

# MAINE STATE LEGISLATURE

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(EMERGENCY)  
SECOND REGULAR SESSION

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ONE HUNDRED AND THIRTEENTH LEGISLATURE

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Legislative Document

NO. 2614

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H.P. 1915 House of Representatives, April 4, 1988  
Reported by Representative JOSEPH from the Joint Standing  
Committee on Labor pursuant to Public Law 1987, Chapter 559,  
Part B, section 53.

Reference to the Committee on Labor suggested and  
printing ordered under Joint Rule 18.

EDWIN H. PERT, Clerk

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STATE OF MAINE

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

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1                   **AN ACT to Amend the Rehabilitation System**  
2                   **under the Workers' Compensation Act.**  
3

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4           **Emergency preamble.**       Whereas, Acts of the  
5           Legislature do not become effective until 90 days  
6           after adjournment unless enacted as emergencies; and

7           Whereas, the Workers' Compensation Act was  
8           substantially revised within the past year to bring  
9           down the cost of claims for insurers; and

1           Whereas, in light of these changes injured workers  
2 are entitled to an effective rehabilitation system  
3 that will meet their needs; and

4           Whereas, there is no available information  
5 regarding some aspects of the rehabilitation system  
6 that potentially could be abused; and

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

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

15           **Sec. 1.** 39 MRSA §81, first ¶, as enacted by PL  
16 1985, c. 372, Pt. A, §29, is amended to read:

17           The purpose of this subchapter is restoration of  
18 the injured employee to gainful suitable  
19 employment, to the maximum extent practicable,  
20 consistent with the priorities listed in section 86.  
21 To further that purpose, it is the shared  
22 responsibility of all parties involved to cooperate in  
23 developing a rehabilitation process designed to  
24 promote reemployment at a level of earnings  
25 commensurate with the employee's ability to perform  
26 under present conditions, consistent with the  
27 priorities of section 86.

28           **Sec. 2.** 39 MRSA §82, sub-§3, ¶¶A and E, as  
29 enacted by PL 1985, c. 372, Pt. A, §29, are amended to  
30 read:

31           A. The administrator is responsible for the  
32 receipt of reports and other information required  
33 under this subchapter and may require  
34 supplementary information needed to fulfill the  
35 purposes of this subchapter. The administrator  
36 shall collect data on reemployment trends for  
37 injured workers.

1 E. The commission shall not provide direct  
2 rehabilitation services. Rehabilitation services  
3 under this subchapter shall be provided by private  
4 and public rehabilitation counselors, governmental  
5 agencies, in-house rehabilitation counselors and  
6 others approved by the administrator as qualified  
7 to provide rehabilitation services under the  
8 commission's rules. The administrator shall  
9 consider a rehabilitation counselor's rate of  
10 successfully placing rehabilitated employees in  
11 jobs relative to the placement rates of other  
12 counselors in the State as fundamental in deciding  
13 whether to approve the counselor as qualified.  
14 The administrator shall compile annually a list of  
15 approved providers of rehabilitation services,  
16 except that in-house rehabilitation counselors  
17 shall not appear on the list, and shall make this  
18 list available to the parties.

19 Sec. 3. 39 MRSA §82-A is enacted to read:

20 §82-A. Initial report.

21 Before any rehabilitation services may be provided  
22 for an injured worker, the rehabilitation provider  
23 must supply the Workers' Compensation Commission with  
24 the following:

25 1. Preliminary information. Preliminary  
26 information on the injured worker on forms provided by  
27 the commission; and

28 2. Informed consent. An informed consent form  
29 provided by the commission and signed by the injured  
30 worker. Before an injured worker can sign the form,  
31 the rehabilitation provider must explain to the  
32 injured worker:

33 A. The rehabilitation rights and options  
34 available to an injured worker; and

35 B. Information requested by the Workers'  
36 Compensation Commission.

1           Sec. 4. 39 MRSA §83, sub-§8 is enacted to read:

2           8. Outside services provided. Persons or firms  
3 providing services concerning workers injured after  
4 January 1, 1986 shall disclose information about  
5 service provided in connection with workers'  
6 compensation claims upon request of the commission.  
7 The commission shall adopt rules under the Maine  
8 Administrative Procedure Act, Title 5, chapter 375, to  
9 implement this subsection. The commission may collect  
10 information to clarify the cost, nature, amount and  
11 results of services provided to insurers and injured  
12 employees. The commission shall have the power to  
13 subpoena information. Information collected under  
14 this subsection shall remain confidential and for the  
15 use of the commission only.

16           Sec. 5. 39 MRSA §84-A, is enacted to read:

17           §84-A. Employer rehabilitation programs

18           Employers who provide rehabilitation services to  
19 injured workers under this Act must report to the  
20 commission on their rehabilitation efforts. The  
21 commission shall adopt rules under the Maine  
22 Administrative Procedure Act, Title 5, chapter 375, to  
23 implement this section. The information shall  
24 include, but not be limited to:

25           1. Number of injured workers. The number of  
26 injured workers using rehabilitation services;

27           2. Type, duration and cost. The type, duration  
28 and cost of rehabilitation services; and

29           3. Status, skill levels, salaries and tasks. The  
30 status of rehabilitated employees including preinjury  
31 and post-injury jobs, skill levels, salaries and tasks.

32           Sec. 6. 39 MRSA §86, as enacted by PL 1985, c.  
33 372, Pt. A, §29, is amended to read:

34           §86. Rehabilitation priorities

35           The following priorities shall be used in  
36 evaluating alternative rehabilitation plans.

1 Retraining may be allowed within any priority. No  
2 higher numbered priority may be utilized unless all  
3 lower numbered priorities have been determined by the  
4 rehabilitation counselor to be unlikely to result in a  
5 suitable job placement for the injured employee that  
6 is consistent with the priorities listed in this  
7 section. If a lower number numbered priority is  
8 clearly inappropriate for the employee, the next  
9 higher numbered priority shall be utilized as follows:

10 1. Former job. Return of the employee to his  
11 preinjury job with the same employer; The tasks  
12 or the workplace may be modified and the employee  
13 retrained if necessary to achieve this return;

14 2. Modified job. Return of the employee to his  
15 preinjury job with the same employer; and with the  
16 modification of tasks or of workplace. The tasks or  
17 the workplace may be modified and the employee  
18 retrained if necessary to achieve this return;

19 3. New job. Return to employment with the  
20 preinjury employer in a different position; The  
21 employee may be retrained if necessary;

22 4. On-the-job training with preinjury employer.  
23 Return to employment with the preinjury employer for  
24 on-the-job training;

25 5. New employer. Employment with a new  
26 employer; Retraining may be allowed if necessary;

27 6. On-the-job training with new employer.  
28 On-the-job training with a new employer; or

29 7. Career retraining. A goal-oriented period of  
30 formal training which is designed to lead to  
31 employment in another career field.

32 **Sec. 7. Legislative study on rehabilitation.** A  
33 Subcommittee on Rehabilitation shall be established to  
34 study the use of vocational rehabilitation and  
35 retraining under the Workers' Compensation Act. The  
36 subcommittee shall consist of 7 members as follows:  
37 Four members of the House of Representatives,  
38 appointed by the Speaker of the House, 3 of whom shall  
39 represent the Joint Standing Committee on Labor

1 and one representing the Joint Standing Committee on  
2 Human Resources; 3 members of the Senate, appointed by  
3 the President of the Senate, 2 representing the Joint  
4 Standing Committee on Labor and one representing the  
5 Joint Standing Committee on Human Resources.

6 The subcommittee shall hold an organizational  
7 meeting at the call of the chairman of the Legislative  
8 Council by May 1, 1988. At this meeting, the  
9 subcommittee shall elect a chairman from within the  
10 membership.

11 Members of the subcommittee shall receive the  
12 legislative per diem for each day's attendance at  
13 committee meetings and reimbursement for necessary  
14 expenses. The subcommittee may request staff  
15 assistance from the Legislative Council and may  
16 consult with vocational rehabilitation or retraining  
17 experts whenever suitable. All state agencies shall  
18 cooperate fully with the subcommittee to further the  
19 purposes of this section.

20 The subcommittee shall hold 5 public hearings  
21 throughout the State and conduct a comprehensive study  
22 of the current system of providing vocational  
23 rehabilitation to injured workers within the State,  
24 including the following:

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

28 A. The current and potential roles of private and  
29 public rehabilitation providers evaluating the  
30 suitability of injured workers for rehabilitation  
31 and the development of rehabilitation plans;

32 B. The implications of requiring an insurance  
33 carrier to pay reasonable rehabilitation costs;

34 C. The implications of private rehabilitation  
35 providers working on behalf of both the injured  
36 worker and insurance carriers through medical

1 management; and

2 D. Any other aspects of the system that may pose  
3 problems currently or in the future or that may  
4 benefit from changes and result in increased  
5 efficiency and effectiveness of the workers'  
6 compensation rehabilitation system;

7 2. Vocational rehabilitation conducted by the  
8 Bureau of Rehabilitation;

9 3. Vocational rehabilitation conducted by private  
10 providers;

11 4. Issues and problems raised by the interaction  
12 of vocational rehabilitation efforts under the  
13 Workers' Compensation Act by the Bureau of  
14 Rehabilitation and private providers; and

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

21 The subcommittee shall report its findings,  
22 together with any legislative recommendations, to the  
23 First Regular Session of the 114th Legislature no  
24 later than March 15, 1989.

25 **Sec. 8. Appropriation.** The following funds are  
26 appropriated from the General Fund to carry out the  
27 purposes of this Act.

28 1988-89

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30 Subcommittee on Rehabilitation

31	Personal Services	\$ 2,145
32	All Other	49,960
33		
34	Total	<u>\$52,105</u>



1 Provides funds for per  
2 diem and related  
3 expenses of 7-member  
4 subcommittee to meet 8  
5 times and hold 5  
6 public hearings. The  
7 cost of 2 consultants,  
8 5 regional forums and  
9 an extensive outreach  
10 program are included  
11 in this study.

12 WORKERS' COMPENSATION COMMISSION

13 Office of Employment Rehabilitation

14	Positions	(3)
15	Personal Services	\$74,008
16	All Other	8,000
17	Capital Expenditures	16,675
18		
19	Total	<u>\$98,683</u>

20 Provides funds for one  
21 Administrative  
22 Assistant, one Data  
23 Entry Specialist and  
24 one Planning and  
25 Research Associate II  
26 to perform the  
27 additional data  
28 gathering,  
29 compilation, analysis  
30 and worker education  
31 required.

32 **Emergency clause.** In view of the emergency  
33 cited in the preamble, this Act shall take effect when  
34 approved.

1 STATEMENT OF FACT

2 The Workers' Compensation Act was substantially  
3 revised in 1987. Part of that legislation established  
4 a study to review the rehabilitation system under the  
5 Act. This bill is a product of that review.

6 Section one amends the Maine Revised Statutes,  
7 Title 39, section 81, the purpose section of the  
8 rehabilitation subchapter. "Gainful employment" is  
9 amended to read "suitable employment" consistent with  
10 the priorities set out in Title 39, section 86. This  
11 change clarifies that the purpose of this section is  
12 to get the injured employee, not back to just any job,  
13 but to an appropriate job.

14 Section 2 requires the administrator of the Office  
15 of Employee Rehabilitation to collect data on both  
16 initial and long-term employment of injured workers.  
17 It also deletes a requirement that the administrator  
18 consider a rehabilitation counselor's placement rate  
19 in deciding whether to approve the counselor to  
20 provide these services. This requirement does not  
21 take into account the severity or complexity of the  
22 cases a rehabilitation provider has handled. Also,  
23 the commission has adopted rules that are more  
24 comprehensive than this requirement.

25 Section 3 requires anyone providing rehabilitation  
26 services to injured workers to notify the commission  
27 before those services are rendered. The section also  
28 requires a vendor of rehabilitation services to  
29 explain the options available to injured workers under  
30 Title 39, subchapter III-A and requires an informed  
31 consent form from the worker.

32 Section 4 empowers the Workers' Compensation  
33 Commission to request information from firms or  
34 persons providing rehabilitation services about the  
35 services they provide. The commission is given  
36 subpoena power.

37 Employers with rehabilitation providers on the  
38 work site are required to report on their programs  
39 under section 5. At this time there is no information  
40 on how those programs are working and how they are  
41 serving injured workers.

1 Section 6 clarifies that retraining may be allowed  
2 within each of the rehabilitation priorities. The  
3 last priority is amended to read career retraining to  
4 make it clear that this option for injured workers,  
5 who are not able to find a suitable job within the  
6 other priorities, is for changing careers.

7 A legislative study is outlined under section 7 to  
8 conduct an in-depth review of the rehabilitation  
9 system and other rehabilitation models. An  
10 appropriation is included in the bill in recognition  
11 that consulting help and additional staff will be  
12 needed.

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