34       may receive any fee from that client for an appear-  
35       ance before the commission, including preparation for  
36       that appearance, except as provided in section 83,  
37       subsection 7 and section 94-B, subsection 3. Any at-  
38       torney who violates this paragraph shall lose his fee  
39       and be liable in a court suit to pay damages to his  
40       client equal to 2 times the fee charged for that cli-  
41       ent.

42       This subsection applies only to employees injured on

1 and after the effective date of this subsection.

2 A. For the purposes of this subsection, "pre-  
3 prevail" means to obtain or retain more compensation  
4 or benefits under the Act than were offered to  
5 the employee by the employer in writing before  
6 the proceeding was instituted. If no such offer  
7 was made, "prevail" means to obtain or retain  
8 compensation or benefits under the Act.

9 B. Any employee, employer or insurance carrier  
10 involved in any proceeding involving a controver-  
11 sy under this Act shall report to the commission,  
12 on forms provided by the commission, any amounts  
13 that he has paid for legal assistance in that  
14 proceeding, including any amount paid for an  
15 employee's legal fees under this subsection.

16 Sec. 43. 39 MRSA §110-A is enacted to read:

17 §110-A. Appearance by officer or employee of corpo-  
18 ration or partnership

19 Notwithstanding Title 4, section 807, the appear-  
20 ance of an authorized officer, employee or represen-  
21 tative of a party in any hearing, action or proceed-  
22 ing before the commission in which the party is par-  
23 ticipating or desires to participate is not deemed to  
24 be an unauthorized practice of law and is not subject  
25 to any criminal sanction. In order to facilitate the  
26 efficient processing of any proceeding, the commis-  
27 sion may, in its discretion, require the appearance  
28 of counsel on behalf of the party.

29 Sec. 44. Applicability. Sections 9, 12 to 18,  
30 21, 23, 32 to 38 and 42, shall apply only as to inju-  
31 ries occurring on or after the effective date of this  
32 Act.

33 Emergency clause. In view of the emergency cited  
34 in the preamble, this Act shall take effect when ap-  
35 proved.



1 STATEMENT OF FACT

2 Section 1 empowers the Department of Labor to offer safety and consultation programs to improve safety and report noncompliance to the United States Occupational Safety and Health Administration. Section 3 2 provides for education and training assistance to 4 further safety. 5 6 7

8 Section 3 establishes a Commission on Safety in 9 the Maine Workplace with not more than 12 members appointed by the Governor. The commission shall hold 10 public hearings to evaluate the effectiveness of 11 safety efforts, identify best-practice safety programs, identify emerging occupational safety issues, 12 monitor trends in safety and review occupational 13 safety loan requests. The commission shall make 14 continuing recommendations to further safety. The 15 commission shall be supported by the staff of the Bureau 16 of Labor. Section 4 provides that the commission is 17 funded by a 1% assessment on the workers' compensation 18 carriers of the State. Sections 5 to 8 complete 19 the technical responsibilities of the commission and 20 provide for an annual report to the Legislature. 21 22

23 Section 9 defines maximum medical improvement and 24 permanent impairment. Sections 10 and 11 repeal obsolete 25 provisions and section 12 accomplishes a technical 26 change in the bill.

27 Section 13 requires written notice of a claim before 28 the 44-day total bar to controvert a claim may 29 be asserted. Section 14 limits an employer's liability 30 for medical expenses and places the burden for exceptional 31 charges on the provider. Section 15 allows 32 an independent medical examiner to require authorization 33 for a physical examination of a claimant. Section 34 16 extends the freeze on the maximum weekly benefit 35 until it reaches 133% of the state average weekly 36 wage and then mandates annual adjustment at that 37 percentage.

38 Section 17 delays the escalator for total incapacity 39 for 2 years from the date of injury and precludes 40 any injured employee whose physical impairment 41 is less than or equal to 75% from being deemed totally 42 incapacitated.

1 Section 18 establishes a schedule of benefit du-  
2 ration limits as a function of whole-body degree of  
3 permanent impairment. If impairment is 25% or less,  
4 the limit is 400 weeks. If the impairment is 26% to  
5 50%, the limit is 500 weeks, and if the impairment is  
6 51% to 75%, the limit is 600 weeks. There is no limit  
7 on duration for those impaired in excess of 75%. The  
8 escalator is eliminated for partial impairments.  
9 Benefits are also limited for seasonal employees, and  
10 workers injured prior to the effective date of this  
11 bill are grandfathered. Sections 19 and 20 repeal ob-  
12 solete language.

13 Section 21 establishes a whole-body schedule for  
14 impairment payments and mandates the use of recog-  
15 nized schedules for determination of degree of im-  
16 pairment. Disfigurement is included in impairment and  
17 impairment petitions are due at maximum medical im-  
18 provement. There is an offset of impairment payments  
19 against other benefits received for the same injury.  
20 Section 22 repeals obsolete language.

21 Section 23 discourages lump sum payments and sub-  
22 jects them to approval of the Workers' Compensation  
23 Commission. Medical expenses cannot be paid in lump  
24 sums and discharged.

25 Section 24 places responsibility for determina-  
26 tion of suitability for rehabilitation in the Office  
27 of Employment Rehabilitation. Section 25 gives the  
28 Office of Employment Rehabilitation power to hire  
29 sufficient personnel. Section 26 requires the Office  
30 of Employment Rehabilitation to develop appropriate  
31 rehabilitation plans, monitor services and modify  
32 plans as appropriate. Sections 27 to 30 complete  
33 technical changes consistent with sections 24 to 26.  
34 Section 31 provides for a July 1, 1989 sunset for the  
35 vocational rehabilitation subsection.

36 Section 32 allows the chairman of the Office of  
37 Employment Rehabilitation to modify a benefit award  
38 or assess penalties in the event of a violation of  
39 this Act.

40 Sections 33 and 34 establish the independent med-  
41 ical examiners as medical doctors under the direction  
42 and payment of the Workers' Compensation Commission.

1 The independent medical examiners shall be appointed  
2 with consideration to specialization and location and  
3 shall be responsible for the determination of all  
4 medical issues relating to a claim. They will be ap-  
5 pointed automatically on a rotating basis and shall  
6 examine any claimant for whom they are responsible.  
7 Claimants will still be free to seek treatment from  
8 any physician or health care provider. The independ-  
9 ent medical examiner shall report to the Workers'  
10 Compensation Commission and that report is subject to  
11 a single review only if there is clear error.

12 Section 35 allows annual review of benefit pay-  
13 ments for either party. Section 36 accomplishes a  
14 technical change. Section 37 provides for suspension  
15 of payments pending a hearing under specific condi-  
16 tions, including mutual agreement, employee's depart-  
17 ure from the State, employee's disappearance,  
18 employee's return to work and employee's refusal to  
19 submit to examination. Benefits may also be suspended  
20 if the independent medical examiner has certified the  
21 employee as fit for work and benefits may be reduced  
22 by the amount of a job offer if the job offered in  
23 good faith is suitable and the independent medical  
24 examiner has certified that the employee is able to  
25 do the work. Any benefit suspension requires written  
26 notice to the employee.

27 Section 38 provides for employer-paid medical ex-  
28 aminations. Section 39 eliminates payments for those  
29 in prison and section 40 repeals obsolete language.  
30 Section 41 provides for an annual report from the De-  
31 partment of Labor relating to injuries and illnesses,  
32 and further provides for cooperation among the De-  
33 partment of Labor, the Bureau of Insurance and the  
34 Workers' Compensation Commission, including at least  
35 3 meetings a year and the coordination of data col-  
36 lection.

37 Section 42 prohibits contingent fees and section  
38 43 allows nonlawyers to appear before the Workers'  
39 Compensation Commission. Section 44 accomplishes a  
40 technical change.

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