

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1263

H.P. 877

House of Representatives, March 21, 1991

Reference to the Committee on Labor suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative BAILEY of Farmington.  
Cosponsored by Representative GOULD of Greenville.

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STATE OF MAINE

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

---

**An Act Concerning the Resolution of Medical, Work-capacity and  
Return-to-work Issues and Procedures under the Workers' Compensation  
Act.**

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

2  
4       **Sec. 1. 22 MRSA §3059**, as amended by PL 1975, c. 771, §222,  
is further amended by adding at the end a new paragraph to read:

6       The department is further authorized to have the same  
7       facility conducting disability determinations under the federal  
8       Social Security Act conduct independent medical examinations  
9       pursuant to Title 39, section 65. The department shall adopt  
10       rules as necessary to perform this function including the  
11       establishment of a fee schedule requiring the employer, pursuant  
12       to Title 39, section 65, to pay the cost of each independent  
13       medical examination performed.

14       **Sec. 2. 39 MRSA §51-B, sub-§2-A** is enacted to read:

16       **2-A. Medical information release.** The filing of a claim  
17       for payment, whether indemnity or medical, constitutes the  
18       employee's authorization for release of medical records to the  
19       employer. The employer is entitled to all medical records,  
20       whether produced before or after the date of injury, that pertain  
21       to the condition that gives rise to the claim.

22       **Sec. 3. 39 MRSA §51-B, sub-§7**, as amended by PL 1989, c. 502,  
23       Pt. D, §22, is further amended to read:

24       **7. Notice of controversy.** If the employer, prior to making  
25       payments under subsection 3, controverts the claim to  
26       compensation, the employer shall file with the commission, within  
27       14 days after an event which gives rise to an obligation to make  
28       payments under subsection 3, a notice of controversy in a form  
29       prescribed by the commission. If the employer, prior to making  
30       payments under subsection 4, controverts the claim to  
31       compensation, the employer shall file with the commission, within  
32       75 or 90 days, as applicable, after an event which gives rise to  
33       an obligation to make payments under subsection 4, a notice of  
34       controversy in a form prescribed by the commission. The notice  
35       shall must indicate the name of the claimant, name of the  
36       employer, date of the alleged injury or death and the grounds  
37       upon which the claim to compensation is controverted. The  
38       employer shall promptly furnish the employee with a copy of the  
39       notice.

40       If, at the end of the 14-day period in subsection 3 or the 90-day  
41       or 75-day periods in subsection 4, the employer has not filed the  
42       notice required by this subsection, the employer shall begin  
43       payments as required under those subsections. In the case of  
44       compensation for incapacity under subsection 3, the employer may  
45       cease payments and file with the commission a notice of  
46       controversy, only as provided in this subsection, no later than  
47       44 days after an event which gives rise to an obligation to make  
48       payments under subsection 3. Failure to file the required notice  
49       of controversy prior to the expiration of the 44-day period, in

2 the case of compensation under subsection 3, constitutes  
3 acceptance by the employer of the compensability of the injury or  
4 death. Failure to file the required notice of controversy does  
5 not constitute such an acceptance by the employer when it is  
6 shown that the failure was due to employee fraud or excusable  
7 neglect by the employer, except when payment has been made and a  
8 notice of controversy is not filed within 44 days of that  
9 payment. Failure to file the required notice of controversy  
10 prior to the expiration of the 90-day period under subsection 4  
11 constitutes acceptance by the employer of the extent of  
12 impairment claimed. Failure to file the required notice of  
13 controversy prior to the expiration of the 75-day period under  
14 subsection 4 for compensation for medical expenses, aids or other  
15 services pursuant to section 52 constitutes acceptance by the  
16 employer of the reasonableness and propriety of the specific  
17 medical services for which compensation is claimed and requires  
18 payment for those services, but does not constitute acceptance of  
19 the compensability of the injury or death.

20 If, at the end of the 44-day period, the employer has not filed a  
21 notice of controversy, or if, pursuant to a proceeding before the  
22 commission, the employer is required to make payments, the  
23 payments may not be decreased or suspended, except as provided in  
24 section 100 101-A.

26 **Sec. 4. 39 MRSA §52, 9th ¶,** as enacted by PL 1989, c. 434, §8,  
27 is amended to read:

28 The Superintendent of Insurance shall prescribe medical and  
29 health care expense forms for the purpose of collecting  
30 information as required by Title 24-A, section 2371. These forms  
31 must also serve the purpose of transmitting the medical  
32 information and reports required by this Act. The Superintendent  
33 of Insurance may consult with the chair of the commission in the  
34 development of these forms. An insurer or self-insurer may  
35 withhold payment of medical and health care fees to any provider  
36 who fails to complete and submit the prescribed form. In the  
37 event the provider fails to properly complete and submit the  
38 prescribed form or to follow any fee schedule approved by the  
39 commission, the insurer or self-insurer is not required to file a  
40 notice of controversy but may simply notify the provider of the  
41 failure. In the case of a dispute, any interested party may  
42 petition the commission to resolve the dispute.

44 **Sec. 5. 39 MRSA §52,** as amended by PL 1989, c. 434, §8, is  
45 further amended by adding at the end a new paragraph to read:

48 An employee's treating physician shall submit to the  
49 employer an initial medical report within 48 hours of the  
50 employee's first visit after an alleged workplace injury. If the  
51 employee continues visits because of that injury, the treating  
52 physician shall report at least monthly to the employer. The

2 monthly reports must, at a minimum, contain the physician's  
3 diagnosis, as well as findings on the employee's expected date of  
4 maximum medical improvement; the approximate date of the  
5 employee's return to work and the employee's ability to return to  
6 work; whether the injury appears to be work-related; and what  
7 limitations, if any, to work capacity are present. Reports must  
8 be submitted on standardized forms pursuant to this section.

9  
10 **Sec. 6. 39 MRSA §55-B, last ¶**, as enacted by PL 1989, c. 575,  
11 is amended to read:

12 For purposes of determining an injured employee's degree of  
13 incapacity under this section, the commission shall consider the  
14 availability of work that the employee is able to perform in and  
15 around ~~the employee's community and the employee's ability to~~  
16 ~~obtain such work considering the effects of the employee's~~  
17 ~~work-related injury. If no such work is available in and around~~  
18 ~~the employee's community or if the employee is unable to obtain~~  
19 ~~such work in and around the employee's community due to the~~  
20 ~~effects of a work-related injury, the employee's degree of~~  
21 ~~incapacity under this section is 100% the ordinary competitive~~  
22 labor market in the State.

23  
24 **Sec. 7. 39 MRSA §65**, as amended by PL 1987, c. 559, Pt. B,  
25 §34, is repealed and the following enacted in its place:

26 **§65. Independent medical exams**

27  
28 After an injury, an employee, at all reasonable times during  
29 the continuance of the employee's disability if so requested by  
30 the employee's employer or a commissioner, shall submit to  
31 independent medical examinations conducted by the state agency  
32 designated under Title 22, section 3059. The independent medical  
33 examiner, after being furnished with the information determined  
34 essential for the purpose, shall thereupon and as often as the  
35 employer or commissioner directs, examine the injured employee to  
36 determine the nature, extent and probable duration of the injury,  
37 the percentage of permanent impairment, the expected date of  
38 maximum medical improvement, the employee's suitability to return  
39 to work and the limitations, if any, to work capacity.

40  
41 The independent medical examiner shall file in the office of  
42 the commission a report of every such examination and a copy of  
43 the report must be sent to each of the interested parties.

44  
45 The results of the independent medical examiner's report are  
46 binding on all parties and not subject to further commission  
47 action.

48  
49 **Sec. 8. 39 MRSA §85, sub-§2-A, ¶F**, as enacted by PL 1989, c.  
50 580, §11, is repealed.  
51  
52

2           **Sec. 9. 39 MRSA §95**, as amended by PL 1989, c. 256, §4, is  
further amended to read:

4           **§95. Time for filing petitions**

6           Any employee's claim for compensation under this Act shall  
be ~~is~~ barred unless an agreement or a petition as provided in  
8 section 94 ~~shall-be~~ is filed within 2 years after the date of the  
injury, or, if the employee is paid by the employer or the  
10 insurer, without the filing of any petition or agreement, within  
2 years of any payment by such employer or insurer for benefits  
12 otherwise required by this Act. The 2-year period in which an  
employee may file a claim does not begin to run until the  
14 employee's employer, if the employer has actual knowledge of the  
injury, files a first report of injury as required by section 106  
16 of the Act. Any time during which the employee is unable by  
reason of physical or mental incapacity to file the petition  
18 shall ~~may~~ not be included in the period provided in this section.  
If the employee fails to file the petition within that period  
20 because of mistake of fact as to the cause and nature of the  
injury, the employee may file the petition within a reasonable  
22 time. In case of the death of the employee, ~~there-shall-be~~  
~~allowed-for-filing-said-petition~~ the petition may be filed one  
24 year after that death. ~~No-petition-of-any-kind-may-be-filed-more~~  
~~than-10-years-following-the-date-of-the-latest-payment-made-under~~  
26 ~~this-Act.~~ For the purposes of this section, payments of benefits  
made by an employer or insurer pursuant to section 51-B or 52  
28 shall-be are considered payments under a decision pursuant to a  
petition, unless a timely notice of controversy has been filed.

30           **Sec. 10. 39 MRSA §100, sub-§4**, as amended by PL 1987, c. 559,  
32 Pt. B, §42, is repealed and the following enacted in its place:

34           4. Payments pending hearing and decision. If the employee  
is receiving payments at the time of the petition, the payments  
36 may not be decreased or suspended pending the hearing and final  
decision on the petition, except pursuant to section 101-A.

38           **Sec. 11. 39 MRSA §100-A**, as amended by PL 1989, c. 580, §20,  
40 is repealed.

42           **Sec. 12. 39 MRSA §101-A** is enacted to read:

44           §101-A. Discontinuance

46           An employer, without hearing, may reduce or suspend benefits  
payable under section 54-B or 55-B as follows.

48           1. Certificate. The employer or its insurance carrier must  
50 file a certificate with the commission stating that:

2           A. The employee has left the State for reasons other than  
4           returning to the employee's permanent residence at the time  
            of injury;

6           B. The employee's whereabouts are unknown;

8           C. The employee has returned to work;

10          D. The employee refuses to submit to an independent medical  
12          examination;

14          E. The employee refuses an offer of reinstatement that the  
16          employee's treating physician or an independent medical  
            examiner appointed pursuant to section 65 has stated in  
            writing is suitable to the employee's physical condition; or

18          F. The employer is unable to offer reinstatement and the  
20          employee's treating physician or an independent medical  
22          examiner appointed pursuant to section 65 has stated in  
            writing that the employee is able to return to work and  
            perform in the ordinary competitive labor market in the  
24          State.

2. Reduction. If the employee refuses an offer of  
26          reinstatement or fails to return to available suitable work, the  
            employee's benefits must be reduced in an amount equal to the  
28          difference between the employee's weekly benefit and the benefits  
30          the employee would have been entitled to receive if the employee  
            had accepted reinstatement or returned to available suitable work.

32          3. Notice; appeal. The employee, unless the employee's  
34          whereabouts are unknown, must receive a copy of the certificate  
            as notice. A postal service certificate of mailing to the  
36          employee at the employee's last known address is conclusive proof  
            of receipt of notice on the 3rd calendar day after mailing.

38          A. If an employee whose benefits have been reduced or  
40          discontinued under this section files a petition with the  
            commission for review of the certificate within 14 days of  
42          that notice, a hearing must be scheduled and a decision must  
            be rendered on the petition within 14 days after the date of  
44          the petition's filing.

46          B. If the employee does not file a petition for review of  
            the certificate or the commission finds for the employer,  
48          the employee must file a petition for restoration if the  
            employee is further incapacitated by the original injury and  
            claims further benefits as a result.

50          4. Signing. There is no requirement that an employee sign  
52          a discontinuance.





2           The bill amends the State's provisions regarding the statute  
of limitations in workers' compensation.

4           The bill amends the discontinuance provisions to inform the  
6   Workers' Compensation Commission more quickly of an employee's  
return to work or of the modification of that employee's benefits.

8           The bill requires the commission to inform injured employees  
10 of the obligation to report when they return to work.