

MAINE STATE LEGISLATURE

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R. of S.

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L.D. 1929
(Filing No. S-307)

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STATE OF MAINE
SENATE
113TH LEGISLATURE
SECOND SPECIAL SESSION

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

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Amend the bill by striking out all of the title
and inserting in its place the following: 'AN ACT to
Improve the Maine Workers' Compensation System.'

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Further amend the Bill by inserting after the en-
acting clause the following:

16

'PART A'

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

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'PART B'

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Sec. 1. 4 MRSA §807, first ¶, as repealed and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

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No person may practice law or hold himself out to
practice law within the State or before its courts,
or demand or receive any remuneration for those ser-
vices rendered in this State, unless he has been ad-
mitted to the bar of this State and has complied with
section 806-A, or unless he has been admitted to try
cases in the courts of this State under section 802.
Any person who practices law in violation of these
requirements is guilty of the unauthorized practice
of law, which is a Class E crime. This section shall
not be construed to apply to practice before any Fed-
eral Court by any person admitted to practice there-
in; nor to a person pleading or managing his own

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1 cause in court; nor to the officer or employee of a
 2 corporation, partnership, sole proprietorship or gov-
 3 ernmental entity, who is not an attorney, but is ap-
 4 pearing for that organization in an action cognizable
 5 as a small claim under Title 14, chapter 738; nor to
 6 a person who is not an attorney, but is representing
 7 a municipality under Title 30, section 2361, subsec-
 8 tion 3; Title 30, section 3222, subsection 2; or Ti-
 9 tle 30, section 4966, subsection 1; or Title 38, sec-
 10 tion 441, subsection 2; nor to a person who is not an
 11 attorney, but is representing the Department of Envi-
 12 ronmental Protection under Title 38, section 342,
 13 subsection 7; nor to a person who is not an attorney,
 14 but is representing the Bureau of Employment Security
 15 or the Bureau of Taxation under section 807-A; nor to
 16 a person who is not an attorney, but is representing
 17 a party in any hearing, action or proceeding before
 18 the Workers' Compensation Commission as provided in
 19 Title 39, section 110-A. In all proceedings, the
 20 fact, as shown by the records of the Board of
 21 Overseers of the Bar, that that person is not re-
 22 corded as a member of the bar shall be prima facie
 23 evidence that he is not a member of the bar licensed
 24 to practice law in the State.

25 Sec. 2. 5 MRSA §4572, as amended by PL 1987, c.
 26 55, §1, is further amended to read:

27 §4572. Unlawful employment discrimination

28 1. Unlawful employment. It shall be unlawful em-
 29 ployment discrimination, in violation of this Act,
 30 except where based on a bona fide occupational quali-
 31 fication:

32 A. For any employer to fail or refuse to hire or
 33 otherwise discriminate against any applicant for
 34 employment because of race or color, sex, physi-
 35 cal or mental handicap, religion, ancestry or na-
 36 tional origin or age, or because of the appli-
 37 cant's previous assertion of a claim or right un-
 38 der Title 39, or because of any such reason to

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1 discharge an employee or discriminate with re-
2 spect to hire, tenure, promotion, transfer, com-
3 pensation, terms, conditions or privileges of em-
4 ployment, or any other matter directly or indi-
5 rectly related to employment, or in recruiting of
6 individuals for employment or in hiring them, to
7 utilize any employment agency which such employer
8 knows, or has reasonable cause to know, discrimi-
9 nates against individuals because of their race
10 or color, sex, physical or mental handicap, reli-
11 gion, age, ancestry or national origin, or their
12 previous assertion of a claim or right under Ti-
13 tle 39;

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

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

35 C. For any labor organization to exclude from
36 apprenticeship or membership, or to deny full and
37 equal membership rights, to any applicant for
38 membership, because of race or color, sex, physi-
39 cal or mental handicap, religion, age, ancestry

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

37 D. For any employer or employment agency or la-
38 bor organization, prior to employment or admis-
39 sion to membership of any individual, to:

- 40 (1) Elicit or attempt to elicit any infor-

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1 mation directly or indirectly pertaining to
2 race or color, sex, physical or mental hand-
3 icap, religion, age, ancestry or national
4 origin, or any previous assertion of a claim
5 or right under Title 39, except where a
6 physical or mental handicap is determined by
7 the employer, employment agency or labor or-
8 ganization to be job related; or where some
9 privileged information is necessary for an
10 employment agency or labor organization to
11 make a suitable job referral;

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

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

38 (4) Print or publish or cause to be printed
39 or published any notice or advertisement re-

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1 lating to employment or membership indicat-
2 ing any preference, limitation, specifica-
3 tion or discrimination based upon race or
4 color, sex, physical or mental handicap,
5 age, ancestry or national origin or any pre-
6 vious assertion of a claim or right under
7 Title 39, except under physical or mental
8 handicap when the text of such printed or
9 published material strictly adheres to this
10 Act; or

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

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

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

28 (19-B) Labor Commission on Safety Expenses 26 MRSA
29 in the Maine Workplace Only §51

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

32 Sec. 5. 26 MRSA §42, as amended by PL 1977, c.
33 615, is further amended to read:

34 §42. Powers and duties

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

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

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

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

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

34 **§51. Commission on Safety in the Maine Workplace**

35 **1. Purpose; members; compensation. The Commis-**
 36 **sion on Safety in the Maine Workplace, established by**
 37 **Title 5, chapter 379, shall consist of knowledgeable**

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

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

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

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

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

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

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

33 D. The appointed members of the board shall be
34 compensated according to Title 5, chapter 379.

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1 The commission chairman must approve and counter-
2 sign all vouchers for expenditures under this
3 paragraph.

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

8 A. Evaluation of the effectiveness of current
9 worker safety efforts, practices and programs in
10 the State and the attitudes of employers and
11 workers toward safety;

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

17 C. Identification of emerging occupational safe-
18 ty and health issues that will be of importance
19 in the future and assessment of their policy im-
20 plications; and

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

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

28 3. Recommendations. The commission shall make
29 recommendations on a continuing basis to include:

30 A. Specific recommendations for action by the
31 Governor, the Legislature, educators, the safety
32 profession, employers and workers which will re-
33 duce the frequency, severity and costs of
34 work-related accidents and illnesses and which

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1 will enhance, promote and improve safety in
2 Maine's workplaces; and

3 B. Recommendations for actions that will improve
4 employer, worker and public attitudes toward
5 safety in the workplace and that will create a
6 continuing public-private, employer-employee
7 partnership in the area of job safety.

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

13 Sec. 8. 26 MRSA §61, sub-§2, as amended by PL
14 1985, c. 819, Pt. C, §5, is repealed and the follow-
15 ing enacted in its place:

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

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1 ing the previous calendar year.

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

5 D. A majority vote of the ~~loan-review-panel~~ Com-
6 mission on Safety in the Maine Workplace is nec-
7 essary to recommend approval of a loan which
8 shall then be transmitted to the department for
9 final disposition in accordance with the policies
10 adopted by the department;

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

22 Sec. 10. 26 MRSA §63, sub-§2, as enacted by PL
23 1985, c. 372, Pt. A, §7, is repealed.

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

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

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

34 §1720. Chemical Information and Training Assistance

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1 Program

2 1. Assistance to employers. The director shall,
3 upon request, provide assistance to employers in the
4 development and conduct of training programs for em-
5 ployees and local public safety personnel.

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

20 2-A. Funds transferred. On the effective date
21 of this subsection, any funds in the Chemical Infor-
22 mation and Training Assistance Fund, and any obliga-
23 tions of that fund, shall be transferred to the Safe-
24 ty Education and Training Fund established in section
25 61.

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

30 ~~---Annual---Average~~
31 ~~Number---of---Employees~~

32	Equal-to--or	Less	Employer's
33	more-than	Than	Fee
34	0	4	\$--0--
35	4	25	15

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1	25	50	50
2	50	100	150
3	100	300	200
4	300	500	250
5	500-or-above		300
6		-	

7 The fee is payable prior to July 1st of each calendar
8 year.

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

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

20 §1724. Report to Legislature

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

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

34 B-1. Notwithstanding paragraphs A and B, the av-
35 erage weekly wage of a seasonal worker shall be

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1 determined by dividing the employee's total
2 wages, earnings or salary for the prior calendar
3 year by 52.

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

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

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

15 Sec. 15-A. 39 MRSA §23, sub-§2, as amended by PL
16 1987, c. 95, §1, is further amended to read:

17 2. Proof of solvency and financial ability to
18 pay; trust. By furnishing satisfactory proof to the
19 Superintendent of Insurance of his solvency and fi-
20 nanacial ability to pay the compensation and benefits,
21 and deposit cash, satisfactory securities or a secu-
22 rity bond, with the Workers' Compensation Commission,
23 in such sum as the superintendent may determine pur-
24 suant to subsection 6; such bond to run to the Treas-
25 urer of State and his successor in office, and to be
26 conditional upon the faithful performance of this Act
27 relating to the payment of compensation and benefits
28 to any injured employee. In case of cash being depos-
29 ited, it shall be placed at interest by the Treasurer
30 of State, and the accumulation of interest on said
31 cash or securities so deposited shall be paid to the
32 employer depositing the same. The superintendent may
33 at any time, upon not less than 3 days notice and
34 following hearing, for cause deny to an employer the
35 right to continue in the exercise of the option
36 granted by this section.

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1 As an alternative to the method described in the
 2 first paragraph of this subsection, an eligible em-
 3 ployer may establish an actuarially funded trust,
 4 funded at a level sufficient to discharge those obli-
 5 gations incurred by the employer pursuant to this Act
 6 as they become due and payable from time to time,
 7 provided that the value of trust assets shall be at
 8 least equal to the present value of such incurred
 9 claims. The trust asset shall consist of cash or
 10 marketable securities of a type and risk character as
 11 specified in subsection 7, and shall have a situs in
 12 the United States. In all other respects, the trust
 13 instrument, including terms for certification, fund-
 14 ing, designation of trustee and pay out shall be as
 15 approved by the superintendent; provided, that the
 16 value of the trust account shall be actuarially cal-
 17 culated at least annually and adjusted to the re-
 18 quired level of funding. For purposes of this para-
 19 graph, an "eligible employer" is one who is found by
 20 the superintendent to be capable of paying compensa-
 21 tion and benefits required by this Act and:

- 22 A. Has positive net earnings; or
- 23 B. Can demonstrate a level of working capital
- 24 adequate to its operating needs.

25 Notwithstanding any provision of this section or
 26 chapter, any bond or security deposit required of a
 27 public employer which is a self-insurer shall not ex-
 28 ceed \$50,000, provided that such public employer has
 29 a state-assessed valuation equal to or in excess of
 30 \$300,000,000 and either a bond rating equal to or in
 31 excess of the 2nd highest standard as set by a na-
 32 tional bond rating agency or a net worth equal to or
 33 in excess of \$25,000,000. If a county, city or town
 34 relies upon a bond rating, it shall value or cause to
 35 be valued its unpaid workers' compensation claims
 36 pursuant to sound accepted actuarial principles.
 37 This value shall be incorporated in the annual audit
 38 of the county, city or town together with disclosure
 39 of funds appropriated to discharge incurred claims

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SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

1 expenses. "Public employer" includes the State, the
2 University of Maine System, counties, cities and
3 towns.

4 In his consideration of a self-insuring entity's ap-
5 plication for authorization to operate a plan of
6 self-insurance, the superintendent may require or
7 permit an applicant to employ valid risk transfer by
8 the utilization of primary excess insurance. Stan-
9 dards respecting the application of primary excess
10 insurance shall be contained in a regulation promul-
11 gated by the superintendent pursuant to the Maine Ad-
12 ministrative Procedure Act, Title 5, chapter 375.
13 Primary excess insurance shall be defined as insur-
14 ance covering workers' compensation exposures in ex-
15 cess of risk retained by a self-insurer.

16 As a further alternative to the method described in
17 this subsection, an employer shall be eligible for
18 approved self-insurance status pursuant to this Act
19 if the employer submits a written guarantee of the
20 obligations incurred pursuant to this Act, the guar-
21 antee to be issued by a United States or Canadian
22 corporation which is a member of an affiliated group
23 of which the employer is a member, and which corpora-
24 tion is solvent and demonstrates an ability to pay
25 the compensation and benefits, and the guarantee is
26 in a form acceptable to the superintendent. The
27 guarantor shall provide quarterly financial state-
28 ments, audited annual financial statements and such
29 other information as the superintendent may require,
30 and the employer shall provide a bond as otherwise
31 required by this Act in an amount not less than
32 \$1,000,000. Any such guarantor shall be deemed to
33 have submitted to the jurisdiction of the Workers'
34 Compensation Commission and the courts of this State
35 for purposes of enforcing any such guarantee. The
36 guarantor, in all respects, shall be bound by and
37 subject to the orders, findings, decisions or awards
38 rendered against the employer for payment of compen-
39 sation and any penalties or forfeitures provided un-
40 der this Act. The superintendent, following hearing,

SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

1 may revoke the self-insured status of the employer if
2 at any time the assets of the guarantor become im-
3 paired, encumbered or are otherwise found to be inad-
4 equate to support the guarantee.

5 Sec. 16. 39 MRSA §26, as amended by PL 1979, c.
6 340, is further amended to read:

7 §26. Notices of assent to be posted

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

21 Sec. 17. 39 MRSA §51-B, sub-§4, as amended by PL
22 1985, c. 729, §1, is further amended to read:

23 4. Compensation for impairment; compensation for
24 medical expenses. Compensation for impairment under
25 ~~sections 56 and 56-A~~ section 56-B shall not be pay-
26 able prior to the date on which the injured employee
27 reaches the stage of maximum medical improvement. It
28 shall become due and payable within 90 days after the
29 employer has notice that maximum medical improvement
30 has been attained. ~~For the purpose of this subsection,~~
31 ~~"maximum medical improvement" means the date~~
32 ~~after which further recovery and further restoration~~
33 ~~of function can no longer be reasonably anticipated,~~
34 ~~based upon reasonable medical probability.~~ Compensa-
35 tion for medical expenses, aids and other services
36 under section 52 is due and payable within 90 days
37 from the date a request is made for payment of these

SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

1 expenses.

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

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

22 If, at the end of the 14-day period in subsection 3
23 or the 90-day period in subsection 4, the employer
24 has not filed the notice required by this subsection,
25 he shall begin payments as required under those sub-
26 sections. In the case of compensation for incapacity
27 under subsection 3, he may cease payments and file
28 with the commission a notice of controversy, only as
29 provided in this subsection, no later than 44 days
30 after an event which gives rise to an obligation to
31 make payments under subsection 3. Failure to file the
32 required notice of controversy prior to the expira-
33 tion of the 44-day period, in the case of compensa-
34 tion under subsection 3, constitutes acceptance by
35 the employer of the compensability of the injury or
36 death. Failure to file the required notice of contro-
37 versy does not constitute such an acceptance by the
38 employer when it is shown that the failure was due to

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SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

1 employee fraud or excusable neglect by the employer,
2 except when payment has been made and a notice of
3 controversy is not filed within 44 days of that pay-
4 ment. Failure to file the required notice of contro-
5 versy prior to the expiration of the 90-day period
6 under subsection 4 constitutes acceptance by the em-
7 ployer of the extent of impairment claimed or the
8 reasonableness of the medical services claimed.

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

15 Sec. 19. 39 MRSA §52, as amended by PL 1985, c.
16 729, §2, is further amended by adding after the 4th
17 paragraph a new paragraph to read:

18 An employer is not liable under this Act for
19 charges for health care services to an injured em-
20 ployee in excess of those established under section
21 52-B, except upon petition as provided. The commis-
22 sion shall allow charges in excess of those provided
23 under section 52-B against the employer if the
24 provider satisfactorily demonstrates to the commis-
25 sion that his services were extraordinary or that he
26 incurred extraordinary costs in treating the employee
27 as compared to those reasonably contemplated for the
28 services provided. An injured employee is not liable
29 for any portion of the cost of medical services under
30 this section.

31 Sec. 20. 39 MRSA §52, as amended by PL 1985, c.
32 729, §2, is further amended by adding at the end a
33 new paragraph to read:

34 Upon request of an employee, the employer or car-
35 rier may establish a program to pay for treatment by
36 prayer or spiritual means by an accredited practi-
37 tioner.

SENATE AMENDMENT "β" to S.P. 704, L.D. 1929

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

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

15 If any employee fails, ~~after request,~~ to execute such
16 a certificate, ~~the employer may petition the commis-~~
17 ~~sion for the following relief~~ within 20 days after
18 receiving a request made by certified mail, return
19 receipt requested:

20 A. As to any employee who is making a claim for
21 compensation, ~~an order suspending~~ any action on
22 the employee's claim shall be suspended, without
23 interest under section 72, until the certificate
24 is executed; and

25 B. As to any employee who is receiving compensa-
26 tion or who has entered into an agreement for the
27 payment of compensation, ~~an order suspending--the~~
28 payment of compensation shall be suspended until
29 the certificate is executed.

30 The date on a returned receipt of delivery is prima
31 facie evidence of the employee's receipt of the re-
32 quest on that date. The request must contain a no-
33 tice to the employee that if he fails to execute the
34 certificate within 20 days after receiving the re-
35 quest, any action on his claim for compensation will
36 be suspended or his compensation will be suspended.

SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

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

2 §52-B. Medical Fees; reimbursement levels

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

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

20 2. Depositions or hearings. Various fees for
21 preparation of materials or attendance at depositions
22 or hearings as may be required under this Act.

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

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

26 §53-B. maximum benefit levels

27 The maximum weekly benefit payable under section
28 54-B, 55-B or 58-A is \$447.92. Beginning on July
29 1st, 1989, this maximum benefit level shall be ad-
30 justed annually so that it continues to bear the same
31 percentage relationship to the state average weekly
32 wage, as determined by the Bureau of Employment Secu-
33 rity, as it did on July 1, 1988.

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

3 Sec. 25. 39 MRSA §54, as amended by PL 1985, c.
4 372, Pt. A, §16, is repealed.

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

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

8 §54-B. Compensation for total incapacity

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

15 1. Annual adjustment. Beginning on the 3rd an-
16 niversary of the injury, weekly compensation under
17 this section shall be adjusted annually. The adjust-
18 ment shall be equal to the lesser of the actual per-
19 centage increase or decrease in the state average
20 weekly wages, as computed by the Bureau of Employment
21 Security, for the previous year or 5%.

22 The annual adjustment shall be made on the 3rd and
23 each succeeding anniversary date of the injury, ex-
24 cept that where the effect of the maximum under sec-
25 tion 53-B is to reduce the amount of compensation to
26 which the claimant would otherwise be entitled, the
27 adjustment shall be made annually on July 1st.

28 2. Limitation. Any employee who has reached
29 maximum medical improvement and is able to perform
30 full-time remunerative work in the ordinary competi-
31 tive labor market in the State, regardless of the
32 availability of such work in and around his communi-
33 ty, is not eligible for compensation under this sec-

SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

1 tion, but may be eligible for compensation under sec-
2 tion 55-B. Reasonable moving and relocation expenses
3 for employees who are retrained or rehabilitated un-
4 der this Act are available as provided in section 87,
5 subsection 2.

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

12 A. The total and irrevocable loss of sight of
13 both eyes;

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

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

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

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

19 F. An injury to the skull resulting in incurable
20 imbecility or insanity.

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

24 Sec. 28. 39 MRS §55, as amended by PL 1985, c.
25 372, Pt. A, §18, is repealed.

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

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

29 §55-B. Compensation for partial incapacity

SENATE AMENDMENT "B " to S.P. 704, L.D. 1929

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

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

13 Sec. 31. 39 MRSA §56, as amended by PL 1985, c.
14 372, Pt. A, §20, is repealed.

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

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

18 §56-B. Permanent impairment

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

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

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

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

32 D. Eight weeks for each percent of permanent im-

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1 pairment to the body as a whole greater than 85%.

2 Compensation under this section is in addition to any
3 compensation under section 54-B or 55-B received by
4 the employee.

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

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

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1 disfigurements, not continuous in length, resulting
2 from the same injury, if partially in the facial area
3 and partially in the neck region as described in this
4 subsection, is deemed to be a facial disfigurement.

5 4. Filing of petition. A petition for determi-
6 nation of the percentage of impairment must be filed
7 with the commission no earlier than the date of maxi-
8 imum medical improvement, except that a petition for
9 the determination of a hearing impairment due to an
10 injury must be filed with the commission within 2
11 years from the date of injury.

12 Sec. 34. 39 MRSA §65, as amended by PL 1965, c.
13 513, §81, is further amended by adding after the 2nd
14 paragraph a new paragraph to read:

15 Nothing in this Act may be construed to require
16 an employee who in good faith relies on treatment by
17 prayer or spiritual means, in accordance with the
18 tenets and practice of a recognized church or reli-
19 gious denomination, by a duly accredited practitioner
20 of those healing methods, to undergo any medical or
21 surgical treatment. Such an employee or his depen-
22 dents may not be deprived of any compensation pay-
23 ments to which he would be entitled if medical or
24 surgical treatments were employed.

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

28 §66-A. Worker reinstatement rights

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

32 1. Reinstatement rights. When an employee has
33 suffered a compensable injury, he is entitled, upon
34 request, to reinstatement to his former position if
35 the position is available and suitable to his physi-

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1 cal condition. If the employee's former position is
2 not available or suitable, he is entitled, upon re-
3 quest, to reinstatement to any other available posi-
4 tion which is suitable to his physical condition.

5 2. Reasonable accommodation required. In order
6 to facilitate the placement of an injured employee as
7 required under this section, the employer must make
8 reasonable accommodations for the physical condition
9 of the employee unless the employer can demonstrate
10 that no reasonable accommodation exists or that the
11 accommodation would impose an undue hardship on the
12 employer. In determining whether undue hardship ex-
13 ists, the commission shall consider:

- 14 A. The size of the employer's business;
15 B. The number of employees employed by the em-
16 ployer;
17 C. The nature of the employer's operations; and
18 D. Any other relevant factors.

19 3. Time period; discrimination prohibited. The
20 employer's obligation to reinstate the employee con-
21 tinues until one year after the employee has reached
22 the stage of maximum medical improvement in the judg-
23 ment of the commission. An employer who reinstates
24 an employee under this section may not subsequently
25 discriminate against that employee in any employment
26 decision, including decisions related to tenure, pro-
27 motion, transfer or reemployment following a layoff,
28 because of the employee's assertion of a claim or
29 right under this Act. Nothing in this subsection may
30 be construed to limit any protection offered to an
31 employee by section 111.

32 4. Exception for collective bargaining agree-
33 ments. Reinstatement may not conflict with any pro-
34 visions of a collective bargaining agreement between
35 the employer and a labor organization which is the

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1 collective bargaining representative of the unit of
2 which the injured employee is or would be a part.

3 5. Limitations. This section does not obligate
4 an employer to offer an injured employee employment
5 or reemployment in:

6 A. Supervisory or confidential positions within
7 the meaning of the United States Code, Title 29,
8 Section 152; or

9 B. Any position for which the employee is not
10 qualified.

11 6. Failure to comply. The employer's failure to
12 comply with his obligation under this section dis-
13 qualifies the employer or insurance carrier from ex-
14 ercising any right it may otherwise have to reduce or
15 terminate the employee's benefits under this Act.
16 The disqualification continues as long as the employ-
17 er fails to offer reinstatement or until the employee
18 accepts other employment.

19 If any injured employee refuses to accept an offer of
20 reinstatement, the employer or insurance carrier may
21 file, in addition to exercising any other rights it
22 may have, a petition for a reduction of benefits.
23 If, after hearing, the commission finds that an em-
24 ployee refused to accept the offer and the position
25 offered was suitable to his physical condition, it
26 shall order the reduction of all benefits payable un-
27 der section 54-B and 55-B. The reduction shall be in
28 an amount equal to the difference between the
29 employee's weekly benefit and the benefits he would
30 have been entitled to receive if he had accepted the
31 offer. The order reducing benefits remains in ef-
32 fect only as long as the employee fails to indicate
33 that he will accept an offer of reinstatement under
34 this section.

35 If the commission determines that the employee has
36 refused to accept an offer of reinstatement to a po-

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

15 7. Burden of proof. The petitioning party has
16 the burden of proof on all issues regarding claims
17 under this section except that the employer always
18 retains the burden of proof regarding the availabili-
19 ty or nonavailability of work.

20 8. Rehabilitation plans. All obligations under
21 this section are suspended during the implementation
22 of a rehabilitation plan under subchapter III-A.

23 9. Foreign workers. If an employee is prevented
24 from accepting an offer of reinstatement because of
25 residence in a foreign country or termination of sta-
26 tus as a lawfully employable alien, he is deemed to
27 have refused the offer.

28 Sec. 36. 39 MRSA §71, as amended by PL 1983, c.
29 479, §13, is repealed.

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

31 §71-A. Lump sum payments

32 1. Commutation. Subject to the limitations of
33 this section, an employer and employee may by agree-
34 ment discharge any liability for compensation, in
35 whole or in part, by the employer's payment of an

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1 amount to be approved by the commission. The employ-
2 er, the employee or the employee's dependents may pe-
3 tition the commission for an order commuting all pay-
4 ments for future benefits to a lump sum.

5 2. Review. Before approving any lump sum settle-
6 ment, a commissioner shall review the following fac-
7 tors with the employee:

8 A. The employee's rights under this Title and
9 the effect a lump sum settlement would have upon
10 those rights, including, if applicable, the ef-
11 fect of the release of an employer's liability
12 for future medical expenses;

13 B. The purpose for which the settlement is re-
14 quested;

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

23 E. Any other information, including the age of
24 the employee and of the employee's dependents,
25 which would bear upon whether the settlement is
26 in the best interest of the claimant.

27 The commissioner shall initiate the review within 14
28 days of his receipt of a request for a settlement re-
29 view. The commissioner may not approve any settlement
30 for any employee who fails to attend a scheduled re-
31 view without good cause.

32 3. Approval. A commissioner may not approve any
33 lump sum settlement unless he finds the settlement to
34 be in the employee's best interest in light of the
35 factors reviewed with the employee under subsection

SENATE AMENDMENT "B " to S.P. 704, L.D. 1929

1 2. In addition, a commissioner may not approve a lump
2 sum settlement which requires the release of an em-
3 ployer's liability for future medical expenses of the
4 employee unless the parties would be unlikely to
5 reach agreement on the amount of the lump sum payment
6 without the release of liability for future medical
7 expenses.

8 Sec. 38. 39 MRSA §86-A is enacted to read:

9 §86-A. Order for mandatory retraining

10 1. Application for retraining. If an employer
11 has failed to reemploy an injured employee in a posi-
12 tion suitable to his physical condition within one
13 year from the date of maximum medical improvement,
14 and the rehabilitation priorities described in sec-
15 tion 86, other than retraining, have been determined
16 to be clearly inappropriate, the employer or employee
17 may petition the commission for an order requiring a
18 fixed period of formal retraining.

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

22 3. Determination of plan. The commission may or-
23 der, after hearing, a fixed period of formal re-
24 training as described in section 86, subsection 7,
25 except that the commission may not order an employee
26 55 years of age or older to involuntarily participate
27 in a retraining plan under this section. In deter-
28 mining whether to order a period of formal retrain-
29 ing, the commission shall consider the factors set
30 forth in subsection 4.

31 4. Retraining plan. The commission, upon a de-
32 termination of retraining under this section, shall
33 prescribe a plan for retraining which will return, to
34 the maximum extent practicable, the employee to his
35 preinjury earning capacity. The commission shall con-
36 sider the following factors in prescribing a plan:

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- 1 A. The employee's age;
- 2 B. The employee's work life expectancy;
- 3 C. The employee's interests;
- 4 D. The employee's aptitudes;
- 5 E. The employee's education;
- 6 F. The employee's earning capacity before and
7 after the injury;
- 8 G. The employee's skills and work experience;
9 and
- 10 H. Any other relevant factors.

11 The plan must include a job placement strategy and a
12 specific program of proposed actions likely to
13 achieve job placement for the employee.

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

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

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1 section 55-B. The commission shall subtract that
2 number of weeks from the 400 weeks' compensation
3 for which the employee is eligible under section
4 55-B.

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

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

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

14 Sec. 38-A. 39 MRSA §90, sub-§2, as enacted by PL
15 1985, c. 372, Pt. A., §29, is repealed.

16 Sec. 39. 39 MRSA §91, sub-§1, as amended by PL
17 1987, c. 452, is further amended to read:

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

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

33 3. Proceedings before Workers' Compensation Com-

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

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

29 Depositions, subpoenas or cross-examination of health
 30 care practitioners is permitted only if the commis-
 31 sioner finds that the testimony is sufficiently im-
 32 portant to outweigh the delay in the proceeding.

33 Sec. 41. 39 MRSA §100, sub-§2, as amended by PL
 34 1985, c. 372, Pt. A, §36, is further amended to read:

35 2. Standard for review. The basis for granting
 36 relief under this section is as follows.

37 A. On the first petition for review brought by a

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1 party to an action, the commissioner shall deter-
2 mine the appropriate relief, if any, under this
3 section by determining the employee's present de-
4 gree of incapacity. ~~For purposes of a first pe-~~
5 ~~tion brought under this section, evidence of~~
6 ~~the employee's medical condition at the time of~~
7 ~~an earlier determination or approved agreement is~~
8 ~~relevant only if it tends to prove the present~~
9 ~~degree of incapacity.~~

10 B. Once a party has sought and obtained a deter-
11 mination under this section, it is the burden of
12 that party in all proceedings on his subsequent
13 petitions under this section to prove ~~by compara-~~
14 ~~tive medical evidence~~ that the employee's earning
15 incapacity attributable to the work-related in-
16 jury has changed since that determination.

17 Sec. 42. 39 MRSA §100, sub-§4, as amended by PL
18 1985, c. 372, Pt. A, §38, is further amended to read:

19 4. Payments pending hearing and decision. If the
20 employee is receiving payments at the time of the pe-
21 tition, the payments may not be decreased or sus-
22 pended pending the hearing and final decision upon
23 the petition, except in the following circumstances:

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

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

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

31 (2) The employee's whereabouts are unknown;
32 or

33 (3) The employee has resumed work;

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1 C. The employer or his insurance carrier files a
2 certificate with the commission stating that the
3 employee refuses to submit to an examination; or

4 D. The employee refuses an offer of reinstatement
5 to a position which is suitable to his physical
6 condition or the employee is able to return
7 to work and there is work available, in or near
8 the community in which he resides, which is suitable
9 to his physical condition.

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

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

29 (3) Benefits shall not be suspended or re-
30 duced pending hearing under this paragraph
31 if the employee shows that, despite a good
32 faith work search, the employee is unable to
33 obtain suitable work.

34 (4) Within 30 days after notice to the em-
35 ployee under subparagraph (2), the commis-
36 sion shall enter a provisional order provid-
37 ing for the suspension, reduction or contin-

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1 uation of benefits pending a hearing on the
2 petition. The order shall be based upon the
3 information submitted by both the employer
4 and the employee under this section.

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

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

14 §102-A. Incarceration of employee

15 No incapacity benefits under section 54-B or 55-B
16 may be paid to an employee during any period in which
17 he is a sentenced prisoner in actual execution of a
18 term of incarceration imposed in this State or any
19 other jurisdiction for a criminal offense, except
20 when the employee is participating in a work-release
21 or similar program or is sentenced to imprisonment
22 with intensive supervision under Title 17-A, section
23 1261. All compensation under those sections is for-
24 feited during the period of incarceration except for
25 any period in which the employee is participating in
26 a work-release or similar program or is sentenced to
27 imprisonment with intensive supervision under Title
28 17-A, section 1261.

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

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

34 2-A. Failure to pay within time limits. An em-
35 ployer or insurance carrier who fails to pay compen-

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1 sation, as provided in this section, shall be penal-
2 ized as provided in this subsection.

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

13 (1) One-half of the forfeiture shall be
14 paid to the employee to whom compensation is
15 due and 1/2 shall be paid to the commission
16 and be credited to the General Fund.

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

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

26 B. Payment of any forfeiture assessed under this
27 subsection shall not be considered an element of
28 loss for the purpose of establishing rates for
29 workers' compensation insurance.

30 2-B. Failure to secure payment. If any employer,
31 who is required to secure the payment to his employ-
32 ees of the compensation provided for by this Act,
33 fails to do so, the employer is subject to the penal-
34 ties set out in paragraphs A, B and C. The failure of
35 any employer to procure insurance coverage for the
36 payment of compensation and other benefits to his em-

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1 ployees in compliance with sections 21-A and 23 con-
2 stitutes a failure to secure payment of compensation
3 within the meaning of this subsection.

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

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

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

19 Prosecution under paragraph A does not preclude ac-
20 tion under paragraph B or C.

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

26 Sec. 46. 39 MRSA §106, as amended by PL 1985, c.
27 372, Pt. A, §42, is repealed and the following en-
28 acted in its place:

29 §106. Reports to commission

30 1. Injuries. Whenever any employee has reported
31 to an employer under the Act any injury arising out
32 of and in the course of his employment which has
33 caused the employee to lose a day's work or has re-
34 quired the services of a physician, or whenever the

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

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

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

30 Sec. 47. 39 MRSA §107, first ¶, as amended by PL
31 1987, c. 402, Pt. A, §210, is further amended to
32 read:

33 Every insurance company insuring employers under
34 this Act shall fill out any blanks and answer all
35 questions submitted to it that may relate to poli-
36 cies, premiums, amount of compensation paid and such
37 other information as the commission or the ~~insurance~~
38 Superintendent of Insurance may deem important, ei-

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1 ther for the proper administration of this Act or for
2 statistical purposes. Any--insurance--company--which
3 shall--refuse--to--fill--out--such--blanks--or--answer--such
4 questions--shall--be--liable--to--a--forfeiture--of--\$10--for
5 each--day--of--such--refusal,--to--be--enforced--by--the--com-
6 mission--in--a--civil--action--in--the--name--of--the--State.
7 All--money--recovered--under--this--section--or--section
8 106,--or--under--sections--21-A--to--27,--shall--be--paid--into
9 the--State--Treasury--and--credited--to--the--appropriation
10 for--the--administration--of--this--Act.

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

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

14 §108-A. Reports and data collection

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

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

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

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1 and

2 B. Similar data for self-insurance workers' com-
3 ensation plans regulated by the Bureau of Insur-
4 ance.

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

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

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

28 §110-A. Appearance by officer or employee of corpo-
29 ration or partnership

30 The appearance of an authorized officer, employee
31 or representative of a party in any hearing, action
32 or proceeding before the commission in which the par-
33 ty is participating or desires to participate is not
34 an unauthorized practice of law and is not subject to
35 any criminal sanction. If the appearance of such an
36 officer, employee or representative prevents the ef-

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1 efficient processing of any proceeding, the commission,
2 in its discretion, may remove that person from repre-
3 sentation of the party.

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

5 §113. Penalties

6 The following provisions govern the commission's
7 authority to impose penalties for violations of this
8 Act or rules adopted under this Act.

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

12 A. Who fails to file or complete any report or
13 form required by this Act or rules adopted under
14 this Act; or

15 B. Who fails to file or complete such a report
16 or form within the time limits specified in this
17 Act or rules adopted under this Act.

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

29 3. Appeal. Imposition of a penalty under this
30 section is deemed to be final agency action subject
31 to appeal to the Superior Court, as provided in Title
32 5, chapter 375, subchapter VII. Notwithstanding Ti-
33 tle 5, section 11004, execution of a penalty assessed
34 under this section is stayed during the pendency of

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1 any appeal under this subsection. The Attorney Gener-
2 al shall represent the commission in any appeal under
3 this subsection or the commission may retain private
4 counsel for that purpose.

5 4. Enforcement and collection. Penalties as-
6 essed under this section are in addition to any oth-
7 er remedies available under this Act and are enforce-
8 able by the Superior Court under section 103-E.

9 A. The Attorney General shall prosecute any ac-
10 tion necessary to recover penalties assessed un-
11 der this section or the commission may retain
12 private counsel for that purpose.

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

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

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

22 C. All penalties assessed under this section are
23 payable to the General Fund.

24 5. Not an element of loss. An insurance carri-
25 er's payment of any penalty assessed under this sec-
26 tion shall not be considered an element of loss for
27 the purpose of establishing rates for workers' com-
28 ensation insurance.

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

31 Sec. 53. Legislative study on rehabilitation.
32 The joint standing committee of the Legislature hav-
33 ing jurisdiction over labor shall study the use of

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1 vocational rehabilitation and retraining under the
2 Maine Workers' Compensation Act. The chairmen of the
3 committee shall call the first meeting of the commit-
4 tee no later than December 1, 1987.

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

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

20 1. Vocational rehabilitation conducted under the
21 Workers' Compensation Act, including the following
22 aspects of that system:

23 A. The desirability of requiring the initial
24 evaluation of suitability for rehabilitation and
25 the development of rehabilitation plans to be
26 performed by the Office of Employment Rehabilita-
27 tion or other public rehabilitation providers;

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

30 C. The desirability of making vocational reha-
31 bilitation mandatory upon the injured employee,
32 the employer or insurance carrier, or both;

33 D. The desirability of permitting or prohibiting
34 medical management or medical monitoring by reha-
35 bilitation providers;

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1 E. The desirability of requiring earlier inter-
2 vention in cases where an employee may benefit
3 from rehabilitation services; and

4 F. Any other aspects of the system that may pose
5 problems currently or in the future or that may
6 benefit from changes and result in increased ef-
7 ficiency and effectiveness of the workers' com-
8 pensation rehabilitation system;

9 2. Vocational rehabilitation conducted by the
10 Bureau of Rehabilitation;

11 3. Vocational rehabilitation conducted by pri-
12 vate providers;

13 4. Issues and problems raised by the interaction
14 of vocational rehabilitation efforts under the Work-
15 ers' Compensation Act, by the Bureau of Rehabilita-
16 tion and by private providers; and

17 5. Identification and evaluation of alternative
18 vocational rehabilitation models in use or proposed
19 by other states or foreign countries, and their po-
20 tential suitability for application in the State, in-
21 cluding the option of requiring employers to provide
22 vocational-technical retraining to injured employees.

23 The committee shall report back to the Second
24 Regular Session of the 113th Legislature and shall
25 recommend legislation to implement a program under
26 which injured employees will have a right to obtain
27 and a duty to participate in vocational rehabilita-
28 tion or retraining under the Workers' Compensation
29 Act in suitable cases. The committee may recommend
30 any other legislation or rules necessary or desirable
31 to improve in any way the current system of vocation-
32 al rehabilitation and retraining in the State.

33 **Sec. 54. Applicability.** Sections 15, 17 to 19,
34 21 to 38 and 41 to 43 of Part B of this Act apply on-

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1 ly to injuries occurring on or after the effective
2 date of this Act.

3 Sec. 55. Appropriation. The following funds are
4 appropriated from the General Fund to carry out the
5 purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
7 <u>MAINE HUMAN RIGHTS COMMISSION</u>		
8 Human Rights Commission -		
9 Regulation		
10 Positions	(1)	(1)
11 Personal Services	\$14,595	\$32,384
12 All Other	900	1,500
13 Capital Expenditures	<u>387</u>	<u> </u>
14 Provides funds for an		
15 additional staff attorney		
16		
17 <u>MAINE HUMAN RIGHTS COMMISSION</u>		
18 TOTAL	\$15,882	\$33,884
19 <u>LABOR, DEPARTMENT OF</u>		
20 Administration - Bureau of		
21 Labor Standards		
22 Positions	(-1)	(-1)
23 Personal Services	\$(8,646)	\$(17,800)
24 Deappropriates funds no		
25 needed due to transfer		
26 of Clerk Typist I position		
27 to Safety Education and Training Program.		
28		
29		
30 DEPARTMENT OF LABOR		
31 TOTAL	<u>\$(8,646)</u>	<u>\$(17,800)</u>

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1	<u>LEGISLATURE</u>		
2	Legislature		
3	Personal Services	\$2,860	
4	All Other	5,700	
5	Provides funds for a		
6	study of vocational re-		
7	habilitation retraining		
8	to be conducted by		
9	joint standing commit-		
10	tee of the Legislature		
11	having jurisdiction		
12	over labor.		
13	LEGISLATURE		
14	TOTAL	<u>\$8,560</u>	
15	<u>Workers' Compensation</u>		
16	<u>Commission</u>		
17	Workers' Compensation Com-		
18	mission		
19	Positions	(17)	(19)
20	Personal Services	\$209,434	\$574,803
21	All Other	110,222	144,662
22	Capital Expenditures	30,525	
23			
24	Total	<u>\$350,181</u>	<u>\$719,465</u>
25	Provides fund to sup-		
26	port the ongoing and		
27	new responsibilities of		
28	the Workers' Compensa-		
29	tion Compensation.		
30	Office of Employment Reha-		
31	ilitation		

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1	Positions		(2)
2	Personal Services		\$23,309
3	All Other		4,200
4	Capital Expenditures		2,571
5			
6	Total		<u>\$30,080</u>
7	Provides funds for a		
8	rehabilitation assist-		
9	ant administrator and		
10	clerical support for		
11	the mandatory retrain-		
12	ing program positions		
13	effective January 1,		
14	1989.		
15	WORKERS' COMPENSATION COMMIS-		
16	SION		
17	TOTAL	<u>\$350,181</u>	<u>\$749,545</u>
18	TOTAL APPROPRIATIONS	\$365,977	\$765,629
19	Sec. 56. Allocation. The following funds are		
20	allocated from the Federal Expenditure Fund to carry		
21	out the purposes of this Act.		
22		<u>1987-88</u>	<u>1988-89</u>
23	<u>LABOR, DEPARTMENT OF</u>		
24	Administration - Bureau of		
25	Labor Standards		
26	Positions	(-3)	(-3)
27	Personal Services	\$(36,500)	\$(88,803)
28	All Other	5,700	52,000
29	Capital Expenditures	4,000	8,247
30	Provides funding for		
31	data return processing		
32	services and data dis-		

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1	semination and for the		
2	transfers of 2		
3	Statisticians II and		
4	one Labor Statistical		
5	Technician to Safety		
6	Education and Training		
7	Program.		
8	DEPARTMENT OF LABOR		
9	TOTAL	<u>\$(26,800)</u>	<u>\$(28,556)</u>
10	Sec. 57. Allocation. The following funds are		
11	allocated from other special revenue fund to carry		
12	out the purposes of this Act.		
13		<u>1987-88</u>	<u>1988-89</u>
14	<u>LABOR, DEPARTMENT OF</u>		
15	Safety Education and Train-		
16	ing Funds		
17	Positions	(14 1/2)	(14 1/2)
18	Personal Services	\$184,800	\$369,750
19	All Other	80,000	160,000
20	Capital Expenditures	5,000	10,000
21	Provides funding for 5		
22	new positions and 9 1/2		
23	positions transferred		
24	from within the Depart-		
25	ment of Labor,		
26	upgrading one position.		
27	Provides additional		
28	funding for the Safety		
29	Training Program.		
30			
31	TOTAL	<u>\$269,800</u>	<u>\$539,750</u>
32	Chemical Information and		
33	Training Assistance Fund		

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1	Positions	(-5 1/2)	(-5 1/2)
2	Personal Services	\$(66,500)	\$(120,321)
3	All Other	(60,000)	(69,977)
4	Capital Expenditures	(15,000)	(11,000)
5	Deallocates funds and		
6	positions which will be		
7	transferred to the Safe-		
8	ty Education and Train-		
9	ing Fund.		
10			
11	TOTAL	<u>\$(141,500)</u>	<u>\$(201,298)</u>
12	DEPARTMENT OF LABOR		
13	TOTAL	<u>\$128,300</u>	<u>\$338,452'</u>

14 FISCAL NOTE

15 This amendment will have the following effects on
16 revenues:

17		<u>1987-88</u>	<u>1988-89</u>
18	General Fund		\$ 10,000
19	Other Special Revenue	\$128,300	\$338,452

20 Provide below is a summary of net appropriations
21 and allocations.

22		<u>1987-88</u>	<u>1988-89</u>
23	General Fund Appropriations	\$350,095	\$731,745
24	Federal Expenditures Fund		
25	Allocations	\$(26,800)	\$(28,556)
26	Other Special Revenue Fund		
27	Allocations	\$128,300	\$338,452

28 STATEMENT OF FACT

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1 Sections 1 and 50 authorize nonattorneys to
2 represent parties before the Workers' Compensation
3 Commission. The commission retains the discretion to
4 remove that person from representation if necessary
5 to ensure an efficient proceeding.

6 Section 2 amends the Maine Human Rights Act to
7 prohibit discrimination against job applicants be-
8 cause of that person's previous assertion of a claim
9 or right under the Workers' Compensation Act. Dis-
10 crimination against persons after they have been
11 hired continues to be governed by the antidiscrimina-
12 tion provisions of the Workers' Compensation Act.

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

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

22 Section 5 permits the Director of the Bureau of
23 Labor Standards to identify employers with poor
24 workplace safety records and offer safety consulta-
25 tion services to those employers. If the employer
26 refuses to cooperate or if dangers to workers exist
27 at the employer's worksite, the director will report
28 the employer to the United States Occupational Safety
29 and Health Administration.

30 Sections 6, 12 and 13 consolidate the responsi-
31 bility for providing education and training assist-
32 ance to employers regarding the chemical substance
33 identification law with the existing general safety
34 education and training program of the Bureau of Labor
35 Standards.

36 Section 7 reenacts and makes minor changes in the

SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

1 enabling legislation for the Commission on Safety in
2 the Maine Workplace and allocates it within the re-
3 vised statutes.

4 Section 8 increases the maximum assessment per-
5 mitted to fund the safety education and training pro-
6 grams of the Bureau of Labor Standards from 1/4 of 1%
7 to 1% of actual paid workers' compensation losses,
8 excluding medical payments, of insurers and
9 self-insured employers. It also removes the existing
10 exemption from the assessment for group
11 self-insurers.

12 Sections 9 to 11 repeal the current Occupational
13 Safety Loan Panel and require the Commission on Safe-
14 ty in the Maine Workplace to assume its duty to re-
15 view request for safety loans.

16 Section 14 provides that seasonal workers will
17 have their average weekly wage calculated to reflect
18 their total annual earnings. This will prevent an
19 individual who is injured while working at a seasonal
20 job from collecting benefits year-round at an
21 artificially-enhanced rate.

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

24 Section 15-A provides the Superintendent of In-
25 surance clear authority to review, and allow where
26 appropriate, self-insurance status for corporations
27 whose obligations are guaranteed by affiliated corpo-
28 rations. Bonding requirements have been increased 10
29 times for such entities and the guaranteeing corpora-
30 tions are made subject to Maine law.

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

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

4 Section 18 enacts an exception to the requirement
5 that an employer file a notice of controversy within
6 44 days after receiving notice of an employee's in-
7 jury or lost work time if he wants to contest the
8 employee's claim for benefits. If the employer has
9 not made any payment on the employee's claim and
10 fails to file a timely notice due to employee fraud
11 or excusable neglect on the part of the employer, he
12 is not prevented from filing a notice of controversy
13 after the 44-day period has expired. The excusable
14 neglect standard employed in this section is derived
15 from the same standard used in the Maine Rules of
16 Civil Procedure.

17 Sections 19 and 20 clarify that employers or in-
18 surers may voluntarily pay for treatment of an
19 employee's injury by prayer or spiritual means. They
20 also limit an employer's liability for an injured
21 employee's medical expenses to the amount determined
22 by the Workers' Compensation Commission in rules
23 adopted under the provisions enacted by section 22.
24 The commission may, upon petition of a treating
25 health care provider, allow costs above the scheduled
26 amounts in exceptional cases.

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

35 Section 22 requires the Workers' Compensation
36 Commission to adopt a rate schedule governing fees
37 for health care services, other than hospital care,
38 that are provided to injured employees under the

SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

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

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

13 Sections 25 to 27 replace the current laws gov-
14 erning total incapacity benefits. The amount of com-
15 pensation payable for total incapacity remains the
16 same as under current law except that the cost-
17 of-living adjustment is delayed for 2 years; totally
18 incapacitated workers will receive benefits for an
19 unlimited duration with an annual adjustment, capped
20 at 5%, beginning on the 3rd anniversary date of the
21 injury. The definition of a totally incapacitated
22 worker has been restricted so that injured employees
23 who are able to perform full-time remunerative work
24 in the State's ordinary labor market will not be
25 classed as totally incapacitated; this standard was
26 adapted from the first phase of the incapacity test
27 outlined by the Law Court in Ibbitson v. Sheridan
28 Corp., 422 A.2d 1005(Me. 1980). The current statuto-
29 ry presumptions of incapacity for very seriously in-
30 jured employees are retained but the existing excep-
31 tion for sheltered workshops from the \$25 minimum
32 payment is deleted.

33 Sections 28 to 30 replace the current laws gov-
34 erning partial incapacity benefits. The method of
35 qualifying for partial incapacity benefits is not
36 changed. Benefits paid under the amendment to em-
37 ployees classed as partially incapacitated are sub-
38 ject to a 400-week duration limit and will not be ad-
39 justed annually.

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SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

1 Sections 31 to 33 replace the current laws gov-
2 erning permanent impairment benefits. The method of
3 calculating the degree of permanent impairment is
4 changed to reflect the actual physical disability to
5 the body as a whole. The degree of impairment will
6 be calculated through reference to a standard medical
7 impairment schedule adopted by the Workers' Compensa-
8 tion Commission through rulemaking. Until a rule is
9 adopted, the 1984 AMA Guides to the Evaluation of
10 Permanent Impairment will be used. The amount of
11 compensation to be paid is calculated by using a
12 graduated table that provides greater compensation to
13 those employees with more serious impairments. Com-
14 pensation will not be paid in a lump sum as under the
15 current law but will be paid in weekly amounts of 2/3
16 of the state average weekly wage. Permanent impair-
17 ment benefits continue to be paid in addition to any
18 incapacity benefits that the employee may qualify
19 for. The current provisions awarding compensation
20 for serious facial or head disfigurement are re-
21 tained.

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

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

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SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

1 hardship for the employer, considering the size of
2 the employer's business, the number of employees, the
3 nature of his operations and other factors.

4 The employer's obligation to reinstate the em-
5 ployee continues until one year after the employee
6 reaches the point of maximum medical improvement.
7 Once an employee has been reemployed, the employer
8 may not discriminate against that employee in any
9 subsequent employment decision. Current restrictions
10 on the obligation to reemploy the employee are re-
11 tained ; the employer does not have to employ the
12 employee in a supervisory position or a position for
13 which the employee is not qualified. If an employer
14 fails to meet his obligations under the law, he is
15 prevented from attempting to reduce or terminate the
16 employee's benefits until he offers the employee re-
17 instatement or the employee is rehired elsewhere. If
18 an employee refuses an offer of reinstatement, his
19 benefits may be reduced as if he were actually re-
20 ceiving the wages of the position which he refused
21 until he indicates that he will accept an offer of
22 reinstatement.

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

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1 penses in most cases.

2 Section 38 creates a mandatory retraining program
3 for certain injured employees that permits an employ-
4 er to require an employee to undergo retraining and
5 also permits the employee to force the employer to
6 pay for a retraining program for the employee. Any
7 employee who has not been reemployed by his previous
8 employer within one year after the employee reaches
9 maximum medical improvement and who is found under
10 the vocational rehabilitation system to be unable to
11 regain employment without retraining is eligible for
12 retraining under amendment. The employer or the em-
13 ployee may petition for an order establishing a re-
14 training program for the employee. The Workers' Com-
15 pensation Commission must consider all relevant fac-
16 tors in determining whether an employee is suitable
17 to undergo retraining. If the commissioner finds
18 that the employee should undergo retraining, the com-
19 mission will establish a retraining program for the
20 employee that is designed to, as near as practicable,
21 restore the employee to his preinjury earning capaci-
22 ty. The program must include a job placement strate-
23 gy that is likely to achieve job placement for the
24 employee after retraining. An employee who undergoes
25 retraining must demonstrate to the commission that he
26 has actively searched for work after completing the
27 retraining or his benefits will be automatically cut
28 off after 6 months. In any event, the 400-week dura-
29 tion limit on partial incapacity benefits will be re-
30 duced so that total compensation to the employee, in-
31 cluding his costs of retraining, will never exceed
32 the costs that would have been incurred if the em-
33 ployee had not undergone retraining.

34 Section 38-A repeals the vocational rehabilita-
35 tion sunset provision.

36 Section 39 adds 2 additional commissioners to the
37 Workers' Compensation Commission, making a total of
38 12, and enacts a requirement that the Governor must
39 make all appointments to the commission within 60

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1 days after the vacancy occurs.

2 Section 40 eliminates the use of the Superior
3 Court discovery rules and instead permits discovery
4 as provided by rule of the chairman of the Workers'
5 Compensation Commission. The section also limits the
6 use of medical testimony in commission proceedings by
7 requiring a commissioner to approve the testimony on-
8 ly if he finds that the need for the testimony
9 outweighs any possible delay caused in obtaining the
10 testimony. These changes are intended to reduce de-
11 lay in commission proceedings.

12 Section 41 changes the standard applied in peti-
13 tions for review. The section expands the use of
14 prior medical evaluations and eliminates the need for
15 comparative medical evidence that demonstrates a
16 change in the injured employee's earning capacity.
17 This change will permit other factors that may influ-
18 ence an injured employee's earning capacity, such as
19 economic factors or vocational retraining, to be con-
20 sidered in petitions for review filed after an ini-
21 tial determination.

22 Section 42 permits a quick cutoff of benefits in
23 2 limited circumstances. First, an employer may de-
24 crease or suspend an employee's compensation pending
25 a hearing on a petition if the employee has refused
26 to submit to a physical examination. Second, an em-
27 ployer can receive permission from the commission to
28 reduce or suspend compensation pending hearing if the
29 employee refuses an offer of suitable work or if work
30 which is suitable to the employee's physical condi-
31 tion is available in his community. An unsuccessful
32 good-faith work search by the employee will rebut an
33 employer's claim that suitable work is available to
34 the employee. The employer must provide the commis-
35 sion and the affected employee with his supporting
36 evidence when he requests the commission for a quick
37 cutoff under this 2nd option. The employee then has
38 20 days in which to respond to the employer's claims.
39 The commission must make a provisional ruling within

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SENATE AMENDMENT "B" to S.P. 704, L.D. 1929

1 30 days after the employee is notified of the employ-
2 er's petition. If benefits are reduced or suspended
3 provisionally and the commission reverses that deter-
4 mination after hearing, the benefits must be repaid
5 to the employee with interest.

6 Section 43 prevents an injured employee who is
7 serving a term of imprisonment in a correctional fa-
8 cility or county jail from collecting incapacity ben-
9 efits while he is in prison, unless he is working in
10 a work-release or similar program or is sentenced to
11 imprisonment under the intensive supervision program.

12 Sections 44 and 45 correct a technical conflict
13 that was created when 2 different provisions were as-
14 signed to the same statutory subsection. The amend-
15 ment repeals and reenacts the provisions in new sub-
16 sections.

17 Section 46 redrafts the provisions requiring em-
18 ployers and employees to file with the commission
19 certain reports of injuries or returns to work. The
20 amendment deletes language establishing a penalty for
21 failure to file the reports since that situation is
22 now covered by the general penalty section enacted in
23 section 51.

24 Section 47 deletes a provision that penalizes in-
25 surers for failing to file certain reports with the
26 commission. That situation is now covered by the
27 general penalty section enacted in section 51 of the
28 amendment.

29 Sections 48 and 49 replace current provisions
30 concerning information collected and reports prepared
31 by the Workers' Compensation Commission. The amend-
32 ment expands the data required to be retained and re-
33 quires all relevant agencies or departments of the
34 State to cooperate in developing a complete and accu-
35 rate data base regarding the workers' compensation
36 system. It also requires an annual report describing
37 the entire workers' compensation system to be pre-

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1 sented to the Governor and to the Legislature.

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

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

31 Section 53 establishes a legislative study of the
32 current vocational rehabilitation and retraining sys-
33 tem under the Workers' Compensation Act. The Joint
34 Standing Committee on Labor will conduct the study
35 and will recommend legislation for introduction into
36 the Second Regular Session of the 113th Legislature
37 that will establish a right and obligation for in-
38 jured employees to participate in vocational rehabil-
39 itation or retraining programs under the Workers'

R. O. F. S.

SENATE AMENDMENT " B " to S.P. 704, L.D. 1929

1 Compensation Act.

2 Section 54 provides that certain sections of this
3 amendment apply only to employees who are injured on
4 or after the effective date of this amendment. No
5 employee who suffers an injury before this amendment
6 takes effect will have his benefits affected in any
7 way by this amendment; it applies only to the bene-
8 fits received by workers injured on or after its ef-
9 fective date. Some procedural changes will, however,
10 apply to persons injured before the amendment's ef-
11 fective date.

12 Sections 55 to 57 provide funding to accomplish
13 the purposes of the amendment.

14 4490111887

15 (Sen Dutremble)
16 SPONSORED BY:



17 TOWN: York

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