

MAINE STATE LEGISLATURE

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S.
R. of S.

1

L.D. 1929

2

(Filing No. S-304)

3

STATE OF MAINE

4

SENATE

5

113TH LEGISLATURE

6

SECOND SPECIAL SESSION

7

SENATE AMENDMENT "A" to S.P. 704, L.D. 1929,
Bill, "AN ACT to Revise the Procedure by which Insur-
9 ance Rates are Established under the Maine Workers'
10 Compensation Act."

11

Amend the Bill by inserting after the enacting
12 clause the following:

13

'PART A'

14

Further amend the Bill by inserting before the
15 emergency clause the following:

16

'PART B'

17

Sec. 1. 4 MRSA §807, first ¶, as repealed and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

20

No person may practice law or hold himself out to
21 practice law within the State or before its courts,
22 or demand or receive any remuneration for those ser-
23 vices rendered in this State, unless he has been ad-
24 mitted to the bar of this State and has complied with
25 section 806-A, or unless he has been admitted to try
26 cases in the courts of this State under section 802.
27 Any person who practices law in violation of these
28 requirements is guilty of the unauthorized practice
29 of law, which is a Class E crime. This section shall
30 not be construed to apply to practice before any Fed-
31 eral Court by any person admitted to practice there-
32 in; nor to a person pleading or managing his own
33 cause in court; nor to the officer or employee of a
34 corporation, partnership, sole proprietorship or gov-
35 ernmental entity, who is not an attorney, but is ap-
36 pearing for that organization in an action cognizable

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1 as a small claim under Title 14, chapter 738; nor to
2 a person who is not an attorney, but is representing
3 a municipality under Title 30, section 2361, subsection
4 3; Title 30, section 3222, subsection 2; or Title
5 30, section 4966, subsection 1; or Title 38, section
6 441, subsection 2; nor to a person who is not an
7 attorney, but is representing the Department of Environmental
8 Protection under Title 38, section 342,
9 subsection 7; nor to a person who is not an attorney,
10 but is representing the Bureau of Employment Security
11 or the Bureau of Taxation under section 807-A; nor to
12 a person who is not an attorney, but is representing
13 a party in any hearing, action or proceeding before
14 the Workers' Compensation Commission as provided in
15 Title 39, section 110-A. In all proceedings, the
16 fact, as shown by the records of the Board of
17 Overseers of the Bar, that that person is not recorded
18 as a member of the bar shall be prima facie
19 evidence that he is not a member of the bar licensed
20 to practice law in the State.

21 Sec. 2. 5 MRSA §4572, as amended by PL 1987, c.
22 55, §1, is further amended to read:

23 §4572. Unlawful employment discrimination

24 1. Unlawful employment. It shall be unlawful em-
25 ployment discrimination, in violation of this Act,
26 except where based on a bona fide occupational quali-
27 fication:

28 A. For any employer to fail or refuse to hire or
29 otherwise discriminate against any applicant for
30 employment because of race or color, sex, phys-
31 ical or mental handicap, religion, ancestry or na-
32 tional origin or age, or because of the appli-
33 cant's previous assertion of a claim or right un-
34 der Title 39, or because of any such reason to
35 discharge an employee or discriminate with re-
36 spect to hire, tenure, promotion, transfer, com-
37 pensation, terms, conditions or privileges of em-
38 ployment, or any other matter directly or indi-

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1 rectly related to employment, or in recruiting of
2 individuals for employment or in hiring them, to
3 utilize any employment agency which such employer
4 knows, or has reasonable cause to know, discrimi-
5 nates against individuals because of their race
6 or color, sex, physical or mental handicap, reli-
7 gion, age, ancestry or national origin, or their
8 previous assertion of a claim or right under Ti-
9 tle 39;

10 (1) This paragraph does not apply to dis-
11 crimination against any individual after
12 hiring because of that individual's previous
13 or subsequent assertion of a claim or right
14 under Title 39. Such discrimination is gov-
15 erned by Title 39, section 111;

16 B. For any employment agency to fail or refuse
17 to classify properly or refer for employment or
18 otherwise discriminate against any individual be-
19 cause of race or color, sex, physical or mental
20 handicap, religion, age, ancestry or national or-
21 igin or the individual's previous assertion of a
22 claim or right under Title 39 or to comply with
23 an employer's request for the referral of job ap-
24 plicants, if such request indicates either di-
25 rectly or indirectly that such employer will not
26 afford full and equal employment opportunities to
27 individuals regardless of their race or color,
28 sex, physical or mental handicap, religion, age,
29 ancestry or national origin or previous assertion
30 of a claim or right under Title 39;

31 C. For any labor organization to exclude from
32 apprenticeship or membership, or to deny full and
33 equal membership rights, to any applicant for
34 membership, because of race or color, sex, physi-
35 cal or mental handicap, religion, age, ancestry
36 or national origin, or the applicant's previous
37 assertion of a claim or right under Title 39, or
38 because of any such reason to deny a member full
39 and equal membership rights, expel from member-

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1 ship, penalize or otherwise discriminate in any
2 manner with respect to hire, tenure, promotion,
3 transfer, compensation, terms, conditions or
4 privileges of employment, representation, griev-
5 ances or any other matter directly or indirectly
6 related to membership or employment, whether or
7 not authorized or required by the constitution or
8 bylaws of such labor organization or by a collec-
9 tive labor agreement or other contract, or to
10 fail or refuse to classify properly or refer for
11 employment, or otherwise to discriminate against
12 any member because of race or color, sex, physi-
13 cal or mental handicap, religion, age, ancestry
14 or national origin, or because of the member's
15 previous assertion of a claim or right under Ti-
16 tle 39 or to cause or attempt to cause an employ-
17 er to discriminate against an individual in vio-
18 lation of this section, except that it shall be
19 lawful for labor organizations and employers to
20 adopt a maximum age limitation in apprenticeship
21 programs, provided that the employer or labor or-
22 ganization obtains prior approval from the Maine
23 Human Rights Commission of any maximum age limi-
24 tation employed in an apprenticeship program.
25 The commission shall approve the age limitation
26 if a reasonable relationship exists between the
27 maximum age limitation employed and a legitimate
28 expectation of the employer in receiving a rea-
29 sonable return upon his investment in an appren-
30 ticeship program. The employer or labor organi-
31 zation bears the burden of demonstrating that
32 such a relationship exists;

33 D. For any employer or employment agency or la-
34 bor organization, prior to employment or admis-
35 sion to membership of any individual, to:

36 (1) Elicit or attempt to elicit any infor-
37 mation directly or indirectly pertaining to
38 race or color, sex, physical or mental hand-
39 icap, religion, age, ancestry or national
40 origin, or any previous assertion of a claim

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1 or right under Title 39, except where a
2 physical or mental handicap is determined by
3 the employer, employment agency or labor or-
4 ganization to be job related; or where some
5 privileged information is necessary for an
6 employment agency or labor organization to
7 make a suitable job referral;

8 (2) Make or keep a record of race or color,
9 sex, physical or mental handicap, religion,
10 age, ancestry or national origin or any pre-
11 vious assertion of a claim or right under
12 Title 39, except under physical or mental
13 handicap, when an employer requires a phys-
14 ical or mental examination prior to employ-
15 ment, a privileged record of such an exami-
16 nation is permissible;

17 (3) Use any form of application for employ-
18 ment, or personnel or membership blank con-
19 taining questions or entries directly or in-
20 directly pertaining to race or color, sex,
21 physical or mental handicap, religion, age,
22 ancestry or national origin or any previous
23 assertion of a claim or right under Title
24 39, except under physical or mental handi-
25 cap, where it can be determined by the em-
26 ployer that the job or jobs to be filled re-
27 quire such information for the well-being
28 and safety of the individual; nor will this
29 section prohibit any officially recognized
30 agency from keeping necessary records in or-
31 der to provide free services to individuals
32 requiring rehabilitation or employment as-
33 sistance;

34 (4) Print or publish or cause to be printed
35 or published any notice or advertisement re-
36 lating to employment or membership indicat-
37 ing any preference, limitation, specifica-
38 tion or discrimination based upon race or
39 color, sex, physical or mental handicap,

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1 age, ancestry or national origin or any pre-
2 vious assertion of a claim or right under
3 Title 39, except under physical or mental
4 handicap when the text of such printed or
5 published material strictly adheres to this
6 Act; or

7 (5) Establish, announce or follow a policy
8 of denying or limiting, through a quota sys-
9 tem or otherwise, employment or membership
10 opportunities of any group because of the
11 race or color, sex, physical or mental hand-
12 icap, religion, age, ancestry or national
13 origin or the previous assertion of a claim
14 or right under Title 39 of such group; or

15 E. For an employer or employment agency or labor
16 organization to discriminate in any manner
17 against any individual because they have opposed
18 any practice which would be a violation of this
19 Act, or because they have made a charge, testi-
20 fied or assisted in any manner in any investiga-
21 tion, proceeding or hearing under this Act.

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

24 (19-B) Labor Commission on Safety Expenses 26 MRSA
25 in the Maine Workplace Only §51

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

28 Sec. 5. 26 MRSA §42, as amended by PL 1977, c.
29 615, is further amended to read:

30 §42. Powers and duties

31 The bureau shall collect, assort and arrange sta-
32 tistical details relating to all departments of labor
33 and industrial pursuits in the State; to trade unions
34 and other labor organizations and their effect upon

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

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1 tion records, as well as other information relating
2 to any public or private employer's safety experi-
3 ence. When any individual public or private employ-
4 er's safety experience causes the director to ques-
5 tion seriously the safe working environment of that
6 employer, the director may offer any safety education
7 and consultation programs to that employer that may
8 be beneficial in providing a safer work environment.
9 If the employer refuses this assistance or is in se-
10 rious noncompliance which may lead to injuries, or if
11 serious threats to worker safety continue, then the
12 director shall communicate his concerns to appropri-
13 ate agencies, such as the United States Occupational
14 Safety and Health Administration. As used in this
15 section, the term "noncompliance" means a lack of
16 compliance with any applicable health and safety reg-
17 ulations of the United States Occupational Safety and
18 Health Administration or other federal agencies.

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

21 A. The development and application of a state-
22 wide safety education and training program to fa-
23 miliarize employers, supervisors, employees and
24 union leaders with techniques of accident inves-
25 tigation and prevention, including education and
26 training assistance to employers and employees
27 under the chemical substance identification law
28 in sections 1715 and 1720;

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

30 §51. Commission on Safety in the Maine Workplace

31 1. Purpose; members; compensation. The Commis-
32 sion on Safety in the Maine Workplace, established by
33 Title 5, chapter 379, shall consist of knowledgeable
34 citizens who shall examine safety attitudes, programs
35 and procedures in Maine's workplaces; identify
36 initiatives to reduce the frequency, severity and
37 cost of work-related accidents and illnesses; and

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1 promote and improve best-practice safety programs.

2 A. The Governor shall appoint the members of the
3 commission, which shall consist of not more than
4 12 members, including:

5 (1) Three members with expertise and pro-
6 fessional qualifications in the field of oc-
7 cupational safety and health;

8 (2) Two members representing workers and 2
9 members representing private employers, all
10 of whom must be knowledgeable in the area of
11 workplace safety; and

12 (3) Other members the Governor considers
13 necessary and appropriate to carry out the
14 purposes of this section.

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

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

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

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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

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1 employer, worker and public attitudes toward
2 safety in the workplace and that will create a
3 continuing, public-private, employer-employee
4 partnership in the area of job safety.

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

10 Sec. 8. 26 MRSA §61, sub-§2, as amended by PL
11 1985, c. 819, Pt. C, §5, is repealed and the follow-
12 ing enacted in its place:

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

37 Sec. 9. 26 MRSA §63, sub-§1, ¶¶D and E, as en-
38 acted by PL 1985, c. 372, Pt. A, §7, are amended to

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1 read:

2 D. A majority vote of the ~~loan-review-panel~~ Commission on Safety in the Maine Workplace is nec-
3 cessary to recommend approval of a loan which
4 shall then be transmitted to the department for
5 final disposition in accordance with the policies
6 adopted by the department;
7

8 E. Loan applications shall be reviewed by both
9 the ~~loan-review-panel~~ Commission on Safety in the
10 Maine Workplace and the department for feasibili-
11 ty, such as, for the general reasonableness and
12 safety need for the proposal, whether the appli-
13 cant has sufficient capital, whether an adequate
14 safety analysis or other counseling requirement
15 has been completed, whether the applicant is
16 credit worthy within the scope of this program
17 and whether the collateral offered to secure the
18 loan is adequate;

19 Sec. 10. 26 MRSA §63, sub-§2, as enacted by PL
20 1985, c. 372, Pt. A, §7, is repealed.

21 Sec. 11. 26 MRSA §63, sub-§2-A is enacted to
22 read:

23 2-A. Commission on Safety in the Maine
24 Workplace. The Commission on Safety in the Maine
25 Workplace shall review loan proposals under this sec-
26 tion. The commission shall meet at least twice year-
27 ly for this purpose in Augusta or any other place
28 designated by the chairman.

29 Sec. 12. 26 MRSA §1720, as amended by PL 1985,
30 c. 170, §1, is further amended to read:

31 §1720. Chemical Information and Training Assistance
32 Program

33 1. Assistance to employers. The director shall,
34 upon request, provide assistance to employers in the

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1 development and conduct of training programs for em-
2 ployees and local public safety personnel.

3 ~~2--Chemical-Information-and-Training--Assistance~~
4 ~~Fund--The-director-shall-establish-by-rule-a-segre-~~
5 ~~gated--nonlapsing-Chemical-Information--and--Training~~
6 ~~Assistance--Fund--which--shall--be--financed--by-fees~~
7 ~~levied-on-employers-subject-to-this--chapter,--Reve-~~
8 ~~nuces-paid-into-the-fund,--including-interest,--shall-be~~
9 ~~used--exclusively--for--carrying--out--the--purposes-of~~
10 ~~this-chapter,--including,--but--not--limited--to,--informa-~~
11 ~~tion-and-communication-with-employers,--provision--of~~
12 ~~copies-of-the-law,--rules,--listing-of-hazardous-chemi-~~
13 ~~cals--and--the--likelihood-of-the-presence-of-certain~~
14 ~~hazardous--chemicals--in--the--various--industry~~
15 ~~workplaces,--Expenditures-from-the-fund-shall-be-at-~~
16 ~~located-and-approved-by-the-Legislature.~~

17 2-A. Funds transferred. On the effective date
18 of this subsection, any funds in the Chemical Infor-
19 mation and Training Assistance Fund, and any obliga-
20 tions of that fund, shall be transferred to the Safe-
21 ty Education and Training Fund established in section
22 61.

23 ~~3--Fees--Each-employer-not-otherwise-exempt-un-~~
24 ~~der--this--chapter--shall--be--assessed-an-annual-fee~~
25 ~~based-on-the-employer's-annual-average-number-of--em-~~
26 ~~ployees-in-accordance-with-the-following-schedule.~~

27 ~~---Annual-Average~~
28 ~~Number-of-Employees~~

29	Equal--to-or	Less	Employer's
30	more-than	Than	Fee
31	0	4	\$--0--
32	4	25	15
33	25	50	50
34	50	100	150
35	100	300	200
36	300	500	250

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1 500-or-above 300
2 -

3 ~~The fee is payable prior to July 1st of each calendar~~
4 ~~year.~~

5 ~~4.--Waivers and exemptions from fees.--The direc-~~
6 ~~tor--shall--waive--fees--under--this--chapter--under--the~~
7 ~~conditions--established--in--section--1724.--Employers~~
8 ~~who--have--no--applicable--chemicals--in--the--workplace,~~
9 ~~employers--employing--3--or--fewer--employees, and--state,~~
10 ~~municipal--or--quasi-municipal--governmental--organiza-~~
11 ~~tions--are--exempt--from--fees--under--this--chapter.--Any~~
12 ~~employer--who--pays--a--fee--and--is--found--to--be--exempt~~
13 ~~from--that--fee--shall--receive--a--prompt--refund.~~

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

16 §1724. Report to Legislature

17 Each year by March 15th the director shall report
18 to the Legislature on the Bureau of Labor Standard's
19 Standards' experience under this chapter, including
20 progress in implementation, the status of the train-
21 ing assistance program, evidence of improved safety
22 records, and any recommendation--on--fee--structure
23 recommendations. Any amount of these fees--collected
24 in--a--year--that--exceeds--the--allocation--from--the--Train-
25 ing--Assistance--Fund--for--that--year--shall--be--applied--so
26 as--to--reduce--fees--levied--on--employers--under--this
27 chapter--in--the--succeeding--year.

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

30 B-1. Notwithstanding paragraphs A and B, the av-
31 erage weekly wage of a seasonal worker shall be
32 determined by dividing the employee's total
33 wages, earnings or salary for the prior calendar
34 year by 52.

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

3 14. Maximum medical improvement. "Maximum medi-
4 cal improvement" means the date after which further
5 recovery and further restoration of function can no
6 longer be reasonably anticipated, based upon reason-
7 able medical probability.

8 15. Permanent impairment. "Permanent impair-
9 ment" means any anatomic or functional abnormality
10 or loss existing after the date of maximum medical
11 improvement which results from the injury.

12 Sec. 16. 39 MRSA §26, as amended by PL 1979, c.
13 340, is further amended to read:

14 §26. Notices of assent to be posted

15 A notice in such form as the commission approves,
16 stating that the employer has conformed to this Act,
17 together with such further matters as the commission
18 determines, shall be posted by the employer and kept
19 posted by him at some place in each of his mills,
20 factories or places of business, conspicuous and ac-
21 cessible to his employees. Any notice posted pursu-
22 ant to this section shall set out the provision of
23 section 110 of this Act. ~~For-willful-failure-to-post~~
24 ~~such-notices,-the-employer-shall-be-liable-to-a--for-~~
25 ~~feiture--of-\$10-for-each-day-of-such-willful-neglect,~~
26 ~~to-be-enforced-by-the-commission-in-a-civil-action-in~~
27 ~~the-name-of-the-State.~~

28 Sec. 17. 39 MRSA §51-B, sub-§4, as amended by PL
29 1985, c. 729, §1, is further amended to read:

30 4. Compensation for impairment; compensation for
31 medical expenses. Compensation for impairment under
32 sections--56--and-56-A section 56-B shall not be pay-
33 able prior to the date on which the injured employee
34 reaches the stage of maximum medical improvement. It
35 shall become due and payable within 90 days after the

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1 employer has notice that maximum medical improvement
2 has been attained. ~~For the purpose of this subsection,~~
3 ~~"maximum medical improvement" means the date~~
4 ~~after which further recovery and further restoration~~
5 ~~of function can no longer be reasonably anticipated,~~
6 ~~based upon reasonable medical probability.~~ Compensation
7 for medical expenses, aids and other services
8 under section 52 is due and payable within 90 days
9 from the date a request is made for payment of these
10 expenses.

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

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

31 If, at the end of the 14-day period in subsection 3
32 or the 90-day period in subsection 4, the employer
33 has not filed the notice required by this subsection,
34 he shall begin payments as required under those sub-
35 sections. In the case of compensation for incapacity
36 under subsection 3, he may cease payments and file
37 with the commission a notice of controversy, only as
38 provided in this subsection, no later than 44 days

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1 after an event which gives rise to an obligation to
2 make payments under subsection 3. Failure to file the
3 required notice of controversy prior to the expira-
4 tion of the 44-day period, in the case of compensa-
5 tion under subsection 3, constitutes acceptance by
6 the employer of the compensability of the injury or
7 death. Failure to file the required notice of contro-
8 versy does not constitute such an acceptance by the
9 employer when it is shown that the failure was due to
10 employee fraud or excusable neglect by the employer,
11 except when payment has been made and a notice of
12 controversy is not filed within 44 days of that pay-
13 ment. Failure to file the required notice of contro-
14 versy prior to the expiration of the 90-day period
15 under subsection 4 constitutes acceptance by the em-
16 ployer of the extent of impairment claimed or the
17 reasonableness of the medical services claimed.

18 If, at the end of the 44-day period the employer has
19 not filed a notice of controversy, or if, pursuant to
20 a proceeding before the commission, the employer is
21 required to make payments, the payments may not be
22 decreased or suspended, except as provided in section
23 100.

24 Sec. 19. 39 MRSA §52, as amended by PL 1985, c.
25 729, §2, is further amended by adding after the 4th
26 paragraph a new paragraph to read:

27 An employer is not liable under this Act for
28 charges for health care services to an injured em-
29 ployee in excess of those established under section
30 52-B, except upon petition as provided. The commis-
31 sion shall allow charges in excess of those provided
32 under section 52-B against the employer if the
33 provider satisfactorily demonstrates to the commis-
34 sion that his services were extraordinary or that he
35 incurred extraordinary costs in treating the employee
36 as compared to those reasonably contemplated for the
37 services provided. An injured employee is not liable
38 for any portion of the cost of medical services under
39 this section.

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

4 Upon request of an employee, the employer or car-
5 rier may establish a program to pay for treatment by
6 prayer or spiritual means by an accredited practi-
7 tioner.

8 Sec. 21. 39 MRSA §52-A, sub-§1, as enacted by PL
9 1981, c. 514, §2, is amended to read:

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

22 If any employee fails, ~~after-request,~~ to execute such
23 a certificate, ~~the employer may petition the commis-~~
24 ~~sion for the following relief~~ within 20 days after
25 receiving a request made by certified mail, return
26 receipt requested:

27 A. As to any employee who is making a claim for
28 compensation, ~~an-order-suspending~~ any action on
29 the employee's claim shall be suspended, without
30 interest under section 72, until the certificate
31 is executed; and

32 B. As to any employee who is receiving compensa-
33 tion or who has entered into an agreement for the
34 payment of compensation, ~~an-order-suspending--the~~
35 payment of compensation shall be suspended until

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1 the certificate is executed.

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

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

10 §52-B. Medical Fees; reimbursement levels

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

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

28 2. Depositions or hearings. Various fees for
29 preparation of materials or attendance at depositions
30 or hearings as may be required under this Act.

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

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

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1 §53-B. maximum benefit levels

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

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

11 Sec. 25. 39 MRSA §54, as amended by PL 1985, c.
12 372, Pt. A, §16, is repealed.

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

15 Sec. 27. 39 MRSA §54-B is enacted to read:

16 §54-B. Compensation for total incapacity

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

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

30 The annual adjustment shall be made on the 3rd and
31 each succeeding anniversary date of the injury, ex-
32 cept that where the effect of the maximum under sec-
33 tion 53-B is to reduce the amount of compensation to

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1 which the claimant would otherwise be entitled, the
2 adjustment shall be made annually on July 1st.

3 2. Limitation. Any employee who has reached
4 maximum medical improvement and is able to perform
5 full-time remunerative work in the ordinary competi-
6 tive labor market in the State, regardless of the
7 availability of such work in and around his communi-
8 ty, is not eligible for compensation under this sec-
9 tion, but may be eligible for compensation under sec-
10 tion 55-B. Reasonable moving and relocation expenses
11 for employees who are retrained or rehabilitated un-
12 der this Act are available as provided in section 87,
13 subsection 2.

14 3. Presumption. For the purposes of this Act,
15 in the following cases, it is conclusively presumed
16 that the injury resulted in permanent total incapaci-
17 ty and that the employee is unable to perform full-
18 time remunerative work in the ordinary competitive
19 labor market in the State:

20 A. The total and irrevocable loss of sight of
21 both eyes;

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

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

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

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

27 F. An injury to the skull resulting in incurable
28 imbecility or insanity.

29 4. Applicability. This section applies only to
30 employees injured on and after the effective date of
31 this section.

32 Sec. 28. 39 M.R.S.A. §55, as amended by PL 1985, c.

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1 372, Pt. A, §18, is repealed.

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

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

5 §55-B. Compensation for partial incapacity

6 While the incapacity for work resulting from the
7 injury is partial, the employer shall pay the injured
8 employee a weekly compensation equal to 2/3 the dif-
9 ference, due to the injury, between his average gross
10 weekly wages, earning or salary before the injury and
11 the weekly wages, earnings or salary which he is able
12 to earn after the injury, but not more than the maxi-
13 mum benefit under section 53-B. Payments under this
14 section shall not continue for longer than 400 weeks
15 after maximum medical improvement.

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

18 Sec. 31. 39 MRSA §56, as amended by PL 1985, c.
19 372, Pt. A, §20, is repealed.

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

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

23 §56-B. Permanent impairment

24 1. Weekly benefit. In the case of permanent im-
25 pairment, the employer shall pay the injured employee
26 a weekly benefit equal to 2/3 of the state average
27 weekly wage, as computed by the Bureau of Employment
28 Security, for the number of weeks shown in the fol-
29 lowing schedule:

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

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

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

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

8 Compensation under this section is in addition to any
9 compensation under section 54-B or 55-B received by
10 the employee.

11 2. Schedules. In order to reduce litigation and
12 establish more certainty and uniformity in the rating
13 of permanent impairment, the commission shall estab-
14 lish by rule a schedule for determining the existence
15 and degree of permanent impairment based upon medi-
16 cally or scientifically demonstrable findings. The
17 schedule must be based on generally accepted medical
18 standards for determining impairment and may incorpo-
19 rate all or part of any one or more generally ac-
20 cepted schedules used for that purpose, such as the
21 American Medical Association's Guides to the Evalua-
22 tion of Permanent Impairment. Pending the adoption
23 of a permanent schedule, Guides to the Evaluation of
24 Permanent Impairment, 2nd edition, copyright 1984, by
25 the American Medical Association, shall be the tempo-
26 rary schedule and shall be used for the purposes of
27 this subsection.

28 3. Disfigurement. The commission may award
29 proper and equitable compensation of serious facial
30 or head disfigurement not to exceed 2/3 of the state
31 average weekly wage, as computed by the Bureau of Em-
32 ployment Security, multiplied by 50, including a dis-
33 figurement continuous in length which is partially in
34 the facial area and also extends into the neck re-
35 gion. The commission, if in its opinion the earning
36 capacity of an employee has been or may in the future

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1 be impaired, may award compensation for any serious
2 disfigurement in the region above the sterno
3 clavicular articulations anterior to and including
4 the region of the sterno cleido mastoid muscles on
5 either side, but no award for the total disfigurement
6 as set forth may exceed, in the aggregate, 2/3 of the
7 state average weekly wage, as computed by the Bureau
8 of Employment Security, multiplied by 50. Notwith-
9 standing this section, 2 or more serious
10 disfigurements, not continuous in length, resulting
11 from the same injury, if partially in the facial area
12 and partially in the neck region as described in this
13 subsection, is deemed to be a facial disfigurement.

14 4. Filing of petition. A petition for determi-
15 nation of the percentage of impairment must be filed
16 with the commission no earlier than the date of maxi-
17 mum medical improvement, except that a petition for
18 the determination of a hearing impairment due to an
19 injury must be filed with the commission within 2
20 years from the date of injury.

21 Sec. 34. 39 MRSA §65, as amended by PL 1965, c.
22 513, §81, is further amended by adding after the 2nd
23 paragraph a new paragraph to read:

24 Nothing in this Act may be construed to require
25 an employee who in good faith relies on treatment by
26 prayer or spiritual means, in accordance with the
27 tenets and practice of a recognized church or reli-
28 gious denomination, by a duly accredited practitioner
29 of those healing methods, to undergo any medical or
30 surgical treatment. Such an employee or his depen-
31 dents may not be deprived of any compensation pay-
32 ments to which he would be entitled if medical or
33 surgical treatments were employed.

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

37 §66-A. Worker reinstatement rights

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

4 1. Reinstatement rights. When an employee has
5 suffered a compensable injury, he is entitled, upon
6 request, to reinstatement to his former position if
7 the position is available and suitable to his physi-
8 cal condition. If the employee's former position is
9 not available or suitable, he is entitled, upon re-
10 quest, to reinstatement to any other available posi-
11 tion which is suitable to his physical condition.

12 2. Reasonable accommodation required. In order
13 to facilitate the placement of an injured employee as
14 required under this section, the employer must make
15 reasonable accommodations for the physical condition
16 of the employee unless the employer can demonstrate
17 that no reasonable accommodation exists or that the
18 accommodation would impose an undue hardship on the
19 employer. In determining whether undue hardship ex-
20 ists, the commission shall consider:

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

22 B. The number of employees employed by the em-
23 ployer;

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

25 D. Any other relevant factors.

26 3. Time period; discrimination prohibited. The
27 employer's obligation to reinstate the employee con-
28 tinues until one year after the employee has reached
29 the stage of maximum medical improvement in the judg-
30 ment of the commission. An employer who reinstates
31 an employee under this section may not subsequently
32 discriminate against that employee in any employment
33 decision, including decisions related to tenure, pro-
34 motion, transfer or reemployment following a layoff,

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1 because of the employee's assertion of a claim or
2 right under this Act. Nothing in this subsection may
3 be construed to limit any protection offered to an
4 employee by section 111.

5 4. Exception for collective bargaining agree-
6 ments. Reinstatement may not conflict with any pro-
7 visions of a collective bargaining agreement between
8 the employer and a labor organization which is the
9 collective bargaining representative of the unit of
10 which the injured employee is or would be a part.

11 5. Limitations. This section does not obligate
12 an employer to offer an injured employee employment
13 or reemployment in:

14 A. Supervisory or confidential positions within
15 the meaning of the United States Code, Title 29,
16 Section 152; or

17 B. Any position for which the employee is not
18 qualified.

19 6. Failure to comply. The employer's failure to
20 comply with his obligation under this section dis-
21 qualifies the employer or insurance carrier from ex-
22 ercising any right it may otherwise have to reduce or
23 terminate the employee's benefits under this Act.
24 The disqualification continues as long as the employ-
25 er fails to offer reinstatement or until the employee
26 accepts other employment.

27 If any injured employee refuses to accept an offer of
28 reinstatement, the employer or insurance carrier may
29 file, in addition to exercising any other rights it
30 may have, a petition for a reduction of benefits.
31 If, after hearing, the commission finds that an em-
32 ployee refused to accept the offer and the position
33 offered was suitable to his physical condition, it
34 shall order the reduction of all benefits payable un-
35 der section 54-B and 55-B. The reduction shall be in
36 an amount equal to the difference between the

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1 employee's weekly benefit and the benefits he would
2 have been entitled to receive if he had accepted the
3 offer. The order reducing benefits remains in ef-
4 fect only as long as the employee fails to indicate
5 that he will accept an offer of reinstatement under
6 this section.

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

23 7. Burden of proof. The petitioning party has
24 the burden of proof on all issues regarding claims
25 under this section except that the employer always
26 retains the burden of proof regarding the availabili-
27 ty or nonavailability of work.

28 8. Rehabilitation plans. All obligations under
29 this section are suspended during the implementation
30 of a rehabilitation plan under subchapter III-A.

31 9. Foreign workers. If an employee is prevented
32 from accepting an offer of reinstatement because of
33 residence in a foreign country or termination of sta-
34 tus as a lawfully employable alien, he is deemed to
35 have refused the offer.

36 Sec. 36. 39 MRSA §71, as amended by PL 1983, c.
37 479, §13, is repealed.

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

2 §71-A. Lump sum payments

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

11 2. Review. Before approving any lump sum settle-
12 ment, a commissioner shall review the following fac-
13 tors with the employee:

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

19 B. The purpose for which the settlement is re-
20 quested;

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

29 E. Any other information, including the age of
30 the employee and of the employee's dependents,
31 which would bear upon whether the settlement is
32 in the best interest of the claimant.

33 The commissioner shall initiate the review within 14

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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 MRSA §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 re-
32 training as described in section 86, subsection 7,
33 except that the commission may not order an employee
34 55 years of age or older to involuntarily participate
35 in a retraining plan under this section. In deter-
36 mining whether to order a period of formal retrain-

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1 ing, the commission shall consider the factors set
2 forth in subsection 4.

3 4. Retraining plan. The commission, upon a de-
4 termination of retraining under this section, shall
5 prescribe a plan for retraining which will return, to
6 the maximum extent practicable, the employee to his
7 preinjury earning capacity. The commission shall con-
8 sider the following factors in prescribing a plan:

9 A. The employee's age;

10 B. The employee's work life expectancy;

11 C. The employee's interests;

12 D. The employee's aptitudes;

13 E. The employee's education;

14 F. The employee's earning capacity before and
15 after the injury;

16 G. The employee's skills and work experience;
17 and

18 H. Any other relevant factors.

19 The plan must include a job placement strategy and a
20 specific program of proposed actions likely to
21 achieve job placement for the employee.

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

29 A. Notwithstanding any other provision of this
30 Act, if any employee who receives retraining un-

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1 der this section is receiving compensation under
2 section 55-B, the 400-week duration limit on his
3 compensation imposed under section 55-B shall be
4 reduced as provided in this paragraph. The com-
5 mission shall calculate the total expense of re-
6 training under this section, exclusive of compen-
7 sation or benefits otherwise payable under this
8 Act, and shall divide this amount by the
9 employee's amount of weekly compensation under
10 section 55-B. The commission shall subtract that
11 number of weeks from the 400 weeks' compensation
12 for which the employee is eligible under section
13 55-B.

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

17 7. Applicability. This section applies only to
18 injuries occurring on or after the effective date of
19 this section.

20 8. Education available. As used in this section,
21 "retraining" may include education of the employee
22 where appropriate.

23 Sec. 38-A. 39 MRSA §90, sub-§2, as enacted by PL
24 1985, c. 372, Pt. A., §29, is repealed.

25 Sec. 39. 39 MRSA §91, sub-§1, as amended by PL
26 1987, c. 452, is further amended to read:

27 1. Membership; term. The Workers' Compensation
28 Commission, as established in this section, shall
29 consist of ~~10~~ 12 members, who shall be persons
30 learned in the law and members of good standing of
31 the bar of this State. They shall be appointed by
32 the Governor within 60 days after a vacancy occurs or
33 a new commissioner is authorized, subject to review
34 by the joint standing committee of the Legislature
35 having jurisdiction over judiciary and to confirma-
36 tion by the Legislature. One of the commissioners,

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1 to be designated by the Governor as chairman, shall
2 be appointed for the term of 5 years and the other
3 commissioners for a term of 4 years each.

4 Sec. 40. 39 MRSA §93, sub-§3, as amended by PL
5 1985, c. 372, Pt. A, §32, is further amended to read:

6 3. Proceedings before Workers' Compensation Com-
7 mission. ~~In all proceedings before the Workers' Com-~~
8 ~~ensation Commission, all forms of discovery shall be~~
9 ~~available in civil actions in the Superior Court--un-~~
10 ~~der--the--Maine-Rules-of-Civil-Procedure, as amended,~~
11 ~~are available~~ to any of the parties in the proceed-
12 ings ~~except that~~ as the chairman may, by rule adopted
13 under section 92, ~~prescribe different time periods~~
14 ~~for the completion of discovery in cases where it is~~
15 ~~necessary~~ to ensure that hearings may be held within
16 the time periods prescribed by this Act. A commis-
17 sioner shall rule on all objections and may enforce
18 this subsection in the same manner and to the same
19 extent as a Superior Court Justice may enforce com-
20 pliance with the Maine Rules of Civil Procedure, as
21 amended, with regard to discovery, except that the
22 commissioner does not have the power of contempt.

23 Signed statements by a medical doctor or osteopathic
24 physician relating to medical questions, by a psy-
25 chologist relating to psychological questions or by a
26 chiropractor relating to chiropractic questions, are
27 admissible in workers' compensation hearings before
28 the Workers' Compensation Commission, providing that
29 notice of that testimony to be used is given and ser-
30 vice of a copy of the letter or report is made on the
31 opposing counsel 14 days before the scheduled hearing
32 ~~to enable that counsel to depose or subpoena and~~
33 ~~cross-examine that medical doctor, osteopathic physi-~~
34 ~~cian, psychologist or chiropractor if he so chooses.~~

35 Depositions, subpoenas or cross-examination of health
36 care practitioners is permitted only if the commis-
37 sioner finds that the testimony is sufficiently im-

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1 portant to outweigh the delay in the proceeding.

2 **Sec. 41. 39 MRSA §100, sub-§2, as amended by PL**
3 **1985, c. 372, Pt. A, §36, is further amended to read:**

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

6 **A. On the first petition for review brought by a**
7 **party to an action, the commissioner shall deter-**
8 **mine the appropriate relief, if any, under this**
9 **section by determining the employee's present de-**
10 **gree of incapacity. ~~For purposes of a first pe-~~**
11 **~~tion brought under this section, evidence of~~**
12 **~~the employee's medical condition at the time of~~**
13 **~~an earlier determination or approved agreement is~~**
14 **~~relevant only if it tends to prove the present~~**
15 **~~degree of incapacity.~~**

16 **B. Once a party has sought and obtained a deter-**
17 **mination under this section, it is the burden of**
18 **that party in all proceedings on his subsequent**
19 **petitions under this section to prove ~~by compara-~~**
20 **~~tive medical evidence~~ that the employee's earning**
21 **incapacity attributable to the work-related in-**
22 **jury has changed since that determination.**

23 **Sec. 42. 39 MRSA §100, sub-§4, as amended by PL**
24 **1985, c. 372, Pt. A, §38, is further amended to read:**

25 **4. Payments pending hearing and decision. If the**
26 **employee is receiving payments at the time of the pe-**
27 **tion, the payments may not be decreased or sus-**
28 **pending pending the hearing and final decision upon**
29 **the petition, except in the following circumstances:**

30 **A. The employer and the employee file an agree-**
31 **ment with the commission; ~~or~~**

32 **B. The employer or his insurance carrier files a**
33 **certificate with the commission stating that:**

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

4 (2) The employee's whereabouts are unknown;
5 or

6 (3) The employee has resumed work;

7 C. The employer or his insurance carrier files a
8 certificate with the commission stating that the
9 employee refuses to submit to an examination; or

10 D. The employee refuses an offer of reinstatement
11 to a position which is suitable to his phys-
12 ical condition or the employee is able to return
13 to work and there is work available, in or near
14 the community in which he resides, which is suit-
15 able to his physical condition.

16 (1) If the employee refuses an offer of re-
17 instatement or fails to return to available
18 suitable work, his benefits shall be reduced
19 in an amount equal to the difference between
20 the employee's weekly benefit and the bene-
21 fits he would have been entitled to receive
22 if he had accepted reinstatement or returned
23 to available suitable work.

24 (2) Benefits shall not be suspended or re-
25 duced pending hearing under this paragraph
26 unless the employer has provided the employ-
27 ee with written notice that benefits may be
28 suspended or reduced together with any in-
29 formation relied on by the employer to sup-
30 port the proposed suspension or reduction.
31 The employee has 20 days, after receiving
32 that notice, to submit to the commission any
33 additional information relating to his con-
34 tinued entitlement to benefits.

35 (3) Benefits shall not be suspended or re-

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1 duced pending hearing under this paragraph
2 if the employee shows that, despite a good
3 faith work search, the employee is unable to
4 obtain suitable work.

5 (4) Within 30 days after notice to the em-
6 ployee under subparagraph (2), the commis-
7 sion shall enter a provisional order provid-
8 ing for the suspension, reduction or contin-
9 uation of benefits pending a hearing on the
10 petition. The order shall be based upon the
11 information submitted by both the employer
12 and the employee under this section.

13 (5) If benefits are suspended or reduced
14 under this paragraph and the commission, af-
15 ter hearing, reverses the provisional order,
16 either in whole or in part, the commission
17 shall order a lump sum payment of all bene-
18 fits withheld together with interest at the
19 rate of 6% a year. The employer shall pay
20 this lump sum within 10 days of the order.

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

22 §102-A. Incarceration of employee

23 No incapacity benefits under section 54-B or 55-B
24 may be paid to an employee during any period in which
25 he is a sentenced prisoner in actual execution of a
26 term of incarceration imposed in this State or any
27 other jurisdiction for a criminal offense, except
28 when the employee is participating in a work-release
29 or similar program. All compensation under those sec-
30 tions is forfeited during the period of incarceration
31 except for any period in which the employee is par-
32 ticipating in a work-release or similar program.

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

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

3 2-A. Failure to pay within time limits. An em-
4 ployer or insurance carrier who fails to pay compen-
5 sation, as provided in this section, shall be penal-
6 ized as provided in this subsection.

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

17 (1) One-half of the forfeiture shall be
18 paid to the employee to whom compensation is
19 due and 1/2 shall be paid to the commission
20 and be credited to the General Fund.

21 (2) If a forfeiture is assessed against any
22 employer or insurance carrier under this
23 subsection on petition by an employee, the
24 employer or insurance carrier shall pay rea-
25 sonable attorney fees, as determined by the
26 commission, to the employee.

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

30 B. Payment of any forfeiture assessed under this
31 subsection shall not be considered an element of
32 loss for the purpose of establishing rates for
33 workers' compensation insurance.

34 2-B. Failure to secure payment. If any employer,
35 who is required to secure the payment to his employ-

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

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

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

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

24 Prosecution under paragraph A does not preclude ac-
25 tion under paragraph B or C.

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

31 Sec. 46. 39 MRSA §106, as amended by PL 1985, c.
32 372, Pt. A, §42, is repealed and the following en-
33 acted in its place:

34 §106. Reports to commission

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

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

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

35 Sec. 47. 39 MRSA §107, first ¶, as amended by PL
36 1987, c. 402, Pt. A, §210, is further amended to
37 read:

38 Every insurance company insuring employers under

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1 this Act shall fill out any blanks and answer all
2 questions submitted to it that may relate to poli-
3 cies, premiums, amount of compensation paid and such
4 other information as the commission or the Insurance
5 Superintendent of Insurance may deem important, ei-
6 ther for the proper administration of this Act or for
7 statistical purposes. ~~Any insurance company which~~
8 ~~shall refuse to fill out such blanks or answer such~~
9 ~~questions shall be liable to a forfeiture of \$10 for~~
10 ~~each day of such refusal, to be enforced by the com-~~
11 ~~mission in a civil action in the name of the State.~~
12 ~~All money recovered under this section or section~~
13 ~~1067 or under sections 21-A to 27, shall be paid into~~
14 ~~the State Treasury and credited to the appropriation~~
15 ~~for the administration of this Act.~~

16 Sec. 48. 39 MRSA §108, as repealed and replaced
17 by PL 1979, c. 713, §2, is repealed.

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

19 §108-A. Reports and data collection

20 1. Occupational injuries and illnesses. The Di-
21 rector of the Bureau of Labor Standards shall provide
22 an annual report concerning the number and character
23 of occupational injuries and illnesses and their ef-
24 fects, as required under Title 26, section 42.

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

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1 A. A tabulation of premium and loss data, on an
2 accrual accounting basis, regarding those insur-
3 ance companies authorized by the Bureau of Insur-
4 ance to write workers' compensation in the State;
5 and

6 B. Similar data for self-insurance workers' com-
7 ensation plans regulated by the Bureau of Insur-
8 ance.

9 2. Workers' compensation system. The Director of
10 the Bureau of Labor Standards, the Superintendent of
11 Insurance and the chairman of the commission shall
12 meet at least 3 times a year with appropriate staff
13 and other state agencies to review the areas of data
14 collection pertaining to the workers' compensation
15 system, as well as interpret and coordinate appropriate
16 data collection programs. The director shall
17 chair this group. The group shall submit an annual
18 report to the Governor and the Legislature as to the
19 results of their data collection, as well as a pro-
20 file of the workers' compensation system, including
21 costs, administration, adequacy and timeliness of
22 benefits and an evaluation of the entire workers'
23 compensation system.

24 The Director of the Bureau of Labor Standards, the
25 Superintendent of Insurance and the chairman of the
26 commission shall provide any further occasional re-
27 ports through their joint or individual efforts that
28 they consider necessary to the improved function and
29 administration of the Workers' Compensation Act and
30 the occupational disease law.

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

32 §110-A. Appearance by officer or employee of corpo-
33 ration or partnership

34 The appearance of an authorized officer, employee
35 or representative of a party in any hearing, action

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1 or proceeding before the commission in which the par-
2 ty is participating or desires to participate is not
3 an unauthorized practice of law and is not subject to
4 any criminal sanction. If the appearance of such an
5 officer, employee or representative prevents the ef-
6 ficient processing of any proceeding, the commission,
7 in its discretion, may remove that person from repre-
8 sentation of the party.

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

10 §113. Penalties

11 The following provisions govern the commission's
12 authority to impose penalties for violations of this
13 Act or rules adopted under this Act.

14 1. Reporting violations. The chairman may assess
15 a civil penalty, not to exceed \$100 for each viola-
16 tion, upon any person:

17 A. Who fails to file or complete any report or
18 form required by this Act or rules adopted under
19 this Act; or

20 B. Who fails to file or complete such a report
21 or form within the time limits specified in this
22 Act or rules adopted under this Act.

23 2. General authority. The chairman may assess,
24 after hearing, a civil penalty in an amount not to
25 exceed \$1,000 for an individual, and \$10,000 for a
26 corporation, partnership or other legal entity for
27 any willful violation of this Act, fraud or inten-
28 tional misrepresentation. The chairman may also re-
29 quire that person to repay any compensation received
30 through a violation of this Act, fraud or intentional
31 misrepresentation or to pay any compensation withheld
32 through a violation of this Act, fraud or misrepre-
33 sentation, with interest at the rate of 10% per year.

34 3. Appeal. Imposition of a penalty under this

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1 section is deemed to be final agency action subject
2 to appeal to the Superior Court, as provided in Title
3 5, chapter 375, subchapter VII. Notwithstanding Title
4 5, section 11004, execution of a penalty assessed
5 under this section is stayed during the pendency of
6 any appeal under this subsection. The Attorney Gener-
7 al shall represent the commission in any appeal under
8 this subsection or the commission may retain private
9 counsel for that purpose.

10 4. Enforcement and collection. Penalties as-
11 essed under this section are in addition to any oth-
12 er remedies available under this Act and are enforce-
13 able by the Superior Court under section 103-E.

14 A. The Attorney General shall prosecute any ac-
15 tion necessary to recover penalties assessed un-
16 der this section or the commission may retain
17 private counsel for that purpose.

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

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

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

27 C. All penalties assessed under this section are
28 payable to the General Fund.

29 5. Not an element of loss. An insurance carri-
30 er's payment of any penalty assessed under this sec-
31 tion shall not be considered an element of loss for
32 the purpose of establishing rates for workers' com-
33 ensation insurance.

34 Sec. 52. PL 1985, c. 372, Pt. A, §51 is re-

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1 pealed.

2 **Sec. 53. Legislative study on rehabilitation.**
3 The joint standing committee of the Legislature hav-
4 ing jurisdiction over labor shall study the use of
5 vocational rehabilitation and retraining under the
6 Maine Workers' Compensation Act. The chairmen of the
7 committee shall call the first meeting of the commit-
8 tee no later than December 1, 1987.

9 Members of the committee shall receive the legis-
10 lative per diem for each day's attendance at commit-
11 tee meetings and reimbursement for necessary expenses
12 upon application to the Executive Director of the
13 Legislative Council. The committee may request staff
14 assistance from the Legislative Council and may con-
15 sult with vocational rehabilitation or retraining ex-
16 perts whenever suitable. All state agencies shall co-
17 operate fully with the committee to further the pur-
18 poses of this section.

19 The committee shall hold public hearings and con-
20 duct a comprehensive study of every aspect of the
21 current system of providing vocational rehabilitation
22 to injured workers within the State, including the
23 following:

24 1. Vocational rehabilitation conducted under the
25 Workers' Compensation Act, including the following
26 aspects of that system:

27 A. The desirability of requiring the initial
28 evaluation of suitability for rehabilitation and
29 the development of rehabilitation plans to be
30 performed by the Office of Employment Rehabilita-
31 tion or other public rehabilitation providers;

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

34 C. The desirability of making vocational reha-
35 bilitation mandatory upon the injured employee,

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- 1 the employer or insurance carrier, or both;
- 2 D. The desirability of permitting or prohibiting
3 medical management or medical monitoring by reha-
4 bilitation providers;
- 5 E. The desirability of requiring earlier inter-
6 vention in cases where an employee may benefit
7 from rehabilitation services; and
- 8 F. Any other aspects of the system that may pose
9 problems currently or in the future or that may
10 benefit from changes and result in increased ef-
11 ficiency and effectiveness of the workers' com-
12 pensation rehabilitation system;
- 13 2. Vocational rehabilitation conducted by the
14 Bureau of Rehabilitation;
- 15 3. Vocational rehabilitation conducted by pri-
16 vate providers;
- 17 4. Issues and problems raised by the interaction
18 of vocational rehabilitation efforts under the Work-
19 ers' Compensation Act, by the Bureau of Rehabilita-
20 tion and by private providers; and
- 21 5. Identification and evaluation of alternative
22 vocational rehabilitation models in use or proposed
23 by other states or foreign countries, and their po-
24 tential suitability for application in the State, in-
25 cluding the option of requiring employers to provide
26 vocational-technical retraining to injured employees.
- 27 The committee shall report back to the Second
28 Regular Session of the 113th Legislature and shall
29 recommend legislation to implement a program under
30 which injured employees will have a right to obtain
31 and a duty to participate in vocational rehabilita-
32 tion or retraining under the Workers' Compensation
33 Act in suitable cases. The committee may recommend
34 any other legislation or rules necessary or desirable

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1	joint standing commit-		
2	tee of the Legislature		
3	having jurisdiction		
4	over labor.		
5	LEGISLATURE		
6	TOTAL	<u>\$8,560</u>	
7	<u>Workers' Compensation</u>		
8	<u>Commission</u>		
9	Workers' Compensation Com-		
10	mission		
11	Positions	(17)	(19)
12	Personal Services	\$209,434	\$574,803
13	All Other	110,222	144,662
14	Capital Expenditures	30,525	
15			
16	Total	<u>\$350,181</u>	<u>\$719,465</u>
17	Provides fund to sup-		
18	port the ongoing and		
19	new responsibilities of		
20	the Workers' Compensa-		
21	tion Compensation.		
22	Office of Employment Reha-		
23	ilitation		
24	Positions		(2)
25	Personal Services		\$23,309
26	All Other		4,200
27	Capital Expenditures		2,571
28			
29	Total		<u>\$30,080</u>
30	Provides funds for a		
31	rehabilitation assist-		
32	ant administrator and		
33	clerical support for		

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1 the mandatory retrain-
2 ing program positions
3 effective January 1,
4 1989.

5 WORKERS' COMPENSATION COMMIS-
6 SION

7 TOTAL \$350,181 \$749,545

8 TOTAL APPROPRIATIONS \$350,095 \$731,745

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

12 1987-88 1988-89

13 LABOR, DEPARTMENT OF

14 Administration - Bureau of
15 Labor Standards

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

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

30 DEPARTMENT OF LABOR

31 TOTAL \$(26,800) \$(28,556)

32 Sec. 57. Allocation. The following funds are

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1	allocated from other special revenue fund to carry		
2	out the purposes of this Act.		
3		<u>1987-88</u>	<u>1988-89</u>
4	<u>LABOR, DEPARTMENT OF</u>		
5	Safety Education and Train-		
6	ing Funds		
7	Positions	(14 1/2)	(14 1/2)
8	Personal Services	\$184,800	\$369,750
9	All Other	80,000	160,000
10	Capital Expenditures	5,000	10,000
11	Provides funding for 5		
12	new positions and 9 1/2		
13	positions transferred		
14	from within the Depart-		
15	ment of Labor,		
16	upgrading one position.		
17	Provides additional		
18	funding for the Safety		
19	Training Program.		
20			
21	TOTAL	<u>\$269,800</u>	<u>\$539,750</u>
22	Chemical Information and		
23	Training Assistance Fund		
24	Positions	(-5 1/2)	(-5 1/2)
25	Personal Services	\$ (66,500)	\$ (120,321)
26	All Other	(60,000)	(69,977)
27	Capital Expenditures	(15,000)	(11,000)
28	Deallocates funds and		
29	positions which will be		
30	transferred to the Safe-		
31	ty Education and Train-		
32	ing Fund.		
33			
34	TOTAL	<u>\$(141,500)</u>	<u>\$(201,298)</u>

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1	DEPARTMENT OF LABOR		
2	TOTAL	<u>\$128,300</u>	<u>\$338,452'</u>

3 FISCAL NOTE

4 This amendment will have the following effects on
5 revenues:

6		<u>1987-88</u>	<u>1988-89</u>
7	General Fund		\$ 10,000
8	Other Special Revenue	\$128,300	\$338,452

9 Provide below is a summary of net appropriations
10 and allocations.

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

17 STATEMENT OF FACT

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

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

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1 tion provisions of the Workers' Compensation Act.

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

6 Section 4 removes the Occupational Safety Loan
7 Panel from the Title 5, chapter 379, list of state
8 boards and commissions. The loan panel is replaced
9 by the Commission on Safety in the Maine Workplace
10 under sections 9 to 11 of this amendment.

11 Section 5 permits the Director of the Bureau of
12 Labor Standards to identify employers with poor
13 workplace safety records and offer safety consulta-
14 tion services to those employers. If the employer
15 refuses to cooperate or if dangers to workers exist
16 at the employer's worksite, the director will report
17 the employer to the United States Occupational Safety
18 and Health Administration.

19 Sections 6, 12 and 13 consolidate the responsi-
20 bility for providing education and training assist-
21 ance to employers regarding the chemical substance
22 identification law with the existing general safety
23 education and training program of the Bureau of Labor
24 Standards.

25 Section 7 reenacts and makes minor changes in the
26 enabling legislation for the Commission on Safety in
27 the Maine Workplace and allocates it within the re-
28 vised statutes.

29 Section 8 increases the maximum assessment per-
30 mitted to fund the safety education and training pro-
31 grams of the Bureau of Labor Standards from 1/4 of 1%
32 to 1% of actual paid workers' compensation losses,
33 excluding medical payments, of insurers and
34 self-insured employers. It also removes the existing
35 exemption from the assessment for group
36 self-insurers.

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1 Sections 9 to 11 repeal the current Occupational
2 Safety Loan Panel and require the Commission on Safe-
3 ty in the Maine Workplace to assume its duty to re-
4 view request for safety loans.

5 Section 14 provides that seasonal workers will
6 have their average weekly wage calculated to reflect
7 their total annual earnings. This will prevent an
8 individual who is injured while working at a seasonal
9 job from collecting benefits year-round at an
10 artificially-enhanced rate.

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

13 Section 16 removes the current penalty on an em-
14 ployer who fails to display an informational poster
15 on workers' compensation in his workplace. Such a
16 violation will be penalized under the general penalty
17 section enacted by section 51.

18 Section 17 simply updates a cross-reference and
19 deletes the current definition of "maximum medical
20 improvement," which is reenacted in section 15.

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

34 Sections 19 and 20 clarify that employers or in-
35 surers may voluntarily pay for treatment of an

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1 employee's injury by prayer or spiritual means. It
2 also limits an employer's liability for an injured
3 employee's medical expenses to the amount determined
4 by the Workers' Compensation Commission in rules
5 adopted under the provisions enacted by section 22.
6 The commission may, upon petition of a treating
7 health care provider, allow costs above the scheduled
8 amounts in exceptional cases.

9 Section 21 allows the automatic suspension of an
10 employee's benefits or action on his claim if he re-
11 fuses to authorize the release of his medical records
12 to his employer within 20 days after a request to do
13 so, if that request is delivered by certified mail
14 and contains a notice to the employee that his bene-
15 fits or action on his claim may be suspended if he
16 does not permit the release.

17 Section 22 requires the Workers' Compensation
18 Commission to adopt a rate schedule governing fees
19 for health care services, other than hospital care,
20 that are provided to injured employees under the
21 Workers' Compensation Act. These fees may not be
22 less than the usual, customary and reasonable charges
23 paid by private health insurers for similar services.
24 Any fee schedule adopted by commission rule will be
25 amended annually as appropriate. The commission will
26 also set maximum fees allowable for testimony by a
27 health care provider for purposes of hearings con-
28 ducted under the Workers' Compensation Act.

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

33 Sections 25 to 27 replace the current laws gov-
34 erning total incapacity benefits. The amount of com-
35 pensation payable for total incapacity remains the
36 same as under current law except that the cost-
37 of-living adjustment is delayed for 2 years; totally
38 incapacitated workers will receive benefits for an un-

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1 limited duration with an annual adjustment, capped at
2 5%, beginning on the 3rd anniversary date of the in-
3 jury. The definition of a totally incapacitated
4 worker has been restricted so that only those injured
5 employees who are unable to perform any full-time re-
6 munerative work in the State's ordinary labor market
7 will be classed as totally incapacitated; this stan-
8 dard was adapted from the first phase of the incapac-
9 ity test outlined by the Law Court in Ibbitson v.
10 Sheridan Corp., 422 A.2d 1005(Me. 1980). The current
11 statutory presumptions of incapacity for very seri-
12 ously injured employees are retained but the existing
13 exception for sheltered workshops from the \$25 mini-
14 mum payment is deleted.

15 Sections 24 to 30 replace the current laws gov-
16 erning partial incapacity benefits. The method of
17 qualifying for partial incapacity benefits is not
18 changed. Benefits paid under the amendment to em-
19 ployees classed as partially incapacitated are sub-
20 ject to a 400-week duration limit and will not be ad-
21 justed annually.

22 Sections 31 to 33 replace the current laws gov-
23 erning permanent impairment benefits. The method of
24 calculating the degree of permanent impairment is
25 changed to reflect the actual physical disability to
26 the body as a whole. The degree of impairment will
27 be calculated through reference to a standard medical
28 impairment schedule adopted by the Workers' Compensa-
29 tion Commission through rulemaking. Until a rule is
30 adopted, the 1984 AMA Guides to the Evaluation of
31 Permanent Impairment will be used. The amount of
32 compensation to be paid is calculated by using a
33 graduated table that provides greater compensation to
34 those employees with more serious impairments. Com-
35 pensation will not be paid in a lump sum as under the
36 current law but will be paid in weekly amounts of 2/3
37 of the State's average weekly wage. Permanent im-
38 pairment benefits continue to be paid in addition to
39 any incapacity benefits that the employee may qualify
40 for. The current provisions awarding compensation

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1 for serious facial or head disfigurement are re-
2 tained.

3 Section 34 provides that compensation will not be
4 reduced for employees who choose to rely upon treat-
5 ment for their injury by prayer or spiritual means.

6 Section 35 replaces the current law governing an
7 injured employee's rights and obligations regarding
8 reinstatement to work. Under the new provisions, an
9 employer has an obligation to offer, and an employee
10 to accept, any available work with that employer that
11 is suitable to the employee's physical condition.
12 The petitioning party has the burden of proof on all
13 issues involved in the case except that, since he is
14 in the best position to bring forth the necessary ev-
15 idence, the employer always retains the burden of
16 proof regarding the availability or nonavailability
17 of work. The employer must make reasonable accommo-
18 dations for the physical condition of the employee
19 unless those accommodations would create an undue
20 hardship for the employer, considering the size of
21 the employer's business, the number of employees, the
22 nature of his operations and other factors.

23 The employer's obligation to reinstate the em-
24 ployee continues until one year after the employee
25 reaches the point of maximum medical improvement.
26 Once an employee has been reemployed, the employer
27 may not discriminate against that employee in any
28 subsequent employment decision. Current restrictions
29 on the obligation to reemploy the employee are re-
30 tained ; the employer does not have to employ the
31 employee in a supervisory position or a position for
32 which the employee is not qualified. If an employer
33 fails to meet his obligations under the law, he is
34 prevented from attempting to reduce or terminate the
35 employee's benefits until he offers the employee re-
36 instatement or the employee is rehired elsewhere. If
37 an employee refuses an offer of reinstatement, his
38 benefits may be reduced as if he were actually re-

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1 ceiving the wages of the position which he refused
2 until he indicates that he will accept an offer of
3 reinstatement.

4 Sections 36 and 37 replace the current law gov-
5 erning lump sum settlements under the Workers' Com-
6 pensation Act. The amendment permits the use of lump
7 sum settlements to extinguish an employer's obliga-
8 tions to pay compensation and benefits under the Act
9 only after a commissioner reviews the proposed set-
10 tlement with the employee and finds that the settle-
11 ment is in the employee's best interest. The amend-
12 ment also discourages lump sum settlements that would
13 extinguish an employer's obligations to pay the in-
14 jured employee's future medical expenses. The amend-
15 ment does recognize that in a limited number of
16 cases the release of an employee's rights regarding
17 medical expenses may actually be in the employee's
18 best interests, particularly if the employer or in-
19 surer will not agree to the settlement without the
20 release. It is expected however, that commissioners
21 will strongly discourage the release of medical ex-
22 penses in most cases.

23 Section 38 creates a mandatory retraining program
24 for certain injured employees that permits an employ-
25 er to require an employee to undergo retraining and
26 also permits the employee to force the employer to
27 pay for a retraining program for the employee. Any
28 employee who has not been reemployed by his previous
29 employer within one year after the employee reaches
30 maximum medical improvement and who is found under
31 the vocational rehabilitation system to be unable to
32 regain employment without retraining is eligible for
33 retraining under amendment. The employer or the em-
34 ployee may petition for an order establishing a re-
35 training program for the employee. The Workers' Com-
36 pensation Commission must consider all relevant fac-
37 tors in determining whether an employee is suitable
38 to undergo retraining. If the commissioner finds
39 that the employee should undergo retraining, the com-
40 mission will establish a retraining program for the

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1 employee that is designed to, as near as practicable,
2 restore the employee to his preinjury earning capaci-
3 ty. The program must include a job placement strate-
4 gy that is likely to achieve job placement for the
5 employee after retraining. An employee who undergoes
6 retraining must demonstrate to the commission that he
7 has actively searched for work after completing the
8 retraining or his benefits will be automatically cut
9 off after 6 months. In any event, the 400-week dura-
10 tion limit on partial incapacity benefits will be re-
11 duced so that total compensation to the employee, in-
12 cluding his costs of retraining, will never exceed
13 the costs that would have been incurred if the em-
14 ployee had not undergone retraining.

15 Section 38-A repeals the sunset provision.

16 Section 39 adds 2 additional commissioners to the
17 Workers' Compensation Commission, making a total of
18 12, and enacts a requirement that the Governor must
19 make all appointments to the commission within 60
20 days after the vacancy occurs.

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

31 Section 41 changes the standard applied in peti-
32 tions for review. The section expands the use of
33 prior medical evaluations and eliminates the need for
34 comparative medical evidence that demonstrates a
35 change in the injured employee's earning capacity.
36 This change will permit other factors that may influ-
37 ence an injured employee's earning capacity, such as
38 economic factors or vocational retraining, to be con-

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1 sidered in petitions for review filed after an ini-
2 tial determination.

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

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

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

36 Section 46 redrafts the provisions requiring em-
37 ployers and employees to file with the commission
38 certain reports of injuries or returns to work. The

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1 amendment deletes language establishing a penalty for
2 failure to file the reports since that situation is
3 now covered by the general penalty section enacted in
4 section 51.

5 Section 47 deletes a provision that penalizes in-
6 surers for failing to file certain reports with the
7 commission. That situation is now covered by the
8 general penalty section enacted in section 51 of the
9 amendment.

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

20 Section 51 gives the chairman of the Workers'
21 Compensation Commission broad powers to enforce the
22 provisions of the Workers' Compensation Act through
23 the imposition of penalties for violations of the Act
24 or rules adopted under the Act. It permits the
25 chairman to assess a fine of up to \$100 per violation
26 for any failure to file or complete a report or form
27 required by the commission. This provision is in-
28 tended to encourage greater compliance with filing
29 requirements in order to provide more accurate data
30 to manage the system more efficiently. For cases in-
31 volving willful violations, fraud or misrepresenta-
32 tions, the chairman may, after hearing, impose a fine
33 of up to \$1,000 for an individual, and up to \$10,000
34 for a corporation, partnership or other legal entity.
35 These fines are subject to appeal under the Maine Ad-
36 ministrative Procedure Act, Title 5, chapter 375. If
37 enforcement of the chairman's decree is necessary,
38 the fines may be collected through civil actions
39 filed in Superior Court. The person against whom the

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1 fine is assessed must pay the costs of the action,
2 including any attorney fees, and if the failure to
3 pay the fine was without due cause, that person's
4 fine will be doubled. All fines collected under
5 these provisions will be paid to the General Fund.

6 Section 52 repeals the current enabling legisla-
7 tion for the Commission on Safety in the Maine
8 Workplace. That commission is reenacted and allo-
9 cated within the laws by section 7 of this amendment.

10 Section 53 establishes a legislative study of the
11 current vocational rehabilitation and retraining sys-
12 tem under the Workers' Compensation Act. The Joint
13 Standing Committee on Labor will conduct the study
14 and will recommend legislation for introduction into
15 the Second Regular Session of the 113th Legislature
16 that will establish a right and obligation for in-
17 jured employees to participate in vocational rehabil-
18 itation or retraining programs under the Workers'
19 Compensation Act.

20 Section 54 provides that certain sections of this
21 amendment apply only to employees who are injured on
22 or after the effective date of this new draft. No
23 employee who suffers an injury before this amendment
24 takes effect will have his benefits affected in any
25 way by this new draft; it applies only to the bene-
26 fits received by workers injured on or after its ef-
27 fective date. Some procedural changes will, however,
28 apply to persons injured before the amendment's ef-
29 fective date.

