

MAINE STATE LEGISLATURE

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L.D. 1957

(Filing No. H-695)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957, Bill, "An Act to Improve the Maine Workers' Compensation System"

Amend the amendment by striking out everything after the title and before the statement of fact and inserting in its place the following:

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

'Sec. 1. 4 MRSA §1151, sub-§2-B is enacted to read:

2-B. Workers' compensation jurisdiction. The Administrative Court has exclusive jurisdiction to hear and decide appeals of workers' compensation decisions as provided in Title 39.

Sec. 2. 24-A MRSA §2362-A is enacted to read:

§2362-A. Disclosure of premium information

All bills and invoices issued to an employer for workers' compensation insurance must disclose clearly to the employer as separate figures the base rate; the employer's experience modification factor; the medical, indemnity and administrative portions of the premium; and the portion of the premium attributable to the mandatory workplace health and safety consultation services.

Sec. 3. 24-A MRSA §2363, sub-§7-B is enacted to read:

7-B. Limit on attorney's fees. An insurer or rating bureau may not utilize attorney's fees in the development and determination of workers' compensation insurance rates that are in excess of those permitted pursuant to Title 39, section 110.

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

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

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

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

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

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

26 Sec. 5. 24-A MRSA §2364, sub-§4, ¶C-1 is enacted to read:

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

36 Sec. 6. 24-A MRSA §2365-A is enacted to read:

38 §2365-A. Medical expense deductibles

40 Each insurer transacting or offering to transact workers'
42 compensation insurance in this State shall offer or provide
44 deductibles for medical expenses to be paid by employers as
follows.

46 1. Optional deductible of \$250. To employers who are not
48 experience-rated insurers must offer a deductible of \$250 per
occurrence.

2 2. Optional deductible of \$250 or \$500. To employers whose
3 premium is between 100% and 500% of the premium qualifying for
4 experience rating and to all employers in the logging and
5 lumbering industries, including employers of drivers, and sawmill
6 industries, insurers must offer a deductible of \$250 or \$500 per
7 occurrence.

8 3. Mandatory deductible of \$500. Except for employers that
9 qualify under subsections 1 and 2, to employers of more than 10
10 employees whose premium is over 500% of the premium qualifying
11 for experience rating, insurers must provide a deductible of \$500
12 per occurrence.

14 **Sec. 7. 24-A MRSA §2366, sub-§1-A is enacted to read:**

16 1-A. Rules. The superintendent may adopt rules for the
17 purpose of encouraging workers' compensation insurers to take
18 workers' compensation policies out of the residual market by
19 establishing credits applicable to any assessments that may be
20 ordered under section 2367 or by any other means. The criteria
21 for applying credits include consideration for policies taken out
22 of the residual market prior to, as well as after, the effective
23 date of the rules.

24 **Sec. 8. 24-A MRSA §2366, sub-§2, ¶B, as enacted by PL 1987, c.**
26 **559, Pt. A, §4, is amended to read:**

28 B. An employer is eligible for insurance from the Accident
29 Prevention Account if:

30 (1) The employer has at least 2 lost-time claims over
32 \$10,000 and a loss ratio greater than 1.00 over the
33 last 3 years for which data is available; and

34 (2) The employer has attempted to obtain insurance in
36 the voluntary market and has been refused by at least 2
37 insurers which that write that insurance in this
38 State. For the purpose of this section, an employer
39 shall-be is considered to have been refused if offered
40 insurance only under a retrospective rating plan or
41 plans.

42 **Sec. 9. 24-A MRSA §2366, sub-§3, ¶¶A and B, as enacted by PL**
44 **1987, c. 559, Pt. A, §4, are amended to read:**

46 A. The Safety Pool is an insurance plan that provides for
48 an alternative source of insurance for employers with good
49 safety records and--is--intended--to--operate--within--the
50 ~~framework-of-the-voluntary-insurance-market.~~

2 B. An employer shall ~~be~~ is eligible for the Safety Pool if
that employer:

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

8 (2) Has a loss ratio which that does not exceed 1.0 or
10 has had no more than one lost-time claim over \$10,000
over the last 3 years for which data is available; or

12 (3) Has been in business for less than 3 years,
14 provided that the eligibility shall ~~---terminate~~
terminates if his the employer's loss ratio exceeds 1.0
16 and the employer has at least 2 lost-time claims over
\$10,000 each at the end of any year.

18 Sec. 10. 24-A MRSA §2366, sub-§4, ¶A-1 is enacted to read:

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

24 Sec. 11. 24-A MRSA §2366, sub-§5, ¶C is enacted to read:

26 C. In a residual market rate proceeding, the superintendent
28 may order payment of dividends to insureds in the Safety
Pool to the extent that the pool's experience supports
30 them. The superintendent may adopt rules establishing a
dividend plan for the Safety Pool to provide an incentive
32 for implementation of safety programs by insureds in the
pool. The superintendent may employ outside consultants to
34 assist in the development of these rules.

36 Sec. 12. 24-A MRSA §2366, sub-§7-A is enacted to read:

38 7-A. Credits for qualifying safety programs. The
superintendent may adopt rules to establish dividend plans and
40 premium credits of up to 10% of the net annual premium for
policyholders that establish qualifying safety programs. The
42 rules must identify those classifications by which policyholders
are eligible for the credits and establish criteria for
44 qualifying safety programs and procedures to be followed by
servicing carriers in approving and auditing compliance with the
46 safety program. The superintendent may employ outside
consultants to assist in the development of rules under this
48 subsection.

50 Sec. 13. 39 MRSA §2, sub-§2, ¶G is enacted to read:

2 G. "Average weekly wages, earnings or salary" does not
4 include fringe benefits, regardless of whether in lieu of or
6 in addition to wages, earnings or salary, including but not
8 limited to employer payments for or contributions to a
10 retirement, pension, health, welfare, medical, life
12 insurance, training, social security or other employee or
14 dependent benefit plan for the employee's or dependent's
16 benefit, or any other employee's dependent entitlement.

18 Sec. 14. 39 MRSA §2, sub-§3, as repealed and replaced by PL
20 1983, c. 479, §4, is repealed and the following enacted in its
22 place:

24 3. Commissioner. "Commissioner" means the Commissioner of
26 Labor, as appointed pursuant to Title 26, section 1401.

28 Sec. 15. 39 MRSA §2, sub-§3-B is enacted to read:

30 3-B. Court. "Court" means the Administrative Court, as
32 established under Title 4, section 1151, unless another court is
34 specifically referenced.

36 Sec. 16. 39 MRSA §5 is enacted to read:

38 §5. Determination of independent contractor status

40 1. Determination permitted. A worker, an employer or a
42 workers' compensation insurance carrier, or any combination
44 thereof, may apply to the commissioner for a determination of
46 whether the status of an individual worker, group of workers or a
48 job classification associated with the employer is that of an
50 employee or an independent contractor.

A. The determination by the commissioner creates a
 rebuttable presumption that the determination is correct in
 any later claim for benefits under this Act.

B. Nothing in this section requires a worker, an employer
 or a workers' compensation insurance carrier to request
 determination.

2. Premium adjustment. If it is determined that a
 determination does not withstand judicial scrutiny when raised in
 a subsequent workers' compensation claim, then, depending on the
 final outcome of that subsequent proceeding, either the workers'
 compensation insurance carrier shall return the excess premium
 collected or the employer shall remit the premium subsequently
 due in order to put the parties in the same position as if the
 final outcome under the contested claim were determined correctly.

2 3. Determination submission. A party may submit, on forms
4 approved by the commissioner, a request for determination
 regarding the status of a person or job description as an
6 employee or independent contractor.

8 A. The status requested by a party is deemed to be approved
10 by the commissioner if the commissioner does not deny or
 take other appropriate action on the submission within 14
 days.

12 B. The commissioner may delegate the authority to make a
14 determination as long as that person or persons delegated
 act as the primary decision maker.

16 4. Hearing. A hearing, if requested by a party within 10
18 days of the commissioner's decision on a petition, must be
 conducted under the Maine Administrative Procedure Act.

20 5. Certificate. The commissioner shall provide the
22 petitioning party a certified copy of the decision regarding
24 determination that may be used as evidence of the commissioner's
 decision regarding determination at a later hearing concerning
 benefits.

26 6. Rulemaking. The commissioner may adopt reasonable rules
28 pursuant to the Maine Administrative Procedure Act to implement
30 the intent of this section, which is to afford speedy and
 equitable predetermination of employee and independent contractor
 status.

32 Sec. 17. 39 MRSA §21-A, sub-§4 is enacted to read:

34 4. Workplace health and safety training programs. The
36 commissioner or the commissioner's designee shall adopt rules
38 regarding the implementation of this subsection. The following
 requirements apply to all employers in the State required to
 secure payment of compensation in conformity with this Title.

40 A. The Superintendent of Insurance shall communicate to the
42 Department of Labor the names of employers that receive in
44 any policy year an experience rating of 2 or more. The
46 department shall notify each such employer and request a
48 plan that should reasonably reduce exposures to occupational
 hazards. In its notification the department must provide a
 statistical evaluation of the employer's experience and
 options for the employer's consideration. The options may
 include on-site consultation, education and training
 activities, technical assistance, and other relevant

2 information. The department shall review and comment on the
3 employer's submitted plan.

4 B. The department shall notify the Superintendent of
5 Insurance of any employer that fails to satisfy the
6 requirements of paragraph A within the time frame provided
7 by the rules. The Superintendent of Insurance shall assess
8 a surcharge of 2% on that employer's premium, or imputed
9 premium for self-insurance, to be paid to the Treasurer of
10 State who shall credit one half of that amount to the Safety
11 Education and Training Fund, as established by Title 26,
12 section 61 and one half to the Occupational Safety Loan
13 Fund, as established by Title 26, section 62.

14 **Sec. 18. 39 MRSA §23, sub-§2, as amended by PL 1989, c. 435,**
15 **§2, is further amended to read:**

16 **2. Proof of solvency and financial ability to pay; trust.**
17 By furnishing satisfactory proof to the Superintendent of
18 Insurance of solvency and financial ability to pay the
19 compensation and benefits, and deposit cash, satisfactory
20 securities or a surety bond, with the Division of Workers'
21 Compensation Commission, in such sum as the superintendent may
22 determine pursuant to subsection 6; such bond to run to the
23 Treasurer of State and the Treasurer of State's successor in
24 office, and to be conditional upon the faithful performance of
25 this Act relating to the payment of compensation and benefits to
26 any injured employee. In case of cash or securities being
27 deposited, the cash or securities shall must be placed in an
28 account at interest by the Treasurer of State, and the
29 accumulation of interest on the cash or securities so deposited
30 shall must be credited to the account and shall may not be paid
31 to the employer to the extent that the interest is required to
32 support any present value discounting in the determination of the
33 amount of the deposit. Any security deposit shall must be held by
34 the Treasurer of State in trust for the benefit of the
35 self-insurer's employees for the purposes of making payments
36 under the Act.
37

38 The superintendent shall prescribe the form of the surety bond
39 which may be used to satisfy, in whole or in part, the employer's
40 responsibility under this section to post security. The bond
41 shall must be continuous, shall be subject to nonrenewal only
42 upon not less than 60 days' notice to the superintendent and
43 shall cover payment of all present and future liabilities
44 incurred under the Act while the bond is in force and cover
45 payments which become due while the bond is in force which are
46 attributable to injuries incurred in prior periods and which are
47 otherwise unsecured by cash or acceptable securities. A bond
48 shall must be held until all payments secured thereby have been
49
50

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1372,
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2 made or until it has been replaced by a bond issued by a
3 qualified successor surety which covers all outstanding
4 liabilities. Payments under the bond shall be are due within 30
5 days after notice has been given to the surety by the ~~chair~~-of
6 the--commission Division of Workers' Compensation that the
7 principal has failed to make a payment required under the terms
8 of an award, agreement or governing law. A surety bond shall may
9 not be used to fund a trust established to satisfy the
10 requirements of this section.

11 As an alternative to the method described in the first paragraph
12 of this subsection, an eligible employer may establish an
13 actuarially fully funded trust, funded at a level sufficient to
14 discharge those obligations incurred by the employer pursuant to
15 this Act as they become due and payable from time to time,
16 provided that the superintendent shall require that the value of
17 trust assets shall be is at least equal to the present value of
18 ultimate expected incurred claims and claims settlement costs.
19 The present value of ultimate expected incurred claims and claims
20 settlement costs for a group self-insurer may not be more than
21 the amount actuarially determined considering the value of trust
22 assets and excess insurance to satisfy a 90% confidence level. A
23 group self-insurer may elect to fund at a higher confidence level
24 through the use of cash, marketable securities, surety bonds or
25 excess insurance. If a member of a group self-insurer terminates
26 its membership in the group for any reason, then that member
27 shall fund its proportionate share of the liabilities and
28 obligations of the trust to the 95% confidence level. If for any
29 reason the departing member fails to fund its proportionate share
30 of the trust's exposure to the 95% level of confidence, then the
31 remaining members of the group shall make such additional
32 contribution no later than the anniversary date of the program as
33 required to fund the departing member's exposure in accordance
34 with this provision. The-trust Trust assets shall must consist
35 of cash or marketable securities of a type and risk character as
36 specified in subsection 7, and shall have a situs in the United
37 States. The trustee shall submit a report to the superintendent
38 not less frequently than quarterly which lists the assets
39 comprising the corpus of the trust, including a statement of
40 their market value and the investment activity during the period
41 covered by the report. The trust shall must be established and
42 maintained subject to the condition that trust assets cannot be
43 transferred or revert in any manner to the employer except to the
44 extent that the superintendent finds that the value of the trust
45 assets exceeds the present value of incurred claims and claims
46 settlement costs with an actuarially indicated margin for future
47 loss development. In all other respects, the trust instrument,
48 including terms for certification, funding, designation of
49 trustee and pay out shall must be as approved by the
50 superintendent; provided, that the value of the trust account

2 shall must be actuarially calculated at least annually by a
casualty actuary who is a member of the American Academy of
4 Actuaries and adjusted to the required level of funding. For
purposes of this paragraph, an "eligible employer" is one who is
6 found by the superintendent to be capable of paying compensation
and benefits required by this Act and:

8 A. Has positive net earnings; or

10 B. Can demonstrate a level of working capital adequate in
relation to its operating needs.

12 Notwithstanding any provision of this section or chapter, any
14 bond or security deposit required of a public employer which is a
self-insurer shall may not exceed \$50,000, provided that such
16 public employer has a state-assessed valuation equal to or in
excess of \$300,000,000 and either a bond rating equal to or in
18 excess of the 2nd highest standard as set by a national bond
rating agency or a net worth equal to or in excess of
20 \$25,000,000. If a county, city or town relies upon a bond
rating, it shall value or cause to be valued its unpaid workers'
22 compensation claims pursuant to sound accepted actuarial
principles. This value shall must be incorporated in the annual
24 audit of the county, city or town together with disclosure of
funds appropriated to discharge incurred claims expenses. "Public
26 employer" includes the State, the University of Maine System,
counties, cities and towns.

28 In consideration of a self-insuring entity's application for
30 authorization to operate a plan of self-insurance, the
superintendent may require or permit an applicant to employ valid
32 risk transfer by the utilization of primary excess insurance,
subject to the provisions of subsection 6. Standards respecting
34 the application of primary excess insurance shall must be
contained in a regulation promulgated by the superintendent
36 pursuant to the Maine Administrative Procedure Act, Title 5,
chapter 375. Primary excess insurance shall must be defined as
38 insurance covering workers' compensation exposures in excess of
risk retained by a self-insurer.

40 As a further alternative to the methods described in this
42 subsection, an employer shall ~~be~~ is eligible for approved
self-insurance status pursuant to this Act if the employer
44 submits a written guarantee of the obligations incurred pursuant
to this Act, the guarantee to be issued by a United States or
46 Canadian corporation which is a member of an affiliated group of
which the employer is a member, and which corporation is solvent
48 and demonstrates an ability to pay the compensation and benefits,
and the guarantee is in a form acceptable to the superintendent.
50 The guarantor shall provide quarterly financial statements,

2 audited annual financial statements and such other information as
the superintendent may require, and the employer shall provide a
4 bond as otherwise required by this Act in an amount not less than
\$1,000,000. Any such guarantor shall--be is deemed to have
6 submitted to the jurisdiction of the Division of Workers'
Compensation Commission and the courts of this State for purposes
8 of enforcing any such guarantee. The guarantor, in all respects,
shall--be is bound by and subject to the orders, findings,
10 decisions or awards rendered against the employer for payment of
12 compensation and any penalties or forfeitures provided under this
14 Act. The superintendent, following hearing, may revoke the
self-insured status of the employer if at any time the assets of
the guarantor become impaired, encumbered or are otherwise found
to be inadequate to support the guarantee.

16 **Sec. 19. 39 MRSA §51, sub-§1, as enacted by PL 1981, c. 200,**
is amended to read:

18
1. **Entitlement.** If an employee who has not given notice of
20 his the employee's claim of common law or statutory rights of
action, or who has given the notice and has waived the same, as
22 provided in section 28 receives a personal injury arising out of
and in the course of his employment or is disabled by
24 occupational disease, he--shall the employee must be paid
compensation and furnished medical and other services by the
26 employer who has assented to become subject to this Act. An
injury does not arise out of and in the course of employment
28 unless it is demonstrated by clear and convincing evidence that
the injury is the immediate result of an acute work-related
30 event. Entitlement for any personal injury or occupational
disease must be established by objective and measurable medical
32 evidence.

34 **Sec. 20. 39 MRSA §51, sub-§4 is enacted to read:**

36 **4. Apportionment of work-related and nonwork-related**
injuries. When a preexisting disease or condition is accelerated
38 or aggravated by a compensable injury, only the acceleration or
aggravation is compensable under sections 52, 54-B and 55-B.
40 When a preexisting disease or condition combines with a
compensable injury, only that portion of the medical costs or
42 incapacity that would exist absent the preexisting disease or
condition is compensable under sections 52, 54-B and 55-B. The
44 degree of acceleration or aggravation attributable to the
compensable injury or the portion of an incapacity that would not
46 exist absent a preexisting disease or condition must be
determined by an independent medical examiner. A subsequent
48 nonwork-related injury or a nonwork-related aggravation is not
compensable under this Act.

2 **Sec. 21. 39 MRSA §51-B, sub-§4**, as repealed and replaced by PL
2 1989, c. 256, §1, is amended to read:

4 **4. Compensation for impairment; compensation for medical**
6 **expenses.** Compensation for impairment under section 56-B shall
6 may not be paid before the date on which the injured employee
8 reaches the stage of maximum medical improvement. In the event
8 of a dispute regarding the date on which the injured employee
10 reaches maximum medical improvement, a determination of maximum
10 medical improvement must be made by an independent medical
12 examiner. The employer or employee may controvert the amount of
12 the impairment payment but may not controvert a final decision by
14 the independent medical examiner that the employee has reached
14 maximum medical improvement. That compensation is due and
16 payable within 90 days after the employer has notice that maximum
16 medical improvement has been attained. Compensation for medical
18 expenses, aids and other services under section 52 is due and
18 payable within 75 days from the date that a request for payment
20 of these expenses is received.

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

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

44 If, at the end of the 14-day period in subsection 3 or the 90-day
44 or 75-day periods in subsection 4, the employer has not filed the
46 notice required by this subsection, the employer shall begin
46 payments as required under those subsections. In the case of
48 compensation for incapacity under subsection 3, the employer may
48 cease payments and file with the ~~commission~~ Division of Workers'
50 Compensation a notice of controversy, only as provided in this
50 subsection, no later than -44- 60 days after ~~an event which gives~~

~~rise to an obligation to make payments under subsection 3~~ receipt
2 of the initial diagnostic medical report. Failure to file the
4 required notice of controversy prior to the expiration of the
6 44-day 60-day period, in the case of compensation under
8 subsection 3, constitutes acceptance by the employer of the
10 compensability of the injury or death. Failure to file the
12 required notice of controversy does not constitute such an
14 acceptance by the employer when it is shown that the failure was
16 due to employee fraud or excusable neglect by the employer,
18 except when payment has been made and a notice of controversy is
20 not filed within 44 60 days of that payment. Failure to file the
22 required notice of controversy prior to the expiration of the
90-day period under subsection 4 constitutes acceptance by the
employer of the extent of impairment claimed. Failure to file
the required notice of controversy prior to the expiration of the
75-day period under subsection 4 for compensation for medical
expenses, aids or other services pursuant to section 52
constitutes acceptance by the employer of the reasonableness and
propriety of the specific medical services for which compensation
is claimed and requires payment for those services, but does not
constitute acceptance of the compensability of the injury or
death.

24 If, at the end of the 44-day 60-day period the employer has not
26 filed a notice of controversy, or if, pursuant to a proceeding
28 before the ~~commission~~ Division of Workers' Compensation, the
employer is required to make payments, the payments may not be
decreased or suspended, except as provided in section 100.

30 **Sec. 23. 39 MRSA §51-B, sub-§8**, as amended by PL 1983, c. 682,
32 §6, is further amended to read:

34 **8. Effect of payment.** If, within the 44-day 60-day period
36 established in subsection 7 and after the payment of compensation
38 for incapacity without an award, the employer elects to
40 controvert the claim to compensation for incapacity, the payment
42 of compensation shall may not be considered to be an acceptance
44 of the claim or an admission of liability. Notwithstanding the
46 provisions of section 99-C, the acceptance of compensation in any
48 case, except by decision or agreement, by the injured employee or
50 his that employee's dependents shall may not be considered an
admission by the employee or his that employee's dependents as to
the nature and scope of the employer's liability or a waiver of
the right to question the amount of compensation or the duration
of the same or the nature of the injury and its consequences.
The employer may continue the payment of compensation for
incapacity under subsection 3 following the filing of a notice of
controversy and up to the convening of the formal hearing, if the
notice was filed prior to the expiration of the 60-day period
established in subsection 7. The continuation of payments under

2 these circumstances is not an acceptance of the claim or an
3 admission of liability on the part of the employer.

4 **Sec. 24. 39 MRSA §52, as amended by PL 1989, c. 434, §8, is**
5 **further amended to read:**

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

8
9
10 An employee sustaining a personal injury arising out of and
11 in the course of his the employee's employment or is disabled by
12 occupational disease shall--~~be~~ is entitled to reasonable and
13 proper medical, surgical and hospital services, nursing,
14 medicines, and mechanical, surgical aids, as needed, paid for by
15 the employer. An injured employee shall--~~have~~ has the right to
16 make his the employee's own selection of a physician or surgeon
17 authorized to practice as such under the laws of the State. Once
18 an employee selects a physician, the employee may not change
19 physicians without seeking approval from an independent medical
20 examiner or the employer. This provision does not limit an
21 employee's right to be treated by a specialist when a referral is
22 made by the employee's physician. Once an employee has begun
23 treatment with the specialist, the employee may not seek
24 treatment from a different specialist without prior approval from
25 the independent medical examiner or the employer.

26
27 An employee's entitlement to health care services for an
28 injury arising out of and in the course of employment is limited
29 to 12 visits, exclusive of hospital inpatient visits, with any
30 one provider from the time of the initial visit, unless otherwise
31 authorized by an independent medical examiner. The independent
32 medical examiner shall authorize or decline to authorize further
33 compensable visits to a provider within 3 business days of
34 request.

35
36 A medical service provider who is not a licensed physician
37 may provide compensable medical service to an injured employee
38 for a period of no more than 30 days from the date of injury
39 without the authorization of an independent medical examiner;
40 thereafter, medical services provided to an injured worker
41 without the written authorization of a licensed physician are not
42 compensable. This limitation does not eliminate the employer's
43 right to controvert the underlying injury or medical care. The
44 independent medical examiner shall authorize or decline to
45 authorize further compensable visits to a provider within 3
46 business days of request.

47
48 Any employee sustaining a personal injury arising out of and
49 in the course of his the employee's employment, provided the
50 injury relates to the scope of a chiropractor's practice, as

2 defined and regulated by statute, shall--be is entitled to
3 chiropractic services as provided by Title 32, chapter 9. A duly
4 licensed chiropractor shall--be is considered competent to testify
5 before the Division of Workers' Compensation Commission.

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

16 ~~In every case where~~ If any services are procured or aids are
17 required by the employee, it shall--be his is the employee's duty
18 to see that the employer is given prompt notice thereof. The
19 employer shall then make prompt payment for them to the provider
20 or supplier or reimburse the employee, in accordance with section
21 51-B, subsection 4, provided that the costs are necessary and
22 adequate and the charges reasonable; and further provided that it
23 shall--be is presumed that, in a jurisdiction outside of the
24 United States that has a socialized medical program, payment of
25 the costs will be borne by the medical program and the employer
26 is not responsible for those costs under this section unless the
27 socialized medical program has made payment for services or aids
28 and requests reimbursement from the employer for the actual
29 amounts paid. The employer shall furnish artificial limbs, eyes,
30 teeth, eyeglasses, hearing aids, orthopedic devices and other
31 physical aids made necessary by the injury and shall replace or
32 renew the same when necessary from wear and tear or physical
33 change of the employee. The employee or ~~his~~ the employee's
34 counsel shall serve upon the employer or opposing counsel, within
35 7 days of the date of receipt by the employee or counsel,
36 complete copies of any medical reports or statements relating to
37 any treatment or examination described in this section. The
38 employer, carrier or ~~their~~ the employer's or carrier's counsel
39 shall serve upon the employee or opposing counsel, within 7 days
40 of the receipt by the employer, carrier or counsel, complete
41 copies of any medical reports or statements relating to any
42 treatment or examination alleged by the employee or ~~his~~ the
43 employee's counsel to be covered by this section.

44
45 An employer is not liable under this Act for charges for
46 health care services to an injured employee in excess of those
47 established under section 52-B, except upon petition as
48 provided. The ~~commission~~ Division of Workers' Compensation shall
49 allow charges in excess of those provided under section 52-B
50

2 against the employer if the provider satisfactorily demonstrates
3 to ~~the commission~~ an independent medical examiner that ~~his~~ the
4 provider's services were extraordinary or that he the provider
5 incurred extraordinary costs in treating the employee as compared
6 to those reasonably contemplated for the services provided. An
7 injured employee is not liable for any portion of the cost of
8 medical services under this section.

9
10 An employer is not liable under this Act and an injured
11 employee is not liable for charges for health care services
12 provided to the employee, with respect to injuries compensable
13 but for this paragraph, by a health care or medical facility
14 owned by a physician or other health care practitioner, other
15 than the physician's or practitioner's principal place of
16 business, if the services were provided to the employee upon
17 referral from the physician or health care practitioner and a
18 comparable facility exists within 100 miles of the facility,
19 unless the following requirements are met: the physician,
20 practitioner or a person on their behalf discloses, either in
21 person, with the disclosure noted in the patient's medical chart,
22 or in writing, the ownership interest of the physician or
23 practitioner to the patient and to the employer; the physician,
24 practitioner or a person on their behalf informs the patient of
25 any comparable facilities available to the patient located within
26 100 miles of the facility; and the patient has the right to
27 choose freely among the comparable facilities in the region. For
28 purposes of this paragraph only, a physician or health care
29 practitioner is presumed to own a health care or medical care
30 facility, if the physician or health care practitioner possesses,
31 directly or indirectly, an ownership interest of at least 25%.

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

42
43 A physician shall prescribe generic drugs for treatment of
44 an injury or disease for which compensation is claimed unless
45 medical necessity warrants otherwise.

46
47 Damage and destruction to artificial limbs, eyes, teeth,
48 eyeglasses, hearing aids, orthopedic devices and other physical
49 aids in the course of and arising out of the employment shall be
50 are considered an injury for the purposes of this Act. In case

2 If such physical aids in use by the employee at the time of the
injury are themselves injured or destroyed, the ~~commission~~
3 Division of Workers' Compensation in its discretion may require
4 that they be repaired or replaced by the employer.

6 Whenever there is any disagreement as to the proper costs of
the services or aids, or the periods during which they shall ~~be~~
7 are furnished, or as to the apportionment thereof among the
8 parties, any interested person may file a petition with the
9 ~~commission~~ Division of Workers' Compensation for the
10 determination thereof by an independent medical examiner.

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

16 The Superintendent of Insurance shall prescribe medical and
17 health care expense forms for the purpose of collecting
information as required by Title 24-A, section 2371. An insurer
18 or self-insurer may withhold payment of medical and health care
19 fees to any provider who fails to complete and submit the
20 prescribed form. In the event the provider fails to properly
21 complete and submit the prescribed form or to follow any fee
22 schedule approved by the ~~commission~~ commissioner, the insurer or
23 self-insurer is not required to file a notice of controversy but
24 may simply notify the provider of the failure. In the case of a
25 dispute, any interested party may petition the ~~commission~~
26 Division of Workers' Compensation to resolve the dispute.
27

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

32 **Sec. 25. 39 MRSA §52-A, sub-§1, as amended by PL 1989, c. 668,**
33 **is repealed.**

34 **Sec. 26. 39 MRSA §52-A, sub-§2, as enacted by PL 1981, c. 514,**
35 **§2, is repealed and the following enacted in its place:**

36 **2. Duties of health care providers. Duties of health care**
37 **providers are as follows.**

38 **A. Within 5 business days from the completion of a medical**
39 **examination or within 5 business days from the date notice**
40 **of injury is given to the employer, whichever is later, the**
41 **employee's health care provider shall forward to the**
42 **employer and the employee a diagnostic medical report, on**
43 **forms prescribed by the commissioner, for the injury for**
44 **which compensation is being claimed. The report must**
45 **include the employee's work capacity, likely duration of**
46

2 incapacity, return to work suitability and treatment
3 required. The Division of Workers' Compensation may assess
4 penalties up to \$500 per violation upon health care
5 providers who fail to comply with the 5-day requirement of
6 this subsection.

8 B. If ongoing medical treatment is being provided, every 30
9 days the employee's health care provider shall forward to
10 the employer and the employee a diagnostic medical report,
11 on forms prescribed by the commissioner. An employer may
12 request, at any time, medical information concerning an
13 employee's condition pertaining to the condition for which
14 compensation is sought. The health care provider shall
15 respond within 10 business days from receipt of the request.

16 C. Any health care provider shall submit to the employer
17 and the employee a final report of treatment within 5
18 working days of the termination of treatment, except that
19 only an initial report must be submitted if the provider
20 treated the employee on a single occasion.

22 D. Health care providers may charge a reasonable fee for
23 providing information pursuant to this subsection. In the
24 event that an employee changes physicians or is referred to
25 a different health care provider or facility, any health
26 care provider or facility having medical records regarding
27 the employee, including x rays, shall forward all medical
28 records relating to an injury or disease for which
29 compensation is claimed to the next physician upon request
30 of the employee. When an employee is scheduled to be
31 treated by a different physician or in a different facility,
32 the employee shall request to have the records transferred.

34 E. The reporting requirements of paragraph A do not apply
35 to claims for medical benefits only.

36 F. Authorization from the employee is required prior to
37 release of medical information from health care providers
38 for treatment of an injury or disease for which claim for
39 benefits under the Act has been made.

42 **Sec. 27. 39 MRSA §52-B, sub-§1-A is enacted to read:**

44 1-A. Restriction on reimbursement for health care
45 providers. In order to qualify for reimbursement for health care
46 services provided to employees under this Title, health care
47 providers providing individual health care services and courses
48 of treatment may not charge more for the services or courses of
49 treatment for employees than is charged to private 3rd-party
50 payers for similar services or courses of treatment. An employer

is not responsible for charges determined to be excessive or
treatment determined to be inappropriate by an independent
medical examiner pursuant to section 92-A.

Sec. 28. 39 MRSA §52-C is enacted to read:

§52-C. Medical health care review

1. Purpose. In order to ensure quality treatment for
injured employees and proper cost of services, the commissioner,
after consulting the Board of Registration in Medicine, shall
adopt rules that provide for review of health care providers who
render services to injured employees by establishing a quality
control system consistent with the requirements of this section.
Review of individual cases must be undertaken by an independent
medical examiner pursuant to the requirements of this section.

2. Peer review. Peer review is as follows.

A. Each case involving the provision of medical or surgical
services to an injured employee for more than 2 months from
the date of injury or medical costs that exceed \$10,000 must
be referred to an independent medical examiner for
monitoring of health care provider services and hospital
utilization. This monitoring must include determinations
concerning the appropriateness of the service, whether the
treatment is necessary and effective, the proper cost of
services, the quality of the treatment and the right of
providers to receive payment under the Act for services
rendered. The 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 examiner shall report the results of this
monitoring to the employee, the employer, and the Department
of Labor not less frequently than monthly.

B. Notwithstanding paragraph A, an employer or employee may
request peer review at any time.

3. Case management. The commissioner, with the advice of
the independent medical examiners, shall adopt rules establishing
a case management program for cases involving provision of
medical services for more than 2 months from the date of injury
or medical costs that exceed \$10,000 or at the request of the
employee or employer. The rules must require prior approval by
the employer or an independent medical examiner of any surgical
procedure and any hospitalization and further require the
employer's or an independent medical examiner's prior approval of
proposed treatment, with appropriate exceptions for emergencies.

2 The hospital or health care provider is responsible for obtaining
3 any required approval. Neither the employer nor the employee is
4 responsible for payment of the cost of any medical services for
5 which a required approval has not been obtained.

6 4. Other penalties. Any health care provider who has
7 submitted false testimony or a false report in connection with
8 any claim for payment made under this Act, or who has repeatedly
9 either overcharged for services or failed to comply with the
10 preapproval requirements of subsection 3, must be barred by order
11 of the Division of Workers' Compensation from receiving any
12 payment under this Act for services rendered for a period not to
13 exceed one year in the first instance and 3 years in the 2nd
14 instance, and the Division of Workers' Compensation may
15 permanently bar the provider from eligibility for payment of
16 services under this Act thereafter.

18 Sec. 29. 39 MRSA §53-C is enacted to read:

20 §53-C. Effect of volunteer services

22 An employee may serve in a volunteer capacity, if that
23 capacity is consistent with any medical restrictions, for a
24 public entity or nonprofit organization organized under the
25 provisions of Title 13-B, section 405, or the Internal Revenue
26 Code, Section 501 (C) (3), and that volunteer service has no
27 effect on any determination of capacity to work made under this
28 Title.

30 Sec. 30. 39 MRSA §55-B, as amended by PL 1989, c. 575, is
31 further amended to read:

32 §55-B. Compensation for partial incapacity

34 While the incapacity for work resulting from the injury is
35 partial, the employer shall pay the injured employee a weekly
36 compensation equal to 2/3 the difference, due to the injury,
37 between his the employee's average gross weekly wages, earning
38 earnings or salary before the injury and the weekly wages,
39 earnings or salary ~~which he~~ that the employee is able to earn
40 after the injury, but not more than the maximum benefit under
41 section 53-B. Payments under this section shall ~~may~~ not continue
42 for longer than 400 ~~413~~ weeks after ~~maximum-medical-improvement-~~
43 the date of injury. This paragraph applies only to employees
44 injured on or after November 20, 1987.

46 ~~This section applies only to employees injured on or after~~
47 ~~the effective date of this section.~~

2 For purposes of determining an injured employee's degree of
3 incapacity under this section, the ~~commission~~ Division of
4 Workers' Compensation shall consider the availability of work
5 that the employee is able to perform in and around the employee's
6 community for the 52-week period following the date of injury and
7 within this State thereafter, and the employee's ability to
8 obtain such work considering the effects of the employee's
9 work-related injury. ~~If no such work is available in and around~~
10 ~~the employee's community or if the employee is unable to obtain~~
11 ~~such work in and around the employee's community due to the~~
12 ~~effects of a work-related injury, the employee's degree of~~
13 ~~incapacity under this section is 100%. For the purpose of this~~
14 ~~section, the employee's community is the greater of a 75-mile~~
15 ~~radius from the employee's residence at the time of injury or the~~
16 ~~actual distance from the employee's normal work location to the~~
17 ~~employee's residence at the time of injury.~~

18 **Sec. 31. 39 MRSA §56-B, sub-§1,** as enacted by PL 1987, c. 559,
19 Pt. B, §33, is amended to read:

20 1. **Weekly benefit.** In the case of permanent impairment,
21 the employer shall pay the injured employee a weekly benefit
22 equal to 2/3 of the state average weekly wage, as computed by the
23 Bureau of Employment Security, for the number of weeks shown in
24 the following schedule:

25 A. One week for each percent of permanent impairment to the
26 body as a whole from 0 to 14%;

27 B. Three weeks for each percent of permanent impairment to
28 the body as a whole from 15% to 50%;

29 C. Four and 1/2 weeks for each percent of permanent
30 impairment to the body as a whole from 51% to 85%; and

31 D. Eight weeks for each percent of permanent impairment to
32 the body as a whole greater than 85%.

33 Compensation under this section is ~~in addition to~~ reduced by any
34 compensation under section 54-B or 55-B received by the employee.

35 **Sec. 32. 39 MRSA §61** is amended to read:

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

37 No compensation or other benefits shall ~~may~~ may be allowed for
38 the injury or death of an employee where ~~where~~ when it is proved that
39 such was occasioned by ~~his~~ the employee's willful intention to
40 bring about the injury or death of ~~himself~~ the employee or of
41 another, or that the same resulted from ~~his~~ the employee's

2 intoxication or use of a nonprescribed scheduled drug as defined
3 in Title 17-A, section 1101, subsection 11 while on duty. This
4 provision as to intoxication shall does not apply, if the
5 employer knew that the employee was intoxicated or that he the
6 employee was in the habit of becoming intoxicated while on duty.
7 For the purposes of this section, an employee is considered
8 intoxicated if the employee's blood alcohol content is .08 or
9 more. Proof of intoxication or use of a controlled substance by
10 a preponderance of the evidence gives rise to a rebuttable
11 presumption that the intoxication or use of a controlled
12 substance was the cause of injury. Any testing required by an
13 employer must be in compliance with Title 26, chapter 7,
14 subchapter III-A.

15 **Sec. 33. 39 MRSA §62-C is enacted to read:**

16 **§62-C. Nonduplication of benefits**

17 When an employee is receiving benefits under this Act or has
18 settled a claim for benefits under section 71-A and suffers
19 another injury for which compensation is payable under this Act,
20 the hearing officer must reduce benefits to the extent necessary
21 to avoid duplicative payment of benefits for any period of
22 incapacity, including offsets or reductions in payments awarded
23 for the subsequent injury. In 2nd-injury controversies, the
24 amount of award for the first injury is presumed to be adequate.

25 **Sec. 34. 39 MRSA §65, first ¶, as amended by PL 1965, c. 513,**
26 **§81, is further amended to read:**

27 Every employee shall after an injury, at all reasonable
28 times during the continuance of his disability if so requested by
29 his the employer, submit himself to an examination by a physician
30 or surgeon authorized to practice as such under the laws of this
31 State, to be selected and paid by the employer. Once an employer
32 selects a health care provider to examine an employee, the
33 employer may not request that the employee be examined by another
34 health care provider without prior approval from the independent
35 medical examiner. The employee shall have the right to have a
36 physician or surgeon of his the employee's own selection present
37 at such examination, whose costs shall be paid by the employer.
38 The employer shall give the employee notice of said right at the
39 time he the employer requests such examination.

40 **Sec. 35. 39 MRSA §66-A, sub-§3, as amended by PL 1989, c. 388,**
41 **is further amended to read:**

42 **3. Time period; discrimination prohibited.** The employer's
43 obligation to reinstate the employee continues until one year, or
44 2 years if the employer has over 250 employees, after the

~~employee has reached the stage of maximum medical improvement in
the judgment of the commission~~ date of the injury. An employer
who reinstates an employee under this section may not
subsequently discriminate against that employee in any employment
decision, including decisions related to tenure, promotion,
transfer or reemployment following a layoff, because of the
employee's assertion of a claim or right under this Act. Nothing
in this subsection may be construed to limit any protection
offered to an employee by section 111.

Sec. 36. 39 MRSA §71-A, as amended by PL 1989, c. 502, Pt. A,
§§150 and 151, is repealed and the following enacted in its place:

§71-A. Lump sum payments

1. Discharge of liability. An employer and an employee may
by agreement discharge any liability for compensation only when
the total settlement, excluding amounts attributable to medical
services, is not more than \$5,000.

Sec. 37. 39 MRSA §82, sub-§1, as enacted by PL 1985, c. 372,
Pt. A, §29, is amended to read:

1. Office of Employment Rehabilitation; appointment. An
Office of Employment Rehabilitation shall must be maintained
under the direction of a rehabilitation administrator, in this
subchapter referred to as the "administrator." The ~~chairman~~
commissioner may appoint and remove the administrator and
assistant administrators ~~with the concurrence of the commission.~~
The administrator shall report to and be directed by the ~~chairman~~
commissioner and shall carry out the duties assigned to the
administrator in this Act.

Sec. 38. 39 MRSA §82, sub-§3, ¶C, as amended by PL 1989, c.
580, §7, is further amended to read:

C. The administrator shall approve agreements regarding
rehabilitation if the administrator finds that they are
consistent with the purpose and requirements of this
subchapter and the rules ~~of the commission~~ pursuant to this
subchapter and shall order the implementation of plans only
as provided in section 85, subsection 2-A.

Sec. 39. 39 MRSA §82, sub-§3, ¶D, as enacted by PL 1985, c.
372, Pt. A, §29, is amended to read:

D. The administrator shall ~~assist the chairman in~~
developing adopt rules ~~under section 92, subsection 1 in~~
accordance with the Maine Administrative Procedure Act,
regarding rehabilitation, including, but not limited to,

2 rules governing minimum standards for providers of plan
3 development and planned rehabilitation services, which may
4 include a combination of medical and vocational
5 rehabilitation education and experience. The performance
6 standards must include minimum levels of success in the
7 completing of rehabilitation plans and placement in suitable
8 employment, as similar as possible to the injured worker's
9 regular employment at a wage as similar as possible to the
10 injured worker's wage at the time of the injury. The rules
11 must address the types of services each category of provider
12 is qualified to provide and procedures for rehabilitation
13 cases.

14 **Sec. 40. 39 MRSA §82, sub-§3, ¶E,** as amended by PL 1987, c.
15 779, §2, is further amended to read:

16 E. The ~~commission~~ administrator may not provide
17 direct rehabilitation services. Rehabilitation services
18 under this subchapter shall must be provided by private and
19 public rehabilitation counselors, governmental agencies,
20 in-house rehabilitation counselors and others approved by
21 the administrator as qualified to provide rehabilitation
22 services under the ~~commission's~~ rules adopted pursuant to
23 this subchapter. The administrator shall compile annually a
24 list of approved providers of rehabilitation services,
25 except that in-house rehabilitation counselors shall may not
26 appear on the list, and shall make this list available to
27 the parties.

28 **Sec. 41. 39 MRSA §82, sub-§3, ¶F,** as enacted by PL 1985, c.
29 372, Pt. A, §29, is amended to read:

30 F. The administrator shall develop fee schedules for
31 providers of rehabilitation services, listing the maximum
32 allowable fees for testing, evaluations of suitability,
33 development of rehabilitation plans and other rehabilitation
34 services.

35 (1) In setting a fee, the administrator shall take
36 into account the usual fee charged to provide that
37 service in the State and the reasonable and necessary
38 costs of providing the service.

39 (2) The administrator may grant prior approval of a
40 fee higher than the maximum in the rate schedule in
41 exceptional circumstances.

42 (3) Fee schedules developed under this paragraph do
43 not apply to services provided by in-house providers of
44 rehabilitation services.

2 (4) The fee schedule for a provider of a rehabilitation
4 plan must include a maximum amount for administrative
 services and costs, not to exceed 30% of the total cost
 of a plan.

6 **Sec. 42. 39 MRSA §82, sub-§3, ¶¶I, J and K** are enacted to read:

8 I. The administrator shall conduct an evaluation of
10 suitability after issuing an order for evaluation, following
12 the receipt of the 120-day report from the employer. The
14 evaluation must be conducted by a person considered
 qualified by the administrator and employed by the Office of
 Employment Rehabilitation. Copies of the evaluation must be
 sent to the employee and to the employer.

16 J. After a finding of suitability, the administrator shall
18 oversee development of the rehabilitation plan in
20 conjunction with the employee. The plan must be developed
 by a person considered qualified by the administrator.

22 K. The administrator shall refer the employee to
24 appropriate sources of services for the implementation of
26 the rehabilitation plan in accordance with section 83,
 subsection 4 and section 85, subsection 2-A. The
 administrator shall develop rules for making such referrals
 to persons approved under paragraph E.

28 **Sec. 43. 39 MRSA §83, sub-§1, ¶A,** as enacted by PL 1985, c.
30 372, Pt. A, §29, is amended to read:

32 A. The report shall must be in the form prescribed by rule
34 of the ~~commission~~ administrator and shall must include
36 information to the best of the employer's knowledge on
 whether the employee is likely to return to his the
 ~~employee's~~ previous employment and any other information
 required by the rule.

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

48 A. The evaluation of suitability shall must be done by a
50 ~~provider of rehabilitation services selected by the employee~~
 ~~from the list of approved providers maintained by the~~

2 ~~administrator~~ an authorized staff member of the Office of
3 Employment Rehabilitation.

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

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

12 ~~D. The provider shall evaluate the employee's suitability~~
13 ~~for rehabilitation under this subchapter. No An employee~~
14 ~~may not be found to be suitable unless the following~~
15 ~~findings are made by the provider evaluator:~~

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

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

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

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

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

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

37 3. **Development of plan.** A rehabilitation plan shall must
38 be developed by a person considered 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.

2 ~~A. The plan shall be developed by a provider of~~
4 ~~rehabilitation services selected by the employee from the~~
 ~~list of approved providers maintained by the administrator.~~

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

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

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

30 (1) The plan development shall must consider and the
32 plan may include a provision for trial work periods not
34 to exceed 3 months with the employer or subsequent
 employer.

36 (2) The administrator may approve trial work periods
 as part of a plan.

38 (3) The plan development shall must consider and the
40 plan may include a provision for participation in
42 appropriate job training programs conducted by the
44 Department of Labor, including, without limitation, the
46 Job Training Partnership Act and the Strategic Training
 for Accelerated Reemployment Program as provided in
 Title 26, chapter 25, and the Health Occupations
 Training Project as provided in Title 26, chapter 31.

48 D. The plan must consider the relative costs of proposed
 services to the employer. In no case may a plan last longer

2 than 2 years nor cost more than \$5,000 without demonstration
3 of special and unusual circumstances in that case.

4 4. Implementation of plan. The administrator shall adopt
5 rules for the assessment and approval of proposed plans within
6 the Office of Employment Rehabilitation. The administrator has
7 final authority, but may delegate specific duties to authorized
8 personnel. The administrator shall approve a plan if all parties
9 agree on the plan and the administrator finds it is consistent
10 with the purpose and requirements of this subchapter and in the
11 employee's best interests.

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

19
20 If the parties still do not agree on a plan at the informal
21 conference held under this paragraph, either party may
22 request that the administrator continue the informal
23 conference to a date certain within 20 days. If the
24 employer refuses to agree to the implementation of a plan at
25 the conclusion of this informal conference, the employee may
26 request that the administrator order the implementation of
27 the plan as provided in section 85, subsection 2-A. This
28 request must be made within 5 days of the informal
29 conference.

30
31 B. All obligations under section 66-A are suspended during
32 the implementation of the plan.

33
34 Sec. 45. 39 MRSA §83-A is enacted to read:

35 §83-A. Early evaluation screening

36
37 The administrator shall adopt rules establishing criteria
38 for early evaluation screening to identify disabilities
39 appropriate for early screening and early entry into employment
40 rehabilitation. In developing the rules and in reviewing them
41 periodically, the administrator shall convene a temporary panel
42 of medical, vocational and rehabilitation experts.

43
44
45 Sec. 46. 39 MRSA §84, sub-§1, as enacted by PL 1985, c. 372,
46 Pt. A, §29, is amended to read:

47
48 1. Applicability. This section applies to all employers in
49 the State which ~~that maintain,--on January 1,--1986,~~ a certified
50 rehabilitation counselor on premises to provide rehabilitation

2 services that meet the requirements of this subchapter. These
services must be provided only to their own employees.

4 In-house providers of rehabilitation services under this section
6 must be approved by the rehabilitation administrator under
section 82, subsection 3, paragraph E. For the purposes of this
8 section, the term "employer" does not include an insurance
carrier.

10 Sec. 47. 39 MRSA §85, sub-§1, as amended by PL 1989, c. 580,
§11, is further amended to read:

12
14 1. Order of evaluation. When a compensable injury exists
and the employee has requested employment rehabilitation, upon
16 referral by the treating physician or occupational health center,
when the employee meets the screening criteria for early
18 evaluation for employment rehabilitation or when the report
required under section 83, subsection 1, indicates that the
20 employee is not likely to return to the employee's previous
employment, the administrator shall order an evaluation of the
22 suitability of rehabilitation for the employee. If the parties
agree to an evaluation, the order is deemed to have been made by
24 the administrator unless notice to the contrary is received by
the parties within 14 days after written notice of the agreement
is sent to the administrator.

26 Sec. 48. 39 MRSA §85, sub-§4-A, ¶B is enacted to read:

28
30 B. The settlement of a claim between an employee and an
32 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).

34 Sec. 49. 39 MRSA §86, sub-§7, as amended by PL 1989, c. 580,
§12, is further amended to read:

36
38 7. Career retraining. A goal-oriented period of formal
training which that is designed to lead to employment in another
40 career field. Retraining may include education of the employee
when appropriate. The proposed rehabilitation plan may not
42 exceed 2 scholastic years or \$5,000.

44 Sec. 50. 39 MRSA §90, sub-§3, as enacted by PL 1989, c. 580,
§19, is amended to read:

46 3. Report to Legislature. The chair Commissioner of Labor
shall report to the First Second Regular Session of the 116th
48 115th Legislature concerning the effectiveness of restoring
injured workers to suitable employment through orders for plan

2 implementation under section 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
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
administrator with plans which that are agreed to by
employers;

12 C. Statistics comparing the types of rehabilitation
14 services used and job placements achieved for plans in which
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
likelihood of employers agreeing to implement plans;

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

26 F. Any other information that the ~~chair~~ Commissioner of
28 Labor considers appropriate.

30 **Sec. 51. 39 MRSA §90, sub-§4 is enacted to read:**

32 4. Repeal. Upon receipt of the report required under
34 subsection 3, the effectiveness of this subchapter must be
36 reviewed by the joint standing committee of the Legislature
having jurisdiction over banking and insurance matters. Unless
continued or modified by law, this subchapter is repealed
September 1, 1992.

38 **Sec. 52. 39 MRSA c. 1, sub-c. IV, first 3 lines, are repealed and**
40 **the following enacted in their place:**

42 **SUBCHAPTER IV**

44 **ADMINISTRATION; PROCEDURE; REVIEW; PENALTIES**

46 **§90-A. Establishment of Division of Workers' Compensation**

48 The Division of Workers' Compensation is established within
the Department of Labor to hear and decide matters pertaining to

workers' compensation claims that arise on or after January 1, 1992.

Sec. 53. 39 MRSA §91, as amended by PL 1989, c. 483, Pt. A, §§57 and 58, is repealed.

Sec. 54. 39 MRSA §91-B is enacted to read:

§91-B. Division of Workers' Compensation; hearing officers

1. Membership; term. The Division of Workers' Compensation; as established in section 90-A, consists of up to 12 hearing officers, who must be persons learned in the law and members of good standing of the bar of this State. They must be appointed by the Governor within 60 days after a vacancy occurs or a new hearing officer is authorized, subject to review by the joint standing committee of the Legislature having jurisdiction over judiciary matters and to confirmation by the Legislature. Hearing officers serve for terms of 6 years each from the date of their respective appointments.

2. Transition period. For a period of 2 years, the Workers' Compensation Commission shall continue to hear and decide matters pertaining to workers' compensation claims filed with the commission prior to the effective date of this section. During that time, the workers' compensation commissioners shall have the same powers and duties granted them in this Title prior to the effective date of this section. Any new actions filed after the effective date of this section are governed by the new workers' compensation system, regardless of the date of injury. The Workers' Compensation Commission must be discontinued as follows:

A. Six months from the effective date of this section and every 6 months thereafter the Governor shall designate 3 workers' compensation commissioners to resign; and

B. The Governor shall give 60 days notice to workers' compensation commissioners designated in paragraph A.

This subsection is repealed January 1, 1994.

3. Appointment of hearing officers. The Governor shall appoint one hearing officer to take office on the effective date of this section. As needed, the Governor shall appoint up to 5 additional hearing officers within one year from the effective date of this section.

4. Practice. Each hearing officer shall devote full time to the duties of the office and may not hold any other public

2 office or public employment. A hearing officer may not practice
3 law during that officer's term of office, nor may the officer
4 during that term be the partner or associate of any person in the
5 practice of law.

6 **Sec. 55. 39 MRSA §92**, as amended by PL 1987, c. 877, §1, is
7 further amended to read:

8 **§92. Authority of Commissioner of Labor; administration**

10 1. **Rules.** ~~The chairman--of--the--commission--shall--have~~
11 commissioner has general supervision over the administration of
12 this Act, ~~and--responsibility--for--the--efficient--and--effective~~
13 ~~management--of--the--commission--and--its--employees~~ to the extent
14 provided in this Act. Subject to any applicable requirements of
15 the Maine Administrative Procedure Act, Title 5, chapter 375,
16 ~~after--obtaining--the--advice--of--the--commissioners,~~ the chairman
17 commissioner shall make rules, prescribe forms and make suitable
18 orders as to procedure adopted to assure ensure a speedy,
19 efficient and inexpensive disposition of all proceedings.

22 2. **Employees.** ~~The chairman shall appoint an assistant to~~
23 ~~the chairman, who shall serve at his pleasure.~~ Subject to the
24 Personnel Civil Service Law, the chairman commissioner shall
25 appoint a Director of Administrative Services, and full-time or
26 part-time ~~reporters--and--such~~ legal, professional and clerical
27 assistants as may be necessary.

28 3. **Data system; reports.** The chairman commissioner is
29 responsible for development and administration of the ~~commission~~
30 workers' compensation data system. The chairman commissioner
31 shall report quarterly to the Governor, the President of the
32 Senate and the Speaker of the House of Representatives on each
33 ~~commissioner's~~ hearing officer's caseload and progress, and the
34 number of instances in which each ~~commissioner~~ hearing officer
35 has exceeded the 30-day rule contained in section 99-B.

38 4. **Booklets; information.** ~~In order to~~ To ensure that both
39 employers and employees are fully informed ~~as to~~ of their rights
40 and responsibilities under this Act, the chairman commissioner
41 shall prepare, publish and distribute an illustrated booklet
42 explaining, in informal and readily understandable language,
43 those rights and responsibilities. ~~The chairman--shall--be~~
44 commissioner is responsible for periodic revision of the booklet.

46 ~~5. Active-retired commissioners.--Any commissioner having~~
47 ~~retired from the commission is eligible for appointment as an~~
48 ~~active-retired commissioner.--The Governor, subject to review by~~
49 ~~the--joint--standing--committee--of--the--Legislature--having~~
50 ~~jurisdiction--over--judiciary--and--to--confirmation--by--the~~
51 ~~Legislature, may, upon being notified of the retirement of a~~

~~commissioner,--appoint--that--commissioner--to--be--an--active--retired
2 commissioner--for--a--term--of--4--years,--unless--sooner--removed,--and
subject--to--reappointment,--An--active--retired--commissioner--shall
4 have--the--same--powers--as--before--retirement,--except--that--he--shall
act--only--in--those--cases--and--at--times--and--places--as--directed--by
6 the--chairman,--and--except--that--an--active--retired--commissioner--may
not--be--a--member--of--a--panel--of--the--appellate--division.~~

~~An--active--retired--commissioner--who--performs--the--services--of--a
10 commissioner--at--the--direction--and--assignment--of--the--chairman
shall--be--compensated--at--a--rate--established--by--the--chairman,
12 provided--that--the--total--per--diem--compensation--and--retirement
pension--received--by--an--active--retired--commissioner--may--not--exceed
14 the--annual--salary--of--a--regular--commissioner,--In--addition,--the
active--retired--commissioner--shall--receive--reimbursement--for--his
16 expenses--actually--and--reasonably--incurred--in--the--performance--of
his--duties.~~

18
20 6. Office of Employee Assistants. The chairman
commissioner shall provide adequate funding for an Office of
Employee Assistants and shall, subject to the Personnel--Law
22 personnel law, appoint the assistants to staff the-Augusta-office
and-district-offices an office to be located in the offices of
24 the Department of Labor. Assistants are not attorneys, but should
demonstrate a level of expertise roughly equivalent to that of
26 insurance claims' analysts. The purpose of employee assistants is
to provide advice and assistance to employees under this Act and
28 particularly to assist employees in preparing for and assisting
at informal conferences under section 94-B. In addition, if an
30 employer appeals a decision of the commission Division of
Workers' Compensation or institutes any proceeding against an
32 employee under this Act, the Office of Employee Assistants shall,
upon request, advise an that employee how to best prepare for and
34 proceed with his the case.

36 No employee of the Office of Employee Assistants may represent
before the commission Division of Workers' Compensation any
38 insurer, self-insurer, group self-insurer, adjusting company or
self-insurance company for a period of 2 years after terminating
40 employment with the office.

~~The--chairman--shall--appoint--employee--assistants--and--supervisors
42 of--employee--assistants--as--necessary--to--effectuate--the--purposes--of
44 this--subsection.~~

46 The commissioner shall appoint 6 employee assistants and a
supervisor of employee assistants no later than January 1, 1992.
48 The commissioner may appoint up to 5 additional assistants if, in
the commissioner's judgment, the additional assistants are
50 necessary to effectuate the purposes of this subsection.

52 7. Budget. The chairman commissioner shall administer the
budget of the commission Division of Workers' Compensation.

2 ~~8. Office of Employment Rehabilitation. The chairman shall~~
3 ~~provide adequate funding for an Office of Employment~~
4 ~~Rehabilitation and shall appoint a Rehabilitation Administrator~~
5 ~~under section 82. The chairman shall, subject to the Civil~~
6 ~~Service Law, appoint such personnel as are necessary to carry out~~
7 ~~the functions of the office.~~

8
9. Abuse investigation unit. The chairman commissioner
10 shall provide adequate funding for a Unit of Abuse Investigation.

12 A. He The commissioner shall, subject to the Civil Service
13 Law civil service law, appoint at least 2 abuse
14 investigators for this unit. Investigators must be
15 qualified by experience and training to perform their duties.

16
17 B. The unit shall, at the direction of the chairman
18 commissioner, investigate all complaints or allegations of
19 fraud, illegal or improper conduct or violation of this Act
20 or rules of the ~~commissioner~~ commissioner relating to workers'
21 compensation insurance, benefits or programs, including
22 those acts by employers, employees or insurers. All records,
23 correspondence and reports of investigation in connection
24 with actual or alleged fraud, illegal or improper conduct or
25 violation of this Act or rules of the ~~commissioner~~
26 commissioner and all records, correspondence and reports of
27 criminal prosecution or civil action shall ~~be~~ are
28 confidential. The confidential nature of any such record,
29 correspondence or report shall ~~do~~ does not limit or affect the
30 use of those materials in any prosecution or action.

32 C. Each employer or employee, and each state, county,
33 municipal or quasi-governmental agency shall cooperate fully
34 with the unit and provide any information requested by it.

36 D. The unit shall report all its findings to the chairman
37 commissioner.

38
39 E. Whenever the chairman commissioner determines that a
40 fraud, attempted fraud or violation of this Act or rules may
41 have occurred, he the commissioner shall report in writing
42 all information concerning it to the Attorney General or his
43 the Attorney General's delegate for appropriate action,
44 including a civil action for recovery of funds and criminal
45 prosecution by the Attorney General.

46
47 10. Independent medical examiners. The commissioner shall
48 select one hospital in or south of Augusta and one hospital north
49 of Augusta to provide the services of independent medical
50 examiners required under this chapter using the competitive
51 bidding process. Subject to the approval of the commissioner,
52 these selected hospitals may enter into agreements with other

2 hospitals and providers of services to the extent necessary to
3 carry out their responsibilities as long as the selected
4 hospitals remain responsible for administration of the program,
5 including the making of specific assignments. The commissioner
6 may require the selected hospitals to make periodic reports or
7 otherwise submit information sufficient to permit the
8 commissioner to evaluate their performance. The commissioner is
9 responsible for maintaining the program at a minimum cost.

10 The independent medical examiners shall make all necessary
11 determinations of medical condition and related issues as
12 specified under section 92-A. The physician or other provider
13 assigned to fulfill the responsibilities of the independent
14 medical examiner in a case may not be the employee's personal
15 physician and may not have treated the employee with respect to
16 the injury for which benefits are being paid. The commissioner
17 shall adopt rules establishing fees for services rendered by
18 independent medical examiners and may adopt any rules considered
19 necessary to effectuate the purposes of section 92-A.

20 Sec. 56. 39 MRSA §92-A is enacted to read:

21 §92-A. Independent medical examiners

22
23 1. Referral. The Division of Workers' Compensation shall
24 refer any dispute relating to the medical condition of a claimant
25 to an independent medical examiner, including disputes that
26 involve the following:

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

28 B. Determination of maximum medical improvement and degree
29 of impairment under section 56-B;

30 C. Determination of the proper cost of medical services or
31 aids under sections 52 or 52-B;

32 D. Evaluation of suitability for return to work; and

33 E. Review of medical services under sections 52, 52-B or
34 52-C.

35
36 2. Standard. If an independent medical examiner permits or
37 refers medical treatment beyond what is medically necessary, an
38 independent medical examiner must take into consideration the
39 cost-effectiveness of the treatment.

40
41 3. Examination. Upon assignment, an independent medical
42 examiner may examine the employee as often as an independent
43 medical examiner determines necessary and may review any medical
44 records necessary to make the determinations required. The
45 examiner must submit a written report to the Division of Workers'
46 examination.

2 Compensation; the employer and the employee stating the
4 examiner's opinions on the issues raised by that case and
6 providing a description of findings sufficient to explain the
8 basis of those findings. The fee for the examination and report
10 must be paid by the employer.

12 4. Notice of report. It is presumed that the employer and
14 employee received the report 3 working days after mailing.

16 5. Right of appeal. The employer or the employee may
18 appeal the examiner's findings up to 20 days from receipt of an
20 independent medical examiner's report. The notice of appeal must
22 identify the findings and conclusions that are objected to and
24 the grounds for the objection. If an appeal is not filed, the
26 findings of the examiner are binding on the parties and the
28 Division of Workers' Compensation.

30 6. Appeal procedure. Upon receipt of a request for review
32 of the examiner's findings, the case must be assigned to a
34 3-person panel for a review of the record. The panel must
36 consist of physicians or other appropriate providers who meet the
38 qualifications in section 92, subsection 10 and who have no
40 independent knowledge of the first review. The panel shall
42 review the report of the first examiner and the available medical
44 records and if necessary shall examine the employee. Upon
46 completion of this review, the panel shall submit a report to the
48 court that must contain conclusions as to whether the challenged
50 findings or conclusions are clearly erroneous and, if so, in what
respects. This report must contain findings or conclusions on
any issue as to which the panel found the first examiner's report
to be clearly erroneous. The findings of the panel are binding
on the court. If the panel does not find one or more material
findings or conclusions of the first examiner to be clearly
erroneous, the cost of the appeal must be paid by the party
requesting the review; if one or more of the material findings or
conclusions is found to be clearly erroneous, these costs must be
paid by the employer.

Appeals concerning the independent medical examiner's approval or
failure to approve the compensability of medical or other health
care services in excess of the number of visits or days of
treatment provided for under section 52 must be considered on an
expedited basis.

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

2 Sec. 57. 39 MRSA §93, as amended by PL 1987, c. 736, §59, is
further amended to read:

4 §93. Investigations; subpoenas; depositions

6 1. Investigators. Any ~~commissioner~~ hearing officer may,
when the interests of any of the parties or when the
8 administration of this Act demand, appoint a person to make a
full investigation of the circumstances surrounding any
10 industrial injury or any matter connected therewith, and report
the same without delay to the ~~office--of--the--commissioner~~
12 commissioner.

14 2. Subpoenas. Any ~~commissioner~~ hearing officer may
administer oaths and any ~~commissioner~~ hearing officer, notary
16 public or clerk of any Superior Court may issue subpoenas for
witnesses and subpoenas duces tecum to compel the production of
18 books, papers and photographs relating to any questions in
dispute before the ~~commissioner~~ Division of Workers' Compensation
20 or to any matters involved in a hearing. Witness fees in all
proceedings under this Act shall ~~be~~ are the same as for witnesses
22 before the Superior Court. When a witness, subpoenaed and
obliged to attend before the ~~commissioner~~ Division of Workers'
24 Compensation or any member thereof, fails to do so without
reasonable excuse, the Superior Court or any justice thereof may,
26 on application of the Attorney General made at the written
request of a ~~member--of--the--commissioner~~ hearing officer, compel
28 obedience by attachment proceedings for contempt as in the case
of disobedience of the requirements of a subpoena issued from
30 such court or a refusal to testify therein.

32 3. Proceedings before Division of Workers' Compensation.
In all proceedings before the Division of Workers' Compensation
34 Commissioner, discovery shall ~~be~~ is available to any of the parties
in the proceedings as the ~~chairman~~ commissioner may, by rule
36 adopted under section 92, prescribe to ensure that hearings may
be held within the time periods prescribed by this Act. A
38 ~~commissioner~~ hearing officer shall rule on all objections and may
enforce this subsection in the same manner and to the same extent
40 as a Superior Court Justice may enforce compliance with the Maine
Rules of Civil Procedure, as amended, with regard to discovery,
42 ~~except that the commissioner does not have the power of contempt.~~

44 Signed statements by a medical doctor or osteopathic physician
relating to medical questions, by a psychologist relating to
46 psychological questions or by a chiropractor relating to
chiropractic questions, are admissible in workers' compensation
48 hearings before the Division of Workers' Compensation Commissioner,
~~providing that~~ as long as notice of that testimony to be used is
50 given and service of a copy of the letter or report is made on
the opposing counsel 14 days before the scheduled hearing.

52

2 Depositions, subpoenas or cross-examination of health care
practitioners is permitted only if the ~~commissioner~~ hearing
4 officer finds that the testimony is sufficiently important to
outweigh the delay in the proceeding.

6 4. **Witnesses.** Upon agreement of the parties, a witness may
be heard by a ~~commissioner~~ hearing officer other than the one to
8 whom the matter was originally referred and a transcript of his
the witness' testimony shall must be furnished by the original
10 ~~commissioner~~ hearing officer. ~~Such~~ This testimony shall ~~have~~ has
12 the same force and effect as if taken by deposition or if heard
by the original ~~commissioner~~ hearing officer.

14 5. **Contempts before Division of Workers' Compensation.** A
person shall may not, in proceedings before the Division of
16 Workers' Compensation Commission ~~or a single commissioner~~
Division, disobey or resist any lawful order, process or writ;
18 misbehave during a hearing or so near the place thereof as to
obstruct the same; neglect to produce, after having been ordered
20 to do so, any pertinent document; or refuse to appear after
having been subpoenaed or, upon appearing, refuse to be examined
22 according to law.

24 If any person shall ~~do~~ does any of the things forbidden in this
subsection, the ~~commissioner or commissioner~~ hearing officer shall
26 forthwith certify the facts to a Superior Court Justice in the
county where the alleged offense occurred and he the hearing
28 officer may serve or cause to be served upon such person an order
requiring such person to appear before such Superior Court
30 Justice upon a day certain to show cause why he that person
should not be adjudged in contempt by reason of the facts so
32 certified. The justice shall thereupon, in a summary manner, hear
the evidence as to the acts complained of and, if it is such as
34 to warrant ~~him~~ the justice in so doing, punish such person in the
same manner and to the same extent as for a contempt committed
36 before ~~him~~ the justice, or commit such person upon the same
conditions as if the doing of the forbidden act had occurred with
38 reference to the process of the Superior Court or in the presence
of the justice.

40 6. **Case administration.** The ~~commissioner~~ commissioner shall
42 assume an active and forceful role in the administration of this
Act to ensure that the system operates efficiently and with
44 maximum benefit to both employers and employees. ~~It shall~~
~~continually monitor individual compensation cases to ensure that~~
46 ~~injured employees or their dependents receive the full amount of~~
~~compensation to which they are entitled under this Act.~~

48 **Sec. 58. 39 MRSA §94**, as amended by PL 1985, c. 372, Pt. A,
50 §33, is further amended to read:

§94. Approval of compensation agreement; petition for award

2
4 Subject to section 94-B, ~~in the event of when~~ a controversy
6 ~~exists~~ as to the responsibility of an employer for the payment of
8 compensation, any party in interest may file ~~in the office of~~
10 ~~with~~ the ~~commission~~ Division of Workers' Compensation a petition
12 for award of compensation, setting forth the names and residences
14 of the parties, the facts relating to the employment at the time
of the injury, the knowledge of the employer or notice of the
occurrence thereof, the character and extent of the injury and
the claims of the petitioner with reference thereto, together
with such other facts as may be necessary and proper for the
determination of the rights of the petitioner.

16 If, following an injury which that causes no incapacity for
18 work, the employer and employee reach an agreement that the
employee has received a personal injury arising out of and in the
course of employment, a memorandum of such agreement signed by
20 the parties may be filed ~~in the office of~~ with the ~~commission~~
22 Division of Workers' Compensation. Such The memorandum shall must
24 set forth the names and residences of the parties, the facts
relating to the employment at the time of the injury, the time,
place and cause of the injury, and the nature and extent of the
injury. Any member ~~of the commission shall be empowered, without~~
26 ~~the necessity of the filing of a petition for award, to~~ hearing
officer may render a protective decree based upon such memorandum
without the filing of a petition for award.

28 Sec. 59. 39 MRSA §94-A, as amended by PL 1985, c. 372, Pt. A,
30 §34, is further amended to read:

32 §94-A. Commissioner of Labor actions

34 In addition to other actions required of or permitted to the
36 ~~commissioner~~ commissioner under this Act, in order to assure ensure
just and efficient administration of claims, the ~~commissioner~~
commissioner shall perform the actions required by this section.

38 1. Inform employee. Immediately upon receipt of the
40 employer's notice of injury required by section 106, the
42 ~~commissioner~~ commissioner shall contact the employee and provide
information explaining the compensation system and the employee's
rights. The ~~commissioner~~ commissioner shall advise the employee
44 how to contact the ~~commissioner~~ commissioner for further assistance
and shall provide that assistance.

46 2. Monitor payments. The ~~commissioner~~ commissioner shall
48 monitor cases in order to assure ensure that:

50 A. Either payments are initiated or notice of controversy
52 is filed within the time limits established in section 51-B,
subsections 3, 4 and 7; and

2 B. Payments to the claimant provide the full amount of
compensation to which he the claimant is entitled, and are
properly indicated on the memorandum of payment.

4
6 **3. Construction.** In interpreting this Act, the ~~emmission~~
commissioner shall construe it so as to ensure the efficient
8 delivery of compensation to injured workers at a reasonable cost
to employers. All workers' compensation cases shall must be
10 decided on their merits and the rule of liberal construction
shall does not apply to those cases. Accordingly, this Act is
12 not to be given a construction in favor of the employee, nor are
the rights and interests of the employer to be favored over those
of the employee.

14
16 **4. Information.** The ~~emmission~~ commissioner shall require
the employee, employer or insurer to provide ~~it--with~~ any
18 information ~~it~~ reasonably ~~deems~~ considered necessary to monitor
cases, including, but not limited to, ~~pre-injury~~ preinjury and
~~post-injury~~ postinjury wage statements.

20 **Sec. 60. 39 MRSA §94-B**, as enacted by PL 1983, c. 479, §19,
22 is amended to read:

24 **§94-B. Procedure upon notice of controversy; informal conference**

26 **1. Conference scheduled; waiver.** Upon filing of a notice
of controversy, and instead of proceeding by way of a petition,
28 the matter shall must be referred to a ~~emmissioner~~ hearing
officer, who shall schedule an informal conference to be held no
30 later than 3 weeks from the date of that filing. The provisions
of section 98 with regard to place and transportation costs apply
32 equally to informal conferences.

34 Upon agreement of the parties, an informal conference may be
waived and a formal hearing scheduled.

36
38 **2. Conference procedure.** The ~~emmissioner~~ hearing officer
shall make every effort to resolve any controversies or
misunderstandings and shall render an advisory opinion at the
40 conference. The ~~emmissioner~~ hearing officer is not bound by the
ordinary common law or statutory rules of evidence or procedure,
42 but shall make inquiry in such manner as is best calculated to
ascertain the substantial rights of the parties and carry out the
44 spirit of this Act.

46 **3. Representation.** In preparation for and at the
conference, the ~~emmission~~ hearing officer shall assure ensure
48 that competent technical staff from the Office of Employee
Assistants is available to provide advice and assistance to the
50 employee.

2 If, at this stage, the employer or insurer elects to be
3 represented by legal counsel, the employee is entitled to be
4 similarly represented by legal counsel of his the employee's
5 choice, with all reasonable attorney fees to be assessed against
6 the employer. If no adverse party elects to be so represented,
7 the employee retains the right to secure legal counsel at his the
8 employee's own expense.

10 4. Action upon opinion. Within 7 days of the conference,
11 the employer may file with the emmission Division of Workers'
12 Compensation a memorandum of payment evidencing the initiation of
13 compensation payments or, if there is further controversy, any
14 party may then file a petition as provided in this Act.

16 5. Notice to employer. The Division of Workers'
17 Compensation shall notify an employer when an informal conference
18 is scheduled, a notice of settlement is filed and a formal
19 hearing or other proceeding regarding a claim of an employee of
20 that employer is scheduled. This notice requirement is in
21 addition to the notice requirements set forth in section 106,
22 subsection 2.

24 6. Employer representation. The employer or representative
25 of the employer or insurer who attends the informal conference
26 must be familiar with the employee's claim and has full authority
27 to make decisions regarding the claim. The hearing officer may
28 assess a penalty in the amount of \$100 against any employer or
29 representative of the employer or insurer who attends the
30 conference without full authority to make decisions regarding the
31 claim.

32
33 Sec. 61. 39 MRSA §95, as amended by PL 1989, c. 256, §4, is
34 further amended to read:

36 **§95. Time for filing petitions**

37 Any employee's claim for compensation under this Act shall
38 be is barred unless an agreement or a petition as provided in
39 section 94 shall-be is filed within 2 years after the date of the
40 injury, or, if the employee is paid by the employer or the
41 insurer, without the filing of any petition or agreement, within
42 2 years of any payment by such employer or insurer for benefits
43 otherwise required by this Act. The 2-year period in which an
44 employee may file a claim does not begin to run until the
45 employee's employer, if the employer has actual knowledge of the
46 injury, files a first report of injury as required by section 106
47 of the Act. Any time during which the employee is unable by
48 reason of physical or mental incapacity to file the petition
49 shall is not be included in the period provided in this section.
50

2 If the employee fails to file the petition within that period
because of mistake of fact as to the cause and nature of the
4 injury, the employee may file the petition within a reasonable
time. In case of the death of the employee, there shall-be is
6 allowed for filing said petition one year after that death. No
petition of any kind may be filed more than ~~10~~ 3 years following
8 the date of the latest payment made under this Act. For the
purposes of this section, payments of benefits made by an
10 employer or insurer pursuant to section 51-B or 52 shall-be are
considered payments under a decision pursuant to a petition,
12 unless a timely notice of controversy has been filed.

14 **Sec. 62. 39 MRSA §96-A**, as enacted by PL 1981, c. 199, §2, is
amended to read:

16 **§96-A. Procedure for filing petitions**

18 **1. Filing with Division of Workers' Compensation.** Any
interested party may seek a determination of his that party's
20 rights under this Act by filing with the ~~commission~~ Division of
Workers' Compensation any petition authorized under this Act.
22 The fee for filing any petition is \$25. Any filing fee paid by
an employee is not reimbursable by the employer.

24 **2. Service upon responding party.** Copies of all petitions
26 filed under this Act shall must be served by certified mail,
return receipt requested, to the other parties named in the
28 petition. In the case of a petition by an employee, a copy of the
petition shall must be served upon the employer's insurer, or
30 group self-insurer, and the time for filing an answer to the
petition commences from the date of receipt of the petition by
32 the insurer or group self-insurer.

34 **Sec. 63. 39 MRSA §96-B**, as amended by PL 1985, c. 249, §5, is
further amended to read:

36 **§96-B. Expedited decision on claim of agricultural or**
38 **aquacultural exemption**

40 **1. Claim of exemption; answer.** If an employer carries
employer liability insurance as required by sections 2 and 21-A
42 and claims to fall within one of the agricultural or aquacultural
exemptions in section 2 or 21-A, the employer may raise this
44 either in an answer filed under section 97 or by motion. The
employer shall file such a motion with the ~~commission~~ Division of
46 Workers' Compensation within 5 days after receipt of the
employee's petition and shall mail a copy thereof to the
48 employee. The employer shall file affidavits, records, proof of
insurance and other evidence supporting his the employer's claim
50 for an exemption, together with the motion. Within 5 days after

2 receipt of the employer's motion, the employee may file a reply
with the ~~commission~~ Division of Workers' Compensation, together
4 with affidavits, records and other evidence supporting his the
employee's claim that the employer does not fall within an
6 agricultural or aquacultural exemption. If the employee files a
reply, a copy thereof shall must be mailed to the employer.

8 2. **Expedited decision.** When the employee has filed a reply
or the time for filing such a reply has expired, the ~~commission~~
10 hearing officer shall promptly rule on whether the employer falls
within an agricultural or aquacultural exemption. Whenever
12 possible, the ~~commission~~ hearing officer shall attempt to decide
this issue based on the documentary evidence submitted by the
14 parties, but may hold a hearing solely on this issue if the
documentary evidence is insufficient, after at least a 5-day
16 notice to all parties or their attorneys of record.

18 If the ~~commission~~ hearing officer rules that the employer does
not fall within an agricultural or aquacultural exemption, he the
20 hearing officer shall schedule a hearing on the employee's
petition as provided in section 98. At that hearing, the
22 employer may again raise the issue of exemption.

24 If the ~~commission~~ hearing officer rules that the employer does
fall within an exemption, he the hearing officer shall issue a
26 decree consistent with that ruling.

28 3. **Appeal.** There is no appeal from the ~~commission's~~
hearing officer's decision, prior to a hearing on the employee's
30 petition, ruling against the employer's exemption. If the
~~commission~~ hearing officer is of the opinion that a question of
32 law involved in the ruling ought to be determined by the
~~Appellate--Division~~ Administrative Court prior to any further
34 proceedings, ~~it~~ the hearing officer may on motion of the
aggrieved party report the case to the ~~division~~ court for that
36 purpose and stay all further proceedings, except those which that
are necessary to preserve the rights of the parties without
38 making a decision.

40 If the ~~commission~~ hearing officer rules that the employer does
fall within the agricultural or aquacultural exemption, the
42 employee may appeal that decision to the ~~division~~ Administrative
Court as provided in section 103-B.

44
46 **Sec. 64. 39 MRSA §97**, as amended by PL 1985, c. 506, Pt. A,
§82, is further amended to read:

48 **§97. Filing of answers**

2 Within 20 days after receipt of such petition, all the other
parties interested in opposition shall file an answer thereto
4 with the ~~commission~~ Division of Workers' Compensation and mail a
copy thereof to the petitioner, ~~which; the answer shall~~ must
6 state specifically the contentions of the opponents with
reference to the claim as disclosed by the petition. The
~~commission--or--any--commissioner~~ A hearing officer may grant
8 further time for filing the answer, and allow amendments to said
petition or answer at any stage of the proceedings. If any party
10 opposing such petition does not file an answer within the time
limited, the hearing shall must proceed upon the petition.

12
14 ~~Except that,--for~~ For good cause shown, a ~~single-commissioner~~
hearing officer may permit the late filing of any pleading
16 permissible under this Act. If the subject of the petition has
been considered in an informal conference under section 94-B, the
period for filing and mailing of answers shall ~~be~~ is 7 days.

18
20 **Sec. 65. 39 MRSA §98**, as repealed and replaced by PL 1983, c.
479, §21, is amended to read:

22 **§98. Time and place of formal hearing**

24 Upon filing of a petition, the matter shall must be referred
to a ~~single-commissioner~~ hearing officer or, in a case under
26 section 94-B, to the same ~~commissioner~~ hearing officer, who shall
fix a time for hearing upon at least a 5-day notice given to all
28 the parties or to the attorney of record of each party. The
matter need not be assigned to the same ~~commissioner~~ hearing
30 officer if that ~~commissioner~~ hearing officer is unavailable due
to illness, death or similar reason. The ~~commissioner~~ hearing
32 officer may not be replaced for reason of caseload or because he
the hearing officer presided at the informal conference. All
34 hearings shall must be held at such towns and cities
geographically distributed throughout the State as the ~~commission~~
36 shall ~~designate~~ commissioner designates. ~~In case~~ If the place of
hearing so designated is more than 10 miles ~~distant~~ from the
38 place where the injury occurred, the employer shall must provide
transportation or reimburse the employee for reasonable mileage
40 in traveling within the State to and from the hearing. The amount
allowed for travel shall must be determined by the ~~commissioner~~
42 ~~or--commission~~ hearing officer and awarded separately in the
decree. If the case has had an informal conference under section
44 94-B, the hearing shall must be held within 30 days of the filing
of the petition.

46
48 **Sec. 66. 39 MRSA §99**, as amended by PL 1981, c. 698, §§193 to
195, is further amended to read:

50 **§99. Hearing and decision**

2 If from the petition and answer there appear to be facts in
4 dispute, the ~~commissioner~~ hearing officer shall then hear such
6 witnesses as may be presented, or by agreement the claims of both
8 parties as to such facts may be presented by affidavits. If the
10 facts are not in dispute, the parties may file with the
12 ~~commission~~ Division of Workers' Compensation an agreed statement
14 of facts for a ruling upon the law applicable thereto. From the
16 evidence or statements thus furnished the ~~commissioner~~ Division
18 of Workers' Compensation shall in a summary manner decide the
20 merits of the controversy. His ~~The~~ decision, ~~shall~~ must be filed
22 in the office of the ~~commission~~ Division of Workers'
Compensation, and a copy thereof attested by the clerk of the
~~commission~~ hearing officer mailed forthwith to all parties
interested or to the attorney of record of each party. His ~~The~~
decision, in the absence of fraud, upon all questions of fact
~~shall be~~ is final, but whenever in a decree the ~~commission~~
hearing officer expressly rules that any party has or has not
sustained the burden of proof cast upon him ~~that party~~, the said
finding shall ~~may~~ not be considered a finding of fact but shall
be ~~is~~ deemed to be a conclusion of law and shall ~~be~~ reviewable as
such.

24 The ~~commissioner~~ hearing officer shall, upon the request of
26 a party made as a motion within 20 days after notice of the
28 decision, or may upon ~~its~~ the hearing officer's own motion find
30 the facts specially and state separately its conclusions of law
32 thereon and file the appropriate decision if it differs from the
34 decision filed before the request was made. Those findings,
36 conclusions and revised decision shall ~~may~~ must be filed in the
office of the ~~commission~~ Division of Workers' Compensation, and a
copy thereof attested by the clerk of the ~~commission~~ Division of Workers' Compensation must be mailed forthwith to all
parties interested. The running of the time for appeal, including
certification and presentation to the ~~Appellate--Division~~
Administrative Court under section 103-B, is terminated by a
timely motion made pursuant to this section, and the full time
for this appeal commences to run and is to be computed from the
filing of those findings, conclusions and revised decision.

40 Clerical mistakes in decrees, orders or other parts of the
42 record and errors therein arising from oversight or omission may
44 be corrected by the ~~commission~~ hearing officer at any time ~~ef-its~~
on the hearing officer's own initiative or on the motion of any
46 party and after notice to the parties. During the pendency of an
48 appeal, these mistakes may be so corrected before the appeal is
docketed in the ~~division~~ Administrative Court or Supreme Judicial
Court and thereafter while the appeal is pending may be so
corrected with leave of the ~~division~~ Administrative Court or
50 Supreme Judicial Court.

2 In any case upon which a ~~commissioner~~ hearing officer whose
4 term has expired has completed hearing all of the evidence, that
6 ~~commissioner~~ hearing officer shall render a decision on that case
8 as soon as practicable. That decision has the same effect as if
it were rendered by a ~~commissioner~~ hearing officer whose term had
not expired. Any ~~commissioner~~ hearing officer whose term has
expired is entitled to \$50 per day for each day spent preparing
and issuing any decision under this paragraph.

10 **Sec. 67. 39 MRSA §99-B**, as amended by PL 1983, c. 479, §22,
12 is further amended to read:

14 **§99-B. Prompt decision required**

16 The ~~commissioner~~ hearing officer who hears a case pursuant
18 to section 99 shall render his a decision no later than 30 days
after each party has completed presenting its case. Whenever the
20 ~~commissioner~~ hearing officer exceeds the limit contained in this
section, compensation to ~~him~~ shall the hearing officer must be
22 forfeited effective the day after the 30th day and for each day
until the decision has been issued; provided that this provision
24 shall does not apply in any case for which the ~~commissioner~~
hearing officer has shown just cause, as determined by rules of
26 the ~~commissioner~~ commissioner made pursuant to section 92,
subsection 1, for delay beyond 30 days.

28 **Sec. 68. 39 MRSA §99-C**, as amended by PL 1983, c. 479, §23,
is further amended to read:

30 **§99-C. Petition for reopening**

32 Upon the petition of either party, a ~~single-commissioner~~
34 hearing officer may reopen and review any compensation payment
36 scheme, award or decree upon the grounds of newly discovered
evidence which by due diligence could not have been discovered
38 prior to the time the payment scheme was initiated or prior to
the hearing on which the award or decree was based. The petition
40 must be filed within 30 days of the payment scheme, award or
decree.

42 **Sec. 69. 39 MRSA §100**, as amended by PL 1987, c. 559, Pt. B,
§§41 and 42, is further amended to read:

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

46 1. Relief available. Upon the petition of either party, a
48 ~~single-commissioner~~ the Division of Workers' Compensation shall
review any unilateral action by an employer pursuant to
50 subsection 4-A or any compensation payment scheme required by

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

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

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

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

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

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

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

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

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

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

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

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

- 2 (2)--The-employee's-whereabouts-are-unknown;-or
- 4 (3)--The-employee-has-resumed-work;
- 6 G.---The---employer---or---his---insurance---carrier---files---a
8 certificate-with-the-commission-stating-that-the-employee
 refuses-to-submit-to-an-examination;-or
- 10 D.---The-employee-refuses-an-offer-of-reinstatement-to-a
12 position-which-is-suitable-to-his-physical-condition-or-the
14 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.
- 16 (1)--If-the-employee-refuses-an-offer-of-reinstatement
18 or-fails-to-return-to-available-suitable-work,-his
20 benefits-shall-be-reduced-in-an-amount-equal-to-the
22 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.
- 24 (2)--Benefits-shall-not-be-suspended-or-reduced-pending
26 hearing-under-this-paragraph-unless-the-employer-has
28 provided-the-employee-with-written-notice-that-benefits
30 may-be-suspended-or-reduced-together-with-any
32 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.
- 34 (3)--Benefits-shall-not-be-suspended-or-reduced-pending
36 hearing-under-this-paragraph-if-the-employee-shows
38 that,-despite-a-good-faith-work-search,-the-employee-is
 unable-to-obtain-suitable-work.
- 40 (4)--Within-30-days-after-notice-to-the-employee-under
42 subparagraph--(2),--the--commission--shall--enter--a
44 provisional--order--providing--for--the--suspension,
46 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.
- 48 (5)--If-benefits-are-suspended-or-reduced-under-this
50 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.~~

4
6 4-A. Unilateral discontinuance of benefits. Upon written
8 notice to the employee and to the Division of Workers'
10 Compensation that benefits are being suspended or reduced,
12 together with any information relied on by the employer to
14 support the suspension or reduction, an employer may discontinue
16 or reduce benefits:

18 A. If the employee refuses an offer of reinstatement to a
20 position that is suitable to the employee's physical
22 condition and the employee's physician or an independent
24 medical examiner has determined that the employee is
26 medically able to perform the employment being offered:

28 B. If the employee is able to return to work and there is
30 work available that is suitable to the employee's physical
32 condition within the community or, after 52 weeks from the
34 date of injury, within the State and the employee's
36 physician or the independent medical examiner has determined
38 that the employee is medically able to perform the available
40 employment:

42 C. If the employee returns to work;

44 D. If the employee refuses to submit to a medical
46 examination pursuant to subsection 5;

48 E. If the employer and the employee file an agreement with
50 the Division of Workers' Compensation;

F. If the employee has left the State for reasons other
than returning to the employee's permanent residence at the
time of injury;

G. If the employee's whereabouts are unknown; or

H. If the employee's treating physician or the independent
medical examiner determines that the employee is able to
return to work in the ordinary competitive labor market in
the State without any restrictions due to the injury.

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

2 A determination by the independent medical examiner that the
4 employee is medically able to perform the requirements of the
employment being offered or available is final and binding in all
6 respects.

8 4-B. Employee's right to a hearing. In the event that
compensation is discontinued by the employer pursuant to
10 subsection 4-A, the employee has a right to file a petition for
review and to submit to the Division of Workers' Compensation any
12 additional information relating to continued entitlement to
benefits.

14 A. The Division of Workers' Compensation, within 2 weeks
after the employee files a petition for review, shall enter
16 an order providing for the suspension, reduction or
continuation of benefits pending a hearing on the petition.
18 The order must be based upon the information submitted by
both the employer and the employee under this section. The
20 Division of Workers' Compensation may not issue an order
reinstating benefits unless there is clear and convincing
22 evidence that the employee will prevail at the hearing.

24 B. If an order is issued upholding the employer's
unilateral action and the hearing officer, after hearing,
26 reverses the order, either in whole or in part, the hearing
officer shall order payment of all benefits withheld
28 together with interest at the rate of 6% a year. The
employer shall pay this amount within 10 days of the order.

30 5. Medical examination. Upon the request of the
32 petitioner, ~~the commission shall order~~ employer or the
independent medical examiner, the employee ~~to~~ must submit to
34 examination by an ~~impartial physician or surgeon designated by~~
~~the commission from the geographical area where the employee~~
36 resides ~~the independent medical examiner.~~ The fee for the
examination shall ~~must~~ be paid by the employer. ~~Payment of~~
38 compensation ~~may be decreased or suspended by the commissioner~~
~~pending final decision on the petition if:~~

40 A. ~~The physician or surgeon certifies to the commission~~
42 ~~after examination that in his opinion the employee is able~~
~~to resume work, or~~

44 B. ~~The employee refuses to submit to an examination.~~

46 6. Recovery of overpayments. Compensation ~~Any compensation~~
48 paid by the employer after the employee has resumed work may be
recovered ~~to an employee from the date the employee is not~~
50 qualified for compensation to the date the employer unilaterally

2 discontinued benefits pursuant to subsection 4-A is recoverable
3 from the employee in a legal action brought by the employer if
4 the employer discontinued compensation pursuant to subsection
5 4-A, paragraphs C to G.

6 ~~A. At the time of his filing a petition under this section,~~
7 ~~the employer also filed a certificate that the employee had~~
8 ~~resumed work, and~~

10 ~~B. After the hearing the commissioner finds that the~~
11 ~~petition was properly filed and decrees that compensation~~
12 ~~cease.~~

14 Sec. 70. 39 MRSA §100-A, as amended by PL 1989, c. 580, §20,
15 is repealed and the following enacted in its place:

16 **§100-A. Orders or agreements for trial work periods**

18 The Division of Workers' Compensation may approve an
19 agreement of the parties to a trial work period at a specified
20 job for a period not to exceed 3 months. During this trial work
21 period and the payment of wages for that work, the payment of
22 compensation is suspended.

24 The suspension ceases and weekly compensation must be
25 restored in the amount paid prior to the commencement of the
26 trial work period immediately upon termination of employment
27 during the trial work period if the reason for termination is an
28 inability to work because of the present injury for which there
29 was prior compensation.

32 If the termination of the trial work period is not related
33 to the injury for which there was prior compensation and the
34 employer does not restore benefits, the continued suspension of
35 benefits is considered a unilateral discontinuance of benefits by
36 the employer and the procedures set forth in section 100,
37 subsection 4-A apply.

38 Sec. 71. 39 MRSA §102, as repealed and replaced by PL 1989,
39 c. 294, §1, is amended to read:

42 **§102. Reopening for mistake of fact or fraud**

44 1. Agreements. Upon the petition of either party at any
45 time, the commissioner Division of Workers' Compensation may annul
46 any agreement which that has been approved by the commissioner
47 Division of Workers' Compensation if it finds that the agreement
48 has been entered into through mistake of fact by the petitioner
49 or through fraud. Except in the case of fraud on the part of the
50 employee, an employee is not barred by any time limit from filing

2 a petition to have the matters covered by the agreement
determined in accordance with this Act as though the agreement
had not been approved.

4
2. **Compensation payment scheme.** Notwithstanding section
6 51-B, subsection 7, a party may petition the ~~commission~~ Division
of Workers' Compensation within one year of initiation of the
8 payment scheme, award or decree to reopen any case in which fraud
on the part of the opposing party is alleged. If the ~~commission~~
10 hearing officer finds that the petitioning party had exercised
due diligence in investigating the initial claim and further
12 finds that fraud occurred, the ~~commission~~ hearing officer may
reopen the case as to any issue which that may have been affected
14 by the fraudulent act and may terminate or modify an employer's
obligation to make payment upon a finding that fraud on the part
16 of a party affected the employer's obligation to make payment.

18 Except in the case of fraud on the part of the employee, an
employee is not barred by any time limit from filing a petition
20 to have any issues determined in accordance with this Act as
though the payment scheme had not been initiated.

22 **Sec. 72. 39 MRSA §103-A**, as enacted by PL 1981, c. 514, §6,
24 is repealed.

26 **Sec. 73. 39 MRSA §103-B**, as amended by PL 1989, c. 412, §§1,
2, 4 and 5, is further amended to read:

28 **§103-B. Appeal from the Division of Workers' Compensation**
30 **decision**

32 1. **Procedure.** An appeal shall may be taken from the
~~commission~~ hearing officer's decision by filing a copy of the
34 decision, order or agreement, with the ~~division~~ Administrative
Court within 20 days after receipt of notice of the filing of the
36 decision by the ~~commission-er-commissioner~~ hearing officer.

38 Any party in interest may present copies of any order, decision
or agreement to the clerk of the ~~division~~ court. Appeals are to
40 a single Judge of the Administrative Court or an Associate Judge
of the Administrative Court.

42
44 The failure of an appellant who timely notifies the ~~division~~
court of his the desire to appeal to provide a copy of the
46 decision, order or agreement appealed from shall does not affect
the jurisdiction of the ~~division~~ court to determine the appeal on
48 its merits unless the appellee shows substantial prejudice from
that failure.

2 ~~2. Basis. There shall be no appeal upon questions of fact~~
3 ~~found by the commission or by any commissioner, except to correct~~
4 ~~manifest error or injustice.~~

6 2-A. Basis. There shall may be no appeal upon questions of
7 fact found by the ~~commission or by any commissioner~~ the hearing
8 officer.

10 3. Action. The division court, after due consideration,
11 may reverse or modify any decree of the ~~commission~~ Division of
12 Workers' Compensation and shall issue a written decision. The
13 written decision of the ~~division~~ shall court must be filed with
14 the ~~commission~~ commissioner and mailed to the parties or their
15 counsel.

16 4. Costs. If the employee prevails, costs of appeal shall
17 must be allowed, including the record, and including reasonable
18 attorneys' fees as provided for under section 110. No attorney
19 who represents an employee who prevails in an appeal before the
20 division court may recover any fee from that client for that
21 representation. Any attorney who violates this paragraph shall
22 ~~lose his~~ loses that fee and is liable in a court suit to pay
23 damages to the client equal to 2 times the fee charged that
24 client.

26 5. Publication of decisions. The division court shall
27 biennially publish its significant workers' compensation
28 decisions and make them available to the public at such cost as
29 is required to pay for suitable publication. Copies of all
30 written decisions shall must be distributed to the State Law
31 Library and the county law libraries.

32 Sec. 74. 39 MRSA §103-C, as amended by PL 1985, c. 372, Pt.
33 A, §41, is further amended to read:

36 **§103-C. Appeal from a decision of the Administrative Court**

38 1. Procedures. Any party in interest may present a copy of
39 the decision of the division court to the clerk of the Law Court
40 within 20 days after receipt of notice of the filing of the
41 decision ~~by the division~~. Within 20 days after the copy is filed
42 with the Law Court, the party seeking review by the Law Court
43 must file a petition seeking appellate review with the Law Court,
44 setting forth a brief statement of the facts, the error or errors
45 of law which that are alleged to exist and legal authority
46 supporting the position of the appellant.

48 2. Rules. The Law Court shall establish and publish
49 procedures for the review of petitions for appellate review of
50 decisions of the division court.

2 3. **Discretionary appeal; action.** Upon the approval of 3 or
4 more members of a panel consisting of no less than 5 justices of
5 the Law Court, the petition for appellate review may be granted.
6 If the petition for appellate review is denied, then the decision
7 of the ~~division~~ shall be court is final. The petition shall must
8 be considered on written briefs only.

9
10 If the petition for appellate review is granted, then the clerk
11 of the Law Court shall notify the parties of the briefing
12 schedule consistent with the Maine Rules of Civil Procedure, and
13 in all respects the appeal before the Law Court shall must be
14 treated as an appeal in an action in which equitable relief has
15 been sought. The Law Court may, after due consideration, reverse,
16 modify or affirm any decision of the ~~division~~ court.

17
18 4. **Costs.** In all cases of appeal to the Law Court in which
19 the employee prevails, it may order a reasonable allowance to be
20 paid to the employee by the employer for expenses incurred in the
21 proceedings of the appeal, including the record, but not
22 including expenses incurred in other proceedings in the case.
23 Reasonable attorneys' fees shall must be allowed as provided for
24 under section 110. No attorney who represents an employee who
25 prevails in an appeal before the court may recover any fee from
26 that client for that representation. Any attorney who violates
27 this paragraph shall ~~lose his~~ loses the fee and is liable in a
28 court suit to pay damages to the client equal to 2 times the fee
29 charged that client.

30 **Sec. 75. 39 MRSA §103-D**, as amended by PL 1981, c. 698, §197,
31 is further amended to read:

32 **§103-D. Report to the Law Court**

33 Decisions of the ~~commission~~ Administrative Court may be
34 reported directly to the Law Court pursuant to the Maine Rules of
35 Civil Procedure, Rule 72.

36
37 **Sec. 76. 39 MRSA §103-E**, as amended by PL 1981, c. 698, §198,
38 is further amended to read:

39 **§103-E. Enforcement of decisions of Division of Workers'
40 Compensation**

41 Any decision of the ~~commissioners or the division~~ shall be
42 Division of Workers' Compensation is enforceable by the Superior
43 Court Division of Workers' Compensation by any suitable process
44 including execution against the goods, chattel and real estate
45 and including proceedings for contempt for willful failure or
46 neglect to obey the orders, decisions or decrees agreements of
47
48
49
50

2 the court Division of Workers' Compensation, or in any other
3 manner that decrees for equitable relief may be enforced. Any
4 ~~party-in-interest may present copies, certified by the clerk of~~
5 ~~the commission or of the division, of any order or decision of~~
6 ~~the commission or of the division, or of any memorandum of~~
7 ~~agreement approved by the commission to the clerk of courts for~~
8 ~~the county in which the injury occurred; or if the injury~~
9 ~~occurred without the State, to the clerk of courts for the County~~
10 ~~of Kennebec. Whereupon any Justice of the Superior Court hearing~~
11 ~~officer shall render a pro forma decision in accordance therewith~~
12 ~~with any order or decision of the Division of Workers'~~
13 ~~Compensation and cause all interested parties to be notified.~~
14 The decision shall has the same effect and all proceedings
15 in relation thereto shall must thereafter be the same as though
16 rendered in an action in which equitable relief is sought, duly
17 heard and determined by the court Division of Workers'
18 Compensation. The decision shall must be for enforcement of a
19 ~~commission~~ Division of Workers' Compensation decision, order or
20 ~~agreement; appeals . Appeals~~ from a ~~commission~~ Division of
21 Workers' Compensation decision, order or agreement shall must be
22 in accordance with section 103-B.

23 Sec. 77. 39 MRSA §104-A, as amended by PL 1989, c. 503, Pt.
24 B, §180, is further amended to read:

25 **§104-A. Compensation payments; penalty**

26 The employer or insurance carrier shall make compensation
27 payments as follows:

28 1. **Order or decision.** With regard to injuries occurring
29 prior to January 1, 1984, within 10 days after the receipt of
30 notice of an approved agreement for payment of compensation, or
31 with regard to injuries occurring after December 31, 1983, within
32 the time limits specified in section 51-B, or within 10 days
33 after any order or decision of the ~~commission~~ Division of
34 Workers' Compensation awarding compensation. Payment shall may
35 not be suspended thereafter in the event of appeal to the
36 ~~Appellate Division~~ Administrative Court as provided in section
37 103-B or, if the ~~division~~ court finds that the employee is
38 entitled to compensation, in the event of appeal to the Law Court
39 from a decision of the ~~division~~ court as provided in section
40 103-C, except that the ~~commission~~ Division of Workers'
41 Compensation shall retain jurisdiction, pending the decision on
42 appeal, to enter orders or decisions as provided in section 100.
43 If the ~~commission~~ Division of Workers' Compensation, after a
44 review of incapacity under section 100, issues an order or
45 decision denying compensation to an employee, compensation shall
46 must be suspended from the date of the ~~commission's~~ order or
47 decision, notwithstanding any appeal of that order or decision to
48
49
50

2 the ~~division~~ court as provided in section 103-B, or any report
or appeal to the Law Court as provided in sections 103-C and
4 103-D. The employer or insurer may recover from an employee
payments made pending appeal to the ~~Appellate-Division~~ court or
6 pending report or appeal to the Law Court if and to the extent
that the ~~Appellate-Division~~ Administrative Court or the Law Court
8 has decided that the employee was not entitled to the
compensation paid. The ~~commission~~ shall have Division of Workers'
10 Compensation has full jurisdiction to determine the amount of
overpayment, if any, and the amount and schedule of repayment, if
12 any. The ~~commission~~ Division of Workers' Compensation, in
determining whether or not repayment should be made and the
14 extent and schedule of repayment, shall consider the financial
situation of the employee and his the employee's family and shall
16 may not order repayment which that would work hardship or
injustice.

18 2-A. Failure to pay within time limits. An employer or
insurance carrier who fails to pay compensation, as provided in
20 this section, shall must be penalized as provided in this
subsection.

22 A. Except as otherwise provided by section 51-B, subsection
24 9, if an employer or insurance carrier fails to pay
compensation as provided in this section, the ~~commission~~
26 Superintendent of Insurance shall assess against the
employer or insurance carrier a forfeiture of up to \$100
28 \$200 for each day of noncompliance. If the ~~commission~~
superintendent finds that the employer or insurance carrier
30 was prevented from complying with this section because of
circumstances beyond their control, no forfeiture may be
32 assessed.

34 (1) ~~One-half-of-the~~ The forfeiture shall must be paid
to the employee to whom compensation is due and ~~1/2~~
36 ~~shall be paid to the commission and be credited to the~~
General Fund.

38 (2) If a forfeiture is assessed against any employer
40 or insurance carrier under this subsection on petition
by an employee, the employer or insurance carrier shall
42 must pay reasonable costs and attorney fees, as
determined by the ~~commission~~ superintendent, to the
44 employee.

46 (3) Forfeitures assessed under this subsection may be
enforced by the ~~Superior-Court~~ Division of Workers'
48 Compensation as provided in section 103-E.

2 B. Payment of any forfeiture assessed under this subsection
shall is not be considered an element of loss for the
4 purpose of establishing rates for workers' compensation
insurance.

6 2-B. Failure to secure payment. If any employer, who is
required to secure the payment to his employees of the
8 compensation provided for by this Act, fails to do so, the
employer is subject to the penalties set out in paragraphs A, B
10 and C. The failure of any employer to procure insurance coverage
for the payment of compensation and other benefits to his
12 employees in compliance with sections 21-A and 23 constitutes a
failure to secure payment of compensation within the meaning of
14 this subsection.

16 A. The employer is guilty of a Class D crime.

18 B. The employer is liable to pay a civil penalty of up to
\$10,000, payable to the Second Injury Fund.

20 C. The employer, if organized as a corporation, is subject
22 to revocation or suspension of its authority to do business
in this State as provided in Title 13-A, section 1302. The
24 employer, if licensed, certified, registered or regulated by
any board authorized by Title 5, section 12004-A, or whose
26 license may be revoked or suspended by proceedings in the
Administrative Court or by the Secretary of State, is
28 subject to revocation or suspension of his the employer's
license, certification or registration.

30 Prosecution under paragraph A does not preclude action under
32 paragraph B or C.

34 If the employer is a corporation, any agent of the corporation
having primary responsibility for obtaining insurance coverage is
36 liable for punishment under this section. Criminal liability
shall must be determined in conformity with Title 17-A, sections
38 60 and 61.

40 3. Certificate. Notwithstanding any other provision of law
or rule of evidence, the certificate of the Director of
42 Administrative Services, under seal of the ~~commission~~ Department
of Labor, shall must be received in any court in this State as
44 prima facie evidence of facts pertaining to insurance coverage
records contained in the certificate or within the documents
46 attached to the certificate.

48 Sec. 78. 39 MRSA §104-B, sub-§§3 and 4, as enacted by PL 1981,
50 c. 474, §4, are 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
~~commissioner~~ superintendent, file a ~~petition for an~~ request for
appointment of an arbitrator to determine apportionment of
liability among the responsible insurers. ~~The commissioner 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 will be the exclusive means for resolving
apportionment disputes among insurers and the decision of the
arbitrator is conclusive and binding among all parties involved.

4. **Consolidation.** ~~The commissioner or any commissioner~~
Division of Workers' Compensation may consolidate some or all
proceedings arising out of multiple injuries.

Sec. 79. 39 MRSA §106, as repealed and replaced by PL 1987,
c. 559, Pt. B, §46, is amended to read:

**§106. Reports to Department of Labor; notice to employer of
settlement**

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 ~~commissioner~~
Department of Labor 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 ~~commissioner~~
Department of Labor. 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. The employer shall
keep a record of all injuries that require medical treatment.

~~2. Settlements. Whenever any settlement is made with an~~
~~injured employee by the employer or insurance carrier for~~
~~compensation covering any specific period under an approved~~

~~agreement or a decree, or covering any period of total or partial
incapacity that has ended, the employer or carrier shall file
with the commission a duplicate copy of the settlement receipt or
agreement signed by the employee showing the total amount of
money paid to him for that period or periods, but the settlement
receipt or agreement is not binding without the commission's
approval.~~

2-A. Settlements. Settlements are subject to this
subsection.

A. Whenever any settlement is made with an injured employee
by the employer or insurance carrier for compensation
covering any specific period under an approved agreement or
a decree, or covering any period of total or partial
incapacity that has ended, the employer or carrier shall
file with the Division of Workers' Compensation a duplicate
copy of the settlement receipt or agreement signed by the
employee showing the total amount of money paid to the
employee for that period or periods, but the settlement
receipt or agreement is not binding without the approval of
the Division of Workers' Compensation.

B. At least 14 days prior to submitting any residual market
settlement agreement having a present value in excess of
\$10,000 to the Division of Workers' Compensation for
approval, the insurance carrier must give notice of the
settlement to the employer. If the employer objects to the
settlement agreement, the employer must give notice of the
grounds for objection to the carrier within 7 days of
receipt of the agreement. After giving notice of objection,
the employer may appeal inclusion of all or part of the
settlement payment in calculation of the experience
modification factor to the Superintendent of Insurance.
Within 30 days from the date notice of appeal was filed,
both parties must submit any relevant information to the
superintendent, and within 60 days from receipt of the
appeal notice, the superintendent shall issue a decision
based upon the written submissions of the parties. Upon
issuance of a decision by the superintendent, either party
may request a hearing before the superintendent pursuant to
Title 24-A, section 229. The procedures set forth in Title
24-A, section 2320 do not apply to appeals pursuant to this
section.

3. Return to employment. Any person receiving compensation
under this Act who returns to employment or engages in new
employment after his that person's injury shall file a written
report of that employment with the commission Department of Labor
and his the previous employer within 7 days of his that person's

2 return to work. This report shall must include the identity of
the employee, his the employer and the amount of his the
4 employee's weekly wages or earnings received or to be received by
the employee. The Department of Labor shall notify the employee
6 in writing of the employee's obligations under this subsection
and of the penalties applicable under section 113.

8 **Sec. 80. 39 MRSA §106-A**, as amended by PL 1983, c. 682, §8,
is further amended to read:

10 **§106-A. Notice by the Division of Workers' Compensation**

12
14 Within 15 days of receipt of an employer's notice of injury,
as required by section 106, unless it has received a petition for
award of compensation relating to the injured employee, the
16 commissioner Division of Workers' Compensation shall take
reasonable steps to notify the employee that, unless the employer
disputes the claim, the employer is required to pay compensation
18 within the time limits established in section 51-B, subsections 3
and 4; that a petition for award may be filed; section 110 of the
Act provides for the payment of attorney's fees under certain
20 circumstances; and rights under the Act may not be protected
unless a petition of award or memorandum of payment is on file
22 with the commissioner Division of Workers' Compensation within 2
24 years of the injury.

26
28 **Sec. 81. 39 MRSA §107, sub-§1**, as repealed and replaced by PL
1989, c. 434, §9, is amended to read:

30 **1. Completion of forms.** Every insurance company insuring
employers under this Act shall fill out any blanks and answer all
32 questions submitted that may relate to policies, premiums, amount
of compensation paid and such other information as the commissioner
34 commissioner or the Superintendent of Insurance may determine
important, either for the proper administration of this Act or
36 for statistical purposes.

38 **Sec. 82. 39 MRSA §108-A**, as enacted by PL 1987, c. 559, Pt.
B, §49, is amended to read:

40 **§108-A. Reports and data collection**

42
44 **1. Occupational injuries and illnesses.** The Director of
the Bureau of Labor Standards shall provide an annual report
concerning the number and character of occupational injuries and
46 illnesses and their effects, as required under Title 26, section
42.

48
50 The ~~chairman--of--the--commissioner~~ commissioner shall assist the
Director of the Bureau of Labor Standards to ensure that

2 necessary information regarding the administrative processes,
3 costs and other factors related to the Workers' Compensation Act
4 and the ~~occupational-disease-law~~ Occupational Disease Law are
5 included in the report. The Commissioner of Human Services and
6 the Director of the Bureau of Health shall provide the Director
7 of the Bureau of Labor Standards with any information in their
8 possession related to occupational injuries and illnesses. The
9 Superintendent of Insurance shall provide the following
10 information to the Director of the Bureau of Labor Standards on
11 an annual basis:

12 A. A tabulation of premium and loss data, on an accrual
13 accounting basis, regarding those insurance companies
14 authorized by the Bureau of Insurance to write workers'
15 compensation in the State; and

16 B. Similar data for self-insurance workers' compensation
17 plans regulated by the Bureau of Insurance.

18
19
20 2. **Workers' compensation system.** The Director of the Bureau
21 of Labor Standards, the Superintendent of Insurance and the
22 ~~chairman-of-the-commission~~ commissioner shall meet at least 3
23 times a year with appropriate staff and other state agencies to
24 review the areas of data collection pertaining to the workers'
25 compensation system, as well as interpret and coordinate
26 appropriate data collection programs. The ~~director~~ commissioner
27 shall chair this group. The group shall submit an annual report
28 to the Governor and the Legislature as to the results of their
29 data collection, as well as a profile of the workers'
30 compensation system, including costs, administration, adequacy
31 and timeliness of benefits and an evaluation of the entire
32 workers' compensation system.

33
34 The Director of the Bureau of Labor Standards, the Superintendent
35 of Insurance and the ~~chairman-of-the-commission~~ commissioner
36 shall provide any further occasional reports through their joint
37 or individual efforts that they consider necessary to the
38 improved function and administration of the Workers' Compensation
39 Act and the ~~occupational-disease-law~~ Occupational Disease Law.

40
41 **Sec. 83. 39 MRSA §110**, as amended by PL 1985, c. 431, §2, is
42 further amended to read:

43
44 **§110. Witness and attorney's fees allowable**

45
46 1. **Injuries prior to June 30, 1985.** When the ~~commissioner~~
47 ~~commissioner's~~ Division of Workers' Compensation finds that an
48 employee has instituted proceedings under this chapter on
49 reasonable grounds and in good faith or that the employer through
50 or under his the employer's insurance carrier has instituted

2 ~~proceedings under this chapter, the eemission-or-commissioner~~
3 Division of Workers' Compensation may assess the employer costs
4 of witness fees and a reasonable attorney's fee, when in the
5 ~~eemission's-or-commissioner's~~ judgment of the hearing officer,
6 the witnesses and the services of the attorney were necessary to
7 the proper and expeditious disposition of the case. The employer
8 may not be assessed costs of an attorney's fee attributable to
9 services rendered prior to one week after the informal conference
10 under section 94-B or, if the informal conference is waived,
11 services rendered prior to the date of that waiver, unless a
12 party adverse to the employee was so represented at that stage.

13
14 No attorney representing an employee in a proceeding under this
15 Act may receive any fee from that client for an appearance before
16 the ~~eemission~~ Division of Workers' Compensation, including
17 preparation for that appearance, except as provided in section
18 94-B, subsection 3. Any attorney who violates this paragraph
19 ~~shall lose his provision loses that~~ fee and ~~shall be~~ is liable in
20 a court suit to pay damages to the client equal to 2 times the
21 fee charged for that client.

22 ~~Notwithstanding--any--other--provision--of--this--subsection--the~~
23 ~~employer may be assessed a reasonable attorney's fee for services~~
24 ~~rendered to the employee in executing an agreement under section~~
25 ~~100, subsection 4, paragraph A.~~

26
27 This subsection ~~does not apply~~ applies to injured employees
28 injured governed by subsection 2 prior to June 30, 1985.

30 **2. Injuries on or after June 30, 1985.** If an employee
31 prevails in any proceeding involving a controversy under this
32 Act, the ~~eemission--or--commissioner~~ Division of Workers'
33 Compensation may assess the employer costs of a reasonable
34 attorney's fee and witness fees whenever the witness was
35 necessary for the proper and expeditious disposition of the case.

36
37 The employer may not be assessed costs of an attorney's fee
38 attributable to services rendered prior to one week after the
39 informal conference under section 94-B or, if the informal
40 conference is waived, services rendered prior to the date of that
41 waiver, unless a party adverse to the employee was so represented
42 at that stage.

43
44 No attorney representing an employee who prevails in a proceeding
45 involving a controversy under this Act may receive any fee from
46 that client for an appearance before the ~~eemission~~ Division of
47 Workers' Compensation, including preparation for that appearance,
48 except as provided in section 83, subsection 7 and section 94-B,
49 subsection 3. Any attorney who violates this paragraph ~~shall~~
50 ~~lose his~~ provision loses that fee and ~~be~~ is liable in a court

2 suit to pay damages to his the client equal to 2 times the fee
charged for that client.

4 This subsection applies only to employees injured on and after
the ~~effective date of this subsection~~ June 30, 1985.

6 A. For the purposes of this subsection, "prevail" means to
8 obtain or retain more compensation or benefits under the Act
than were offered to the employee by the employer in writing
10 before the proceeding was instituted. If no such offer was
made, "prevail" means to obtain or retain compensation or
12 benefits under the Act.

14 B. Any employee, employer or insurance carrier involved in
any proceeding involving a controversy under this Act shall
16 report to the ~~commission~~ Division of Workers' Compensation,
on forms provided by the ~~commission~~ commissioner, any
18 amounts that he that employee, employer or insurance carrier
has paid for legal assistance in that proceeding, including
20 any amount paid for an employee's legal fees under this
subsection.

22 3. Attorney's fees; reimbursement levels. In order to
24 ensure appropriate limitation on the cost of attorney's fees,
charges for legal fees may not exceed 5% of the discounted
26 present value of the case, but in no case may any fee exceed
\$4,000 or actual billable hours, whichever is less.

28 **Sec. 84. 39 MRSA §110-A**, as enacted by PL 1987, c. 559, Pt.
30 B, §50, is amended to read:

32 **§110-A. Appearance by officer or employee of corporation or**
34 **partnership**

The appearance of an authorized officer, employee or
36 representative of a party in any hearing, action or proceeding
before the ~~commission~~ Division of Workers' Compensation in which
38 the party is participating or desires to participate is not an
unauthorized practice of law and is not subject to any criminal
40 sanction. If the appearance of such an officer, employee or
representative prevents the efficient processing of any
42 proceeding, the ~~commission~~ Division of Workers' Compensation, in
its discretion, may remove that person from representation of the
44 party.

46 **Sec. 85. 39 MRSA §111**, as amended by PL 1989, c. 251, §2, is
further amended to read:

48 **§111. Discrimination**
50

2 No employee shall may be discriminated against by any
3 employer in any way for testifying or asserting any claim under
4 this Act. Any employee who is so discriminated against may file a
5 petition alleging a violation of this section. The matter shall
6 must be referred to a ~~commissioner~~ hearing officer for a formal
7 hearing under section 98, but any ~~commissioner~~ hearing officer
8 who has previously rendered any decision concerning the claim
9 must be excluded. If the employee prevails at this hearing, the
10 ~~commissioner~~ hearing officer may award the employee reinstatement
11 to his the employee's previous job, payment of back wages,
12 reestablishment of employee benefits and reasonable attorneys'
13 fees.

14 This section applies only to an employer against whom the
15 employee has testified or asserted a claim under this Act.
16 Discrimination by an employer who is not the same employer
17 against whom the employee has testified or asserted a claim under
18 this Act is governed by Title 5, section 4572, subsection 1,
19 paragraph A.

20 **Sec. 86. 39 MRSA §111-A, sub-§3, ¶C,** as enacted by PL 1989, c.
21 468, is repealed.

22 **Sec. 87. 39 MRSA §112,** as amended by PL 1985, c. 372, Pt. A,
23 §44, is further amended to read:

24 **§112. Protection**

25 No statement, except made in proceedings before the ~~Workers'~~
26 Compensation-Commission Division of Workers' Compensation, to any
27 investigator or employer's representative, of any kind, oral or
28 written, recorded or unrecorded, made by the injured employee
29 shall may be admissible in evidence or considered in any way in
30 any proceeding under this Title unless:

- 31
- 32 1. **In writing.** It is in writing;
 - 33
 - 34 2. **Delivery of true copy to employee.** A true copy of said
35 statement is delivered to the employee by certified mail;
 - 36
 - 37 3. **Employee advised in writing.** The employee has been
38 previously advised in writing:
 - 39 A. That the statement may be used against him the employee;
 - 40
 - 41 B. That the employer (insurance carrier) may have pecuniary
42 interest adverse to the employee;
 - 43
 - 44 C. The employee may consult with counsel prior to making
45 any statements;
 - 46
 - 47
 - 48
 - 49
 - 50

2 D. The employee may decline to make any statement; and

4 E. The employer may not discriminate against him the
6 employee in any manner for refusing to make such a statement
or exercising in any way his the employee's rights under
8 this Title.

10 This section shall does not apply to agreements for the
12 payment of compensation made pursuant to the Workers'
Compensation Act or to the admissibility of statements to show
compliance with the notice requirements of sections 63 and 64.

14 This section does not apply to injured employees governed by
section 112-A.

16 **Sec. 88. 39 MRSA §113**, as enacted by PL 1987, c. 559, Pt. B,
18 §51, is amended to read:

20 **§113. Penalties**

22 The following provisions govern the ~~commissioner's~~
24 commissioner's authority to impose penalties for violations of
this Act or rules adopted under this Act.

26 1. **Reporting violations.** The ~~chairman~~ commissioner may
28 assess a civil penalty, not to exceed \$100 for each violation,
upon any person:

30 A. Who fails to file or complete any report or form
required by this Act or rules adopted under this Act; or

32 B. Who fails to file or complete such a report or form
34 within the time limits specified in this Act or rules
adopted under this Act.

36 2. **General authority.** The ~~chairman~~ commissioner may
38 assess, after hearing, a civil penalty in an amount not to exceed
\$1,000 for an individual, and \$10,000 for a corporation,
40 partnership or other legal entity for any willful violation of
this Act, fraud or intentional misrepresentation. The ~~chairman~~
42 commissioner may also require that person to repay any
44 compensation received through a violation of this Act, fraud or
intentional misrepresentation or to pay any compensation withheld
46 through a violation of this Act, fraud or misrepresentation, with
interest at the rate of 10% per year.

48 3. **Appeal.** Imposition of a penalty under this section is
deemed to be final agency action subject to appeal to the
50 Superior Court, as provided in Title 5, chapter 375, subchapter

2 VII. Notwithstanding Title 5, section 11004, execution of a
penalty assessed under this section is stayed during the pendency
4 of any appeal under this subsection. The Attorney General shall
represent the ~~commissioner~~ commissioner in any appeal under this
6 subsection or the ~~commissioner~~ commissioner may retain private
counsel for that purpose.

8 4. **Enforcement and collection.** Penalties assessed under
this section are in addition to any other remedies available
10 under this Act and are enforceable by the Superior Court under
section 103-E.

12 A. The Attorney General shall prosecute any action
14 necessary to recover penalties assessed under this section
or the ~~commissioner~~ Division of Workers' Compensation may
16 retain private counsel for that purpose.

18 B. If any person fails to pay any penalty assessed under
this section and enforcement by the Superior Court is
20 necessary:

22 (1) That person shall pay the costs of prosecuting the
action in Superior Court, including reasonable attorney
24 fees; and

26 (2) If his the failure to pay was without due cause,
any penalty assessed upon that person under this
28 section shall must be doubled.

30 C. All penalties assessed under this section are payable to
the General Fund.

32 5. **Not an element of loss.** An insurance carrier's payment
34 of any penalty assessed under this section shall may not be
considered an element of loss for the purpose of establishing
36 rates for workers' compensation insurance.

38 **Sec. 89. 39 MRSA c. 1, sub-c. V is enacted to read:**

40 SUBCHAPTER V

42 MEDICAL COORDINATION

44 §131. Rules

46 The commissioner may adopt rules, subject to section 92,
48 subsection 1, to coordinate medical and occupational health
services to injured employees to ensure the delivery of
appropriate medical and occupational health services.

particularly to injured workers participating in rehabilitation
under this Title.

§132. Office of Medical Coordination; Medical coordinator

1. Office of Medical Coordination; appointment. The Office
of Medical Coordination is established and must be maintained
under the direction of a medical coordinator, in this subchapter
referred to as the "coordinator," who is appointed by and serves
at the will of the commissioner. The coordinator reports to and
is directed by the commissioner.

2. Qualifications. The coordinator must be qualified by
training, professional experience or education in employment
rehabilitation, medical treatment and occupational health and
safety and must be familiar with the workers' compensation system.

3. Powers and duties. In addition to any other provisions
in this subchapter, the coordinator has the following powers and
duties.

A. The coordinator is responsible for the receipt of
reports and other information required under this Title and
may require supplementary information needed to fulfill the
purposes of this subchapter.

B. The coordinator shall:

(1) Monitor medical and occupational health services
provided to injured workers under this Title;

(2) Encourage agreement and attempt to conciliate
differences regarding medical and occupational health
services issues;

(3) Provide leadership in the development of
occupational health centers;

(4) Review and make recommendations regarding the fee
schedule established in section 52-B;

(5) Review and make recommendations regarding the
necessity of medical services provided under this Act;
and

(6) Oversee the services of the independent medical
examiner and advise the commissioner and the
independent medical examiner.

2 C. The coordinator shall assist the commissioner in
3 developing rules regarding the provision of appropriate
4 medical services to injured workers, including those
5 services designed to foster the ability to return to active
6 employment.

7 D. The coordinator shall make efforts to educate and
8 disseminate information to all persons interested in medical
9 and occupational health services as they relate to injured
10 workers.

11 The coordinator may not provide direct medical services under
12 this subchapter. Those services must be provided by private and
13 public medical professionals and occupational health centers.
14 Nothing in this subsection should be interpreted to limit
15 programs and services that may be provided by other state
16 agencies or the coordination of providers with those program and
17 services.

18 4. Access to records. Except for purposes directly
19 connected with the administration of the Office of Medical
20 Coordination, a person may not solicit, disclose, receive or make
21 use of, or authorize, knowingly permit, participate in or
22 acquiesce in the use of, any list of names of individuals or any
23 information concerning individuals applying for or receiving
24 rehabilitation services, directly or indirectly derived from the
25 records, papers, files or communications of the Office of Medical
26 Coordination or acquired in the course of the performance of
27 official duties. This subsection does not prevent any employee
28 or that person's employer from obtaining or viewing information
29 relating to the medical coordination services provided to that
30 employee under this subchapter.

31 **Sec. 90. 39 MRS §192, as amended by PL 1977, c. 696, §415,**
32 **is further amended to read:**

33 **§192. Impartial medical advice**

34 On request of a party or on its own motion the eemmission
35 Division of Workers' Compensation may in occupational disease
36 cases ~~appoint one or more competent and impartial physicians,~~
37 ~~their reasonable fees and expenses to be fixed and paid by the~~
38 ~~eemmission~~ make referrals to an independent medical examiner.
39 ~~These appointees~~ The independent medical examiner shall examine
40 the employee and inspect the industrial conditions under which he
41 the employee has worked in order to determine the nature, extent
42 and probable duration of his the employee's occupational disease,
43 the likelihood of its origin in the industry and the date of
44 incapacity. Section 65 of the Workers' Compensation Act shall

2 apply applies to the filing and subsequent proceedings on their
report, and to examinations and treatments by the employer.

4 If claim is made for death from an occupational disease, an
6 autopsy may be ordered by the ~~commission~~ Division of Workers'
8 Compensation under the supervision of ~~such impartial appointees~~
10 an independent medical examiner. All proceedings for or payments
of compensation to any claimant refusing to permit such autopsy
when ordered shall must be and remain suspended upon and during
the continuance of such refusal.

12 **Sec. 91. Study.** The Superintendent of Insurance shall conduct
14 a study of the methods of coverage and corresponding premium
costs applicable to the logging industry and report to the Joint
Standing Committee on Banking and Insurance and the Joint
16 Standing Committee on Labor by January 1, 1992.

18 **Sec. 92. Transition provision.** Within 90 days from the
effective date of this Act, the Superintendent of Insurance shall
20 hold a hearing and issue a decision that determines the effect of
the changes in law provided for in this Act on workers'
22 compensation rates. Insurers shall provide whatever information
is requested to assist the superintendent in making a
24 determination pursuant to this section. Evidence and argument
must be limited to matters relevant to evaluation of the effect
26 of these changes on rates, and the time limitations of the Maine
Revised Statutes, Title 24-A, section 2363, subsections 3, 6, 11,
28 and 12 do not apply.

30 The Workers' Compensation Commission shall transfer to the
Commissioner of Labor all records relevant to those
32 responsibilities given to the Commissioner of Labor under this
Act on or before January 1, 1992. The commission shall cooperate
34 with the commissioner in making all records and computerized
systems available to department personnel so as to facilitate the
36 transition between the commission and the Division of Workers'
Compensation.

38 On or before the effective date of this Act, the Chair of
40 the Workers' Compensation Commission shall report to the Governor
on the number of cases pending before the commission.

42 **Sec. 93. Application.** The following sections apply only to
44 injuries occurring on or after the effective date of this Act:
sections 3, 19 to 29, 32 to 36, 58, 63, 64, 71, 72, 80, 81, 91
46 and 92. Section 30 of this Act as it amends the Maine Revised
Statutes, Title 39, section 55-3, 3rd paragraph applies only to
48 injuries occurring after the effective date of this Act. Section
60 of this Act as it enacts Title 39, section 94-B, subsections 5
50 and 6, applies only to injuries occurring after the effective

2 date of this Act. Section 83 of this Act as it enacts Title 39,
3 section 110, subsection 3, applies only to injuries occurring
4 after the effective date of this Act. Sections 1, 2, 4 to 10,
5 and 74 apply only to injuries occurring on or after January 1,
6 1992.

7 **Sec. 94. Effective date.** Section 2 of this Act takes effect
8 January 1, 1992.

9 **Sec. 95. Retroactive provisions.** Section 12 of this Act applies
10 to employees injured either before or after the effective date of
11 this Act. If this retroactivity provision is held invalid,
12 section 12 applies only to employees injured on or after the
13 effective date of this Act.' '

16 STATEMENT OF FACT

17
18
19 This amendment represents the minority report of the Joint
20 Standing Committee on Banking and Insurance and the Joint
21 Standing Committee on Labor.

22
23 This amendment amends the workers' compensation laws to
24 address concerns of cost, promptness of payment and complexity.
25 The amendment incorporates many changes recommended by the
26 Governor's Task Force on Workers' Compensation Reform.

27 Specifically, this amendment:

28
29 1. Grants jurisdiction to the Administrative Court to hear
30 appeals of workers' compensation cases;

31
32 2. Requires insurers to separately identify in all bills
33 issued to employers the base rate, experience modification
34 factors for each year, and the medical, indemnity and
35 administrative components of premiums and the portion of the
36 premium attributable to the mandatory workplace health and safety
37 consultation services charged;

38
39 3. Contains modifications to the premium experience rating
40 procedure to reward employers who have instituted safety programs
41 and to protect employers who hire or rehire employees with
42 previous work-related injuries;

43
44 4. Creates optional medical deductibles to permit certain
45 employers to pay directly claims of \$500 or less and provides for
46 mandatory deductibles for certain employers;

2 5. Provides for rulemaking authority for the Superintendent
of Insurance to establish credits for insurers that take policies
out of the residual market;

4
6 6. 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;

8
10 7. Requires the residual market plan to contain an appeals
procedure for employers who believe a claim settlement has an
unfair impact on its experience rating;

12
14 8. Permits the Superintendent of Insurance to order
dividend plans to be created in the Safety Pool;

16
18 9. Permits the Superintendent of Insurance to establish by
rule premium credits of up to 10% and dividend plans for
employers qualifying for safety programs;

20
22 10. Defines "average weekly wages, earnings or salary" to
exclude fringe benefits, abrogating the result in Ashby v. Rust
Engineering, 559 A.2d 774 (Me. 1989) and subsequent related
24 decisions of the Appellate Division of the Workers' Compensation
Commission;

26
28 11. Defines "commissioner" as the Commissioner of Labor and
"court" as the Administrative Court, respectively;

30
32 12. Establishes a procedure for determination of
independent contractor status;

34
36 13. Requires employers with an experience modification
factor of 2 or more to participate in workplace health and safety
training programs that are certified under rules to be adopted by
the Commissioner of Labor. Failure to comply results in
38 imposition of a 2% premium surcharge, proceeds of which are
credited to the Safety Education and Training Fund and the
Occupational Safety and Loan Fund;

40
42 14. Provides specific standards for the funding of group
self-insurance trusts and imposes certain additional funding
obligations on members that leave the group;

44
46 15. Limits entitlement to workers' compensation benefits
for those injuries or illnesses that are shown by clear and
convincing evidence to be the immediate result of an acute
work-related event. It is intended that this standard differ
48 from the "by accident" requirement that existed in Maine prior to
the enactment of Public Law 1973, chapter 389. It is intended to
50 modify interpretations of that prior standard that had not

2 required the work-related incident to have an immediate effect
upon the worker, McDougal's Case, 127 Me. 491, 144 A. 446 (1929)
4 and that had included as an "accident" a weakness in bodily
structure that gradually worsens and breaks down in the stress of
6 usual work, Bernier v. Coca-Cola Bottling Co., 250 A.2d 820
(1969);

8 16. Requires apportionment of benefits for disability as a
result of work-related and nonwork-related injuries combined.
10 This provision is intended to modify the holdings in Bryant v.
Masters Machine Co., 444 A.2d 329 (1982), Westcott v. S.D. Warren
12 Co., 447 A.2d 78 (1982) and Brackett v. A.C. Lawrence Leather
Co., 559 A.2d 776 (Me. 1989);

14 17. Provides that disputes regarding the date of maximum
16 medical improvement must be made by the newly created independent
medical examiner. The medical decision can not be controverted;

18 18. Amends the early pay system by changing the period in
20 which an employer may contest a claim from 44 days after an event
causing an obligation to make payments to 60 days after receipt
22 of the diagnostic medical report. It also clarifies that
employers may make payments without prejudice after a notice of
24 controversy is filed;

26 19. Limits the number of physicians an employee may select
without the approval of the independent medical examiner or the
28 employer. The provision does not prevent referral to a
specialist. Durational limits are placed on medical services
30 provided to claimants by nonphysicians. Repeated diagnostic
testing is not covered without prior authorization from the
32 independent medical examiner, and generic drugs are to be used
unless otherwise recommended by the employee's physician. It
34 also limits payment for self-referred medical services and
provides for payment limitations for nonphysician providers;

36 20. Repeals the requirement for a medical certificate of
38 authorization signed by the employee and requires that if
compensation is sought for a lost-time claim the health care
40 provider must automatically forward a written report to the
employee and employer within 5 business days and every 30 days
42 thereafter if treatment is ongoing. No authorization from the
employee is needed for additional information pertaining to the
44 work-related condition;

46 21. Prohibits health care providers from charging employees
receiving treatment under the Workers' Compensation Act more than
48 they charge 3rd-party payors;

2 22. Requires that the Commissioner of Labor establish a
3 medical quality control system including peer review of medical
4 services more than 2 months after the date of injury or for which
5 costs exceed \$10,000 and case management for cases involving
6 medical treatment continuing 2 months from the date of injury or
7 costing in excess of \$10,000;

8 23. Provides that injured employees, subject to some
9 limitations, may serve as volunteers to public or nonprofit
10 organizations without prejudice to compensation;

12 24. Establishes a limit on duration of permanent partial
13 claims of 413 weeks from the date of injury and requires the
14 court to consider the availability of work on a statewide basis
15 with respect to benefits paid for periods more than 52 weeks
16 following the date of injury;

18 25. Provides for total and partial incapacity benefits to
19 be offset against permanent impairment benefits;

20 26. Defines intoxication for purposes of the Workers'
21 Compensation Act to .08 blood-alcohol content and includes
22 on-duty use of nonprescribed controlled substances as a basis for
23 disallowing benefits for resulting injuries; a rebuttable
24 presumption of causation arises from proof by a preponderance of
25 the evidence of intoxication or use of a controlled substance;

26 27. Requires the hearing officer to review subsequent
27 injury cases to ensure that duplicative benefits are not paid for
28 a single period of disability;

30 28. Changes the reinstatement obligation of an employer
31 with over 250 employees to a period of 2 years from the date of
32 injury;

34 29. Limits lump sum settlements to \$5000. The requirement
35 of review by the Workers' Compensation Commission and approval of
36 lump sum settlements is deleted;

38 30. Makes revisions to the rehabilitation sections of the
39 Workers' Compensation Act. The Administrator of the Office of
40 Employment Rehabilitation, which is transferred to the Department
41 of Labor, conducts the evaluation of suitability for
42 rehabilitation, oversees plan development and makes referrals to
43 appropriate providers of services. Administrative services of
44 plan providers are limited to 30% of the total cost of a plan.
45 The administrator is authorized to adopt rules providing for
46 reporting periods of less than 120 days for specified types of
47 injuries in order to allow earlier identification of those
48 appropriate for rehabilitation services.
50

2 31. Limits rehabilitation plans to 2 years or \$5,000
3 without demonstration of special and unusual circumstances,
4 requires the Administrator of the Office of Employment
5 Rehabilitation to develop rules for the assessment and approval
6 of proposed rehabilitation plans, allows the administrator to
7 develop rules for early screening and early entry into
8 rehabilitation and limits educational retraining rehabilitation
9 benefits to 2 scholastic years or \$5,000.

10 32. Provides that settlement of a claim between an employer
11 and employee does not affect an employer's obligations to the
12 Employment Rehabilitation Fund, defers the report on the
13 effectiveness of rehabilitation until the 115th Legislature and
14 sunsets the rehabilitation provisions of the Workers'
15 Compensation Act effective September 1, 1992.

16 33. Establishes a new system for administration of the
17 Workers' Compensation Act. The Workers' Compensation Commission
18 is eliminated. The Commissioner of Labor is given responsibility
19 for general supervision of the Act and the Division of Workers
20 Compensation is given the exclusive jurisdiction to hear and
21 decide claims relative to workers' compensation;

22 34. Establishes the independent medical examiner (IME) to
23 resolve any medical dispute. The IME must be one hospital in or
24 south of Augusta and one north of Augusta, selected by
25 competitive bidding. The amendment describes the scope of
26 responsibility, provides for an appeal procedure to a 3-member
27 panel and provides immunity to the IME when acting within the
28 scope of its duties;

29 35. Shortens the time limit for filing any petitions under
30 the Workers' Compensation Act from 10 to 3 years following the
31 date of the latest payment under the Act;

32 36. Establishes a \$25 filing fee for petitions filed under
33 the Workers' Compensation Act, and provides that any fee paid by
34 an employee is not reimbursable by the employer;

35 37. Amends the section of the Workers' Compensation Act on
36 petitions for review to permit discontinuance of benefits by the
37 employer if the employee refuses an offer of reinstatement of
38 suitable work or returns to work or refuses to submit to a
39 medical examination, if the employer and employee reach
40 agreement, if the employee has left the State or the employee's
41 whereabouts is unknown or the employee is able to return to
42 work. If compensation is discontinued by the employer, the
43 employee has the right to file for review by the Division of
44 Workers' Compensation and within 2 weeks the court must enter a
45

2 provisional order suspending, reducing or continuing benefits
3 pending a hearing. If a provisional order upholding suspension
4 is subsequently reversed, the employee is entitled to back
5 payments plus interest;

6 38. Allows restoration of weekly benefits upon termination
7 of a trial work period only if the termination is for an
8 injury-related reason;

10 39. Increases the penalty for late payment of compensation
11 benefits and shifts the enforcement authority with respect to
12 timely payments to the Superintendent of Insurance;

14 40. Establishes an arbitration procedure for the
15 apportionment between insurers;

16 41. Eliminates the requirement of reports to the Department
17 of Labor on "medical-only" claims and provides for notice to an
18 employer in the residual market of any proposed settlement by the
19 insurer of \$10,000 or more. If the employer objects to part or
20 all of the settlement, the Superintendent of Insurance may limit
21 the impact of the settlement or the employer's experience rating
22 factor. This section also requires the court to notify the
23 employee of the obligation to notify the court and the previous
24 employer when returning to work;

26 42. Places limitations on attorney's fees;

28 43. Repeals the requirement that the Superintendent of
29 Insurance recommend legislation for the Second Regular Session of
30 the 114th Legislature to achieve the purposes of the section
31 having to do with provisional payment of disability benefits;

34 44. Establishes the Office of Medical Coordination within
35 the Department of Labor. This office will oversee all medical
36 aspects of workers' compensation claims, including monitoring of
37 medical services and fees. The office will also provide
38 leadership in the development of occupational health centers;

40 45. Substitutes Division of Workers' Compensation where
41 necessary in the Maine Revised Statutes, Title 39, section 192;

44 46. Requires the Superintendent of Insurance to conduct a
45 study of the workers' compensation costs and methods of coverage
46 relative to the logging industry;

48 47. Requires the Superintendent of Insurance to commence a
49 hearing within 60 days of the effective date of this Act to
50 determine the effect of the law changes on workers' compensation
insurance rates; and

