

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1052

H.P. 748

House of Representatives, March 12, 1991

Received by the Clerk of the House on March 8, 1991. Referred to the Committee on Labor and 1400 ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PINEAU of Jay.

Cosponsored by Senator CONLEY of Cumberland and Senator COLLINS of Aroostook.

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STATE OF MAINE

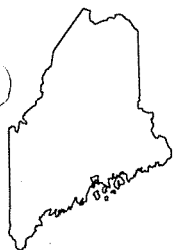
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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**An Act to Permit the Establishment of the Workers' Compensation  
Apportionment Arbitration Board.**

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

2  
3       Sec. 1. 39 MRSA §104-B, sub-§§1 to 3, as enacted by PL 1981, c.  
4 474, §4, are amended to read:

6       1. **Applicability.** ~~Where~~ When 2 or more occupational  
7 injuries occur, during either a single employment or successive  
8 employments, which combine to produce a single incapacitating  
9 condition, and more than one insurer is responsible for that  
10 condition, their liability shall be is governed by this section.  
11 This section governs all such apportionment disputes, whether  
12 initiated by petition for apportionment or otherwise.

14       2. **Liability to employee.** If an employee has sustained  
15 more than one injury while employed by different employers, or if  
16 an employee has sustained more than one injury while employed by  
17 the same employer and that employer was insured by one insurer  
18 when the first injury occurred and insured by another insurer  
19 when the subsequent injury or injuries occurred, the insurer  
20 providing coverage at the time of the last injury shall initially  
21 be is responsible to the employee for all benefits payable under  
22 this Act. If the commission finds that an employee has suffered  
23 a compensable injury governed by this section, the lead insurer,  
24 as designated pursuant to subsection 6, paragraph D, is  
25 responsible to the employee for all benefits payable under this  
26 Act with the right of contribution as determined by the Workers'  
27 Compensation Apportionment Arbitration Board or by agreement.

28       3. **Subrogation.** Any insurer ~~determined-to-be~~ who is liable  
29 for benefits under subsection 2 ~~shall-be~~ is subrogated to the  
30 employee's rights under this Act for all benefits the insurer has  
31 paid and for which another insurer may be liable. Any such  
32 insurer may, in accordance with rules prescribed by the  
33 commission, file a petition for an apportionment of liability  
34 among the responsible insurers. ~~The commission has jurisdiction~~  
35 ~~over all claims for apportionment under this section.~~ When  
36 petition or any other filing is filed that raises an  
37 apportionment issue, the commission shall refer the matter to the  
38 Workers' Compensation Apportionment Arbitration Board for  
39 resolution of insurers' apportioned liability. In any proceeding  
40 for apportionment, no insurer is bound as to any finding of fact  
41 or conclusion of the law made in a prior proceeding in which ~~it~~  
42 the insurer was not a party.

44       Sec. 2. 39 MRSA §104-B, sub-§§5 to 7 are enacted to read:

46       5. **Workers' Compensation Apportionment Arbitration Board.**  
47 The Workers' Compensation Apportionment Arbitration Board is  
48 established and authorized to apportion liability among insurers  
49 under this section. The board is not a state agency or authority  
50 but is empowered to resolve disputes only as permitted under this  
51 section.

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A. For the purposes of this section, "insurer" means an insurance company or association that does business or collects premiums for workers' compensation insurance in this State or an individual or group self-insurer under this Title, including the State and other public or governmental authorities.

B. All insurers, as a condition to participate under the Workers' Compensation Act, bind themselves to arbitrate workers' compensation apportionment disputes pursuant to this section when there is a question as to the apportionment of indemnity and expense among the insurers of present and past liable employers.

C. Upon the referral of a filing by the commission as provided in subsection 2, all issues of apportionment must be determined by the board pursuant to subsection 6 if the insurers involved in the dispute are unable to resolve the issues among themselves.

D. The determination of apportionment by the board is binding upon participating insurers and is not appealable. The decision of the board or any agreement made among the insurers must be filed with the commission.

E. The Workers' Compensation Apportionment Arbitration Board consists of 9 members, appointed by the Governor, representative of the insurers authorized to write workers' compensation in this State. Members of the board:

- (1) Must have 5 years' experience in handling workers' compensation claims in this State;
- (2) Shall serve 3-year terms, which must be staggered in groups of 3;
- (3) Must be eligible to serve on arbitration panels; and
- (4) Shall elect a chair from the members.

F. The Workers' Compensation Apportionment Arbitration Board, called "the board" in this section, may:

- (1) Adopt appropriate guidelines and procedures as necessary for the timely resolution of controversies under this section and to effect the purpose of this section;

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(2) Adopt a policy for the selection and appointment of panels;

(3) Adopt appropriate guidelines and procedures to apportion equitably among insurers the operating expenses of the arbitration program and the reporting of information for status reports among insurers of interest;

(4) Secure accommodations for administrative facilities;

(5) Hire appropriate staff and enter into contracts necessary to manage and conduct the administrative responsibilities associated with its mission; and

(6) Report to the Bureau of Insurance the failure of an insurer to conform with this section or the rules issued pursuant to this section.

G. The guidelines and procedures adopted pursuant to this subsection must be filed with the commission and the Bureau of Insurance.

6. Apportionment arbitration procedure. The arbitration procedure is governed by this subsection.

A. Upon the submission of a matter by the commission to the board pursuant to this section, the insurers and companies of interest shall forward to the board all essential information as required by the board by rule.

B. Upon receipt of the required essential information, the board shall refer the matter for review and decision to a 3-member arbitration panel.

C. Members of arbitration panels must have a minimum of 3 years' experience in workers' compensation claims administration in this State.

D. The arbitration panel shall:

(1) Review all information available, weigh the evidence and issue its decision within 30 days of its impanelling; establish the contribution and recovery rights of insurers in interest; and set forth a schedule for the appropriate allocation of ultimate cost and expenses. In reaching their decision, panel members may confer and communicate in person or by any means suitable to ensure proper and accurate communication;

2                   (2) Designate the insurer with the longest period of  
4                   employment for which coverage is determined as the lead  
6                   insurer and charge that insurer with the responsibility  
8                   to represent the insurers in interest in all subsequent  
10                   proceedings or attempts at disposition involving issues  
                    that give rise to the application of this section.  
                    When there are 2 or more insurers with the same length  
                    of covered employment, the panel shall designate the  
                    insurer with the most recent coverage as the lead  
                    insurer; and

12                   (3) Send copies of the panel's decision and  
14                   designation of lead insurer to the commission and all  
                    insurers in interest.

16                   E. The lead insurer shall:

18                   (1) Immediately notify the board if any conflict of  
20                   interest exists, in which event the panel shall  
                    reconvene without notice and designate another insurer  
                    as lead insurer;

22                   (2) Begin further investigation as necessary to  
24                   represent all insurers in interest during the pendency  
                    of the claim;

26                   (3) Obtain further medical information, examinations,  
28                   consultations, xrays and tests as the lead insurer  
                    determines material;

30                   (4) Associate an attorney of its choice to defend it  
32                   and the insurers in interest. An attorney associated  
34                   for this purpose must have a minimum of 2 years'  
                    experience before the Workers' Compensation Commission  
                    and may not be an employee of an insurer; and

36                   (5) Provide periodic status reports to insurers in  
38                   interest whenever a significant case development occurs  
40                   but not less frequently than every 30 days. Reports  
42                   must include information necessary to permit insurers  
                    in interest to assess ultimate costs and expenses,  
                    including legal expenses.

44                   F. Nothing in this section prohibits the association of  
46                   legal counsel solely at the expense of an insurer in  
                    interest other than the lead insurer when:

48                   (1) A claim for benefits due to specific injury is  
50                   made concurrently against that insurer; or

2           (2) Evidence developed during formal proceedings  
3           before the Workers' Compensation Commission raises a  
4           reasonable doubt as to the liability of an insurer,  
5           provided that insurer is responsible for its share of  
6           expenses incurred prior to association of counsel in  
7           accordance with the schedule previously set forth by  
8           the arbitration panel.

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10           G. Upon final disposition of the claim either by settlement  
11           or award, the lead insurer shall pay the amount of the  
12           settlement or award and send to each insurer in interest a  
13           copy of the award or summary of settlement and an  
14           itemization of expenses incurred in disposing of the claim.  
15           Within 21 days of receipt, each insurer shall reimburse the  
16           lead insurer for the proportionate share of costs and  
17           expenses in accordance with the schedule previously set  
18           forth by the arbitration panel.

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20           H. Appeals from decisions and orders of the Workers'  
21           Compensation Commission initiated by an applicant must be  
22           directed and supervised by the lead insurer. Appeals from  
23           decisions of the Workers' Compensation Commission must be  
24           taken by defendant insurers only upon concurrence of  
25           insurers accounting for 2/3 or more of the potential  
26           liability. Costs of appeal, including any modification of  
27           the award, must be paid by the lead insurer subject to  
28           reimbursement by each insurer in interest in accordance with  
29           the schedule previously set forth by the arbitration panel.

30           7. Applicability. Resolution of a dispute before the  
31           Workers' Compensation Apportionment Arbitration Board applies to  
32           all workers' compensation apportionment claims raised on or after  
33           January 1, 1992.

## 34 35 36 37 38           **STATEMENT OF FACT**

39           The purpose of this bill is to reduce the costs associated  
40           with workers' compensation apportionment claims. Currently,  
41           whenever 2 or more separate injuries combine to incapacitate a  
42           worker, the insurance company responsible for the last injury may  
43           seek to apportion its liability with the insurance company  
44           responsible for the earlier injury. The bill requires that  
45           apportionment disputes be taken out of the workers' compensation  
46           system and arbitrated among insurers potentially liable for such  
47           workplace injuries. The bill sets up an arbitration panel that  
48           appoints member insurers to hear and resolve a dispute quickly if  
49           involved companies can not reach resolution informally. The  
50           decision of a panel is binding on the parties and is not  
51           appealable. This reduces the potentially extensive costs and  
52           time associated with apportionment cases heard before the

2 Workers' Compensation Commission. This bill takes effect  
beginning with apportionment claims arising on or after January  
1, 1992.

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