

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

100  
R. of S.  
1

1  
3  
5  
7  
9  
11  
13  
15  
17  
19  
21  
23  
25  
27  
29  
31  
33  
35  
37  
39  
41  
43  
45  
47

L.D. 916

(Filing No. S- 343)

STATE OF MAINE  
SENATE  
114TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 346, L.D. 916, Bill, "An Act to Reduce Hardship for Injured Workers"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

Sec. 1. 39 MRSA §57, sub-§§3 and 4, as enacted by PL 1981, c. 474, §1, are amended to read:

3. Employer knowledge. In order to qualify under this section subsections 1 to 8 for reimbursement from the Second Injury Fund, the employer must establish that the employer had knowledge of the permanent impairment at the time that the employee was hired or at the time the employee was retained in employment after the employer acquired that knowledge.

4. Jurisdiction. The Workers' Compensation Commission has jurisdiction over all claims brought by employers or insurance carriers against the Second Injury Fund. The Except for claims made under section 98-A, the Second Injury Fund shall not be bound as to any question of law or fact by reason of any award or any adjudication to which it was not a party or in relation to which it was not notified, at least 3 weeks prior to the award or adjudication, that it might be subject to liability for the injury or death. An employer or its insurance carrier shall notify the Workers' Compensation Commission of any possible claim against the Second Injury Fund as soon as practicable, but in no event later than 3 years after the injury or death or one year after the employer or insurance carrier becomes eligible for reimbursement under section 98-A.

Sec. 2. 39 MRSA §57, sub-§9 is enacted to read:

9. Reimbursement for provisional payments; notice of fund balance. Upon the written order of the chair, the Treasurer of

of S.

COMMITTEE AMENDMENT "A" to S.P. 346, L.D. 916

1 State shall pay from the Second Injury Fund any reimbursement  
2 which an employer or insurance carrier is due under section 98-A,  
3 subsection 3.

5 Sec. 3. 39 MRSA §98-A is enacted to read:

7 §98-A. Provisional orders for payment

9 Notwithstanding any other provision of this Act, the  
10 commission may issue provisional orders requiring an employer who  
11 controverts an employee's claim to compensation under section  
12 54-B or 55-B to pay weekly compensation to that employee as  
13 provided in this section. The order shall provide for the amount  
14 of the weekly payments and include the date on which payments  
15 commence, which may be retroactive.

17 1. Requirements for order. The commission may issue  
18 provisional orders under this section only when there is a clear  
19 and convincing basis to find that:

21 A. The employee has a seriously incapacitating injury;

23 B. The employee and the employee's dependents are  
24 financially necessitous; and

25 C. The employee is likely to ultimately obtain compensation  
26 under section 54-B or 55-B for the injury.

29 The chair shall adopt rules providing standards for  
30 determinations made under this subsection.

31 2. Procedure. A request for a provisional order shall be  
32 heard at the first hearing for the claim under section 99. The  
33 chair shall adopt rules providing for the swift determination of  
34 requests for provisional orders.

37 3. Effect of final decision; credit; employer  
38 reimbursement. A provisional order issued under this section is  
39 void when a final decision on the employee's claim is issued  
40 under section 99. The procedure provided in this subsection  
41 shall be followed when a final decision is reached under section  
42 99.

43 A. The employer shall receive a credit against any back  
44 benefits owed to an employee pursuant to an order issued  
45 under section 99 for all payments made to an employee under  
46 a provisional order.

49 B. If the commission's final order under section 99  
50 provides for less compensation than had been paid by an  
51 employer under a provisional order, the employer shall be  
reimbursed from the Second Injury Fund, as provided in

R. of S.

COMMITTEE AMENDMENT "A" to S.P. 346, L.D. 916

1 section 57, subsection 9, for the overpayment.

3 4. Suspension of authority. If the chair determines that  
5 the Second Injury Fund balance has fallen below \$400,000, no  
7 further provisional orders may be issued under this section.  
9 Provisional orders issued before the chair determines that the  
11 fund balance has fallen below that amount remain valid.  
13 Provisional orders may again be issued when the Second Injury  
15 Fund reaches a balance of \$600,000 or more. The chair shall  
17 immediately notify the joint standing committee of the  
19 Legislature having jurisdiction over labor matters if the Second  
21 Injury Fund balance falls below \$400,000.

13 5. Rules. Pursuant to section 92, the chair shall adopt  
15 the rules required by this section and any other rules necessary  
17 to specifically define the rights and duties of the parties and  
19 the use of the Second Injury Fund consistent with this section.

19 6. Report. The chair shall provide a report to the joint  
21 standing committee of the Legislature having jurisdiction over  
23 labor matters by January 1, 1991, describing the effects of this  
25 section. The report shall include:

25 A. The number of cases in which provisional orders were  
27 issued and the number of these cases in which the employee  
29 did not obtain compensation under a final decision;

29 B. The amount of money paid to employees under provisional  
31 orders;

31 C. The amount of money reimbursed to employers under  
33 subsection 3;

35 D. The status of the Second Injury Fund; and

37 E. Any other information that the chair considers useful.

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

41 1989-90 1990-91

43 **WORKERS' COMPENSATION COMMISSION**

45 **Workers' Compensation Commission**

47	Positions	(1)	(1)
	Personal Services	\$15,948	\$21,978
49	All Other	1,125	1,500
	Capital Expenditures	2,134	

51

1. of 3.

1  
3  
5  
7  
9  
11  
13  
15  
17  
19  
21  
23  
25  
27  
29  
31  
33  
35  
37  
39  
41  
43  
45  
47  
49  
51

Provides funds for a Clerk  
Typist III position and  
related expenses to process  
provisional orders within the  
central office.

<b>WORKERS' COMPENSATION COMMISSION</b>		
<b>TOTAL</b>	<b>\$19,207</b>	<b>\$23,478</b>

**Sec. 5. Application.** This Act applies only to employees  
injured on or after the effective date of this Act.

**FISCAL NOTE**

It is anticipated that each regional office of the Workers'  
Compensation Commission will experience an increase in workload  
as a result of provisional orders, in addition to the projected  
increase within the central office. Once it is known which  
region or regions are adversely affected, it may be necessary for  
the Workers' Compensation Commission to request additional funds  
and staff to fulfill the requirements of this legislation.'

**STATEMENT OF FACT**

This amendment completely replaces the original bill. It  
authorizes the Workers' Compensation Commission to issue  
provisional orders requiring an employer or insurer to pay  
compensation to a claimant pending a final decision in the case.

A petition for a provisional order will be considered at the  
first formal hearing scheduled after an informal conference fails  
to resolve the dispute. The commissioner presiding at that  
hearing may issue a provisional order only in cases where there  
is a clear and convincing basis to find that the employee is  
suffering from a severely incapacitating injury, the employee and  
the employee's dependents are financially necessitous and the  
employee is likely to obtain compensation for the injury when a  
final decision is made in the case. These requirements are  
intended to restrict the use of provisional orders to those few  
cases where an employee is suffering severe hardship due to late  
payment for an apparently compensable injury.

The employer will be credited for any payments made under a  
provisional order when a final order is issued. If the final  
decision in the case provides for less compensation to the  
employee than was paid under the provisional order, the employer  
will be reimbursed for any overpayment from the Second Injury  
Fund. A "circuit breaker" is added by the amendment to prevent  
overuse of the Second Injury Fund for this purpose. This

COMMITTEE AMENDMENT " A" to S.P. 346, L.D. 916

1 "circuit breaker" prevents the issuance of further provisional  
2 orders if the Second Injury Fund balance drops below \$400,000.  
3 Orders issued before that event remain valid and any employer who  
4 requests reimbursement for an overpayment occurring under one of  
5 those orders will receive reimbursement. Finally, the Workers'  
6 Compensation Commission is directed to provide a report to the  
7 Joint Standing Committee on Labor describing the effects of this  
8 amendment.

9  
10 The amendment also adds appropriation and application  
11 sections and a fiscal note to the bill.

Reported by the Majority for the Committee Labor.  
Reproduced and Distributed Pursuant to Senate Rule 12.  
(6/19/89) (Filing No. S-343)