

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 998

S.P. 373

Received by the Secretary, March 7, 1991

Referred to the Committee on Labor and 1400 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

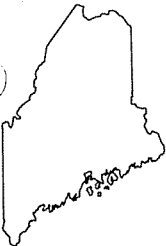
Presented by Senator CONLEY of Cumberland
Cosponsored by Speaker MARTIN of Eagle Lake.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Provide Provisional Orders for Workers' Compensation Cases.

Printed on recycled paper



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

2
4 Sec. 1. 39 MRSA §57, sub-§§3 and 4, as enacted by PL 1981, c.
474, §1, are amended to read:

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

18 4. Jurisdiction. The Workers' Compensation Commission has
20 jurisdiction over all claims brought by employers or insurance
22 carriers against the Second Injury Fund. The Except for claims
24 made under section 98-A, the Second Injury Fund shall is not be
26 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.

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

30 9. Reimbursement for provisional payments. Upon the
32 written order of the chair of the commission, the Treasurer of
34 State shall pay from the Second Injury Fund any reimbursement an
employer or insurance carrier is due under section 98-A,
subsection 3.

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

38 §98-A. Provisional orders for payment

40 Notwithstanding any other provision of this Act, the
42 commission may issue a provisional order requiring an employer
44 who controverts an employee's claim to compensation under section
46 54-B or 55-B to pay weekly compensation to that employee as
provided in this section. The order must provide for the amount
of the weekly payments and include the date on which payments
commence, which may be retroactive.

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

52 A. The employee has a seriously incapacitating injury;

2 B. The employee and the employee's dependents are
4 financially necessitous; and

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

10 The chair of the commission shall adopt rules providing standards
12 for determinations made under this subsection.

14 2. Procedure. A request for a provisional order must be
16 heard at the first hearing for the claim under section 99. The
18 chair of the commission shall adopt rules providing for the swift
20 determination of requests for provisional orders.

22 3. Effect of final decision; credit; employer
24 reimbursement. A provisional order issued under this section is
26 void when a final decision on the employee's claim is issued
28 under section 99. The procedure provided in this subsection must
30 be followed when a final decision is reached under section 99.

32 A. The employer shall receive a credit against any back
34 benefits owed to an employee pursuant to an order issued
36 under section 99 for all payments made to an employee under
38 a provisional order.

40 B. If the commission's final order under section 99
42 provides for less compensation than had been paid by an
44 employer under a provisional order, the employer is entitled
46 to reimbursement from the Second Injury Fund, as provided in
48 section 57, subsection 9, for the overpayment.

50 4. Suspension of authority. If the chair of the commission
52 determines that the Second Injury Fund balance has fallen below
54 \$400,000, no further provisional orders may be issued under this
56 section. Provisional orders issued before the chair determines
58 that the fund balance has fallen below that amount remain valid.
60 Provisional orders may again be issued when the Second Injury
62 Fund reaches a balance of \$600,000 or more. The chair shall
64 immediately notify the joint standing committee of the
66 Legislature having jurisdiction over labor matters if the Second
68 Injury Fund balance falls below \$400,000.

70 5. Rules. Pursuant to section 92, the chair of the
72 commisison shall adopt rules as required by this section and any
74 other rules necessary to specifically define the rights and
76 duties of the parties and the use of the Second Injury Fund
78 consistent with this section.

80 6. Report. The chair of the commisison shall provide a
82 report to the joint standing committee of the Legislature having

2 jurisdiction over labor matters by January 1, 1992, describing
3 the effects of this section. The report must include:

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

8 B. The amount of money paid to employees under provisional
9 orders;

10 C. The amount of money reimbursed to employers under
11 subsection 3;

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

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

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

20 1991-92 1992-93

22 **WORKERS' COMPENSATION COMMISSION**

24 **Workers' Compensation Commission**

26	Positions	(1)	(1)
28	Personal Services	\$16,014	\$23,218
	All Other	1,125	1,500
30	Capital Expenditures	2,134	

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

38	WORKERS' COMPENSATION COMMISSION		
40	TOTAL	<u>\$19,273</u>	<u>\$24,718</u>

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

44 **STATEMENT OF FACT**

46 This bill authorizes the Workers' Compensation Commission to
47 issue provisional orders requiring an employer or insurer to pay
48 compensation to a claimant pending a final decision in the case.
49

2 A petition for a provisional order will be considered at the
first formal hearing scheduled for a claim. The commissioner
4 presiding at the hearing may issue a provisional order only when
there is a clear and convincing basis to find that the employee
6 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
8 final decision is made in the case. These requirements are
intended to restrict the use of provisional orders to those few
10 cases when an employee is suffering severe hardship due to late
payment for an apparently compensable injury.

12

The employer will be credited for any payments made under a
14 provisional order when a final order is issued. If the final
decision in the case provides for less compensation to the
16 employee than was paid under the provisional order, the employer
will be reimbursed from the Second Injury Fund for any
18 overpayment. A "circuit breaker" is added by the bill to prevent
overuse of the Second Injury Fund for this purpose. This
20 "circuit breaker" prevents the issuance of further provisional
orders if the Second Injury Fund balance drops below \$400,000.
22 Orders issued before that event remain valid and any employer who
requests reimbursement for an overpayment occurring under one of
24 those orders will receive reimbursement. Finally, the Workers'
Compensation Commission is directed to provide a report to the
26 Joint Standing Committee on Labor describing the effects of this
bill.