

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1594

H.P. 1094

House of Representatives, April 18, 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 HASTINGS of Fryeburg.

Cosponsored by Representative WHITCOMB of Waldo, Senator BRAWN of Knox and Senator CAHILL of Sagadahoc.

STATE OF MAINE

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

An Act to Improve the Maine Workers' Compensation System.

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

2
3 Sec. 1. 24-A MRSA §2364, sub-§4, ¶A, as enacted by PL 1987, c.
4 559, Pt. A, §4, is amended to read:

6 A. The uniform experience rating plan shall must be the
7 exclusive means for providing prospective premium
8 adjustments based upon the past claim experience of an
9 individual insured. The experience rating plan must provide
10 that the claims experience for the 3 most recent years for
11 which data is available must be considered on the following
12 basis.

14 (1) The claims and exposure for the most recent year
15 for which data is available must be given 45% weight.

16 (2) The claims and exposure for the 2nd most recent
17 year for which data is available must be given 30%
18 weight.

20 (3) The claims and exposure for the 3rd most recent
21 year for which data is available must be given 25%
22 weight.

24 If data is available for only 2 years of claims experience,
25 the weighting must be 60% for the most recent year and 40%
26 for the 2nd most recent year.

28 Sec. 2. 24-A MRSA §2364, sub-§4, ¶C-1 is enacted to read:

30 C-1. An experience or merit rating plan may not permit in
31 the calculation of experience modification factors
32 consideration of those lost-time cases attributable to
33 work-related injuries that are aggravations of any prior
34 lost-time work-related injury. The superintendent shall
35 adopt rules to protect employers from the impact of these
36 subsequent injury claims and to equitably compensate
37 insurers that provide coverage to these employers.

40 Sec. 3. 24-A MRSA §2365, sub-§1, ¶¶A and B, as enacted by PL
41 1987, c. 559, Pt. A, §4, are amended to read:

42 A. Deductibles shall must be available for indemnity
43 benefits in amounts of \$1,000 and \$5,000 a claim, for claims
44 for medical expenses only in the amount of \$250 or less a
45 claim, and such other reasonable amounts as may be approved
46 by the superintendent.

48 B. The indemnity deductible form shall must provide that
49 the-claim-shall claims for indemnity benefits be paid by the
50 applicable insurer, which shall then be reimbursed by the
51 employer for any deductible amounts paid by the carrier.
52

2 The employer shall-be is liable for reimbursement up to the
3 limit of the deductible. The medical deductible form must
4 provide that claims for medical expenses only, in the amount
5 of \$250 or less, must be paid directly by the employer.

6 **Sec. 4. 24-A MRSA §2366, sub-§1-A is enacted to read:**

8 1-A. Rules. The superintendent may adopt rules for the
9 purpose of encouraging workers' compensation insurers to take
10 workers' compensation policies out of the residual market by
11 establishing credits applicable to any assessments that may be
12 ordered under section 2367 or by any other means.

14 **Sec. 5. 24-A MRSA §2366, sub-§2, ¶B, as enacted by PL 1987, c.**
15 **559, Pt. A, §4, is amended to read:**

16 B. An employer is eligible for insurance from the Accident
17 Prevention Account if:

20 (1) The employer has at least 2 lost-time claims over
21 \$10,000 and a loss ratio greater than 1.00 over the
22 last 3 years for which data is available; and

24 (2) The employer has attempted to obtain insurance in
25 the voluntary market and has been refused by at least 2
26 insurers which write that insurance in this State. For
27 the purpose of this section, an employer shall-be is
28 considered to have been refused if offered insurance
29 only under a retrospective rating plan or plans.

30 **Sec. 6. 24-A MRSA §2366, sub-§3, ¶¶A and B, as enacted by PL**
31 **1987, c. 559, Pt. A, §4, are amended to read:**

34 A. The Safety Pool is an insurance plan that provides for
35 an alternative source of insurance for employers with good
36 safety records ~~and--is--intended--to--operate--within--the~~
37 ~~framework-of-the-voluntary-insurance-market.~~

38 B. An employer shall-be is eligible for the Safety Pool if
39 that employer:

42 (1) Has had no more than one lost-time claim in the
43 last 3 years for which data is available, regardless of
44 the resulting loss ratio;

46 (2) Has a loss ratio which that does not exceed 1.0 or
47 has had no more than 2 lost-time claims over \$10,000
48 each, both over the last 3 years for which data is
49 available; or

50 (3) Has been in business for less than 3 years,
51 provided that the eligibility shall---terminate

2 terminates if his the employer's loss ratio exceeds 1.0
3 and the employer has at least 2 lost-time claims over
4 \$10,000 each at the end of any year.

6 Sec. 7. 24-A MRSA §2366, sub-§4, ¶A-1 is enacted to read:

8 A-1. The plan must include a procedure to handle appeals
9 filed pursuant to Title 39, section 106, subsection 2,
10 paragraph B.

12 Sec. 8. 24-A MRSA §2366, sub-§5, ¶C is enacted to read:

14 C. In a residual market rate proceeding, the superintendent
15 may order payment of dividends to insureds in the Safety
16 Pool to the extent that the pool's experience supports
17 them. The superintendent may adopt rules establishing a
18 dividend plan for the Safety Pool to provide an incentive
19 for implementation of safety programs by insureds in the
20 pool. The superintendent may employ outside consultants to
21 assist in the development of these rules, the costs of which
22 must be paid by the Safety Education and Training Fund
23 established under Title 26, section 61 to the extent that
24 funds are available.

26 Sec. 9. 24-A MRSA §2366, sub-§7-A is enacted to read:

28 7-A. Credits for qualifying safety programs. The
29 superintendent may adopt rules to establish dividend plans and
30 premium credits of up to 10% of net annual premiums for
31 policyholders that establish qualifying safety programs. The
32 rules must identify the classifications by which policyholders
33 are eligible for the credits and establish criteria for
34 qualifying safety programs and procedures to be followed by
35 servicing carriers in approving and auditing compliance with the
36 safety programs. The superintendent may employ outside
37 consultants to assist in the development of rules under this
38 subsection, the costs of which must be paid by the Safety
39 Education and Training Fund established under Title 26, section
40 61 to the extent that funds are available.

42 Sec. 10. 39 MRSA §2, sub-§2, ¶G is enacted to read:

44 G. "Average weekly wages, earnings or salary" does not
45 include fringe benefits, including but not limited to
46 employer payments for or contributions to a retirement,
47 pension, health and welfare, life insurance, training,
48 social security or other employee or dependent benefit plan
49 for the employee's or dependent's benefit or any other
50 employee's dependent entitlement.

52 Sec. 11. 39 MRSA §2, sub-§13, as enacted by PL 1987, c. 409,
§2, is amended to read:

2 13. **Independent contractor.** "Independent contractor" means
4 a person who performs services for another under contract, but
6 who is not under the essential control or superintendence of the
8 other person while performing those services. In determining
10 whether such a relationship exists, the commission shall consider
12 the following factors:

14 A. Whether or not a contract exists for the person to
16 perform a certain piece or kind of work at a fixed price;

18 B. Whether or not the person employs assistants with the
20 right to supervise their activities;

22 C. Whether or not the person has an obligation to furnish
24 any necessary tools, supplies and materials;

26 D. Whether or not the person has the right to control the
28 progress of the work, except as to final results;

30 E. Whether or not the work is part of the regular business
32 of the employer;

34 F. Whether or not the person's business or occupation is
36 typically of an independent nature;

38 G. The amount of time for which the person is employed; and

40 H. The method of payment, whether by time or by job.

42 In applying these factors, the commission shall ~~shall~~ may not give any
44 particular factor a greater weight than any other factor, nor
46 shall may the existence or absence of any one factor be
48 decisive. The commission shall consider the totality of the
50 relationship in determining whether an employer exercises
52 essential control or superintendence of the person.

38 "Independent contractor" does not include any person engaged in
40 the logging industry other than a person whose logging activities
42 are limited to the sale of firewood to consumers or any person
44 participating in any construction project involving a
46 nonresidential project or the initial construction of any
48 residence.

46 Sec. 12. 39 MRSA §22-E is enacted to read:

48 §22-E. Proof of insurance; logging and nonresidential
50 construction industries

52 Any person who employs, contracts with or otherwise engages
54 for compensation an individual who is engaged in the logging
56 industry or participating in a construction project and is

2 excluded from the definition of independent contractor under
3 section 2, subsection 13 must require proof of workers'
4 compensation coverage before engaging the individual's services.
5 The Superintendent of Insurance shall prescribe the form of the
6 certificate to be provided by any workers' compensation insurer
7 as proof of coverage. Any person who fails to require proof of
8 insurance as required by this section may be assessed a civil
9 penalty not to exceed \$1,000 by the chair of the commission.

10 Sec. 13. 39 MRSA §51, sub-§1, as enacted by PL 1981, c. 200,
11 is amended to read:

12
13 1. **Entitlement.** If an employee who has not given notice of
14 his the employee's claim of common law or statutory rights of
15 action, or who has given the notice and has waived the same, as
16 provided in section 28, receives a personal injury arising out of
17 and in the course of his the employee's employment or is disabled
18 by occupational disease, ~~he--shall~~ the employee must be paid
19 compensation and furnished medical and other services by the
20 employer who has assented to become subject to this Act. An
21 injury does not arise out of and in the course of employment
22 unless it is demonstrated by clear and convincing evidence that
23 the employment is the predominant cause of the injury.
24 Entitlement for any personal injury or occupational disease must
25 be established by objective medical evidence.

26
27 Sec. 14. 39 MRSA §51-B, sub-§4, as repealed and replaced by PL
28 1989, c. 256, §1, is amended to read:

29
30 4. **Compensation for impairment; compensation for medical**
31 **expenses.** Compensation for impairment under section 56-B shall
32 may not be paid before the date on which the injured employee
33 reaches the stage of maximum medical improvement. In the event
34 of a dispute regarding the date on which the injured employee
35 reaches maximum medical improvement, a determination of maximum
36 medical improvement must be made by the independent medical
37 examiner. The parties may not controvert the medical decisions
38 of the independent medical examiner. That compensation is due
39 and payable within 90 ~~30~~ days after the employer has notice that
40 maximum medical improvement has been attained. Compensation for
41 medical expenses, aids and other services under section 52 is due
42 and payable within 75 days from the date that a request for
43 payment of these expenses is received.

44
45 Sec. 15. 39 MRSA §51-B, sub-§7, as amended by PL 1989, c. 502,
46 Pt. D, §22, is further amended to read:

47
48 7. **Notice of controversy.** If the employer, prior to making
49 payments under subsection 3, controverts the claim to
50 compensation, the employer shall file with the commission, within

2 14 days after an event which gives rise to an obligation to make
4 payments under subsection 3, a notice of controversy in a form
6 prescribed by the commission. If the employer, prior to making
8 payments under subsection 4, controverts the claim to
10 compensation, the employer shall file with the commission, within
12 75 or 90 60 days, as applicable, after an event which gives rise
14 to an obligation to make payments under subsection 4, a notice of
16 controversy in a form prescribed by the commission. The notice
18 shall must indicate the name of the claimant, name of the
20 employer, date of the alleged injury or death and the grounds
22 upon which the claim to compensation is controverted. The
24 employer shall promptly furnish the employee with a copy of the
26 notice.

28 If, at the end of the 14-day period in subsection 3 or the 90-day
30 60-day or 75-day periods in subsection 4, the employer has not
32 filed the notice required by this subsection, the employer shall
34 begin payments as required under those subsections. In the case
36 of compensation for incapacity under subsection 3, the employer
38 may cease payments and file with the commission a notice of
40 controversy, only as provided in this subsection, no later than
42 ~~44 days after an event which gives rise to an obligation to make~~
44 ~~payments--under--subsection--3~~ 60 days after receipt of the
46 diagnostic medical report required by subsection 7-A. Failure to
48 file the required notice of controversy prior to the expiration
50 of the 44-day 60-day period, in the case of compensation under
52 subsection 3, constitutes acceptance by the employer of the
54 compensability of the injury or death. Failure to file the
56 required notice of controversy does not constitute such an
58 acceptance by the employer when it is shown that the failure was
60 due to employee fraud or excusable neglect by the employer,
62 except when payment has been made and a notice of controversy is
64 not filed within 44 60 days of that payment. Failure to file the
66 required notice of controversy prior to the expiration of the
68 90-day 60-day period under subsection 4 constitutes acceptance by
70 the employer of the extent of impairment claimed. Failure to
72 file the required notice of controversy prior to the expiration
74 of the 75-day period under subsection 4 for compensation for
76 medical expenses, aids or other services pursuant to section 52
78 constitutes acceptance by the employer of the reasonableness and
80 propriety of the specific medical services for which compensation
82 is claimed and requires payment for those services, but does not
84 constitute acceptance of the compensability of the injury or
86 death.

88 If, at the end of the 44-day 60-day period the employer has not
90 filed a notice of controversy, or if, pursuant to a proceeding
92 before the commission, the employer is required to make payments,
94 the payments may not be decreased or suspended, except as
96 provided in section 100.

52 **Sec. 16. 39 MRSA §51-B, §7-A is enacted to read:**

2 7-A. Medical diagnosis required. Within 30 days from the
3 completion of a medical examination or within 30 days from the
4 date notice of injury is given to the employer, whichever is
5 later, the employee's health care provider shall forward to the
6 employer and to the employee a diagnostic medical report for the
7 injury for which compensation is being claimed. The commission
8 may assess penalties, as set by rule by the commission, upon
9 health care providers who fail to comply with the 30-day
10 requirement of this subsection.

12 Sec. 17. 39 MRSA §51-B, sub-§8, as amended by PL 1983, c. 682,
13 §6, is further amended to read:

14 8. Effect of payment. If, within the 44-day 60-day period
15 established in subsection 7 and after the payment of compensation
16 for incapacity without an award, the employer elects to
17 controvert the claim to compensation for incapacity, the payment
18 of compensation shall may not be considered to be an acceptance
19 of the claim or an admission of liability. Notwithstanding the
20 provisions of section 99-C, the acceptance of compensation in any
21 case, except by decision or agreement, by the injured employee or
22 his that employee's dependents shall may not be considered an
23 admission by the employee or his that employee's dependents as to
24 the nature and scope of the employer's liability or a waiver of
25 the right to question the amount of compensation or the duration
26 of the same or the nature of the injury and its consequences.

28 Sec. 18. 39 MRSA §52, as amended by PL 1989, c. 434, §8, is
29 further amended to read:

32 **§52. Duties and rights of parties as to medical and other**
33 **services; cost**

34 An employee sustaining a personal injury arising out of and
35 in the course of his the employee's employment or is disabled by
36 occupational disease shall--be is entitled to reasonable and
37 proper medical, surgical and hospital services, nursing,
38 medicines, and mechanical, surgical aids, as needed, paid for by
39 the employer. An injured employee shall--have has the right to
40 make his the employee's own selection of a physician or surgeon
41 authorized to practice as such under the laws of the State. Once
42 an employee selects a physician, the employee may not change
43 physicians without seeking approval from the independent medical
44 examiner or the employer. This provision does not limit an
45 employee's right to be treated by a specialist when a referral is
46 made by the employee's physician. Once an employee has begun
47 treatment with the specialist, the employee may not seek
48 treatment from a different specialist without prior approval from
49 the independent medical examiner or the employer. The
50 independent medical examiner may only grant an employee's request
51 to change physicians or specialists in the event of unusual
52

2 circumstances such as the death or departure of the physician or
3 any other compelling circumstance.

4 Any employee sustaining a personal injury arising out of and
5 in the course of his the employee's employment, provided the
6 injury relates to the scope of a chiropractor's practice, as
7 defined and regulated by statute, shall--be is entitled to
8 chiropractic services as provided by Title 32, chapter 9. An
9 employee's entitlement to chiropractic services is limited to 12
10 visits or 30 days from the initial chiropractic visit, whichever
11 comes first. A duly licensed chiropractor shall--be is considered
12 competent to testify before the Workers' Compensation Commission.

14 An employee sustaining personal injury arising out of and in
15 the course of his the employee's employment, provided the injury
16 relates to the foot, shall--be is entitled to an examination,
17 diagnosis and treatment therefor from a podiatrist who is
18 licensed in the State of ~~Maine~~ and who has been granted the
19 degree of Doctor of Podiatric Medicine by an accredited school of
20 podiatry recognized by the Council of Education of the American
21 Podiatry Association. This examination may include diagnostic
22 ~~x-rays~~ x rays. Such a podiatrist is competent to testify before
23 the Workers' Compensation Commission.

24 ~~In every case where~~ If any services are procured or aids are
25 required by the employee, it shall--be ~~his~~ is the employee's duty
26 to see that the employer is given prompt notice thereof. The
27 employer shall then make prompt payment for them to the provider
28 or supplier or reimburse the employee, in accordance with section
29 51-B, subsection 4, provided that the costs are necessary and
30 adequate and the charges reasonable; and further provided that it
31 shall--be is presumed that, in a jurisdiction outside of the
32 United States that has a socialized medical program, payment of
33 the costs will be borne by the medical program and the employer
34 is not responsible for those costs under this section unless the
35 socialized medical program has made payment for services or aids
36 and requests reimbursement from the employer for the actual
37 amounts paid. The employer shall furnish artificial limbs, eyes,
38 teeth, eyeglasses, hearing aids, orthopedic devices and other
39 physical aids made necessary by the injury and shall replace or
40 renew the same when necessary from wear and tear or physical
41 change of the employee. The employee or ~~his~~ the employee's
42 counsel shall serve upon the employer or opposing counsel, within
43 7 days of the date of receipt by the employee or counsel,
44 complete copies of any medical reports or statements relating to
45 any treatment or examination described in this section. The
46 employer, carrier or ~~their~~ the employer's or carrier's counsel
47 shall serve upon the employee or opposing counsel, within 7 days
48 of the receipt by the employer, carrier or counsel, complete
49 copies of any medical reports or statements relating to any
50 treatment or examination alleged by the employee or ~~his~~ the
51 employee's counsel to be covered by this section.

2 An employer is not liable under this Act for charges for
4 health care services to an injured employee in excess of those
6 established under section 52-B, except upon petition as
8 provided. The commission shall allow charges in excess of those
10 provided under section 52-B against the employer if the provider
12 satisfactorily demonstrates to the--commission an independent
14 medical examiner that his the independent medical examiner's
16 services were extraordinary or that he the independent medical
18 examiner incurred extraordinary costs in treating the employee as
20 compared to those reasonably contemplated for the services
22 provided. An injured employee is not liable for any portion of
24 the cost of medical services under this section.

26 An employee is entitled to payment or reimbursement for only
28 one set of diagnostic tests, including but not limited to
30 laboratory tests, radiologic procedures and outpatient surgical
32 procedures, without prior authorization by the independent
34 medical examiner or the employer, except in the event of medical
36 emergencies. It is the responsibility of every health care
38 provider to promptly transfer diagnostic testing results to any
40 other health care provider who furnishes services in connection
42 with the examination or treatment of the employee relating to any
44 injury or disease for which compensation is claimed.

26 An employee shall purchase generic drugs for treatment of an
28 injury or disease for which compensation is claimed except when
30 generic drugs are not available or when the employee's physician
32 recommends in writing that the employee not use generic drugs.
34 Requests for payment or reimbursement for other than generic
36 drugs must be accompanied by a statement from the pharmacist that
38 the generic drug was not available or the written recommendation
40 from the physician.

34 Damage and destruction to artificial limbs, eyes, teeth,
36 eyeglasses, hearing aids, orthopedic devices and other physical
38 aids in the course of and arising out of the employment shall-be
40 are considered an injury for the purposes of this Act. In-case If
42 such physical aids in use by the employee at the time of the
44 injury are themselves injured or destroyed, the commission in its
46 discretion may require that they be repaired or replaced by the
48 employer.

44 Whenever there is any disagreement as to the proper costs of
46 the services or aids, or the periods during which they shall-be
48 are furnished, or as to the apportionment thereof among the
50 parties, any interested person may file a petition with the
commission for the determination thereof by an independent
medical examiner.

2 Upon request of an employee, the employer or carrier may
establish a program to pay for treatment by prayer or spiritual
4 means by an accredited practitioner.

6 The Superintendent of Insurance shall prescribe medical and
health care expense forms for the purpose of collecting
8 information as required by Title 24-A, section 2371. An insurer
or self-insurer may withhold payment of medical and health care
10 fees to any provider who fails to complete and submit the
prescribed form. In the event the provider fails to properly
12 complete and submit the prescribed form or to follow any fee
schedule approved by the commission, the insurer or self-insurer
14 is not required to file a notice of controversy but may simply
notify the provider of the failure. In the case of a dispute, any
16 interested party may petition the commission to resolve the
dispute.

18 No claimant may incur liability for the cost of any provided
medical or health care services resulting from a provider's
20 failure to comply with this section.

22 **Sec. 19. 39 MRSA §52-A, sub-§1,** as amended by PL 1989, c.
668, is repealed.

24 **Sec. 20. 39 MRSA §52-A, sub-§2,** as enacted by PL 1981, c. 514,
26 **§2,** is amended to read:

28 **2. Duties of health care providers.** ~~Upon payment of a~~
30 ~~reasonable fee, all~~ All written information which that relates to
an injury or disease for which compensation for lost time is
32 ~~claimed shall, within 10 days after written request by the~~
~~employer or the employee, be made available to the party making~~
34 ~~the request. In the case of a request by the employer, the~~
~~request shall be accompanied by a copy of a certificate of~~
36 ~~authorization as described in subsection 1~~ must automatically be
forwarded to the employer and employee at the time it is
38 created. Any health care provider who is providing treatment for
an injured employee shall provide a written report or office
40 notes of the employee's condition and treatment to the employer
and the employee every 30 days, beginning with the first
42 treatment date. An employer may request, at any time, medical
information concerning an employee's condition pertaining to the
44 condition for which compensation is sought by providing written
questions to the health care provider. The health care provider
46 must respond within 10 business days from receipt of the
request. Authorization from the employee is not required prior
48 to release of the medical information. Health care providers may
charge a reasonable fee for providing information pursuant to
50 this subsection. In the event that an employee changes
physicians or is referred to a different health care provider or
52 facility, any health care provider or facility having medical

2 records, including x rays, regarding the employee shall forward
4 all medical records relating to an injury or disease for which
6 compensation is claimed to the next physician upon request of the
8 employee. When an employee is scheduled to be treated by a
10 different physician or in a different facility, the employee
12 shall request that the records be transferred.

14 Sec. 21. 39 MRSA §52-C is enacted to read:

16 §52-C. Medical health care review

18 1. Purpose. In order to ensure quality treatment for
20 injured employees and proper cost of services, the commission
22 shall provide for review of health care providers who render
24 services to injured employees by establishing a quality control
26 system consistent with the requirements of this section. Review
28 of individual cases must be undertaken by an independent medical
30 examiner pursuant to the requirements of this section.

32 2. Peer review. Each case involving the provision of
34 medical or surgical services to an injured employee for more than
36 3 months from the date of injury or medical costs that exceed
38 \$10,000 must be referred to an independent medical examiner for
40 monitoring health care provider services and hospital
42 utilization. This monitoring must include determinations
44 concerning the appropriateness of the service, whether the
46 treatment is necessary and effective, the proper cost of
48 services, the quality of the treatment and the right of providers
50 to receive payments under this Act for services rendered. The
52 independent medical examiner shall also monitor services provided
by health care professionals who have been the subject of
complaints and cases selected on a random basis for purposes of
evaluating the appropriateness of charges and performance. The
independent medical examiner shall report the results of this
monitoring to the employee, the employer and the commission at
least monthly.

3. Case management. The chair, with the advice of the
independent medical examiners, shall adopt rules establishing a
case management program for cases involving the provision of
medical services for more than 3 months from the date of injury
or medical costs that exceed \$15,000. The rules must require
prior approval by the employer or an independent medical examiner
of any surgical procedure, hospitalization or proposed treatment,
with appropriate exceptions for emergencies. The hospital or
health care provider is responsible for obtaining any required
approval and neither the employer nor the employee is responsible
for payment of the cost of any medical services for which a
required approval is not obtained.

4. Other penalties. Any health care provider who submits
false testimony or a false report in connection with any claim

2 for payment made under this Act, or repeatedly overcharges for
3 services or fails to comply with the preapproval requirements of
4 subsection 3 must be barred by order of the commission from
5 receiving any payment under this Act for services rendered for a
6 period not to exceed one year in the first instance and 3 years
7 in the 2nd instance and the commission may permanently bar that
8 provider from eligibility for payment of services under this Act
9 thereafter.

10 Sec. 22. 39 MRSA §55-B, as amended by PL 1989, c. 575, is
11 further amended to read:

12 **§55-B. Compensation for partial incapacity**

13 While the incapacity for work resulting from the injury is
14 partial, the employer shall pay the injured employee a weekly
15 compensation equal to 2/3 the difference, due to the injury,
16 between his the employee's average gross weekly wages, earning
17 earnings or salary before the injury and the weekly wages,
18 earnings or salary ~~which he~~ that the employee is able to earn
19 after the injury, but not more than the maximum benefit under
20 section 53-B. Payments under this section shall ~~may~~ not continue
21 for longer than 400 430 weeks after ~~maximum-medical-improvement~~
22 the date of injury.

23 This section applies only to employees injured on or after
24 ~~the effective date of this section~~ November 20, 1987.

25 For purposes of determining an injured employee's degree of
26 incapacity under this section, the commission shall consider the
27 availability of work that the employee is able to perform ~~in and~~
28 ~~around--the--employee's--community~~ within this State and the
29 employee's ability to obtain such work considering the effects of
30 the employee's work-related injury. If no such work is available
31 ~~in and around the employee's community~~ within this State or if
32 the employee is unable to obtain such work ~~in and around the~~
33 ~~employee's community~~ within this State due to the effects of a
34 work-related injury, the employee's degree of incapacity under
35 this section is 100%.

36 Sec. 23. 39 MRSA §61 is amended to read:

37 **§61. Injury or death due to willful intention or intoxication**

38 No compensation or other benefits shall ~~may~~ be allowed for
39 the injury or death of an employee ~~where~~ when it is proved that
40 such was occasioned by his the employee's willful intention to
41 bring about the injury or death of himself the employee or of
42 another, or that the same resulted from his the employee's
43 intoxication while on duty. This provision as to intoxication
44 shall does not apply, if the employer knew that the employee was
45 intoxicated or that he the employee was in the habit of becoming
46 intoxicated.

2 intoxicated while on duty. For the purposes of this section, an
3 employee is considered intoxicated if the employee's blood
4 alcohol content is found to be .04 or more.

6 Sec. 24. 39 MRSA §71-A, as amended by PL 1989, c. 502, Pt. A,
7 §§150 and 151, is repealed.

8 Sec. 25. 39 MRSA §71-B is enacted to read:

10 §71-B. Prohibition of lump sum payments

12 An employer and employee may not by agreement discharge any
13 liability for compensation, in whole or in part, by the
14 employer's lump sum payment of an amount.

16 Sec. 26. 39 MRSA §82, sub-§3, ¶I is enacted to read:

18 I. The administrator shall conduct an evaluation of
19 suitability after issuing an order for evaluation following
20 the receipt of either the 120-day report from the employer
21 or a request for services from an employee. The valuation
22 must be conducted by a person determined to be qualified by
23 the administrator and employed by the Office of Employment
24 Rehabilitation. Copies of the evaluation must be sent to
25 the employee and the employer.

26 After a finding of suitability, the administrator shall
27 oversee development of the rehabilitation plan in
28 conjunction with the employee. The plan must be developed
29 by a person determined to be qualified by the administrator.

32 The administrator shall refer the employee to appropriate
33 sources of services for the implementation of the
34 rehabilitation plan in accordance with section 83,
35 subsection 4 and section 85, subsection 2-A. The
36 administrator shall adopt rules for making such referrals to
37 persons approved under paragraph E.

38 Sec. 27. 39 MRSA §83, sub-§§2 to 4, as amended by PL 1989, c.
40 580, §9, are further amended to read:

42 2. Evaluation of suitability. An evaluation of the
43 suitability of rehabilitation for the employee shall ~~must~~ be
44 ~~submitted to~~ conducted by the administrator within 30 days after
45 an order of evaluation is made or is deemed to have been made by
46 the administrator under section 85, subsection 1.

48 A. The evaluation of suitability shall ~~must~~ be done by a
49 ~~provider of rehabilitation services selected by the employee~~
50 ~~from the list of approved providers maintained by the~~
51 ~~administrator~~ an authorized staff member of the Office of
52 Employment Rehabilitation.

2 B. ~~If the employer objects to the employee's selection, the~~
3 ~~employer may request within 10 business days after~~
4 ~~notification of that selection that the administrator~~
5 ~~schedule a meeting within 10 business days between the~~
6 ~~employer, the employee and the administrator for the purpose~~
7 ~~of discussing which provider may be mutually acceptable.~~

8
9 C. ~~The employee shall have the final decision on which~~
10 ~~approved provider shall be utilized.~~

11 D. ~~The provider shall evaluate the employee's suitability~~
12 ~~for rehabilitation under this subchapter. No employee may~~
13 ~~be found to be suitable unless the following findings are~~
14 ~~made by the provider evaluator:~~

15 (1) The employee does not refuse to participate in the
16 rehabilitation process;

17 (2) The employee's treating physician certifies that
18 some reasonable assessment of the employee's residual
19 functioning capacities can be made;

20 (3) The employee's former employer certifies that the
21 employer is unlikely to return the employee to the
22 employee's former employment position without
23 rehabilitation services or the rehabilitation provider
24 evaluator has made reasonable efforts to obtain this
25 certification without response from the employer;

26 (4) The employee is unlikely to return to suitable
27 employment without the provision of rehabilitation
28 services; and

29 (5) No litigation is pending concerning the
30 compensability of the employee's injury or benefits or
31 compensation due to the employee under this Act.

32 An employee who is found not to be suitable for
33 rehabilitation because of a failure to meet the criteria of
34 subparagraph (2) or (5), may be reevaluated at a later date
35 when those criteria can be met.

36
37 3. **Development of plan.** A rehabilitation plan shall must
38 be developed by a person determined to be qualified by the
39 administrator and submitted to the administrator within 60 days
40 after an order of plan development is made or is deemed to have
41 been made by the administrator under section 85, subsection 2.

42
43 A. ~~The plan shall be developed by a provider of~~
44 ~~rehabilitation services selected by the employee from the~~
45 ~~list of approved providers maintained by the administrator.~~

2 B. In developing any plan, consideration shall must be
4 given to the employee's qualifications, including, but not
limited to:

- 6 (1) The employee's work history, including the
employee's prior earnings history;
8
10 (2) The employee's interests;
12
14 (3) The employee's aptitude;
16
18 (4) The employee's education;
20
22 (5) The employee's skills;
24
26 (6) The employee's work life expectancy;
28
30 (7) The locality of employment; and
32
34 (8) The likelihood of reemployment.

36 C. A plan shall must include a job placement strategy and a
38 specific program of proposed actions designed and likely to
40 achieve job placement for the employee.

- 42 (1) The plan development shall must consider and the
44 plan may include a provision for trial work periods not
46 to exceed 3 months with the employer or subsequent
48 employer.
50
52 (2) The administrator may approve trial work periods
as part of a plan.
54
56 (3) The plan development shall must consider and the
58 plan may include a provision for participation in
60 appropriate job training programs conducted by the
62 Department of Labor, including, without limitation, the
64 Job Training Partnership Act and the Strategic Training
66 for Accelerated Reemployment Program as provided in
68 Title 26, chapter 25, and the Health Occupations
70 Training Project as provided in Title 26, chapter 31.

72 D. The plan must consider the relative costs of proposed
74 services to the employer. In no case may a plan last longer
76 than 18 months nor cost more than \$5,000 without
78 demonstration of special and unusual circumstances in that
80 case.

82 4. Implementation of plan. The administrator shall adopt
84 rules to be adopted by the chair for the assessment and approval
86 of proposed plans within the Office of Employment

2 Rehabilitation. The administrator has final authority, but may
4 delegate specific duties to authorized personnel. The
6 administrator shall approve a plan if all parties agree on the
plan and the administrator finds it is consistent with the
purpose and requirements of this subchapter and in the employee's
best interests.

8 A. If the parties do not agree on a plan, an informal
10 conference shall must be held within 21 days after the
12 submission of the rehabilitation plan under subsection 3, at
14 which the administrator shall make every effort to encourage
agreement and conciliate any differences or
misunderstandings between the parties.

16 If the parties still do not agree on a plan at the informal
18 conference held under this paragraph, either party may
20 request that the administrator continue the informal
22 conference to a date certain within 20 days. If the
24 employer refuses to agree to the implementation of a plan at
the conclusion of this informal conference, the employee may
request that the administrator order the implementation of
the plan as provided in section 85, subsection 2-A. This
request must be made within 5 days of the informal
conference.

26 B. All obligations under section 66-A are suspended during
28 the implementation of the plan.

30 **Sec. 28. 39 MRSA §85, sub-§4-A, ¶B** is enacted to read:

32 B. The settlement of a claim between an employee and an
34 employer does not affect the employer's obligation to the
fund under this section or under section 57-B, subsection 6,
paragraph B, subparagraph (2).

36 **Sec. 29. 39 MRSA §86, sub-§7, as amended by PL 1989, c. 580,**
38 **§12,** is further amended to read:

40 **7. Career retraining.** A goal-oriented period of formal
42 training which that is designed to lead to employment in another
44 career field. Retraining may include education of the employee
46 when appropriate. The proposed rehabilitation plan may not
exceed 2 scholastic years or \$5,000, unless special and unusual
circumstances are demonstrated to the administrator's
satisfaction.

48 **Sec. 30. 39 MRSA §90, sub-§3, as enacted by PL 1989, c. 580,**
§19, is amended to read:

50 **3. Report to Legislature.** The chair shall report to the
52 First Regular Session of the ~~116th~~ 118th Legislature concerning
the effectiveness of restoring injured workers to suitable

2 employment through orders for plan implementation under section
2 85, subsection 2-A. This report shall must include:

4 A. Statistics comparing the success rates of plans in which
6 implementation is ordered by the administrator with plans
6 which that are agreed to by employers;

8 B. Statistics comparing the average implementation costs of
10 plans in which implementation is ordered by the
10 administrator with plans which that are agreed to by
12 employers;

14 C. Statistics comparing the types of rehabilitation
14 services used and job placements achieved for plans in which
16 implementation is ordered by the administrator with plans
16 which that are agreed to by employers;

18 D. Any perceptible effect that the ability of the
20 administrator to order plan implementation has had upon the
20 likelihood of employers agreeing to implement plans;

22 E. The methods employed to achieve coordination of the
24 workers' compensation rehabilitation system with job
24 training programs conducted by the Department of Labor and
26 the effects of that coordination; and

28 F. Any other information that the chair considers
28 appropriate.

30 **Sec. 31. 39 MRSA §92, sub-§10 is enacted to read:**

32 10. Independent medical examiners. Utilizing the
34 competitive bidding process, the chair shall select one hospital
34 in or south of Augusta and one hospital north of Augusta to serve
36 as independent medical examiners. The independent medical
36 examiners shall make all necessary determinations of medical
38 condition and related issues as specified under section 92-A.
38 The physician or other provider assigned to fulfill the
40 responsibilities of the independent medical examiner in a case
40 must not be the employee's personal physician and must not have
42 treated the employee with respect to the injury for which
42 benefits are being paid. The chair shall adopt rules
44 establishing fees for services rendered by independent medical
44 examiners and may adopt any rules the chair determines necessary
46 to effectuate the purposes of section 92-A.

48 **Sec. 32. 39 MRSA §92-A is enacted to read:**

50 **§92-A. Independent medical examiners**

2 1. Referral. The commission shall refer to the independent
3 medical examiner any dispute relating to the medical condition of
4 a claimant, including:

6 A. Incapacity for work under sections 54-B and 55-B;

8 B. Determination of maximum medical improvement and degree
9 of impairment under section 56-B;

10 C. Determination of the proper cost of medical services or
11 aids under section 52;

12 D. Evaluation of suitability for return to work; or

14 E. Review of medical services under section 52-C.

16
18 2. Examination. Upon assignment, the independent medical
19 examiner may examine the employee as often as the independent
20 medical examiner determines necessary and may review any medical
21 records necessary to make the determinations required. The
22 examiner shall submit a written report to the commission, the
23 employer and the employee stating the independent medical
24 examiner's findings and conclusions on the issues raised by that
25 case. The fee for the examination and report must be paid by the
26 employer.

28 3. Notice of report. It must be presumed that the employer
29 and employee received the report 3 working days after mailing.

30 4. Right of appeal. The employer or employee may appeal
31 the examiner's findings up to 20 days from receipt of the
32 independent medical examiner's report. The notice of appeal must
33 identify the findings and conclusions that are objected to, and
34 the grounds for the objection. If an appeal is not filed, the
35 findings of the examiner are binding on the parties and the
36 commission.

38 5. Appeal procedure. Upon receipt of a request for review
39 of the examiner's findings, the commission shall again assign the
40 case to the independent medical examiner and request a review of
41 the record by a physician or other appropriate provider who meets
42 the qualifications in section 92, subsection 10 and who has no
43 independent knowledge of the first review. The 2nd examiner
44 shall review the report of the first examiner and the available
45 medical records. Upon completion of this review, the examiner
46 shall submit a report to the commission, which must contain
47 conclusions as to whether the challenged findings or conclusions
48 were clearly erroneous, and if so, in what respects. This report
49 must contain findings or conclusions on any issue as to which the
50 2nd examiner found the first examiner's report to be clearly
51 erroneous. The findings of the 2nd examiner are binding on the
52 commission. If the 2nd examiner does not find one or more

2 material findings or conclusions of the first examiner to be
3 clearly erroneous, the cost of the appeal must be paid by the
4 party requesting the review; if one or more of the material
5 findings or conclusions are found to be clearly erroneous, these
6 costs must be paid by the employer.

7 6. Immunity. Any hospital or other health care provider
8 acting without malice and within the scope of its duties as an
9 independent medical examiner is immune from civil liability for
10 making any report or other information available to the
11 commission or for assisting in the origination, investigation or
12 preparation of the report or other information so provided.

13 **Sec. 33. 39 MRSA §95, as amended by PL 1989, c. 256, §4, is**
14 **further amended to read:**

15 **§95. Time for filing petitions**

16
17 Any employee's claim for compensation under this Act shall
18 be ~~is~~ barred unless an agreement or a petition as provided in
19 section 94 shall ~~be is~~ filed within 2 years after the date of the
20 injury, or, if the employee is paid by the employer or the
21 insurer, without the filing of any petition or agreement, within
22 2 years of any payment by such employer or insurer for benefits
23 otherwise required by this Act. The 2-year period in which an
24 employee may file a claim does not begin to run until the
25 employee's employer, if the employer has actual knowledge of the
26 injury, files a first report of injury as required by section 106
27 of the this Act. Any time during which the employee is unable by
28 reason of physical or mental incapacity to file the petition
29 shall ~~may~~ not be included in the period provided in this section.
30 If the employee fails to file the petition within that period
31 because of mistake of fact as to the cause and nature of the
32 injury, the employee may file the petition within a reasonable
33 time. In case of the death of the employee, there shall ~~be is~~
34 allowed for filing said petition one year after that death. No
35 petition of any kind may be filed more than ~~10~~ 3 years following
36 the date of the latest payment made under this Act. For the
37 purposes of this section, payments of benefits made by an
38 employer or insurer pursuant to section 51-B or 52 shall ~~be are~~
39 considered payments under a decision pursuant to a petition,
40 unless a timely notice of controversy has been filed.
41

42
43 **Sec. 34. 39 MRSA §100, as amended by PL 1987, c. 559, Pt B,**
44 **§§41 and 42, is further amended to read:**

45 **§100. Petitions for review; unilateral discontinuance of benefits**

46
47 **1. Relief available.** Upon the petition of either party, a
48 single commissioner shall review any unilateral action by an
49 employer pursuant to subsection 4-A or any compensation payment
50

2 scheme required by this Act for the purposes of ordering the
3 following relief, as the justice of the case may require:

4 A. Increase, decrease, restoration or discontinuance of
5 compensation.

6
7 2. **Standard for review.** The basis for granting relief under
8 this section is as follows.

10 A. On the first petition for review brought by a party to
11 an action, the commissioner shall determine the appropriate
12 relief, if any, under this section by determining the
13 employee's present degree of incapacity.

14
15 B. Once a party has sought and obtained a determination
16 under this section, it is the burden of that party in all
17 proceedings on his subsequent petitions under this section
18 to prove that the employee's earning incapacity attributable
19 to the work-related injury has changed since that
20 determination.

22 C. When a provisional order has been issued pursuant to
23 subsection 4-B denying the employee's petition for
24 reinstatement of benefits, the commission may not reinstate
25 benefits after a hearing if any of the conditions in
26 subsection 4-A are met.

28 3. **Petition procedure.** Sections 96-A to 99 apply to
29 petitions brought under this section.

30
31 3-A. **Petitions during rehabilitation.** A petition may not
32 be brought during the development or implementation of a
33 rehabilitation plan under section 83, subsection 3 or 4, except
34 in the event of substantial change in the employee's medical
35 condition.

36
37 ~~4. -- Payments pending hearing and decision. -- If the employee~~
38 ~~is receiving payments at the time of the petition, the payments~~
39 ~~may not be decreased or suspended pending the hearing and final~~
40 ~~decision upon the petition, except in the following circumstances:~~

41 ~~A. -- The employer and the employee file an agreement with the~~
42 ~~commission;~~

43 ~~B. -- The employer or his insurance carrier files a~~
44 ~~certificate with the commission stating that:~~

45
46
47 (1) ~~The employee has left the State for reasons other~~
48 ~~than returning to his permanent residence at the time~~
49 ~~of injury;~~

50
51 (2) ~~The employee's whereabouts are unknown; or~~
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(3) -- The employee has resumed work;

C. -- The employer or his insurance carrier files a certificate with the commission stating that the employee refuses to submit to an examination; or

D. -- The employee refuses an offer of reinstatement to a position which is suitable to his physical condition or the employee is able to return to work and there is work available, in or near the community in which he resides, which is suitable to his physical condition.

(1) -- If the employee refuses an offer of reinstatement or fails to return to available suitable work, his benefits shall be reduced in an amount equal to the difference between the employee's weekly benefit and the benefits he would have been entitled to receive if he had accepted reinstatement or returned to available suitable work.

(2) -- Benefits shall not be suspended or reduced pending hearing under this paragraph unless the employer has provided the employee with written notice that benefits may be suspended or reduced together with any information relied on by the employer to support the proposed suspension or reduction. The employee has 20 days, after receiving that notice, to submit to the commission any additional information relating to his continued entitlement to benefits.

(3) -- Benefits shall not be suspended or reduced pending hearing under this paragraph if the employee shows that, despite a good faith work search, the employee is unable to obtain suitable work.

(4) -- Within 30 days after notice to the employee under subparagraph (2), the commission shall enter a provisional order providing for the suspension, reduction or continuation of benefits pending a hearing on the petition. The order shall be based upon the information submitted by both the employer and the employee under this section.

(5) -- If benefits are suspended or reduced under this paragraph and the commission, after hearing, reverses the provisional order, either in whole or in part, the commission shall order a lump sum payment of all benefits withheld together with interest at the rate of 6% a year. The employer shall pay this lump sum within 10 days of the order.

2 4-A. Unilateral discontinuance of benefits. Upon written
3 notice to the employee and to the commission that benefits are
4 being suspended or reduced, together with any information relied
5 on by the employer to support the suspension or reduction, an
6 employer may discontinue or reduce benefits:

7 A. If the employee refuses an offer of reinstatement to a
8 position that is suitable to the employee's physical
9 condition or is able to return to work and there is work
10 available within the State that is suitable to the
11 employee's physical condition and the employee's physician
12 or the independent medical examiner has determined that the
13 employee is medically able to perform the requirements of
14 the employment being offered or available.

15 (1) If the employee refuses an offer of reinstatement
16 or fails to return to available suitable work, benefits
17 are reduced in an amount equal to the difference
18 between the employee's weekly benefit and the benefits
19 the employee would have been entitled to receive if the
20 employee had accepted reinstatement or returned to
21 available suitable work.

22 (2) A determination by the independent medical
23 examiner that the employee is medically able to perform
24 the requirements of the employment being offered or
25 available is final and binding in all respects;

26 B. If the employee fails to participate in an approved
27 rehabilitation plan that is implemented pursuant to section
28 83, subsection 4;

29 C. If the employee returns to work;

30 D. If the employee refuses to submit to a medical
31 examination pursuant to subsection 5;

32 E. If the employer and the employee file an agreement with
33 the commission; or

34 F. If the employer or the employer's insurance carrier
35 files a certificate with the commission stating that:

36 (1) The employee has left the State for reasons other
37 than returning to the employee's permanent residence at
38 the time of injury; or

39 (2) The employee's whereabouts are unknown.

40 4-B. Employee's right to a hearing. In the event that
41 compensation is discontinued by the employer pursuant to
42 subsection 4-A, the employee has a right to file a petition for
43 subsection 4-A, the employee has a right to file a petition for
44 subsection 4-A, the employee has a right to file a petition for
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52 subsection 4-A, the employee has a right to file a petition for

2 review and to submit to the commission any additional information
3 relating to continued entitlement to benefits.

4 A. The commission shall, within 2 weeks after the employee
5 files a petition under subsection 1, enter a provisional
6 order providing for the suspension, reduction or
7 continuation of benefits pending a hearing on the petition.
8 The order must be based upon the information submitted by
9 both the employer and the employee under this section. The
10 commission may not issue a provisional order reinstating
11 benefits unless there is clear and convincing evidence that
12 the employee will prevail at the hearing.

13 B. If a provisional order is issued upholding the
14 employer's unilateral action, and the commission, after
15 hearing, reverses the provisional order, either in whole or
16 in part, the commission shall order payment of all benefits
17 withheld, together with interest at the rate of 6% a year.
18 The employer shall pay this amount within 10 days of the
19 order.

20
21
22 5. Medical examination. Upon the request of the petitioner,
23 the commission shall order employer or the independent medical
24 examiner, the employee to shall submit to examination by an
25 impartial physician or surgeon designated by the commission from
26 the geographical area where the employee resides the independent
27 medical examiner. The fee for the examination shall must be paid
28 by the employer. Payment of compensation may be decreased or
29 suspended by the commissioner pending final decision on the
30 petition if:

31
32 A. The physician or surgeon certifies to the commission
33 after examination that in his opinion the employee is able
34 to resume work; or

35 B. The employee refuses to submit to an examination.

36
37
38 6. Recovery of overpayments. Compensation paid by the
39 employer after the employee has resumed work may be recovered
40 from the employee in a legal action brought by the employer if:

41 A. At the time of his filing a petition under this section,
42 the employer also filed a certificate that the employee had
43 resumed work; and

44
45 A-1. The employer discontinued compensation pursuant to
46 subsection 4-A and the commission issued a provisional order
47 reinstating the employee's benefits; and

48
49 B. After the hearing the commissioner finds that the
50 petition was properly filed discontinuance was proper and
51 decrees that compensation cease.

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Sec. 35. 39 MRSA §100-A, sub-§2 is enacted to read:

2. Discontinuance. Upon the expiration of any such agreement, the employer or insurer may reduce compensation payments to an amount equal to 2/3 of the difference between the employee's average gross weekly wages, earnings or salary before the injury and the weekly wages, earnings or salary that the employee is earning at such trial work.

Sec. 36. 39 MRSA §104-B, sub-§3, as enacted by PL 1981, c. 474, §4, is amended to read:

3. Subrogation. Any insurer determined to be liable for benefits under subsection 2 shall must be subrogated to the employee's rights under this Act for all benefits the insurer has paid and for which another insurer may be liable. Any such insurer may, in accordance with rules ~~prescribed~~ adopted by the commission, file a petition request for an appointment of an arbitrator to determine apportionment of liability among the responsible insurers. ~~The commission has jurisdiction over all claims for apportionment under this section. In any proceeding for apportionment, no insurer is bound as to any finding of fact or conclusion of the law made in a prior proceeding in which it was not a party.~~ The arbitrator's decision is limited to a choice between the submissions of the parties and may not be calculated by averaging. Within 30 days of the request, the Superintendent of Insurance shall appoint a neutral arbitrator who shall decide, in accordance with the rules adopted by the Superintendent of Insurance, respective liability among or between insurers. Arbitration pursuant to this subsection is the exclusive means for resolving apportionment disputes among insurers and the decision of the arbitrator is conclusive and binding among all parties involved.

Sec. 37. 39 MRSA §106, sub-§1, as repealed and replaced by PL 1987, c. 559, Pt. B, §46, is amended to read:

1. Injuries. Whenever any employee has reported to an employer under the Act any injury arising out of and in the course of his the employee's employment which that has caused the employee to lose a day's work ~~or has required the services of a physician,~~ or whenever the employer has knowledge of any such injury, the employer shall report the injury to the commission within 7 days after he the employer receives notice or has knowledge of the injury. The employer shall also report the average weekly wages or earnings of the employee, together with any other information required by the commission. The employer shall report whenever the injured employee resumes his employment and the amount of his the employee's wages or earnings at that time.

2 Sec. 38. 39 MRSA §106, sub-§2, as repealed and replaced by PL
3 1987, c. 559, Pt. B, §46, is repealed and the following enacted
4 in its place:

6 2. Settlements. Settlements are subject to this subsection.

8 A. Whenever any settlement is made with an injured employee
9 by the employer or insurance carrier for compensation
10 covering any specific period under an approved agreement or
11 a decree or covering any period of total or partial
12 incapacity that has ended, the employer or carrier shall
13 file with the commission a duplicate copy of the settlement
14 receipt or agreement signed by the employee showing the
15 total amount of money paid to the employee for that period
16 or periods, but the settlement receipt or agreement is not
17 binding without the commission's approval.

18 B. At least 14 days prior to submitting any residual market
19 settlement agreement that is in excess of \$10,000 to the
20 commission for approval, the insurance carrier shall give
21 notice of the settlement to the employer. If the employer
22 objects to the settlement agreement, the employer shall give
23 notice of the grounds for objection to the carrier within 7
24 days of receipt of the agreement. After giving notice of
25 objection, the employer may appeal inclusion of all or part
26 of the settlement payment in calculation of the experience
27 modification factor to the Superintendent of Insurance.
28 Within 30 days from the date notice of appeal was filed,
29 both parties shall submit any relevant information to the
30 superintendent and within 60 days from receipt of the appeal
31 notice the superintendent shall issue a decision based upon
32 the written submissions of the parties. Upon issuance of a
33 decision by the superintendent, either party may request a
34 hearing before the superintendent pursuant to Title 24-A,
35 section 229. The procedures set forth in Title 24-A,
36 section 2320 do not apply to appeals pursuant to this
37 section.

38 Sec. 39. 39 MRSA §106, sub-§3, as repealed and replaced by PL
39 1987, c. 559, Pt. B, §46, is amended to read:

41 3. Return to employment. Any person receiving compensation
42 under this Act who returns to employment or engages in new
43 employment after his that person's injury shall file a written
44 report of that employment with the commission and his the
45 previous employer within 7 days of his that person's return to
46 work. This report shall must include the identity of the
47 employee, his the employee's employer and the amount of his
48 weekly wages or earnings received or to be received by the
49 employee. The commission shall notify the employee in writing of
50 the employee's obligations under this subsection and of the
51 penalties applicable under section 113.

2 **Sec. 40. 39 MRSA §110, sub-§3** is enacted to read:

4 **3. Attorney's fees; reimbursement levels.** In order to
6 ensure appropriate limitation on the cost of attorney's fees,
8 charges for legal fees may not exceed 5% of the discounted
10 present value of cases up to \$100,000 and 2.5% of the discounted
12 present value of cases over \$100,000, but in no case may any fee
14 exceed \$7,500 or actual billable hours, whichever is less.

16 **Sec. 41. Transition provision.** Within 60 days from the
18 effective date of this Act, the Superintendent of Insurance shall
20 hold a hearing and issue a decision that determines the effect of
22 the changes in the law provided for in this Act on workers'
24 compensation rates. Insurers shall provide whatever information
26 is requested to assist the superintendent in making a
28 determination pursuant to this section.

30 **Sec. 42. Applicability.** Sections 10, 13 to 20, 22 to 29, 32 to
32 35 and 37 to 40 of this Act apply only to injuries occurring on
34 or after the effective date of this Act.

36 **Sec. 43. Effective date.** Section 1 of this Act takes effect
38 January 1, 1992.

STATEMENT OF FACT

40 This bill amends the workers' compensation laws to address
42 concerns of cost, promptness of payment and complexity. The bill
44 incorporates changes recommended by the Governor's Task Force on
46 Workers' Compensation Reform. Specifically the bill accomplishes
48 the following.

50 1. The bill contains modifications to the premium
experience rating procedure to reward employers who have
instituted safety programs and to protect employers who hire or
rehire employees with previous work-related injuries.

2. The bill creates optional medical deductibles to permit
employers to pay directly claims of \$250 or less.

3. The bill provides for rule-making authority for the
Superintendent of Insurance to establish credits for insurers
that take policies out of the residual market.

4. The bill amends the eligibility requirements of the
Accident Prevention Account to prevent employers from being
placed in the higher rated pool because of a single lost-time
claim.

2 5. The bill requires the residual market plan to contain an
appeals procedure for employers who believe a claim settlement
4 unfairly impacts on their experience rating.

6 6. The bill permits the superintendent to order dividend
plans to be created in the Safety Pool.

8 7. The bill permits the superintendent to establish by rule
premium credits of up to 10% and dividend plans for employers
10 qualifying for safety programs.

12 8. The bill defines "average weekly wages, earnings or
salary" to exclude fringe benefits.

14 9. The bill excludes persons in the logging industry and
16 persons in the nonresidential construction industry from the
definition of independent contractor and requires the employer of
18 those persons to require proof of coverage.

20 10. The bill limits entitlement to workers' compensation
benefits for injuries or illnesses for which employment is the
22 predominant cause of the injury.

24 11. The bill provides that disputes regarding the date of
maximum medical improvement will be resolved by the newly created
26 independent medical examiner, or IME. The medical decision can
not be controverted.

28 12. The bill amends the early pay system by changing the
30 period in which an employer can contest a claim from 44 days
after an event causing an obligation to make payments to 60 days
32 after receipt of the diagnostic medical report.

34 13. The bill requires that the employee's health provider
forward a copy of a medical diagnostic report to the employer and
36 employee within 30 days from completion of the medical report or
within 30 days from the notice of injury, whichever is later.

38 14. The bill limits the number of physicians an employee
40 may select without the approval of the independent medical
examiner or the employer. The provision does not prevent
42 referral to a specialist. Chiropractic services are limited to
12 visits or 30 days from the initial chiropractic visit,
44 whichever comes first. Repeated diagnostic testing is not
covered without prior authorization from the independent medical
46 examiner, and generic drugs are to be used unless otherwise
recommended by the employee's physician.

48 15. The bill repeals the requirement for a medical
50 certificate of authorization signed by the employee and requires
that if compensation is sought for a lost-time claim the health
52 care provider must automatically forward a copy of a written

2 report or office notes to the employee and employer within 30
3 days. No authorization from the employee is needed for
4 additional information pertaining to the work-related condition.

6 16. The bill requires that the Workers' Compensation
7 Commission establish a medical quality control system including
8 peer review of medical services more than 3 months after the date
9 of injury or for which costs exceed \$10,000 and case management
10 for cases involving medical treatment continuing 3 months from
11 the date of injury or costing in excess of \$15,000.

12 17. The bill establishes a limit on duration of permanent
13 partial claims of 430 weeks from the date of injury and requires
14 the commission to consider the availability of work on a
15 statewide basis.

16 18. The bill defines intoxication for purposes of the
17 Workers' Compensation Act to be .04 blood alcohol content.

18 19. The bill prohibits lump sum settlements.

20 20. The bill makes revisions to the rehabilitation sections
21 of the Act. The administrator of the Office of Employment
22 Rehabilitation shall conduct the evaluation of suitability for
23 rehabilitation.

24 21. The bill limits rehabilitation plans to 18 months or
25 \$5,000 without demonstration of special and unusual circumstances.

26 22. The bill requires the administrator to develop rules
27 for the assessment and approval of proposed rehabilitation plans.

28 23. The bill provides that settlement of a claim between an
29 employer and employee does not affect an employer's obligations
30 to the Employment Rehabilitation Fund.

31 24. The bill limits educational retraining rehabilitation
32 benefits to 2 scholastic years or \$5,000 unless special and
33 unusual circumstances are demonstrated.

34 25. The bill defers the report on the effectiveness of
35 rehabilitation until the 118th Legislature.

36 26. The bill establishes the independent medical examiner,
37 IME, to resolve any medical dispute. The IME shall be one
38 hospital south of Augusta and one north of Augusta, selected by
39 competitive bidding. The bill describes the scope of
40 responsibility, provides for an appeal procedure to a 2nd IME and
41 provides immunity to the IME when acting within the scope of its
42 duties.

27. The bill amends the time period for filing petitions to not more than 3 years following the date of the latest payment.

28. The bill amends the section on petitions for review to permit discontinuance of benefits by the employer if the employee refuses an offer of reinstatement of suitable work, fails to participate in an approved rehabilitation plan, returns to work, refuses to submit to a medical examination, if the employer and employee reach agreement, or if the employee has left the State or the employee's whereabouts are unknown. If compensation is discontinued by the employer, the employee has the right to file for review by the commission, and within 2 weeks, the commission shall enter a provisional order suspending, reducing or continuing benefits pending a hearing. If a provisional order upholding suspension is subsequently reversed, the employee is entitled to back payments plus interest.

29. The bill establishes posttrial work benefits at 2/3 of the difference between preinjury and trial work earnings.

30. The bill establishes an arbitration procedure for the apportionment among insurers.

31. The bill eliminates the requirement of reports to the commission on medical only claims and provides for notice to an employer in the residual market of any proposed settlement by the insurer of \$10,000 or more. If the employer objects to part or all of the settlement, the superintendent may limit the impact of the settlement on the employer's experience rating factor.

32. The bill requires the commission to notify the employee of the obligation to notify the commission and previous employer of the employee's return to work.

33. The bill places limitations on attorney's fees.

34. The bill requires the superintendent to commence a hearing within 60 days of the effective date of this Act to determine the effect of the changes in the law on workers' compensation insurance rates.

35. The bill enacts transition, applicability and effective date provisions.