

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
(New Draft of S.P. 692, L.D. 1918)  
SECOND SPECIAL SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

No. 1928

S.P. 703

In Senate, November 19, 1987

Reported by the Majority for the Committee on Labor and printed under Joint Rule 2. Original Bill sponsored by Senator Collins of Aroostook. Cosponsored by: Representative Willey of Hampden.

JOY J. O'BRIEN, Secretary of the Senate

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STATE OF MAINE

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

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

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5           **Emergency preamble.** Whereas, Acts of the Legis-  
6           lature do not become effective until 90 days after  
7           adjournment 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 or  
5 employees would be left unprotected in the event of  
6 an injury; and

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

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

15           **Sec. 1. 4 MRSA §807, first ¶, as repealed and**  
16 **replaced by PL 1987, c. 402, Pt. A, §8, is amended to**  
17 **read:**

18           No person may practice law or hold himself out to  
19 practice law within the State or before its courts,  
20 or demand or receive any remuneration for those ser-  
21 vices rendered in this State, unless he has been ad-  
22 mitted to the bar of this State and has complied with  
23 section 806-A, or unless he has been admitted to try  
24 cases in the courts of this State under section 802.  
25 Any person who practices law in violation of these  
26 requirements is guilty of the unauthorized practice  
27 of law, which is a Class E crime. This section shall  
28 not be construed to apply to practice before any Fed-  
29 eral Court by any person admitted to practice there-  
30 in; nor to a person pleading or managing his own  
31 cause in court; nor to the officer or employee of a  
32 corporation, partnership, sole proprietorship or gov-  
33 ernmental entity, who is not an attorney, but is ap-  
34 pearing for that organization in an action cognizable  
35 as a small claim under Title 14, chapter 738; nor to  
36 a person who is not an attorney, but is representing  
37 a municipality under Title 30, section 2361, subsec-  
38 tion 3; Title 30, section 3222, subsection 2; or Ti-  
39 tle 30, section 4966, subsection 1; or Title 38, sec-  
40 tion 441, subsection 2; nor to a person who is not an  
41 attorney, but is representing the Department of Envi-  
42 ronmental Protection under Title 38, section 342,

1 subsection 7; nor to a person who is not an attorney,  
2 but is representing the Bureau of Employment Security  
3 or the Bureau of Taxation under section 807-A; nor to  
4 a person who is not an attorney, but is representing  
5 a party in any hearing, action or proceeding before  
6 the Workers' Compensation Commission as provided in  
7 Title 39, section 110-A. In all proceedings, the  
8 fact, as shown by the records of the Board of  
9 Overseers of the Bar, that that person is not re-  
10 corded as a member of the bar shall be prima facie  
11 evidence that he is not a member of the bar licensed  
12 to practice law in the State.

13       Sec. 2. 5 MRSA §4572, as amended by PL 1987, c.  
14 55, §1, is further amended to read:

15 §4572. Unlawful employment discrimination

16       1. Unlawful employment. It shall be unlawful em-  
17 ployment discrimination, in violation of this Act,  
18 except where based on a bona fide occupational quali-  
19 fication:

20       A. For any employer to fail or refuse to hire or  
21 otherwise discriminate against any applicant for  
22 employment because of race or color, sex, phys-  
23 ical or mental handicap, religion, ancestry or na-  
24 tional origin or age, or because of the appli-  
25 cant's previous assertion of a claim or right un-  
26 der Title 39, or because of any such reason to  
27 discharge an employee or discriminate with re-  
28 spect to hire, tenure, promotion, transfer, com-  
29 pensation, terms, conditions or privileges of em-  
30 ployment, or any other matter directly or indi-  
31 rectly related to employment, or in recruiting of  
32 individuals for employment or in hiring them, to  
33 utilize any employment agency which such employer  
34 knows, or has reasonable cause to know, discrimi-  
35 nates against individuals because of their race  
36 or color, sex, physical or mental handicap, reli-  
37 gion, age, ancestry or national origin, or their  
38 previous assertion of a claim or right under Ti-  
39 tle 39;

40       (1) This paragraph does not apply to dis-  
41 crimination against any individual after  
42 hiring because of that individual's previous

1 or subsequent assertion of a claim or right  
2 under Title 39. Such discrimination is gov-  
3 erned by Title 39, section 111;

4 B. For any employment agency to fail or refuse  
5 to classify properly or refer for employment or  
6 otherwise discriminate against any individual be-  
7 cause of race or color, sex, physical or mental  
8 handicap, religion, age, ancestry or national or  
9 igin or the individual's previous assertion of a  
10 claim or right under Title 39 or to comply with  
11 an employer's request for the referral of job ap-  
12 plicants, if such request indicates either di-  
13 rectly or indirectly that such employer will not  
14 afford full and equal employment opportunities to  
15 individuals regardless of their race or color,  
16 sex, physical or mental handicap, religion, age,  
17 ancestry or national origin or previous assertion  
18 of a claim or right under Title 39;

19 C. For any labor organization to exclude from  
20 apprenticeship or membership, or to deny full and  
21 equal membership rights, to any applicant for  
22 membership, because of race or color, sex, physi-  
23 cal or mental handicap, religion, age, ancestry,  
24 or national origin, or the applicant's previous  
25 assertion of a claim or right under Title 39, or  
26 because of any such reason to deny a member full  
27 and equal membership rights, expel from member-  
28 ship, penalize or otherwise discriminate in any  
29 manner with respect to hire, tenure, promotion,  
30 transfer, compensation, terms, conditions or  
31 privileges of employment, representation, griev-  
32 ances or any other matter directly or indirectly  
33 related to membership or employment, whether or  
34 not authorized or required by the constitution or  
35 bylaws of such labor organization or by a collec-  
36 tive labor agreement or other contract, or to  
37 fail or refuse to classify properly or refer for  
38 employment, or otherwise to discriminate against  
39 any member because of race or color, sex, physi-  
40 cal or mental handicap, religion, age, ancestry  
41 or national origin, or because of the member's  
42 previous assertion of a claim or right under Ti-  
43 tle 39 or to cause or attempt to cause an employ-  
44 er to discriminate against an individual in vio-  
45 lation of this section, except that it shall be

1 lawful for labor organizations and employers to  
2 adopt a maximum age limitation in apprenticeship  
3 programs, provided that the employer or labor or-  
4 ganization obtains prior approval from the Maine  
5 Human Rights Commission of any maximum age limi-  
6 tation employed in an apprenticeship program.  
7 The commission shall approve the age limitation  
8 if a reasonable relationship exists between the  
9 maximum age limitation employed and a legitimate  
10 expectation of the employer in receiving a rea-  
11 sonable return upon his investment in an appren-  
12 ticeship program. The employer or labor organi-  
13 zation bears the burden of demonstrating that  
14 such a relationship exists;

15 D. For any employer or employment agency or la-  
16 bor organization, prior to employment or admis-  
17 sion to membership of any individual, to:

18 (1) Elicit or attempt to elicit any infor-  
19 mation directly or indirectly pertaining to  
20 race or color, sex, physical or mental handi-  
21 cap, religion, age, ancestry or national  
22 origin, or any previous assertion of a claim  
23 or right under Title 39, except where a  
24 physical or mental handicap is determined by  
25 the employer, employment agency or labor or-  
26 ganization to be job related; or where some  
27 privileged information is necessary for an  
28 employment agency or labor organization to  
29 make a suitable job referral;

30 (2) Make or keep a record of race or color,  
31 sex, physical or mental handicap, religion,  
32 age, ancestry or national origin or any pre-  
33 vious assertion of a claim or right under  
34 Title 39, except under physical or mental  
35 handicap, when an employer requires a phys-  
36 ical or mental examination prior to employ-  
37 ment, a privileged record of such an exami-  
38 nation is permissible;

39 (3) Use any form of application for employ-  
40 ment, or personnel or membership blank con-  
41 taining questions or entries directly or in-  
42 directly pertaining to race or color, sex,  
43 physical or mental handicap, religion, age,

1 ancestry or national origin or any previous  
2 assertion of a claim or right under Title  
3 39, except under physical or mental handi-  
4 cap, where it can be determined by the em-  
5 ployer that the job or jobs to be filled re-  
6 quire such information for the well-being  
7 and safety of the individual; nor will this  
8 section prohibit any officially recognized  
9 agency from keeping necessary records in or-  
10 der to provide free services to individuals  
11 requiring rehabilitation or employment as-  
12 sistance;

13 (4) Print or publish or cause to be printed  
14 or published any notice or advertisement re-  
15 lating to employment or membership indicat-  
16 ing any preference, limitation, specifica-  
17 tion or discrimination based upon race or  
18 color, sex, physical or mental handicap,  
19 age, ancestry or national origin or any pre-  
20 vious assertion of a claim or right under  
21 Title 39, except under physical or mental  
22 handicap when the text of such printed or  
23 published material strictly adheres to this  
24 Act; or

25 (5) Establish, announce or follow a policy  
26 of denying or limiting, through a quota sys-  
27 tem or otherwise, employment or membership  
28 opportunities of any group because of the  
29 race or color, sex, physical or mental hand-  
30 icap, religion, age, ancestry or national  
31 origin or the previous assertion of a claim  
32 or right under Title 39 of such group; or

33 E. For an employer or employment agency or labor  
34 organization to discriminate in any manner  
35 against any individual because they have opposed  
36 any practice which would be a violation of this  
37 Act, or because they have made a charge, testi-  
38 fied or assisted in any manner in any investiga-  
39 tion, proceeding or hearing under this Act.

40 Sec. 3. 5 MRSA §12004, sub-§8, ¶A, sub-¶(19-B)  
41 is enacted to read:

42 (19-B) Labor Commission on Safety Expenses  
26 MRSA

2 Sec. 4. 5 MRSA §12004, sub-§8, ¶A, sub-¶(26), as  
3 enacted by PL 1985, c. 372, Pt. A, §3, is repealed.

4 Sec. 5. 26 MRSA §42, as amended by PL 1977, c.  
5 615, is further amended to read:

6 §42. Powers and duties

7 The bureau shall collect, assort and arrange sta-  
8 tistical details relating to all departments of labor  
9 and industrial pursuits in the State; to trade unions  
10 and other labor organizations and their effect upon  
11 labor and capital; to the number and character of in-  
12 dustrial accidents and their effect upon the injured,  
13 their dependent relatives and upon the general pub-  
14 lic; to other matters relating to the commercial, in-  
15 dustrial, social, educational, moral and sanitary  
16 conditions prevailing within the State, including the  
17 names of firms, companies or corporations, where lo-  
18 cated, the kind of goods produced or manufactured,  
19 the time operated each year, the number of employees  
20 classified according to age and sex and the daily and  
21 average wages paid each employee; and the exploita-  
22 tion of such other subjects as will tend to promote  
23 the permanent prosperity of the industries of the  
24 State. The director is authorized and empowered, sub-  
25 ject to the approval of the Governor, to accept from  
26 any other agency of government, individual, group or  
27 corporation such funds as may be available in carry-  
28 ing out this section, and meet such requirements with  
29 respect to the administration of such funds, not in-  
30 consistent with this section, as are required as con-  
31 ditions precedent to receiving such funds. An ac-  
32 counting of such funds and a report of the use to  
33 which they were put shall be included in the biennial  
34 report to the Governor. Each agency of government  
35 shall cooperate fully with the bureau's efforts to  
36 compile labor and industrial statistics. The director  
37 shall cause to be enforced all laws regulating the  
38 employment of minors and women; all laws established  
39 for the protection of health, lives and limbs of op-  
40 erators in workshops and factories, on railroads and  
41 in other places; all laws regulating the payment of  
42 wages, and all laws enacted for the protection of the  
43 working classes. He shall, on or before the first day



1 of July, biennially, report to the Governor, and may  
2 make such suggestions and recommendations as he may  
3 deem necessary for the information of the Legisla-  
4 ture. He may from time to time cause to be printed  
5 and distributed bulletins upon any subject that shall  
6 be of public interest and benefit to the State; and  
7 may conduct a program of research, education and pro-  
8 motion to reduce industrial accidents. The director  
9 may review various data, such as workers' compensa-  
10 tion records, as well as other information relating  
11 to any public or private employer's safety experi-  
12 ence. When any individual public or private employ-  
13 er's safety experience causes the director to ques-  
14 tion seriously the safe working environment of that  
15 employer, the director may offer any safety education  
16 and consultation programs to that employer that may  
17 be beneficial in providing a safer work environment.  
18 If the employer refuses this assistance or is in se-  
19 rious noncompliance which may lead to injuries, or if  
20 serious threats to worker safety continue, then the  
21 director shall communicate his concerns to appropri-  
22 ate agencies, such as the United States Occupational  
23 Safety and Health Administration. As used in this  
24 section, the term "noncompliance" means a lack of  
25 compliance with any applicable health and safety reg-  
26 ulations of the United States Occupational Safety and  
27 Health Administration or other federal agencies.

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

30 A. The development and application of a state-  
31 wide safety education and training program to fa-  
32 miliarize employers, supervisors, employees and  
33 union leaders with techniques of accident inves-  
34 tigation and prevention, including education and  
35 training assistance to employers and employees  
36 under the chemical substance identification law  
37 in sections 1715 and 1720;

38 Sec. 7. 26 MRSA §51 is enacted to read:

39 §51. Commission on Safety in the Maine Workplace

40 1. Purpose; members; compensation. The Commis-  
41 sion on Safety in the Maine Workplace, established by  
42 Title 5, chapter 379, shall consist of knowledgeable

1 citizens who shall examine safety attitudes, programs  
2 and procedures in Maine's workplaces; identify  
3 initiatives to reduce the frequency, severity and  
4 cost of work-related accidents and illnesses; and  
5 promote and improve best-practice safety programs.

6 A. The Governor shall appoint the members of the  
7 commission, which shall consist of not more than  
8 12 members, including:

9 (1) Three members with expertise and pro-  
10 fessional qualifications in the field of oc-  
11 cupational safety and health;

12 (2) Two members representing workers and 2  
13 members representing private employers, all  
14 of whom must be knowledgeable in the area of  
15 workplace safety; and

16 (3) Other members the Governor considers  
17 necessary and appropriate to carry out the  
18 purposes of this section.

19 B. Initial appointments shall be made for terms  
20 of one, 2, 3 and 4 years such that the terms of  
21 approximately 1/4 of the members expire in each  
22 year. All subsequent appointments shall be for  
23 terms of 4 years. Each member shall hold office  
24 until his successor is appointed and qualified.

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

33 D. The appointed members of the board shall be  
34 compensated according to Title 5, chapter 379.  
35 The commission chairman must approve and counter-  
36 sign all vouchers for expenditures under this  
37 paragraph.

1           2. Duties. The commission shall conduct studies  
2 and hold public meetings as necessary to develop  
3 findings and recommendations respecting each of the  
4 following issues:

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

9           B. Identification of the best-practice safety  
10 programs in the State and elsewhere, whose  
11 wide-spread adoption would reduce the incidence,  
12 severity and cost of workplace accidents and ill-  
13 nesses;

14           C. Identification of emerging occupational safe-  
15 ty and health issues that will be of importance  
16 in the future and assessment of their policy im-  
17 PLICATIONS; and

18           D. Determination of existing statistical infor-  
19 mation on accidents and illnesses and reliability  
20 and adequacy to monitor trends and to support ef-  
21 fective safety rehabilitation and compensation  
22 programs;

23 The commission shall also review occupational safety  
24 loan requests as provided for in section 63.

25           3. Recommendations. The commission shall make  
26 recommendations on a continuing basis to include:

27           A. Specific recommendations for action by the  
28 Governor, the Legislature, educators, the safety  
29 profession, employers and workers which will re-  
30 duce the frequency, severity and costs of  
31 work-related accidents and illnesses and which  
32 will enhance, promote and improve safety in  
33 Maine's workplaces; and

34           B. Recommendations for actions that will improve  
35 employer, worker and public attitudes toward  
36 safety in the workplace and that will create a  
37 continuing public-private, employer-employee  
38 partnership in the area of job safety.

1           4. Support. The Department of Labor shall pro-  
2 vide administrative, clerical and technical support  
3 to the commission and act as its fiscal agent unless  
4 otherwise provided for. All agencies of the State  
5 shall cooperate fully with the commission.

6           **Sec. 8.** 26 MRSA §61, sub-§2, as amended by PL  
7 1985, c. 819, Pt. C, §5, is repealed and the follow-  
8 ing enacted in its place:

9           2. Source of funds. The commissioner shall an-  
10 nually assess a levy based on actual annual workers'  
11 compensation paid losses, excluding medical payments,  
12 paid in the previous calendar year by employers under  
13 Title 39, the Workers' Compensation Act. As soon as  
14 practicable after July 1st of each year, the commis-  
15 sioner shall assess upon and collect from each insur-  
16 ance carrier licensed to do workers' compensation  
17 business in the State, and each group and individual  
18 self-insured employer authorized to make workers'  
19 compensation payments directly to their employees, a  
20 sum equal to that proportion of the current fiscal  
21 year's appropriation, exclusive of any federal funds,  
22 for the safety education and training division which  
23 the total workers' compensation benefits, exclusive  
24 of medical payments, paid by each carrier or each  
25 group or individual self-insured employer, bear to  
26 the total of the benefits paid by all carriers, and  
27 group and individual self-insured employers, during  
28 the previous calendar year, except that the total  
29 amount levied annually may not exceed 1% of the total  
30 of the compensation benefits paid by all carriers,  
31 and group and individual self-insured employers dur-  
32 ing the previous calendar year.

33           **Sec. 9.** 26 MRSA §63, sub-§1, ¶¶D and E, as en-  
34 acted by PL 1985, c. 372, Pt. A, §7, are amended to  
35 read:

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

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

12 **Sec. 10.** 26 MRSa §63, sub-§2, as enacted by PL  
13 1985, c. 372, Pt. A, §7, is repealed.

14 **Sec. 11.** 26 MRSa §63, sub-§2-A is enacted to  
15 read:

16 2-A. Commission on Safety in the Maine  
17 Workplace. The Commission on Safety in the Maine  
18 Workplace shall review loan proposals under this sec-  
19 tion. The commission shall meet at least twice year-  
20 ly for this purpose in Augusta or any other place  
21 designated by the chairman.

22 **Sec. 12.** 26 MRSa §1720, as amended by PL 1985,  
23 c. 170, §1, is further amended to read:

24 §1720. Chemical Information and Training Assistance  
25 Program

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

30 ~~2.--Chemical--Information--and--Training--Assistance~~  
31 ~~Fund.--The--director--shall--establish--by--rule--a--segre-~~  
32 ~~gated,--nonlapsing--Chemical--Information--and--Training~~  
33 ~~Assistance--Fund--which--shall--be--financed--by--fees~~  
34 ~~levied--on--employers--subject--to--this--chapter.--Reve-~~  
35 ~~nuces--paid--into--the--fund,--including--interest,--shall--be~~  
36 ~~used--exclusively--for--carrying--out--the--purposes--of~~  
37 ~~this--chapter,--including,--but--not--limited--to,--informa-~~  
38 ~~tion--and--communication--with--employers,--provision--of~~  
39 ~~copies--of--the--law,--rules,--listing--of--hazardous--chemi-~~  
40 ~~cals--and--the--likelihood--of--the--presence--of--certain~~

1 hazardous---chemicals---in---the---various---industry  
2 workplaces.---Expenditures from the fund shall be---al-  
3 located and approved by the legislature.

4 2-A. Funds transferred. On the effective date  
5 of this subsection, any funds in the Chemical Infor-  
6 mation and Training Assistance Fund, and any obliga-  
7 tions of that fund, shall be transferred to the Safe-  
8 ty Education and Training Fund established in section  
9 61.

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

14 ---Annual Average  
15 Number of Employees

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

26 The fee is payable prior to July 1st of each calendar  
27 year.

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

37 Sec. 13. 26 MRSA §1724, as amended by PL 1985,  
38 c. 170, §2, is further amended to read:

1     §1724. Report to Legislature

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

13           Sec. 14. 39 MRSA §2, sub-§2, ¶B-1 is enacted to  
14 read:

15           B-1. Notwithstanding paragrpahs A and B, the av-  
16 erage weekly wage of a seasonal worker shall be  
17 determined by dividing the employee's total  
18 wages, earnings or salary for the prior calendar  
19 year by 52.

20           Sec. 15. 39 MRSA §2, sub-§§14 and 15 are en-  
21 acted to read:

22           14. Maximum medical improvement. "Maximum medi-  
23 cal improvement" means the date after which further  
24 recovery and further restoration of function can no  
25 longer be reasonably anticipated, based upon reason-  
26 able medical probability.

27           15. Permanent impairment. "Permanent impair-  
28 ment" means any anatomic or functional abnormality  
29 or loss existing after the date of maximum medical  
30 improvement which results from the injury.

31           Sec. 16. 39 MRSA §26, as amended by PL 1979, c.  
32 340, is further amended to read:

33     §26. Notices of assent to be posted

34           A notice in such form as the commission approves,  
35 stating that the employer has conformed to this Act,  
36 together with such further matters as the commission  
37 determines, shall be posted by the employer and kept  
38 posted by him at some place in each of his mills,

1 factories or places of business, conspicuous and ac-  
2 cessible to his employees. Any notice posted pursuant  
3 to this section shall set out the provision of  
4 section 110 of this Act. ~~For willful failure to post~~  
5 ~~such notices, the employer shall be liable to a for-~~  
6 ~~feiture of \$10 for each day of such willful neglect,~~  
7 ~~to be enforced by the commission in a civil action in~~  
8 ~~the name of the State.~~

9 Sec. 17. 39 MRSA §51-B, sub-§4, as amended by PL  
10 1985, c. 729, §1, is further amended to read:

11 4. Compensation for impairment; compensation for  
12 medical expenses. Compensation for impairment under  
13 ~~sections 56 and 56-A~~ section 56-B shall not be pay-  
14 able prior to the date on which the injured employee  
15 reaches the stage of maximum medical improvement. It  
16 shall become due and payable within 90 days after the  
17 employer has notice that maximum medical improvement  
18 has been attained. ~~For the purpose of this subsec-~~  
19 ~~tion, "maximum medical improvement" means the date~~  
20 ~~after which further recovery and further restoration~~  
21 ~~of function can no longer be reasonably anticipated,~~  
22 ~~based upon reasonable medical probability.~~ Compensa-  
23 tion for medical expenses, aids and other services  
24 under section 52 is due and payable within 90 days  
25 from the date a request is made for payment of these  
26 expenses.

27 Sec. 18. 39 MRSA §51-B, sub-§7, as amended by  
28 PL 1983, c. 682, §5, is further amended to read:

29 7. Notice of controversy. If the employer, pri-  
30 or to making payments under subsection 3, controverts  
31 the claim to compensation, he shall file with the  
32 commission, within 14 days after an event which gives  
33 rise to an obligation to make payments under subsec-  
34 tion 3, a notice of controversy in a form prescribed  
35 by the commission. If the employer, prior to making  
36 payments under subsection 4, controverts the claim to  
37 compensation, he shall file with the commission,  
38 within 90 days after an event which gives rise to an  
39 obligation to make payments under subsection 4, a no-  
40 tice of controversy in a form prescribed by the com-  
41 mission. The notice shall indicate the name of the  
42 claimant, name of the employer, date of the alleged



1 injury or death and the grounds upon which the claim  
2 to compensation is controverted. The employer shall  
3 promptly furnish the employee with a copy of the no-  
4 tice.

5 If, at the end of the 14-day period in subsection 3  
6 or the 90-day period in subsection 4, the employer  
7 has not filed the notice required by this subsection,  
8 he shall begin payments as required under those sub-  
9 sections. In the case of compensation for incapacity  
10 under subsection 3, he may cease payments and file  
11 with the commission a notice of controversy, only as  
12 provided in this subsection, no later than 44 days  
13 after an event which gives rise to an obligation to  
14 make payments under subsection 3. Failure to file the  
15 required notice of controversy prior to the expira-  
16 tion of the 44-day period, in the case of compensa-  
17 tion under subsection 3, constitutes acceptance by  
18 the employer of the compensability of the injury or  
19 death. Failure to file the required notice of contro-  
20 versy does not constitute such an acceptance by the  
21 employer when it is shown that the failure was due to  
22 employee fraud or excusable neglect by the employer,  
23 except when payment has been made and a notice of  
24 controversy is not filed within 44 days of that pay-  
25 ment. Failure to file the required notice of contro-  
26 versy prior to the expiration of the 90-day period  
27 under subsection 4 constitutes acceptance by the em-  
28 ployer of the extent of impairment claimed or the  
29 reasonableness of the medical services claimed.

30 If, at the end of the 44-day period the employer has  
31 not filed a notice of controversy, or if, pursuant to  
32 a proceeding before the commission, the employer is  
33 required to make payments, the payments may not be  
34 decreased or suspended, except as provided in section  
35 100.

36 Sec. 19. 39 MRSA §52, as amended by PL 1985, c.  
37 729, §2, is further amended by adding after the 4th  
38 paragraph a new paragraph to read:

39 An employer is not liable under this Act for  
40 charges for health care services to an injured em-  
41 ployee in excess of those established under section  
42 52-B, except upon petition as provided. The commis-  
43 sion shall allow charges in excess of those provided

1 under section 52-B against the employer if the  
2 provider satisfactorily demonstrates to the commis-  
3 sion that his services were extraordinary or that he  
4 incurred extraordinary costs in treating the employee  
5 as compared to those reasonably contemplated for the  
6 services provided. An injured employee is not liable  
7 for any portion of the cost of medical services under  
8 this section.

9       **Sec. 20. 39 MRSA §52, as amended by PL 1985, c.**  
10       **729, §2, is further amended by adding at the end a**  
11       **new paragraph to read:**

12       Upon request of an employee, the employer or car-  
13 rier may establish a program to pay for treatment by  
14 prayer or spiritual means by an accredited practi-  
15 tioner.

16       **Sec. 21. 39 MRSA §52-A, sub-§1, as enacted by PL**  
17       **1981, c. 514, §2, is amended to read:**

18       1. Certificate of authorization. Any employee  
19 who makes any claim for compensation, enters into any  
20 agreement for compensation or is receiving compensa-  
21 tion shall, upon request by the employer, execute a  
22 certificate, in a form prescribed by the commission,  
23 authorizing the employer to obtain, after payment of  
24 a reasonable fee, ~~in-writing,~~ from any physician, os-  
25 teopath, chiropractor or any other health care  
26 provider any written information which is or has been  
27 obtained in connection with the examination or treat-  
28 ment of the employee and which relates to any injury  
29 or disease for which compensation is claimed.

30       If any employee fails, ~~after request,~~ to execute such  
31 a certificate, ~~the employer may petition the commis-~~  
32 ~~sion for the following relief~~ within 20 days after  
33 receiving a request made by certified mail, return  
34 receipt requested:

35       A. As to any employee who is making a claim for  
36 compensation, ~~an order suspending~~ any action on  
37 the employee's claim shall be suspended, without  
38 interest under section 72, until the certificate  
39 is executed; and

40       B. As to any employee who is receiving compensa-

1 tion or who has entered into an agreement for the  
2 payment of compensation, ~~an order suspending the~~  
3 payment of compensation shall be suspended until  
4 the certificate is executed.

5 The date on a returned receipt of delivery is prima  
6 facie evidence of the employee's receipt of the re-  
7 quest on that date. The request must contain a no-  
8 tice to the employee that if he fails to execute the  
9 certificate within 20 days after receiving the re-  
10 quest, any action on his claim for compensation will  
11 be suspended or his compensation will be suspended.

12 Sec. 22. 39 MRSA §52-B is enacted to read:

13 §52-B. Medical Fees; reimbursement levels

14 In order to ensure appropriate limitations on the  
15 cost of health care services, the commission shall  
16 adopt or amend rules under Title 5, chapter 375, that  
17 establish:

18 1. Maximum charges. Standards, schedules or  
19 scales of maximum charges for individual services,  
20 procedures of courses of treatment. The maximum  
21 charges shall not be less than the usual, customary  
22 and reasonable charge paid by private 3rd-party pay-  
23 ors for similar services provided by Maine health  
24 care providers. In establishing these standards,  
25 schedules or scales, the commission shall consult  
26 with organizations representing health care providers  
27 and other appropriate groups. The standards shall be  
28 adjusted annually to reflect any appropriate changes  
29 in levels of reimbursement. The standards shall not  
30 apply to hospital costs; and

31 2. Depositions or hearings. Various fees for  
32 preparation of materials or attendance at depositions  
33 or hearings as may be required under this Act.

34 Sec. 23. 39 MRSA §53-A, as enacted by PL 1987,  
35 c. 156, §1, is repealed.

36 Sec. 24. 39 MRSA §53-B is enacted to read:

37 §53-B. maximum benefit levels

1           The maximum weekly benefit payable under section  
2 54-B, 55-B or 58-A is \$447.92. Beginning on July  
3 1st, 1989, this maximum benefit level shall be ad-  
4 justed annually so that it continues to bear the same  
5 percentage relationship to the state average weekly  
6 wage, as determined by the Bureau of Employment Secu-  
7 rity, as it did on July 1, 1988.

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

10           Sec. 25. 39 MRSa §54, as amended by PL 1985, c.  
11 372, Pt. A, §16, is repealed.

12           Sec. 26. 39 MRSa §54-A, as amended by PL 1985,  
13 c. 601, §2, is repealed.

14           Sec. 27. 39 MRSa §54-B is enacted to read:

15           §54-B. Compensation for total incapacity

16           While the incapacity for work resulting from the  
17 injury is total, the employer shall pay the injured  
18 employee a weekly compensation equal to 2/3 his aver-  
19 age gross weekly wages, earnings or salary, but not  
20 more than the maximum benefit under section 53-B, nor  
21 less than \$25 weekly.

22           1. Annual adjustment. Beginning on the 3rd an-  
23 niversary of the injury, weekly compensation under  
24 this section shall be adjusted annually. The adjust-  
25 ment shall be equal to the lesser of the actual per-  
26 centage increase or decrease in the state average  
27 weekly wages, as computed by the Bureau of Employment  
28 Security, for the previous year or 5%.

29           The annual adjustment shall be made on the 3rd and  
30 each succeeding anniversary date of the injury, ex-  
31 cept that where the effect of the maximum under sec-  
32 tion 53-B is to reduce the amount of compensation to  
33 which the claimant would otherwise be entitled, the  
34 adjustment shall be made annually on July 1st.

35           2. Limitation. Any employee who has reached  
36 maximum medical improvement and is able to perform  
37 full-time remunerative work in the ordinary competi-  
38 tive labor market in the State, regardless of the

1 availability of such work in and around his communi-  
2 ty, is not eligible for compensation under this sec-  
3 tion, but may be eligible for compensation under sec-  
4 tion 55-B. Reasonable moving and relocation expenses  
5 for employees who are retrained or rehabilitated un-  
6 der this Act are available as provided in section 87,  
7 subsection 2.

8 3. Presumption. For the purposes of this Act,  
9 in the following cases, it is conclusively presumed  
10 that the injury resulted in permanent total incapac-  
11 ity and that the employee is unable to perform full-  
12 time remunerative work in the ordinary competitive  
13 labor market in the State:

14 A. The total and irrevocable loss of sight of  
15 both eyes;

16 B. The loss of both hands at or above the wrist;

17 C. The loss of both feet at or above the ankle;

18 D. The loss of one hand and one foot;

19 E. An injury to the spine resulting in permanent  
20 and complete paralysis of the arms or legs; or

21 F. An injury to the skull resulting in incurable  
22 imbecility or insanity.

23 4. Applicability. This section applies only to  
24 employees injured on and after the effective date of  
25 this section.

26 Sec. 28. 39 MRSA §55, as amended by PL 1985, c.  
27 372, Pt. A, §18, is repealed.

28 Sec. 29. 39 MRSA §55-A, as enacted by PL 1985,  
29 c. 372, Pt. A, §19, is repealed.

30 Sec. 30. 39 MRSA §55-B is enacted to read:

31 §55-B. Compensation for partial incapacity

32 While the incapacity for work resulting from the  
33 injury is partial, the employer shall pay the injured  
34 employee a weekly compensation equal to 2/3 the dif-

1 ference, due to the injury, between his average gross  
2 weekly wages, earning or salary before the injury and  
3 the weekly wages, earnings or salary which he is able  
4 to earn after the injury, but not more than the maxi-  
5 imum benefit under section 53-B. Payments under this  
6 section shall not continue for longer than 400 weeks  
7 after maximum medical improvement.

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

10 Sec. 31. 39 MRSA §56, as amended by PL 1985, c.  
11 372, Pt. A, §20, is repealed.

12 Sec. 32. 39 MRSA §56-A, as amended by PL 1985,  
13 c. 372, Pt. A, §210, is repealed.

14 Sec. 33. 39 MRSA §56-B is enacted to read:

15 §56-B. Permanent impairment

16 1. Weekly benefit. In the case of permanent im-  
17 pairment, the employer shall pay the injured employee  
18 a weekly benefit equal to 2/3 of the state average  
19 weekly wage, as computed by the Bureau of Employment  
20 Security, for the number of weeks shown in the fol-  
21 lowing schedule:

22 A. One week for each percent of permanent im-  
23 pairment to the body as a whole from 0 to 14%;

24 B. Three weeks for each percent of permanent im-  
25 pairment to the body as a whole from 15% to 50%;

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

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

31 Compensation under this section is in addition to any  
32 compensation under section 54-B or 55-B received by  
33 the employee.

34 2. Schedules. In order to reduce litigation and  
35 establish more certainty and uniformity in the rating

1 of permanent impairment, the commission shall estab-  
2 lish by rule a schedule for determining the existence  
3 and degree of permanent impairment based upon medi-  
4 cally or scientifically demonstrable findings. The  
5 schedule must be based on generally accepted medical  
6 standards for determining impairment and may incorpo-  
7 rate all or part of any one or more generally ac-  
8 cepted schedules used for that purpose, such as the  
9 American Medical Association's Guides to the Evalua-  
10 tion of Permanent Impairment. Pending the adoption of  
11 a permanent schedule, Guides to the Evaluation of  
12 Permanent Impairment, 2nd edition, copyright 1984, by  
13 the American Medical Association, shall be the tempo-  
14 rary schedule and shall be used for the purposes of  
15 this subsection.

16 3. Disfigurement. The commission may award  
17 proper and equitable compensation of serious facial  
18 or head disfigurement not to exceed  $2/3$  of the state  
19 average weekly wage, as computed by the Bureau of Em-  
20 ployment Security, multiplied by 50, including a dis-  
21 figurement continuous in length which is partially in  
22 the facial area and also extends into the neck re-  
23 gion. The commission, if in its opinion the earning  
24 capacity of an employee has been or may in the future  
25 be impaired, may award compensation for any serious  
26 disfigurement in the region above the sterno  
27 clavicular articulations anterior to and including  
28 the region of the sterno cleido mastoid muscles on  
29 either side, but no award for the total disfigurement  
30 as set forth may exceed, in the aggregate,  $2/3$  of the  
31 state average weekly wage, as computed by the Bureau  
32 of Employment Security, multiplied by 50. Notwith-  
33 standing this section, 2 or more serious  
34 disfigurements, not continuous in length, resulting  
35 from the same injury, if partially in the facial area  
36 and partially in the neck region as described in this  
37 subsection, is deemed to be a facial disfigurement.

38 4. Filing of petition. A petition for determi-  
39 nation of the percentage of impairment must be filed  
40 with the commission no earlier than the date of maxi-  
41 mum medical improvement, except that a petition for  
42 the determination of a hearing impairment due to an  
43 injury must be filed with the commission within 2  
44 years from the date of injury.

1           Sec. 34. 39 MRSA §65, as amended by PL 1965, c.  
2 513, §81, is further amended by adding after the 2nd  
3 paragraph a new paragraph to read:

4           Nothing in this Act may be construed to require  
5 an employee who in good faith relies on treatment by  
6 prayer or spiritual means, in accordance with the  
7 tenets and practice of a recognized church or reli-  
8 gious denomination, by a duly accredited practitioner  
9 of those healing methods, to undergo any medical or  
10 surgical treatment. Such an employee or his depen-  
11 dents may not be deprived of any compensation pay-  
12 ments to which he would be entitled if medical or  
13 surgical treatments were employed.

14           Sec. 35. 39 MRSA §66-A, as amended by PL 1985,  
15 c. 729, §3, is repealed and the following enacted in  
16 its place:

17           §66-A. Worker reinstatement rights

18           Upon petition of an injured employee, the commis-  
19 sion may require, after hearing, that the employee be  
20 reinstated as required by this section.

21           1. Reinstatement rights. When an employee has  
22 suffered a compensable injury, he is entitled, upon  
23 request, to reinstatement to his former position if  
24 the position is available and suitable to his physi-  
25 cal condition. If the employee's former position is  
26 not available or suitable, he is entitled, upon re-  
27 quest, to reinstatement to any other available posi-  
28 tion which is suitable to his physical condition.

29           2. Reasonable accommodation required. In order  
30 to facilitate the placement of an injured employee as  
31 required under this section, the employer must make  
32 reasonable accommodations for the physical condition  
33 of the employee unless the employer can demonstrate  
34 that no reasonable accommodation exists or that the  
35 accommodation would impose an undue hardship on the  
36 employer. In determining whether undue hardship ex-  
37 ists, the commission shall consider:

38           A. The size of the employer's business;

39           B. The number of employees employed by the em-



1       ployer;

2       C. The nature of the employer's operations; and

3       D. Any other relevant factors.

4       3. Time period; discrimination prohibited. The  
5 employer's obligation to reinstate the employee con-  
6 tinues until one year after the employee has reached  
7 the stage of maximum medical improvement in the judg-  
8 ment of the commission. An employer who reinstates  
9 an employee under this section may not subsequently  
10 discriminate against that employee in any employment  
11 decision, including decisions related to tenure, pro-  
12 motion, transfer or reemployment following a layoff,  
13 because of the employee's assertion of a claim or  
14 right under this Act. Nothing in this subsection may  
15 be construed to limit any protection offered to an  
16 employee by section 111.

17       4. Exception for collective bargaining agree-  
18 ments. Reinstatement may not conflict with any pro-  
19 visions of a collective bargaining agreement between  
20 the employer and a labor organization which is the  
21 collective bargaining representative of the unit of  
22 which the injured employee is or would be a part.

23       5. Limitations. This section does not obligate  
24 an employer to offer an injured employee employment  
25 or reemployment in:

26       A. Supervisory or confidential positions within  
27 the meaning of the United States Code, Title 29,  
28 Section 152; or

29       B. Any position for which the employee is not  
30 qualified.

31       6. Failure to comply. The employer's failure to  
32 comply with his obligation under this section dis-  
33 qualifies the employer or insurance carrier from ex-  
34 ercising any right it may otherwise have to reduce or  
35 terminate the employee's benefits under this Act.  
36 The disqualification continues as long as the employ-  
37 er fails to offer reinstatement or until the employee  
38 accepts other employment.

1 If any injured employee refuses to accept an offer of  
2 reinstatement, the employer or insurance carrier may  
3 file, in addition to exercising any other rights it  
4 may have, a petition for a reduction of benefits.  
5 If, after hearing, the commission finds that an em-  
6 ployee refused to accept the offer and the position  
7 offered was suitable to his physical condition, it  
8 shall order the reduction of all benefits payable un-  
9 der section 54-B and 55-B. The reduction shall be in  
10 an amount equal to the difference between the  
11 employee's weekly benefit and the benefits he would  
12 have been entitled to receive if he had accepted the  
13 offer. The order reducing benefits remains in ef-  
14 fect only as long as the employee fails to indicate  
15 that he will accept an offer of reinstatement under  
16 this section.

17 If the commission determines that the employee has  
18 refused to accept an offer of reinstatement to a po-  
19 sition which is suitable to his physical condition,  
20 all or a portion of the benefits paid between the  
21 time the offer was refused and the commission's de-  
22 termination is deemed to be an overpayment. The  
23 amount of the overpayment shall be the difference be-  
24 tween the employee's benefits for that period and the  
25 benefits, if any, he would have been entitled to re-  
26 ceive if he had accepted the offer. The employer or  
27 insurance carrier may recover the amount of the  
28 overpayment by making deductions from future benefit  
29 payments in such amounts as the commission deter-  
30 mines. If no benefits are payable, the employer or  
31 insurance carrier may recover the amount of the over-  
32 payment by civil action.

33 7. Burden of proof. The petitioning party has  
34 the burden of proof on all issues regarding claims  
35 under this section except that the employer always  
36 retains the burden of proof regarding the availabili-  
37 ty or nonavailability of work.

38 8. Rehabilitation plans. All obligations under  
39 this section are suspended during the implementation  
40 of a rehabilitation plan under subchapter III-A.

41 9. Foreign workers. If an employee is prevented  
42 from accepting an offer of reinstatement because of  
43 residence in a foreign country or termination of sta-

1 tus as a lawfully employable alien, he is deemed to  
2 have refused the offer.

3 **Sec. 36. 39 MRSA §71, as amended by PL 1983, c.**  
4 **479, §13, is repealed.**

5 **Sec. 37. 39 MRSA §71-A is enacted to read:**

6 §71-A. Lump sum payments

7 1. Commutation. Subject to the limitations of  
8 this section, an employer and employee may by agree-  
9 ment discharge any liability for compensation, in  
10 whole or in part, by the employer's payment of an  
11 amount to be approved by the commission. The employ-  
12 er, the employee or the employee's dependents may pe-  
13 tition the commission for an order commuting all pay-  
14 ments for future benefits to a lump sum.

15 2. Review. Before approving any lump sum settle-  
16 ment, a commissioner shall review the following fac-  
17 tors with the employee:

18 A. The employee's rights under this Title and  
19 the effect a lump sum settlement would have upon  
20 those rights, including, if applicable, the ef-  
21 fect of the release of an employer's liability  
22 for future medical expenses;

23 B. The purpose for which the settlement is re-  
24 quested;

25 C. The employee's post-injury earnings and pros-  
26 pects, considering all means of support, includ-  
27 ing the projected income and financial security  
28 resulting from proposed employment, self-  
29 employment, any business venture or investment  
30 and the prudence of consulting with a financial  
31 or other expert to review the likelihood of suc-  
32 cess of such projects; and

33 E. Any other information, including the age of  
34 the employee and of the employee's dependents,  
35 which would bear upon whether the settlement is  
36 in the best interest of the claimant.

37 The commissioner shall initiate the review within 14

1 days of his receipt of a request for a settlement re-  
2 view. The commissioner may not approve any settlement  
3 for any employee who fails to attend a scheduled re-  
4 view without good cause.

5 3. Approval. A commissioner may not approve any  
6 lump sum settlement unless he finds the settlement to  
7 be in the employee's best interest in light of the  
8 factors reviewed with the employee under subsection  
9 2. In addition, a commissioner may not approve a lump  
10 sum settlement which requires the release of an em-  
11 ployer's liability for future medical expenses of the  
12 employee unless the parties would be unlikely to  
13 reach agreement on the amount of the lump sum payment  
14 without the release of liability for future medical  
15 expenses.

16 **Sec. 38. 39 MRS §86-A is enacted to read:**

17 §86-A. Order for mandatory retraining

18 1. Application for retraining. If an employer  
19 has failed to reemploy an injured employee in a posi-  
20 tion suitable to his physical condition within one  
21 year from the date of maximum medical improvement,  
22 and the rehabilitation priorities described in sec-  
23 tion 86, other than retraining, have been determined  
24 to be clearly inappropriate, the employer or employee  
25 may petition the commission for an order requiring a  
26 fixed period of formal retraining.

27 2. Time for filing. Any petition under this sec-  
28 tion must be filed within 14 months after the date of  
29 maximum medical improvement.

30 3. Determination of plan. The commission may or-  
31 der, after hearing, a fixed period of formal retrain-  
32 ing as described in section 86, subsection 7, except  
33 that the commission may not order an employee 55  
34 years of age or older to involuntarily participate in  
35 a retraining plan under this section. In determining  
36 whether to order a period of formal retraining, the  
37 commission shall consider the factors set forth in  
38 subsection 4.

39 4. Retraining plan. The commission, upon a de-  
40 termination of retraining under this section, shall

1 prescribe a plan for retraining which will return, to  
2 the maximum extent practicable, the employee to his  
3 preinjury earning capacity. The commission shall con-  
4 sider the following factors in prescribing a plan:

5 A. The employee's age;

6 B. The employee's work life expectancy;

7 C. The employee's interests;

8 D. The employee's aptitudes;

9 E. The employee's education;

10 F. The employee's earning capacity before and  
11 after the injury;

12 G. The employee's skills and work experience;  
13 and

14 H. Any other relevant factors.

15 The plan must include a job placement strategy and a  
16 specific program of proposed actions likely to  
17 achieve job placement for the employee.

18 5. Compensation. If retraining is ordered under  
19 this section, the employer's obligation to pay com-  
20 ensation under section 54-B or 55-B terminates 6  
21 months after the period fixed for completion of the  
22 retraining program, unless the employee demonstrates  
23 to the commission that he has actively and reasonably  
24 sought employment during that period.

25 A. Notwithstanding any other provision of this  
26 Act, if any employee who receives retraining under  
27 this section is receiving compensation under  
28 section 55-B, the 400-week duration limit on his  
29 compensation imposed under section 55-B shall be  
30 reduced as provided in this paragraph. The com-  
31 mission shall calculate the total expense of re-  
32 training under this section, exclusive of compen-  
33 sation or benefits otherwise payable under this  
34 Act, and shall divide this amount by the  
35 employee's amount of weekly compensation under  
36 section 55-B. The commission shall subtract that

1           number of weeks from the 400 weeks' compensation  
2           for which the employee is eligible under section  
3           55-B.

4           6. Rules. On or before July 1, 1988, the commis-  
5           sion shall adopt rules under Title 5, chapter 375, to  
6           implement this section.

7           7. Applicability. This section applies only to  
8           injuries occurring on or after the effective date of  
9           this section.

10           8. Education available. As used in this section,  
11           "retraining" may include education include education  
12           of the employee where appropriate.

13           Sec. 39. 39 MRSA §91, sub-§1, as amended by PL  
14           1987, c. 452, is further amended to read:

15           1. Membership; term. The Workers' Compensation  
16           Commission, as established in this section, shall  
17           consist of ~~10~~ 12 members, who shall be persons  
18           learned in the law and members of good standing of  
19           the bar of this State. They shall be appointed by  
20           the Governor within 60 days after a vacancy occurs or  
21           a new commissioner is authorized, subject to review  
22           by the joint standing committee of the Legislature  
23           having jurisdiction over judiciary and to confirma-  
24           tion by the Legislature. One of the commissioners,  
25           to be designated by the Governor as chairman, shall  
26           be appointed for the term of 5 years and the other  
27           commissioners for a term of 4 years each.

28           Sec. 40. 39 MRSA §93, sub-§3, as amended by PL  
29           1985, c. 372, Pt. A, §32, is further amended to read:

30           3. Proceedings before Workers' Compensation Com-  
31           mission. In all proceedings before the Workers' Com-  
32           mission, ~~all forms of discovery shall be~~  
33           ~~available in civil actions in the Superior Court--un-~~  
34           ~~der--the--Maine-Rules-of-Civil-Procedure, as amended,~~  
35           ~~are available~~ to any of the parties in the proceed-  
36           ings ~~except that~~ as the chairman may, by rule adopted  
37           under section 92, ~~prescribe different time periods~~  
38           ~~for the completion of discovery in cases where it is~~  
39           necessary to ensure that hearings may be held within

1 the time periods prescribed by this Act. A commis-  
2 sioner shall rule on all objections and may enforce  
3 this subsection in the same manner and to the same  
4 extent as a Superior Court Justice may enforce com-  
5 pliance with the Maine Rules of Civil Procedure, as  
6 amended, with regard to discovery, except that the  
7 commissioner does not have the power of contempt.

8 Signed statements by a medical doctor or osteopathic  
9 physician relating to medical questions, by a psy-  
10 chologist relating to psychological questions or by a  
11 chiropractor relating to chiropractic questions, are  
12 admissible in workers' compensation hearings before  
13 the Workers' Compensation Commission, providing that  
14 notice of that testimony to be used is given and ser-  
15 vice of a copy of the letter or report is made on the  
16 opposing counsel 14 days before the scheduled hearing  
17 ~~to enable that counsel to depose or subpoena and~~  
18 ~~cross-examine that medical doctor, osteopathic physi-~~  
19 ~~cian, psychologist or chiropractor if he so chooses.~~

20 Depositions, subpoenas or cross-examination of health  
21 care practitioners is permitted only if the commis-  
22 sioner finds that the testimony is sufficiently im-  
23 portant to outweigh the delay in the proceeding.

24 Sec. 41. 39 MRSA §100, sub-§2, as amended by PL  
25 1985, c. 372, Pt. A, §36, is further amended to read:

26 2. Standard for review. The basis for granting  
27 relief under this section is as follows.

28 A. On the first petition for review brought by a  
29 party to an action, the commissioner shall deter-  
30 mine the appropriate relief, if any, under this  
31 section by determining the employee's present de-  
32 gree of incapacity. ~~For purposes of a first pe-~~  
33 ~~tition brought under this section, evidence of~~  
34 ~~the employee's medical condition at the time of~~  
35 ~~an earlier determination or approved agreement is~~  
36 ~~relevant only if it tends to prove the present~~  
37 ~~degree of incapacity.~~

38 B. Once a party has sought and obtained a deter-  
39 mination under this section, it is the burden of  
40 that party in all proceedings on his subsequent  
41 petitions under this section to prove by compara-

1           ~~tive-medical-evidence~~ that the employee's earning  
2           incapacity attributable to the work-related in-  
3           jury has changed since that determination.

4           Sec. 42. 39 MRSA §100, sub-§4, as amended by PL  
5           1985, c. 372, Pt. A, §38, is further amended to read:

6           4. Payments pending hearing and decision. If the  
7           employee is receiving payments at the time of the pe-  
8           tition, the payments may not be decreased or sus-  
9           pended pending the hearing and final decision upon  
10          the petition, except in the following circumstances:

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

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

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

18                  (2) The employee's whereabouts are unknown;  
19                  or

20                  (3) The employee has resumed work;

21          C. The employer or his insurance carrier files a  
22          certificate with the commission stating that the  
23          employee refuses to submit to an examination; or

24          D. The employee refuses an offer of reinstatement  
25          to a position which is suitable to his phys-  
26          ical condition or the employee is able to return  
27          to work and there is work available, in or near  
28          the community in which he resides, which is suit-  
29          able to his physical condition.

30                  (1) If the employee refuses an offer of re-  
31                  instatement or fails to return to available  
32                  suitable work, his benefits shall be reduced  
33                  in an amount equal to the difference between  
34                  the employee's weekly benefit and the bene-  
35                  fits he would have been entitled to receive  
36                  if he had accepted reinstatement or returned  
37                  to available suitable work.



1           (2) Benefits shall not be suspended or re-  
2 duced pending hearing under this paragraph  
3 unless the employer has provided the employ-  
4 ee with written notice that benefits may be  
5 suspended or reduced together with any in-  
6 formation relied on by the employer to sup-  
7 port the proposed suspension or reduction.  
8 The employee has 20 days, after receiving  
9 that notice, to submit to the commission any  
10 additional information relating to his con-  
11 tinued entitlement to benefits.

12           (3) Benefits shall not be suspended or re-  
13 duced pending hearing under this paragraph  
14 if the employee shows that, despite a good  
15 faith work search, the employee is unable to  
16 obtain suitable work.

17           (4) Within 30 days after notice to the em-  
18 ployee under subparagraph (2), the commis-  
19 sion shall enter a provisional order provid-  
20 ing for the suspension, reduction or contin-  
21 uation of benefits pending a hearing on the  
22 petition. The order shall be based upon the  
23 information submitted by both the employer  
24 and the employee under this section.

25           (5) If benefits are suspended or reduced  
26 under this paragraph and the commission, af-  
27 ter hearing, reverses the provisional order,  
28 either in whole or in part, the commission  
29 shall order a lump sum payment of all bene-  
30 fits withheld together with interest at the  
31 rate of 6% a year. The employer shall pay  
32 this lump sum within 10 days of the order.

33           **Sec. 43. 39 MRSA §102-A is enacted to read:**

34           §102-A. Incarceration of employee

35           No incapacity benefits under section 54-B or 55-B  
36 may be paid to an employee during any period in which  
37 he is a sentenced prisoner in actual execution of a  
38 term of incarceration imposed in this State or any  
39 other jurisdiction for a criminal offense, except  
40 when the employee is participating in a work-release  
41 or similar program. All compensation under those sec-

1 tions is forfeited during the period of incarceration  
2 except for any period in which the employee is par-  
3 ticipating in a work-release or similar program.

4       Sec. 44. 39 MRSA §104-A, sub-§2, as repealed and  
5 replaced by PL 1987, c. 77, §5 and c. 290, is re-  
6 pealed.

7       Sec. 45. 39 MRSA §104-A, sub-§§2-A and 2-B are  
8 enacted to read:

9       2-A. Failure to pay within time limits. An em-  
10 ployer or insurance carrier who fails to pay compen-  
11 sation, as provided in this section, shall be penal-  
12 ized as provided in this subsection.

13       A. Except as otherwise provided by section 51-B,  
14 subsection 9, if an employer or insurance carrier  
15 fails to pay compensation as provided in this  
16 section, the commission shall assess against the  
17 employer or insurance carrier a forfeiture of up  
18 to \$100 for each day of noncompliance. If the  
19 commission finds that the employer or insurance  
20 carrier was prevented from complying with this  
21 section because of circumstances beyond their  
22 control, no forfeiture may be assessed.

23               (1) One-half of the forfeiture shall be  
24 paid to the employee to whom compensation is  
25 due and 1/2 shall be paid to the commission  
26 and be credited to the General Fund.

27               (2) If a forfeiture is assessed against any  
28 employer or insurance carrier under this  
29 subsection on petition by an employee, the  
30 employer or insurance carrier shall pay rea-  
31 sonable attorney fees, as determined by the  
32 commission, to the employee.

33               (3) Forfeitures assessed under this subsec-  
34 tion may be enforced by the Superior Court  
35 as provided in section 103-E.

36       B. Payment of any forfeiture assessed under this  
37 subsection shall not be considered an element of  
38 loss for the purpose of establishing rates for  
39 workers' compensation insurance.

1        2-B. Failure to secure payment. If any employer,  
2 who is required to secure the payment to his employ-  
3 ees of the compensation provided for by this Act,  
4 fails to do so, the employer is subject to the penal-  
5 ties set out in paragraphs A, B and C. The failure of  
6 any employer to procure insurance coverage for the  
7 payment of compensation and other benefits to his em-  
8 ployees in compliance with sections 21-A and 23 con-  
9 stitutes a failure to secure payment of compensation  
10 within the meaning of this subsection.

11        A. The employer is guilty of a Class D crime.

12        B. The employer is liable to pay a civil penalty  
13 of up to \$10,000, payable to the Second Injury  
14 Fund.

15        C. The employer, if organized as a corporation,  
16 is subject to revocation or suspension of its au-  
17 thority to do business in this State as provided  
18 in Title 13-A, section 1302. The employer, if li-  
19 icensed, certified, registered or regulated by any  
20 board authorized by Title 5, section 12004, sub-  
21 section 1, or whose license may be revoked or  
22 suspended by proceedings in the Administrative  
23 Court or by the Secretary of State, is subject to  
24 revocation or suspension of his license, certifi-  
25 cation or registration.

26        Prosecution under paragraph A does not preclude ac-  
27 tion under paragraph B or C.

28        If the employer is a corporation, any agent of the  
29 corporation having primary responsibility for obtain-  
30 ing insurance coverage is liable for punishment under  
31 this section. Criminal liability shall be determined  
32 in conformity with Title 17-A, sections 60 and 61.

33        Sec. 46. 39 MRSA §106, as amended by PL 1985, c.  
34 372, Pt. A, §42, is repealed and the following en-  
35 acted in its place:

36        §106. Reports to commission

37        1. Injuries. Whenever any employee has reported  
38 to an employer under the Act any injury arising out  
39 of and in the course of his employment which has

1 caused the employee to lose a day's work or has re-  
2 quired the services of a physician, or whenever the  
3 employer has knowledge of any such injury, the em-  
4 ployer shall report the injury to the commission  
5 within 7 days after he receives notice or has knowl-  
6 edge of the injury. The employer shall also report  
7 the average weekly wages or earnings of the employee,  
8 together with any other information required by the  
9 commission. The employer shall report whenever the  
10 injured employee resumes his employment and the  
11 amount of his wages or earnings at that time.

12 2. Settlements. Whenever any settlement is made  
13 with an injured employee by the employer or insurance  
14 carrier for compensation covering any specific period  
15 under an approved agreement or a decree, or covering  
16 any period of total or partial incapacity that has  
17 ended, the employer or carrier shall file with the  
18 commission a duplicate copy of the settlement receipt  
19 or agreement signed by the employee showing the total  
20 amount of money paid to him for that period or peri-  
21 ods, but the settlement receipt or agreement is not  
22 binding without the commission's approval.

23 3. Return to employment. Any person receiving  
24 compensation under this Act who returns to employment  
25 or engages in new employment after his injury shall  
26 file a written report of that employment with the  
27 commission and his previous employer within 7 days of  
28 his return to work. This report shall include the  
29 identity of the employee, his employer and the amount  
30 of his weekly wages or earnings received or to be re-  
31 ceived.

32 Sec. 47. 39 MRSA §107, first ¶, as amended by PL  
33 1987, c. 402, Pt. A, §210, is further amended to  
34 read:

35 Every insurance company insuring employers under  
36 this Act shall fill out any blanks and answer all  
37 questions submitted to it that may relate to poli-  
38 cies, premiums, amount of compensation paid and such  
39 other information as the commission or the Insurance  
40 Superintendent of Insurance may deem important, ei-  
41 ther for the proper administration of this Act or for  
42 statistical purposes. Any--insurance--company--which  
43 shall-refuse-to-fill-out-such-blanks-or--answer--such

1 questions--shall-be-liable-to-a-forfeiture-of-\$10-for  
2 each-day-of-such-refusal, to-be-enforced-by-the--com-  
3 mission--in--a-civil-action-in-the-name-of-the-State.  
4 All-money-recovered-under--this--section--or--section  
5 106,--or--under-sections-21-A-to-27,--shall-be-paid-into  
6 the--State-Treasury-and-credited-to-the-appropriation  
7 for-the-administration-of-this-Act.

8       **Sec. 48.** 39 MRSA §108, as repealed and replaced  
9 by PL 1979, c. 713, §2, is repealed.

10       **Sec. 49.** 39 MRSA §108-A is enacted to read:

11       §108-A. Reports and data collection

12       1. Occupational injuries and illnesses. The Di-  
13 rector of the Bureau of Labor Standards shall provide  
14 an annual report concerning the number and character  
15 of occupational injuries and illnesses and their ef-  
16 fects, as required under Title 26, section 42.

17       The chairman of the commission shall assist the Di-  
18 rector of the Bureau of Labor Standards to ensure  
19 that necessary information regarding the administra-  
20 tive processes, costs and other factors related to  
21 the Workers' Compensation Act and the occupational  
22 disease law are included in the report. The Commis-  
23 sioner of Human Services and the Director of the Bu-  
24 reau of Health shall provide the Director of the Bu-  
25 reau of Labor Standards with any information in their  
26 possession related to occupational injuries and ill-  
27 nesses. The Superintendent of Insurance shall provide  
28 the following information to the Director of the Bu-  
29 reau of Labor Standards on an annual basis:

30       A. A tabulation of premium and loss data, on an  
31 accrual accounting basis, regarding those insur-  
32 ance companies authorized by the Bureau of Insur-  
33 ance to write workers' compensation in the State;  
34 and

35       B. Similar data for self-insurance workers' com-  
36 penetration plans regulated by the Bureau of Insur-  
37 ance.

38       2. Workers' compensation system. The Director of  
39 the Bureau of Labor Standards, the Superintendent of

1 Insurance and the chairman of the commission shall  
2 meet at least 3 times a year with appropriate staff  
3 and other state agencies to review the areas of data  
4 collection pertaining to the workers' compensation  
5 system, as well as interpret and coordinate appropri-  
6 ate data collection programs. The director shall  
7 chair this group. The group shall submit an annual  
8 report to the Governor and the Legislature as to the  
9 results of their data collection, as well as a pro-  
10 file of the workers' compensation system, including  
11 costs, administration, adequacy and timeliness of  
12 benefits and an evaluation of the entire workers'  
13 compensation system.

14 The Director of the Bureau of Labor Standards, the  
15 Superintendent of Insurance and the chairman of the  
16 commission shall provide any further occasional re-  
17 ports through their joint or individual efforts that  
18 they consider necessary to the improved function and  
19 administration of the Workers' Compensation Act and  
20 the occupational disease law.

21 **Sec. 50. 39 MRSA §110-A is enacted to read:**

22 §110-A. Appearance by officer or employee of corpo-  
23 ration or partnership

24 The appearance of an authorized officer, employee  
25 or representative of a party in any hearing, action  
26 or proceeding before the commission in which the par-  
27 ty is participating or desires to participate is not  
28 an unauthorized practice of law and is not subject to  
29 any criminal sanction. If the appearance of such an  
30 officer, employee or representative prevents the ef-  
31 efficient processing of any proceeding, the commission,  
32 in its discretion, may remove that person from repre-  
33 sentation of the party.

34 **Sec. 51. 39 MRSA §113 is enacted to read:**

35 §113. Penalties

36 The following provisions govern the commission's  
37 authority to impose penalties for violations of this  
38 Act or rules adopted under this Act.

39 1. Reporting violations. The chairman may assess

1 a civil penalty, not to exceed \$100 for each viola-  
2 tion, upon any person:

3 A. Who fails to file or complete any report or  
4 form required by this Act or rules adopted under  
5 this Act; or

6 B. Who fails to file or complete such a report  
7 or form within the time limits specified in this  
8 Act or rules adopted under this Act.

9 2. General authority. The chairman may assess,  
10 after hearing, a civil penalty in an amount not to  
11 exceed \$1,000 for an individual, and \$10,000 for a  
12 corporation, partnership or other legal entity for  
13 any willful violation of this Act, fraud or inten-  
14 tional misrepresentation. The chairman may also re-  
15 quire that person to repay any compensation received  
16 through a violation of this Act, fraud or intentional  
17 misrepresentation or to pay any compensation withheld  
18 through a violation of this Act, fraud or misrepre-  
19 sentation, with interest at the rate of 10% per year.

20 3. Appeal. Imposition of a penalty under this  
21 section is deemed to be final agency action subject  
22 to appeal to the Superior Court, as provided in Title  
23 5, chapter 375, subchapter VII. Notwithstanding Ti-  
24 tle 5, section 11004, execution of a penalty assessed  
25 under this section is stayed during the pendency of  
26 any appeal under this subsection. The Attorney Gener-  
27 al shall represent the commission in any appeal under  
28 this subsection or the commission may retain private  
29 counsel for that purpose.

30 4. Enforcement and collection. Penalties as-  
31 essed under this section are in addition to any oth-  
32 er remedies available under this Act and are enforce-  
33 able by the Superior Court under section 103-E.

34 A. The Attorney General shall prosecute any ac-  
35 tion necessary to recover penalties assessed un-  
36 der this section or the commission may retain  
37 private counsel for that purpose.

38 B. If any person fails to pay any penalty as-  
39 essed under this section and enforcement by the  
40 Superior Court is necessary:

1                   (1) That person shall pay the costs of  
2                   prosecuting the action in Superior Court,  
3                   including reasonable attorney fees; and

4                   (2) If his failure to pay was without due  
5                   cause, any penalty assessed upon that person  
6                   under this section shall be doubled.

7                   C. All penalties assessed under this section are  
8                   payable to the General Fund.

9                   5. Not an element of loss. An insurance carrier's  
10                  payment of any penalty assessed under this section  
11                  shall not be considered an element of loss for  
12                  the purpose of establishing rates for workers' com-  
13                  ensation insurance.

14                  Sec. 52. PL 1985, c. 372, Pt. A, §51 is re-  
15                  pealed.

16                  Sec. 53. Legislative study on rehabilitation.  
17                  The joint standing committee of the Legislature hav-  
18                  ing jurisdiction over labor shall study the use of  
19                  vocational rehabilitation and retraining under the  
20                  Maine Workers' Compensation Act. The chairmen of the  
21                  committee shall call the first meeting of the commit-  
22                  tee no later than December 1, 1987.

23                  Members of the committee shall receive the legis-  
24                  lative per diem for each day's attendance at commit-  
25                  tee meetings and reimbursement for necessary expenses  
26                  upon application to the Executive Director of the  
27                  Legislative Council. The committee may request staff  
28                  assistance from the Legislative Council and may con-  
29                  sult with vocational rehabilitation or retraining ex-  
30                  perts whenever suitable. All state agencies shall co-  
31                  operate fully with the committee to further the pur-  
32                  poses of this section.

33                  The committee shall hold public hearings and con-  
34                  duct a comprehensive study of every aspect of the  
35                  current system of providing vocational rehabilitation  
36                  to injured workers within the State, including the  
37                  following:

38                  1. Vocational rehabilitation conducted under the  
39                  Workers' Compensation Act, including the following



1 aspects of that system:

2 A. The desirability of requiring the initial  
3 evaluation of suitability for rehabilitation and  
4 the development of rehabilitation plans to be  
5 performed by the Office of Employment Rehabilitation or other public rehabilitation providers;  
6

7 B. The desirability of allowing injured employ-  
8 ees to choose their own rehabilitation provider;

9 C. The desirability of making vocational reha-  
10 bilitation mandatory upon the injured employee,  
11 the employer or insurance carrier, or both;

12 D. The desirability of permitting or prohibiting  
13 medical management or medical monitoring by reha-  
14 bilitation providers;

15 E. The desirability of requiring earlier inter-  
16 vention in cases where an employee may benefit  
17 from rehabilitation services; and

18 F. Any other aspects of the system that may pose  
19 problems currently or in the future or that may  
20 benefit from changes and result in increased ef-  
21 ficiency and effectiveness of the workers' com-  
22 pensation rehabilitation system;

23 2. Vocational rehabilitation conducted by the  
24 Bureau of Rehabilitation;

25 3. Vocational rehabilitation conducted by pri-  
26 vate providers;

27 4. Issues and problems raised by the interaction  
28 of vocational rehabilitation efforts under the Work-  
29 ers' Compensation Act, by the Bureau of Rehabilita-  
30 tion and by private providers; and

31 5. Identification and evaluation of alternative  
32 vocational rehabilitation models in use or proposed  
33 by other states or foreign countries, and their po-  
34 tential suitability for application in the State, in-  
35 cluding the option of requiring employers to provide  
36 vocational-technical retraining to injured employees.



1 study of vocational re-  
 2 habilitation retraining  
 3 to be conducted by  
 4 joint standing commit-  
 5 tee of the Legislature  
 6 having jurisdiction  
 7 over labor.

8 LEGISLATURE  
 9 TOTAL \$8,560

10 Workers' Compensation  
 11 Commission

12 Workers' Compensation Com-  
 13 mission

14	Positions	(17)	(19)
15	Personal Services	\$209,434	\$574,803
16	All Other	110,222	144,662
17	Capital Expenditures	30,525	

18			
19	Total	<u>\$350,181</u>	<u>\$719,465</u>

20 Provides fund to sup-  
 21 port the ongoing and  
 22 new responsibilities of  
 23 the Workers' Compensa-  
 24 tion Compensation.

25 Office of Employment Reha-  
 26 bilitation

27	Positions	(2)	
28	Personal Services		\$23,309
29	All Other		4,200
30	Capital Expenditures		2,571

31			
32	Total		<u>\$30,080</u>

33 Provides funds for a  
 34 rehabilitation assist-  
 35 ant administrator and  
 36 clerical support for  
 37 the mandatory retrain-  
 38 ing program positions

1 effective January 1,  
2 1989.

3	WORKERS' COMPENSATION COMMIS-		
4	SION		
5	TOTAL	<u>\$350,181</u>	<u>\$749,545</u>
6	TOTAL APPROPRIATIONS	\$350,095	\$731,745

7 Sec. 56. Allocation. The following funds are  
8 allocated from the Federal Expenditure Fund to carry  
9 out the purposes of this Act.

10		<u>1987-88</u>	<u>1988-89</u>
----	--	----------------	----------------

11 LABOR, DEPARTMENT OF

12 Administration - Bureau of  
13 Labor Standards

14	Positions	(-3)	(-3)
15	Personal Services	\$(36,500)	\$(88,803)
16	All Other	5,700	52,000
17	Capital Expenditures	4,000	8,247

18 Provides funding for  
19 data return processing  
20 services and data dis-  
21 semination and for the  
22 transfers of 2  
23 statisticians II and  
24 one Labor Statistical  
25 Technician to Safety  
26 Education and Training  
27 Program.

28	DEPARTMENT OF LABOR		
29	TOTAL	<u>\$(26,800)</u>	<u>\$(28,556)</u>

30 Sec. 57. Allocation. The following funds are  
31 allocated from the other special revenue funds to  
32 carry out the purposes of this Act.

33		<u>1987-88</u>	<u>1988-89</u>
----	--	----------------	----------------

34 LABOR, DEPARTMENT OF



1 This new draft will have the following effects on  
2 revenues:

3		<u>1987-88</u>	<u>1988-89</u>
4	General Fund		\$ 10,000
5	Other Special Revenue	\$128,300	\$338,452

6 Provided below is a summary of net appropriations  
7 and allocations.

8		<u>1987-88</u>	<u>1988-89</u>
9	General Fund Appropriations	\$350,095	\$731,745
10	Federal Expenditure Fund		
11	Allocations	\$(26,800)	\$(28,556)
12	Other Special Revenue Fund		
13	Allocations	\$128,300	\$338,452

14 STATEMENT OF FACT

15 This new draft completely redrafts and makes sev-  
16 eral major changes in the original bill.

17 Sections 1 and 50 authorize nonattorneys to  
18 represent parties before the Workers' Compensation  
19 Commission. The commission retains the discretion to  
20 remove that person from representation if necessary  
21 to ensure an efficient proceeding.

22 Section 2 amends the Maine Human Rights Act to  
23 prohibit discrimination against job applicants be-  
24 cause of that person's previous assertion of a claim  
25 or right under the Workers' Compensation Act. Dis-  
26 crimination against persons after they have been  
27 hired continues to be governed by the antidiscrimina-  
28 tion provisions of the Workers' Compensation Act.

29 Section 3 enacts the Commission on Safety in the  
30 Maine Workplace within the Maine Revised Statutes,  
31 Title 5, chapter 379, list of state boards and com-  
32 missions.

33 Section 4 removes the Occupational Safety Loan  
34 Panel from the Title 5, chapter 379, list of state  
35 boards and commissions. The loan panel is replaced  
36 by the Commission on Safety in the Maine Workplace

1 under sections 9 to 11 of this new draft.

2 Section 5 permits the Director of the Bureau of  
3 Labor Standards to identify employers with poor  
4 workplace safety records and offer safety consulta-  
5 tion services to those employers. If the employer  
6 refuses to cooperate or if dangers to workers exist  
7 at the employer's worksite, the director will report  
8 the employer to the United States Occupational Safety  
9 and Health Administration.

10 Sections 6, 12 and 13 consolidate the responsi-  
11 bility for providing education and training assist-  
12 ance to employers regarding the chemical substance  
13 identification law with the existing general safety  
14 education and training program of the Bureau of Labor  
15 Standards.

16 Section 7 reenacts and makes minor changes in the  
17 enabling legislation for the Commission on Safety in  
18 the Maine Workplace and allocates it within the re-  
19 vised statutes.

20 Section 8 increases the maximum assessment per-  
21 mitted to fund the safety education and training pro-  
22 grams of the Bureau of Labor Standards from 1/4 of 1%  
23 to 1% of actual paid workers' compensation losses,  
24 excluding medical payments, of insurers and  
25 self-insured employers. It also removes the existing  
26 exemption from the assessment for group  
27 self-insurers.

28 Sections 9 to 11 repeal the current Occupational  
29 Safety Loan Panel and require the Commission on Safe-  
30 ty in the Maine Workplace to assume its duty to re-  
31 view request for safety loans.

32 Section 14 provides that seasonal workers will  
33 have their average weekly wage calculated to reflect  
34 their total annual earnings. This will prevent an  
35 individual who is injured while working at a seasonal  
36 job from collecting benefits year-round at an  
37 artificially-enhanced rate.

38 Section 15 enacts definitions of the terms "maxi-  
39 mum medical improvement" and "permanent impairment."

1 Section 16 removes the current penalty on an em-  
2 ployer who fails to display an informational poster  
3 on workers' compensation in his workplace. Such a  
4 violation will be penalized under the general penalty  
5 penalty section enacted by section 51 of the new  
6 draft.

7 Section 17 simply updates a cross-reference and  
8 deletes the current definition of "maximum medical  
9 improvement," which is reenacted in section 15 of the  
10 new draft.

11 Section 18 enacts an exception to the requirement  
12 that an employer file a notice of controversy within  
13 44 days after receiving notice of an employee's in-  
14 jury or lost work time if he wants to contest the  
15 employee's claim for benefits. If the employer has  
16 not made any payment on the employee's claim and  
17 fails to file a timely notice due to employee fraud  
18 or excusable neglect on the part of the employer, he  
19 is not prevented from filing a notice of controversy  
20 after the 44-day period has expired. The excusable  
21 neglect standard employed in this section is derived  
22 from the same standard used in the Maine Rules of  
23 Civil Procedure.

24 Sections 19 and 20 clarify that employers or in-  
25 surers may voluntarily pay for treatment of an  
26 employee's injury by prayer or spiritual means. It  
27 also limits an employer's liability for an injured  
28 employee's medical expenses to the amount determined  
29 by the Workers' Compensation Commission in rules  
30 adopted under the provisions enacted by section 22 of  
31 this new draft. The commission may, upon petition of  
32 a treating health care provider, allow costs above  
33 the scheduled amounts in exceptional cases.

34 Section 21 allows the automatic suspension of an  
35 employee's benefits or action on his claim if he re-  
36 fuses to authorize the release of his medical records  
37 to his employer within 20 days after a request to do  
38 so, if that request is delivered by certified mail  
39 and contains a notice to the employee that his bene-  
40 fits or action on his claim may be suspended if he  
41 does not permit the release.

42 Section 22 requires the Workers' Compensation



1 Commission to adopt a rate schedule governing fees  
2 for health care services, other than hospital care,  
3 that are provided to injured employees under the  
4 Workers' Compensation Act. These fees may not be  
5 less than the usual, customary and reasonable charges  
6 paid by private health insurers for similar services.  
7 Any fee schedule adopted by commission rule will be  
8 amended annually as appropriate. The commission will  
9 also set maximum fees allowable for testimony by a  
10 health care provider for purposes of hearings con-  
11 ducted under the Workers' Compensation Act.

12 Sections 23 and 24 extend the freeze on the cur-  
13 rent maximum weekly benefit of \$447.92 for one addi-  
14 tional year. The maximum benefit will resume annual  
15 adjustments beginning July 1, 1989.

16 Sections 25 to 27 replace the current laws gov-  
17 erning total incapacity benefits. The amount of com-  
18 pensation payable for total incapacity remains the  
19 same as under current law except that the cost-  
20 of-living adjustment is delayed for 2 years; totally  
21 incapacitated workers will receive benefits for an  
22 unlimited duration with an annual adjustment, capped  
23 at 5%, beginning on the 3rd anniversary date of the  
24 injury. The definition of a totally incapacitated  
25 worker has been restricted so that only those injured  
26 employees who are unable to perform any full-time re-  
27 munerative work in the State's ordinary labor market  
28 will be classed as totally incapacitated; this stan-  
29 dard was adapted from the first phase of the incapaci-  
30 ty test outlined by the Law Court in Ibbitson v.  
31 Sheridan Corp., 422 A.2d 1005(Me. 1980). The current  
32 statutory presumptions of incapacity for very seri-  
33 ously injured employees are retained but the existing  
34 exception for sheltered workshops from the \$25 mini-  
35 mum payment is deleted.

36 Sections 24 to 30 replace the current laws gov-  
37 erning partial incapacity benefits. The method of  
38 qualifying for partial incapacity benefits is not  
39 changed in this new draft. Benefits paid under the  
40 new draft to employees classed as partially incapaci-  
41 tated are subject to a 400-week duration limit and  
42 will not be adjusted annually.

43 Sections 31 to 33 replace the current laws gov-

1 erning permanent impairment benefits. The method of  
2 calculating the degree of permanent impairment is  
3 changed to reflect the actual physical disability to  
4 the body as a whole. The degree of impairment will  
5 be calculated through reference to a standard medical  
6 impairment schedule adopted by the Workers' Compensation  
7 Commission through rulemaking. Until a rule is  
8 adopted, the 1984 AMA Guides to the Evaluation of  
9 Permanent Impairment will be used. The amount of  
10 compensation to be paid is calculated by using a  
11 graduated table that provides greater compensation to  
12 those employees with more serious impairments. Compensation  
13 will not be paid in a lump sum as under the  
14 current law but will be paid in weekly amounts of 2/3  
15 of the State's average weekly wage. Permanent impairment  
16 benefits continue to be paid in addition to  
17 any incapacity benefits that the employee may qualify  
18 for. The current provisions awarding compensation  
19 for serious facial or head disfigurement are retained  
20 in the new draft.

21 Section 34 provides that compensation will not be  
22 reduced for employees who choose to rely upon treatment  
23 for their injury by prayer or spiritual means.

24 Section 35 replaces the current law governing an  
25 injured employee's rights and obligations regarding  
26 reinstatement to work. Under the new provisions, an  
27 employer has an obligation to offer, and an employee  
28 to accept, any available work with that employer that  
29 is suitable to the employee's physical condition.  
30 The petitioning party has the burden of proof on all  
31 issues involved in the case except that, since he is  
32 in the best position to bring forth the necessary evidence,  
33 the employer always retains the burden of proof  
34 regarding the availability or nonavailability  
35 of work. The employer must make reasonable accommodations  
36 for the physical condition of the employee  
37 unless those accommodations would create an undue  
38 hardship for the employer, considering the size of  
39 the employer's business, the number of employees, the  
40 nature of his operations and other factors.

41 The employer's obligation to reinstate the employee  
42 continues until one year after the employee  
43 reaches the point of maximum medical improvement.

1 Once an employee has been reemployed, the employer  
2 may not discriminate against that employee in any  
3 subsequent employment decision. Current restrictions  
4 on the obligation to reemploy the employee are re-  
5 tained in the new draft; the employer does not have  
6 to employ the employee in a supervisory position or a  
7 position for which the employee is not qualified. If  
8 an employer fails to meet his obligations under the  
9 law, he is prevented from attempting to reduce or  
10 terminate the employee's benefits until he offers the  
11 employee reinstatement or the employee is rehired  
12 elsewhere. If an employee refuses an offer of rein-  
13 statement, his benefits may be reduced as if he were  
14 actually receiving the wages of the position which he  
15 refused until he indicates that he will accept an of-  
16 fer of reinstatement.

17 Sections 36 and 37 replace the current law gov-  
18 erning lump sum settlements under the Workers' Com-  
19 pensation Act. The new draft permits the use of lump  
20 sum settlements to extinguish an employer's obliga-  
21 tions to pay compensation and benefits under the Act  
22 only after a commissioner reviews the proposed set-  
23 tlement with the employee and finds that the settle-  
24 ment is in the employee's best interest. The new  
25 draft also discourages lump sum settlements that  
26 would extinguish an employer's obligations to pay the  
27 injured employee's future medical expenses. The new  
28 draft does recognize that in a limited number of  
29 cases the release of an employee's rights regarding  
30 medical expenses may actually be in the employee's  
31 best interests, particularly if the employer or in-  
32 surer will not agree to the settlement without the  
33 release. It is expected however, that commissioners  
34 will strongly discourage the release of medical ex-  
35 penses in most cases.

36 Section 38 creates a mandatory retraining program  
37 for certain injured employees that permits an employ-  
38 er to require an employee to undergo retraining and  
39 also permits the employee to force the employer to  
40 pay for a retraining program for the employee. Any  
41 employee who has not been reemployed by his previous  
42 employer within one year after the employee reaches  
43 maximum medical improvement and who is found under  
44 the vocational rehabilitation system to be unable to  
45 regain employment without retraining is eligible for

1 retraining under the new draft. The employer or the  
2 employee may petition for an order establishing a re-  
3 training program for the employee. The Workers' Com-  
4 pensation Commission must consider all relevant fac-  
5 tors in determining whether an employee is suitable  
6 to undergo retraining. If the commissioner finds  
7 that the employee should undergo retraining, the com-  
8 mission will establish a retraining program for the  
9 employee that is designed to, as near as practicable,  
10 restore the employee to his preinjury earning capaci-  
11 ty. The program must include a job placement strate-  
12 gy that is likely to achieve job placement for the  
13 employee after retraining. An employee who undergoes  
14 retraining must demonstrate to the commission that he  
15 has actively searched for work after completing the  
16 retraining or his benefits will be automatically cut  
17 off after 6 months. In any event, the 400-week dura-  
18 tion limit on partial incapacity benefits will be re-  
19 duced so that total compensation to the employee, in-  
20 cluding his costs of retraining, will never exceed  
21 the costs that would have been incurred if the em-  
22 ployee had not undergone retraining.

23 Section 39 adds 2 additional commissioners to the  
24 Workers' Compensation Commission, making a total of  
25 12, and enacts a requirement that the Governor must  
26 make all appointments to the commission within 60  
27 days after the vacancy occurs.

28 Section 40 eliminates the use of the Superior  
29 Court discovery rules and instead permits discovery  
30 as provided by rule of the chairman of the Workers'  
31 Compensation Commission. The section also limits the  
32 use of medical testimony in commission proceedings by  
33 requiring a commissioner to approve the testimony on-  
34 ly if he finds that the need for the testimony  
35 outweighs any possible delay caused in obtaining the  
36 testimony. These changes are intended to reduce de-  
37 lay in commission proceedings.

38 Section 41 changes the standard applied in peti-  
39 tions for review. The section expands the use of  
40 prior medical evaluations and eliminates the need for  
41 comparative medical evidence that demonstrates a  
42 change in the injured employee's earning capacity.  
43 This change will permit other factors that may influ-  
44 ence an injured employee's earning capacity, such as

1 economic factors or vocational retraining, to be con-  
2 sidered in petitions for review filed after an ini-  
3 tial determination.

4 Section 42 permits a quick cutoff of benefits in  
5 2 limited circumstances. First, an employer may de-  
6 crease or suspend an employee's compensation pending  
7 a hearing on a petition if the employee has refused  
8 to submit to a physical examination. Second, an em-  
9 ployer can receive permission from the commission to  
10 reduce or suspend compensation pending hearing if the  
11 employee refuses an offer of suitable work or if work  
12 which is suitable to the employee's physical condi-  
13 tion is available in his community. An unsuccessful  
14 good-faith work search by the employee will rebut an  
15 employer's claim that suitable work is available to  
16 the employee. The employer must provide the commis-  
17 sion and the affected employee with his supporting  
18 evidence when he requests the commission for a quick  
19 cutoff under this 2nd option. The employee then has  
20 20 days in which to respond to the employer's claims.  
21 The commission must make a provisional ruling within  
22 30 days after the employee is notified of the employ-  
23 er's petition. If benefits are reduced or suspended  
24 provisionally and the commission reverses that deter-  
25 mination after hearing, the benefits must be repaid  
26 to the employee with interest.

27 Section 43 prevents an injured employee who is  
28 serving a term of imprisonment in a correctional fa-  
29 cility or county jail from collecting incapacity ben-  
30 efits while he is in prison, unless he is working in  
31 a work-release or similar program.

32 Sections 44 and 45 correct a technical conflict  
33 that was created when 2 different provisions were as-  
34 signed to the same statutory subsection. The new  
35 draft repeals and reenacts the provisions in new sub-  
36 sections.

37 Section 46 redrafts the provisions requiring em-  
38 ployers and employees to file with the commission  
39 certain reports of injuries or returns to work. The  
40 new draft deletes language establishing a penalty for  
41 failure to file the reports since that situation is  
42 now covered by the general penalty section enacted in  
43 section 51 of this new draft.

1 Section 47 deletes a provision that penalizes in-  
2 surers for failing to file certain reports with the  
3 commission. That situation is now covered by the  
4 general penalty section enacted in section 51 of the  
5 new draft.

6 Sections 48 and 49 replace current provisions  
7 concerning information collected and reports prepared  
8 by the Workers' Compensation Commission. The new  
9 draft expands the data required to be retained and  
10 requires all relevant agencies or departments of the  
11 State to cooperate in developing a complete and accu-  
12 rate data base regarding the workers' compensation  
13 system. It also requires an annual report describing  
14 the entire workers' compensation system to be pre-  
15 sented to the Governor and to the Legislature.

16 Section 51 gives the chairman of the Workers'  
17 Compensation Commission broad powers to enforce the  
18 provisions of the Workers' Compensation Act through  
19 the imposition of penalties for violations of the Act  
20 or rules adopted under the Act. It permits the  
21 chairman to assess a fine of up to \$100 per violation  
22 for any failure to file or complete a report or form  
23 required by the commission. This provision is in-  
24 tended to encourage greater compliance with filing  
25 requirements in order to provide more accurate data  
26 to manage the system more efficiently. For cases in-  
27 volving willful violations, fraud or misrepresenta-  
28 tions, the chairman may, after hearing, impose a fine  
29 of up to \$1,000 for an individual, and up to \$10,000  
30 for a corporation, partnership or other legal entity.  
31 These fines are subject to appeal under the Maine Ad-  
32 ministrative Procedure Act, Title 5, chapter 375. If  
33 enforcement of the chairman's decree is necessary,  
34 the fines may be collected through civil actions  
35 filed in Superior Court. The person against whom the  
36 fine is assessed must say the costs of the action,  
37 including any attorney fees, and if the failure to  
38 pay the fine was without due cause, that person's  
39 fine will be doubled. All fines collected under  
40 these provisions will be paid to the General Fund.

41 Section 52 repeals the current enabling legisla-  
42 tion for the Commission on Safety in the Maine  
43 Workplace. That commission is reenacted and allo-  
44 cated within the laws by section 7 of this new draft.

1 Section 53 establishes a legislative study of the  
2 current vocational rehabilitation and retraining sys-  
3 tem under the Workers' Compensation Act. The Joint  
4 Standing Committee on Labor will conduct the study  
5 and will recommend legislation for introduction into  
6 the Second Regular Session of the 113th Legislature  
7 that will establish a right and obligation for in-  
8 jured employees to participate in vocational rehabil-  
9 itation or retraining programs under the Workers'  
10 Compensation Act.

11 Section 54 provides that certain sections of this  
12 new draft apply only to employees who are injured on  
13 or after the effective date of this new draft. No  
14 employee who suffers an injury before this new draft  
15 takes effect will have his benefits affected in any  
16 way by this new draft; it applies only to the bene-  
17 fits received by workers injured on or after its ef-  
18 fective date. Some procedural changes will, however,  
19 apply to persons injured before the new draft's ef-  
20 fective date.

21 Sections 55 to 57 provide funding to accomplish  
22 the purposes of the new draft.

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