

MAINE STATE LEGISLATURE

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L.D. 1957

(Filing No. H-689)

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

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

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.
3 559, Pt. A, §4, is amended to read:

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

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

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

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

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

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

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

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

31 §2365-A. Medical expense deductibles

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

36 1. Optional deductible of \$250. To employers who are not
37 experience-rated insurers must offer a deductible of \$250 per
38 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 whose premium is
10 over 500% of the premium qualifying for experience rating,
11 insurers must provide a deductible of \$500 per occurrence.

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

13 1-A. Rules. The superintendent may adopt rules for the
14 purpose of encouraging workers' compensation insurers to take
15 workers' compensation policies out of the residual market by
16 establishing credits applicable to any assessments that may be
17 ordered under section 2367 or by any other means. The criteria
18 for applying credits include consideration for policies taken out
19 of the residual market prior to, as well as after, the effective
20 date of the rules.

21 Sec. 8. 24-A MRSA §2366, sub-§2, ¶B, as enacted by PL 1987, c.
22 559, Pt. A, §4, is amended to read:

23 B. An employer is eligible for insurance from the Accident
24 Prevention Account if:

25 (1) The employer has at least 2 lost-time claims over
26 \$10,000 and a loss ratio greater than 1.00 over the
27 last 3 years for which data is available; and

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

35 Sec. 9. 24-A MRSA §2366, sub-§3, ¶¶A and B, as enacted by PL
36 1987, c. 559, Pt. A, §4, are amended to read:

37 A. The Safety Pool is an insurance plan that provides for
38 an alternative source of insurance for employers with good
39 safety records and--is--intended--to--operate--within--the
40 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
last 3 years for which data is available, regardless of
6 the resulting loss ratio;

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

12 (3) Has been in business for less than 3 years,
provided that the eligibility shall---~~terminate~~
14 terminates if his the employer's loss ratio exceeds 1.0
and the employer has at least 2 lost-time claims over
16 \$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
filed pursuant to Title 39, section 106, subsection 2,
22 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
may order payment of dividends to insureds in the Safety
28 Pool to the extent that the pool's experience supports
them. The superintendent may adopt rules establishing a
30 dividend plan for the Safety Pool to provide an incentive
for implementation of safety programs by insureds in the
32 pool. The superintendent may employ outside consultants to
assist in the development of these rules.

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

36 7-A. Credits for qualifying safety programs. The
38 superintendent may adopt rules to establish dividend plans and
premium credits of up to 10% of the net annual premium for
40 policyholders that establish qualifying safety programs. The
rules must identify those classifications by which policyholders
42 are eligible for the credits and establish criteria for
qualifying safety programs and procedures to be followed by
44 servicing carriers in approving and auditing compliance with the
safety program. The superintendent may employ outside
46 consultants to assist in the development of rules under this
subsection.

48 Sec. 13. 39 MRSA §2, sub-§2, ¶G is enacted to read:
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G. "Average weekly wages, earnings or salary" does not include fringe benefits, including but not limited to employer payments for or contributions to a retirement, pension, health, welfare, medical, life insurance, training, social security or other employee or dependent benefit plan for the employee's or dependent's benefit, or any other employee's dependent entitlement.

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

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

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

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

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

§5. Determination of independent contractor status

1. Determination permitted. A worker, an employer or a workers' compensation insurance carrier, or any combination thereof, may apply to the commissioner for a determination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an 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
3 approved by the commissioner, a request for determination
4 regarding the status of a person or job description as an
5 employee or independent contractor.

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

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

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

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

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

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

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

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

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

22 Sec. 18. 39 MRSA §23, sub-§2, as amended by PL 1989, c. 435,
24 §2, is further amended to read:

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

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

2 liabilities. Payments under the bond shall-be are due within 30
3 days after notice has been given to the surety by the chair--of
4 the--commission Division of Workers' Compensation that the
5 principal has failed to make a payment required under the terms
6 of an award, agreement or governing law. A surety bond shall may
7 not be used to fund a trust established to satisfy the
8 requirements of this section.

9
10 As an alternative to the method described in the first paragraph
11 of this subsection, an eligible employer may establish an
12 actuarially fully funded trust, funded at a level sufficient to
13 discharge those obligations incurred by the employer pursuant to
14 this Act as they become due and payable from time to time,
15 provided that the superintendent shall require that the value of
16 trust assets shall-be is at least equal to the present value of
17 ultimate expected incurred claims and claims settlement costs.
18 The present value of ultimate expected incurred claims and claims
19 settlement costs for a group self-insurer may not be more than
20 the amount actuarially determined considering the value of trust
21 assets and excess insurance to satisfy a 90% confidence level. A
22 group self-insurer may elect to fund at a higher confidence level
23 through the use of cash, marketable securities, surety bonds or
24 excess insurance. If a member of a group self-insurer terminates
25 its membership in the group for any reason, then that member
26 shall fund its proportionate share of the liabilities and
27 obligations of the trust to the 95% confidence level. If for any
28 reason the departing member fails to fund its proportionate share
29 of the trust's exposure to the 95% level of confidence, then the
30 remaining members of the group shall make such additional
31 contribution no later than the anniversary date of the program as
32 required to fund the departing member's exposure in accordance
33 with this provision. The-trust Trust assets shall must consist
34 of cash or marketable securities of a type and risk character as
35 specified in subsection 7, and shall have a situs in the United
36 States. The trustee shall submit a report to the superintendent
37 not less frequently than quarterly which lists the assets
38 comprising the corpus of the trust, including a statement of
39 their market value and the investment activity during the period
40 covered by the report. The trust shall must be established and
41 maintained subject to the condition that trust assets cannot be
42 transferred or revert in any manner to the employer except to the
43 extent that the superintendent finds that the value of the trust
44 assets exceeds the present value of incurred claims and claims
45 settlement costs with an actuarially indicated margin for future
46 loss development. In all other respects, the trust instrument,
47 including terms for certification, funding, designation of
48 trustee and pay out shall must be as approved by the
49 superintendent; provided, that the value of the trust account
50 shall must be actuarially calculated at least annually by a
casualty actuary who is a member of the American Academy of

COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957

2 Actuaries and adjusted to the required level of funding. For
purposes of this paragraph, an "eligible employer" is one who is
4 found by the superintendent to be capable of paying compensation
and benefits required by this Act and:

6 A. Has positive net earnings; or

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

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

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

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

2 bond as otherwise required by this Act in an amount not less than
3 \$1,000,000. Any such guarantor shall--be is deemed to have
4 submitted to the jurisdiction of the Division of Workers'
5 Compensation Commission and the courts of this State for purposes
6 of enforcing any such guarantee. The guarantor, in all respects,
7 shall--be is bound by and subject to the orders, findings,
8 decisions or awards rendered against the employer for payment of
9 compensation and any penalties or forfeitures provided under this
10 Act. The superintendent, following hearing, may revoke the
11 self-insured status of the employer if at any time the assets of
12 the guarantor become impaired, encumbered or are otherwise found
13 to be inadequate to support the guarantee.

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

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

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

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

47
48 Sec. 21. 39 MRSA §51-B, sub-§4, as repealed and replaced by PL
49 1989, c. 256, §1, is amended to read:

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

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

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

38 If, at the end of the 14-day period in subsection 3 or the 90-day
39 or 75-day periods in subsection 4, the employer has not filed the
40 notice required by this subsection, the employer shall begin
41 payments as required under those subsections. In the case of
42 compensation for incapacity under subsection 3, the employer may
43 cease payments and file with the ~~commission~~ Division of Workers'
44 Compensation a notice of controversy, only as provided in this
45 subsection, no later than ~~44-~~ 60 days after ~~an event which gives~~
46 ~~rise to an obligation to make payments under subsection 3~~ receipt
47 of the initial diagnostic medical report. Failure to file the
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2 required notice of controversy prior to the expiration of the
3 44-day 60-day period, in the case of compensation under
4 subsection 3, constitutes acceptance by the employer of the
5 compensability of the injury or death. Failure to file the
6 required notice of controversy does not constitute such an
7 acceptance by the employer when it is shown that the failure was
8 due to employee fraud or excusable neglect by the employer,
9 except when payment has been made and a notice of controversy is
10 not filed within 44 60 days of that payment. Failure to file the
11 required notice of controversy prior to the expiration of the
12 90-day period under subsection 4 constitutes acceptance by the
13 employer of the extent of impairment claimed. Failure to file
14 the required notice of controversy prior to the expiration of the
15 75-day period under subsection 4 for compensation for medical
16 expenses, aids or other services pursuant to section 52
17 constitutes acceptance by the employer of the reasonableness and
18 propriety of the specific medical services for which compensation
19 is claimed and requires payment for those services, but does not
20 constitute acceptance of the compensability of the injury or
21 death.

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

28 **Sec. 23. 39 MRSA §51-B, sub-§8, as amended by PL 1983, c. 682,**
29 **§6, is further amended to read:**

30
31 8. Effect of payment. If, within the 44-day 60-day period
32 established in subsection 7 and after the payment of compensation
33 for incapacity without an award, the employer elects to
34 controvert the claim to compensation for incapacity, the payment
35 of compensation shall may not be considered to be an acceptance
36 of the claim or an admission of liability. Notwithstanding the
37 provisions of section 99-C, the acceptance of compensation in any
38 case, except by decision or agreement, by the injured employee or
39 his that employee's dependents shall may not be considered an
40 admission by the employee or his that employee's dependents as to
41 the nature and scope of the employer's liability or a waiver of
42 the right to question the amount of compensation or the duration
43 of the same or the nature of the injury and its consequences.
44 The employer may continue the payment of compensation for
45 incapacity under subsection 3 following the filing of a notice of
46 controversy and up to the convening of the formal hearing, if the
47 notice was filed prior to the expiration of the 60-day period
48 established in subsection 7. The continuation of payments under
49 these circumstances is not an acceptance of the claim or an
50 admission of liability on the part of the employer.

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

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

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

26 An employee's entitlement to health care services for an
injury arising out of and in the course of employment is limited
to 12 visits with any one provider from the time of the initial
visit, unless otherwise authorized by an independent medical
examiner.

30 A medical service provider who is not a licensed physician
may provide compensable medical service to an injured employee
for a period of no more than 30 days from the date of injury
without the authorization of an independent medical examiner;
thereafter, medical services provided to an injured worker
without the written authorization of a licensed physician are not
compensable. This limitation does not eliminate the employer's
right to controvert the underlying injury or medical care.

40 Any employee sustaining a personal injury arising out of and
42 in the course of his the employee's employment, provided the
44 injury relates to the scope of a chiropractor's practice, as
46 defined and regulated by statute, shall--be is entitled to
chiropractic services as provided by Title 32, chapter 9. A duly
licensed chiropractor shall--be is considered competent to testify
before the Division of Workers' Compensation Commission .

48 An employee sustaining personal injury arising out of and in
50 the course of his the employee's employment, provided the injury
relates to the foot, shall--be is entitled to an examination,

2 diagnosis and treatment therefor from a podiatrist who is
3 licensed in the State of ~~Maine~~ and who has been granted the
4 degree of Doctor of Podiatric Medicine by an accredited school of
5 podiatry recognized by the Council of Education of the American
6 Podiatry Association. This examination may include diagnostic
7 ~~x-rays~~ x rays. Such a podiatrist is competent to testify before
8 the Division of Workers' Compensation Commission.

9
10 ~~In every case where~~ If any services are procured or aids are
11 required by the employee, it shall ~~be his~~ is the employee's duty
12 to see that the employer is given prompt notice thereof. The
13 employer shall then make prompt payment for them to the provider
14 or supplier or reimburse the employee, in accordance with section
15 51-B, subsection 4, provided that the costs are necessary and
16 adequate and the charges reasonable; and further provided that it
17 shall ~~be~~ is presumed that, in a jurisdiction outside of the
18 United States that has a socialized medical program, payment of
19 the costs will be borne by the medical program and the employer
20 is not responsible for those costs under this section unless the
21 socialized medical program has made payment for services or aids
22 and requests reimbursement from the employer for the actual
23 amounts paid. The employer shall furnish artificial limbs, eyes,
24 teeth, eyeglasses, hearing aids, orthopedic devices and other
25 physical aids made necessary by the injury and shall replace or
26 renew the same when necessary from wear and tear or physical
27 change of the employee. The employee or ~~his~~ the employee's
28 counsel shall serve upon the employer or opposing counsel, within
29 7 days of the date of receipt by the employee or counsel,
30 complete copies of any medical reports or statements relating to
31 any treatment or examination described in this section. The
32 employer, carrier or ~~their~~ the employer's or carrier's counsel
33 shall serve upon the employee or opposing counsel, within 7 days
34 of the receipt by the employer, carrier or counsel, complete
35 copies of any medical reports or statements relating to any
36 treatment or examination alleged by the employee or ~~his~~ the
employee's counsel to be covered by this section.

37
38 An employer is not liable under this Act for charges for
39 health care services to an injured employee in excess of those
40 established under section 52-B, except upon petition as
41 provided. The ~~commission~~ Division of Workers' Compensation shall
42 allow charges in excess of those provided under section 52-B
43 against the employer if the provider satisfactorily demonstrates
44 to ~~the commission~~ an independent medical examiner that ~~his~~ the
45 provider's services were extraordinary or that ~~he~~ the provider
46 incurred extraordinary costs in treating the employee as compared
47 to those reasonably contemplated for the services provided. An
48 injured employee is not liable for any portion of the cost of
49 medical services under this section.
50

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

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

34 A physician shall prescribe generic drugs for treatment of
35 an injury or disease for which compensation is claimed unless
36 medical necessity warrants otherwise.

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

45 Whenever there is any disagreement as to the proper costs of
46 the services or aids, or the periods during which they shall-be
47 are furnished, or as to the apportionment thereof among the
48 employee and the employer, the Commission shall have the
49 power to determine the proper costs, periods and apportionment
50 thereof.

2 parties, any interested person may file a petition with the
3 ~~commissioner~~ Division of Workers' Compensation for the
4 determination thereof by an independent medical examiner.

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

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

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

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

28 **Sec. 26. 39 MRSA §52-A, sub-§2, as enacted by PL 1981, c. 514,**
29 **§2, is repealed and the following enacted in its place:**

32 **2. Duties of health care providers. Duties of health care**
33 **providers are as follows.**

34 **A. Within 5 business days from the completion of a medical**
35 **examination or within 5 business days from the date notice**
36 **of injury is given to the employer, whichever is later, the**
37 **employee's health care provider shall forward to the**
38 **employer and the employee a diagnostic medical report, on**
39 **forms prescribed by the commissioner, for the injury for**
40 **which compensation is being claimed. The report must**
41 **include the employee's work capacity, likely duration of**
42 **incapacity, return to work suitability and treatment**
43 **required. The Division of Workers' Compensation may assess**
44 **penalties up to \$500 per violation upon health care**
45 **providers who fail to comply with the 5-day requirement of**
46 **this subsection.**

48 **B. If ongoing medical treatment is being provided, every 30**
49 **days the employee's health care provider shall forward to**
50

2 the employer and the employee a diagnostic medical report,
3 on forms prescribed by the commissioner. An employer may
4 request, at any time, medical information concerning an
5 employee's condition pertaining to the condition for which
6 compensation is sought. The health care provider shall
7 respond within 10 business days from receipt of the request.

8 C. Any health care provider shall submit to the employer
9 and the employee a final report of treatment within 5
10 working days of the termination of treatment, except that
11 only an initial report must be submitted if the provider
12 treated the employee on a single occasion.

13 D. Health care providers may charge a reasonable fee for
14 providing information pursuant to this subsection. In the
15 event that an employee changes physicians or is referred to
16 a different health care provider or facility, any health
17 care provider or facility having medical records regarding
18 the employee, including x rays, shall forward all medical
19 records relating to an injury or disease for which
20 compensation is claimed to the next physician upon request
21 of the employee. When an employee is scheduled to be
22 treated by a different physician or in a different facility,
23 the employee shall request to have the records transferred.

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

26 F. Authorization from the employee is required prior to
27 release of medical information from health care providers
28 for treatment of an injury or disease after the occurrence
29 of an event that gives rise to an obligation to make
30 payments under the Act.

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

32 1-A. Restriction on reimbursement for health care
33 providers. In order to qualify for reimbursement for health care
34 services provided to employees under this Title, health care
35 providers providing individual health care services and courses
36 of treatment may not charge more for the services or courses of
37 treatment for employees than is charged to private 3rd-party
38 payers for similar services or courses of treatment. An employer
39 is not responsible for charges which are determined to be
40 excessive or treatment determined to be inappropriate by an
41 independent medical examiner pursuant to section 92-A.

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

43 **§52-C. Medical health care review**

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

18 2. Peer review. Peer review is as follows.

20 A. Each case involving the provision of medical or surgical
22 services to an injured employee for more than 2 months from
24 the date of injury or medical costs that exceed \$10,000 must
26 be referred to an independent medical examiner for
28 monitoring of health care provider services and hospital
30 utilization. This monitoring must include determinations
32 concerning the appropriateness of the service, whether the
34 treatment is necessary and effective, the proper cost of
36 services, the quality of the treatment and the right of
38 providers to receive payment under the Act for services
40 rendered. The examiner shall also monitor services provided
42 by health care professionals who have been the subject of
44 complaints and cases selected on a random basis for purposes
46 of evaluating the appropriateness of charges and
48 performance. The examiner shall report the results of this
50 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.
 The hospital or health care provider is responsible for obtaining
 any required approval. Neither the employer nor the employee is
 responsible for payment of the cost of any medical services for
 which a required approval has not been obtained.

4. Other penalties. Any health care provider who has
 submitted false testimony or a false report in connection with

2 any claim for payment made under this Act, or who has repeatedly
3 either overcharged for services or failed to comply with the
4 preapproval requirements of subsection 3, must be barred by order
5 of the Division of Workers' Compensation from receiving any
6 payment under this Act for services rendered for a period not to
7 exceed one year in the first instance and 3 years in the 2nd
8 instance, and the Division of Workers' Compensation may
9 permanently bar the provider from eligibility for payment of
10 services under this Act thereafter.

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

12 **§53-C. Effect of volunteer services**

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

20
21 **Sec. 30. 39 MRSA §55-B, as amended by PL 1989, c. 575, is**
22 **further amended to read:**

23 **§55-B. Compensation for partial incapacity**

24 While the incapacity for work resulting from the injury is
25 partial, the employer shall pay the injured employee a weekly
26 compensation equal to 2/3 the difference, due to the injury,
27 between his the employee's average gross weekly wages, earning
28 earnings or salary before the injury and the weekly wages,
29 earnings or salary which he that the employee is able to earn
30 after the injury, but not more than the maximum benefit under
31 section 53-B. Payments under this section shall may not continue
32 for longer than 400 413 weeks after maximum-medical-improvement
33 the date of injury. This paragraph applies only to employees
34 injured on or after November 20, 1987.

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

37
38 For purposes of determining an injured employee's degree of
39 incapacity under this section, the ~~commission~~ Division of
40 Workers' Compensation shall consider the availability of work
41 that the employee is able to perform in and around the employee's
42 community for the 52-week period following the date of injury and
43 within this State thereafter, and the employee's ability to
44 obtain such work considering the effects of the employee's
45 work-related injury. ~~If no such work is available in and around~~
46 ~~the employee's community or if the employee is unable to obtain~~
47 ~~such work in and around the employee's community due to the~~

2 effects--of--a--work-related--injury,--the--employee's--degree--of
ineapacity--under--this--section--is--100%. For the purpose of this
4 section, the employee's community is the greater of a 75-mile
radius from the employee's residence at the time of injury or the
6 actual distance from the employee's normal work location to the
employee's residence at the time of injury.

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

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

- 16 A. One week for each percent of permanent impairment to the
- 18 body as a whole from 0 to 14%;
- 20 B. Three weeks for each percent of permanent impairment to
- 22 the body as a whole from 15% to 50%;
- 24 C. Four and 1/2 weeks for each percent of permanent
- impairment to the body as a whole from 51% to 85%; and
- 26 D. Eight weeks for each percent of permanent impairment to
- 28 the body as a whole greater than 85%.

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

32 Sec. 32. 39 MRSA §57-B, as amended by PL 1989, c. 580, §§1 to
5, is repealed.

34 Sec. 33. 39 MRSA §57-C, as amended by PL 1985, c. 691, §47,
36 is repealed.

38 Sec. 34. 39 MRSA §61 is amended to read:

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

42 No compensation or other benefits shall ~~may~~ be allowed for
44 the injury or death of an employee where when it is proved that
such was occasioned by ~~his~~ the employee's willful intention to
46 bring about the injury or death of ~~himself~~ the employee or of
another, or that the same resulted from ~~his~~ the employee's
48 intoxication or use of a nonprescribed scheduled drug as defined
in Title 17-A, section 1101, subsection 11 while on duty. This
provision as to intoxication shall ~~does~~ not apply, if the

2 employer knew that the employee was intoxicated or that he the
3 employee was in the habit of becoming intoxicated while on duty.
4 For the purposes of this section, an employee is considered
5 intoxicated if the employee's blood alcohol content is .08 or
6 more. Proof of intoxication or use of a controlled substance by
7 a preponderance of the evidence gives rise to a rebuttable
8 presumption that the intoxication or use of a controlled
9 substance was the cause of injury. Any testing required by an
10 employer must be in compliance with Title 26, chapter 7,
11 subchapter III-A.

12 Sec. 35. 39 MRSA §62-C is enacted to read:

14 § 62-C. Nonduplication of benefits

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

24 Sec. 36. 39 MRSA §66-A, sub-§3, as amended by PL 1989, c. 388,
26 is further amended to read:

28 3. Time period; discrimination prohibited. The employer's
29 obligation to reinstate the employee continues until one year, or
30 2 years if the employer has over 250 employees, after the
31 ~~employee has reached the stage of maximum medical improvement in~~
32 ~~the judgment of the commission~~ date of the injury. An employer
33 who reinstates an employee under this section may not
34 subsequently discriminate against that employee in any employment
35 decision, including decisions related to tenure, promotion,
36 transfer or reemployment following a layoff, because of the
37 employee's assertion of a claim or right under this Act. Nothing
38 in this subsection may be construed to limit any protection
39 offered to an employee by section 111.

40 Sec. 37. 39 MRSA §71-A, as amended by PL 1989, c. 502, Pt. A,
42 §§150 and 151, is repealed and the following enacted in its place:

44 §71-A. Lump sum payments

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

2 Sec. 38. 39 MRSA c. 1, sub-c. III-A, as amended, is repealed.

4 Sec. 39. 39 MRSA c. 1, sub-c. IV, first 3 lines, are repealed and
6 the following enacted in their place:

8 SUBCHAPTER IV

10 ADMINISTRATION; PROCEDURE; REVIEW; PENALTIES

12 §90-A. Establishment of Division of Workers' Compensation

14 The Division of Workers' Compensation is established within
16 the Department of Labor to hear and decide matters pertaining to
workers' compensation claims that arise on or after January 1,
18 1992.

20 Sec. 40. 39 MRSA §91, as amended by PL 1989, c. 483, Pt. A,
§§57 and 58, is repealed.

22 Sec. 41. 39 MRSA §91-B is enacted to read:

24 §91-B. Division of Workers' Compensation; hearing officers

26 1. Membership; term. The Division of Workers'
28 Compensation, as established in section 90-A, consists of up to
10 hearing officers, who must be persons learned in the law and
30 members of good standing of the bar of this State. They must be
appointed by the Governor within 60 days after a vacancy occurs
32 or a new hearing officer is authorized, subject to review by the
joint standing committee of the Legislature having jurisdiction
34 over judiciary matters and to confirmation by the Legislature.
Hearing officers serve for terms of 4 years each from the date of
36 their respective appointments.

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

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

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

7 This subsection is repealed January 1, 1994.

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

16 4. Practice. Each hearing officer shall devote full time
17 to the duties of the office and may not hold any other public
18 office or public employment. A hearing officer may not practice
19 law during that officer's term of office, nor may the officer
20 during that term be the partner or associate of any person in the
21 practice of law.

22 Sec. 42. 39 MRSA §92, as amended by PL 1987, c. 877, §1, is
23 further amended to read:

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

26 1. Rules. The chairman--of--the--commission--shall--have
27 commissioner has general supervision over the administration of
28 this Act, and--responsibility--for--the--efficient--and--effective
29 management--of--the--commission--and--its--employees to the extent
30 provided in this Act. Subject to any applicable requirements of
31 the Maine Administrative Procedure Act, Title 5, chapter 375,
32 after--obtaining--the--advice--of--the--commissioners, the chairman
33 commissioner shall make rules, prescribe forms and make suitable
34 orders as to procedure adopted to assure ensure a speedy,
35 efficient and inexpensive disposition of all proceedings.

36 2. Employees. The--chairman--shall--appoint--an--assistant--to
37 the--chairman,--who--shall--serve--at--his--pleasure. Subject to the
38 Personnel Civil Service Law, the chairman commissioner shall
39 appoint a Director of Administrative Services, and full-time or
40 part-time reporters--and--such legal, professional and clerical
41 assistants as may-be necessary.

42 3. Data system; reports. The chairman commissioner is
43 responsible for development and administration of the commission
44 workers' compensation data system. The chairman commissioner
45 shall report quarterly to the Governor, the President of the
46 Senate and the Speaker of the House of Representatives on each

2 commissioner's hearing officer's caseload and progress, and the
number of instances in which each commissioner hearing officer
4 has exceeded the 30-day rule contained in section 99-B.

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

12 ~~5. Active retired commissioners. Any commissioner having~~
~~retired from the commission is eligible for appointment as an~~
14 ~~active retired commissioner. The Governor, subject to review by~~
~~the joint standing committee of the Legislature having~~
16 ~~jurisdiction over judiciary and to confirmation by the~~
Legislature, may, upon being notified of the retirement of a
18 ~~commissioner, appoint that commissioner to be an active retired~~
20 ~~commissioner for a term of 4 years, unless sooner removed, and~~
subject to reappointment. An active retired commissioner shall
22 ~~have the same powers as before retirement, except that he shall~~
act only in those cases and at times and places as directed by
24 ~~the chairman, and except that an active retired commissioner may~~
not be a member of a panel of the appellate division.

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

36 6. Office of Employee Assistants. The chairman
38 commissioner shall provide adequate funding for an Office of
Employee Assistants and shall, subject to the Personnel Law
40 personnel law, appoint the assistants to staff the Augusta office
and district offices an office to be located in the offices of
42 the Department of Labor. Assistants are not attorneys, but should
demonstrate a level of expertise roughly equivalent to that of
44 insurance claims' analysts. The purpose of employee assistants is
to provide advice and assistance to employees under this Act and
46 particularly to assist employees in preparing for and assisting
at informal conferences under section 94-B. In addition, if an
48 employer appeals a decision of the commissioner Division of
Workers' Compensation or institutes any proceeding against an
50 employee under this Act, the Office of Employee Assistants shall,

2 upon request, advise an that employee how to best prepare for and
proceed with his the case.

4 No employee of the Office of Employee Assistants may represent
6 before the ~~commissioner~~ Division of Workers' Compensation any
8 insurer, self-insurer, group self-insurer, adjusting company or
self-insurance company for a period of 2 years after terminating
employment with the office.

10 ~~The chairman shall appoint employee assistants and supervisors~~
12 ~~of employee assistants as necessary to effectuate the purposes of~~
~~this subsection.~~

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

20 7. Budget. The ~~chairman~~ commissioner shall administer the
22 budget of the ~~commissioner~~ Division of Workers' Compensation.

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

30 9. Abuse investigation unit. The ~~chairman~~ commissioner
32 shall provide adequate funding for a Unit of Abuse Investigation.

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

38 B. The unit shall, at the direction of the ~~chairman~~
40 commissioner, investigate all complaints or allegations of
fraud, illegal or improper conduct or violation of this Act
42 or rules of the ~~commissioner~~ commissioner relating to workers'
44 compensation insurance, benefits or programs, including
those acts by employers, employees or insurers. All records,
46 correspondence and reports of investigation in connection
with actual or alleged fraud, illegal or improper conduct or
48 violation of this Act or rules of the ~~commissioner~~
commissioner and all records, correspondence and reports of
criminal prosecution or civil action shall ~~be~~ are
confidential. The confidential nature of any such record,

2 correspondence or report shall does not limit or affect the
use of those materials in any prosecution or action.

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

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

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

18 10. Independent medical examiners. The commissioner shall
20 select one hospital in or south of Augusta and one hospital north
22 of Augusta to provide the services of independent medical
24 examiners required under this chapter using the competitive
26 bidding process. Subject to the approval of the commissioner,
28 these selected hospitals may enter into agreements with other
30 hospitals and providers of services to the extent necessary to
32 carry out their responsibilities as long as the selected
hospitals remain responsible for administration of the program,
including the making of specific assignments. The commissioner
may require the selected hospitals to make periodic reports or
otherwise submit information sufficient to permit the
commissioner to evaluate their performance. The commissioner is
responsible for maintaining the program at a minimum cost.

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

46 Sec. 43. 39 MRSA §92-A is enacted to read:

48 §92-A. Independent medical examiners

50 1. Referral. The Division of Workers' Compensation shall
refer any dispute relating to the medical condition of a claimant

2 to an independent medical examiner, including disputes that
3 involve the following:

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

6 B. Determination of maximum medical improvement and degree
7 of impairment under section 56-B;

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

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

14 E. Review of medical services under sections 52, 52-B or
16 52-C.

18 2. Standard. If an independent medical examiner permits or
19 refers medical treatment beyond what is medically necessary, an
20 independent medical examiner must take into consideration the
21 cost-effectiveness of the treatment.

22 3. Examination. Upon assignment, an independent medical
23 examiner may examine the employee as often as an independent
24 medical examiner determines necessary and may review any medical
25 records necessary to make the determinations required. The
26 examiner must submit a written report to the Division of Workers'
27 Compensation, the employer and the employee stating the
28 examiner's opinions on the issues raised by that case and
29 providing a description of findings sufficient to explain the
30 basis of those findings. The fee for the examination and report
31 must be paid by the employer.

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

36 5. Right of appeal. The employer or the employee may
37 appeal the examiner's findings up to 20 days from receipt of an
38 independent medical examiner's report. The notice of appeal must
39 identify the findings and conclusions that are objected to and
40 the grounds for the objection. If an appeal is not filed, the
41 findings of the examiner are binding on the parties and the
42 Division of Workers' Compensation.

44 6. Appeal procedure. Upon receipt of a request for review
45 of the examiner's findings, the case must be assigned to a
46 3-person panel for a review of the record. The panel must
47 consist of physicians or other appropriate providers who meet the
48 qualifications in section 92, subsection 10 and who have no
49 independent knowledge of the first review. The panel shall
50 review the report of the first examiner and the available medical

2 records and if necessary shall examine the employee. Upon
3 completion of this review, the panel shall submit a report to the
4 court that must contain conclusions as to whether the challenged
5 findings or conclusions are clearly erroneous and, if so, in what
6 respects. This report must contain findings or conclusions on
7 any issue as to which the panel found the first examiner's report
8 to be clearly erroneous. The findings of the panel are binding
9 on the court. If the panel does not find one or more material
10 findings or conclusions of the first examiner to be clearly
11 erroneous, the cost of the appeal must be paid by the party
12 requesting the review; if one or more of the material findings or
13 conclusions is found to be clearly erroneous, these costs must be
14 paid by the employer.

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

21 Sec. 44. 39 MRSA §93, as amended by PL 1987, c. 736, §59, is
22 further amended to read:

23 **§93. Investigations; subpoenas; depositions**

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25
26
27
28 1. Investigators. Any ~~commissioner~~ hearing officer may,
29 when the interests of any of the parties or when the
30 administration of this Act demand, appoint a person to make a
31 full investigation of the circumstances surrounding any
32 industrial injury or any matter connected therewith, and report
33 the same without delay to the ~~office of the~~ commissioner.

34
35
36 2. Subpoenas. Any ~~commissioner~~ hearing officer may
37 administer oaths and any ~~commissioner~~ hearing officer, notary
38 public or clerk of any Superior Court may issue subpoenas for
39 witnesses and subpoenas duces tecum to compel the production of
40 books, papers and photographs relating to any questions in
41 dispute before the ~~commission~~ Division of Workers' Compensation
42 or to any matters involved in a hearing. Witness fees in all
43 proceedings under this Act shall ~~be~~ are the same as for witnesses
44 before the Superior Court. When a witness, subpoenaed and
45 obliged to attend before the ~~commission~~ Division of Workers'
46 Compensation or any member thereof, fails to do so without
47 reasonable excuse, the Superior Court or any justice thereof may,
48 on application of the Attorney General made at the written
request of a member ~~of the commission~~ hearing officer, compel
obedience by attachment proceedings for contempt as in the case

2 of disobedience of the requirements of a subpoena issued from
such court or a refusal to testify therein.

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

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

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

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

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

48 If any person shall ~~do~~ does any of the things forbidden in this
subsection, the ~~commissioner or commissioner~~ hearing officer shall
50 forthwith certify the facts to a Superior Court Justice in the

2 county where the alleged offense occurred and he the hearing
3 officer may serve or cause to be served upon such person an order
4 requiring such person to appear before such Superior Court
5 Justice upon a day certain to show cause why he that person
6 should not be adjudged in contempt by reason of the facts so
7 certified. The justice shall thereupon, in a summary manner, hear
8 the evidence as to the acts complained of and, if it is such as
9 to warrant him the justice in so doing, punish such person in the
10 same manner and to the same extent as for a contempt committed
11 before him the justice, or commit such person upon the same
12 conditions as if the doing of the forbidden act had occurred with
13 reference to the process of the Superior Court or in the presence
14 of the justice.

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

22 Sec. 45. 39 MRSA §94, as amended by PL 1985, c. 372, Pt. A,
23 §33, is further amended to read:

24 **§94. Approval of compensation agreement; petition for award**

25 Subject to section 94-B, ~~in the event of when~~ a controversy
26 exists as to the responsibility of an employer for the payment of
27 compensation, any party in interest may file ~~in the office of~~
28 with the commissioner Division of Workers' Compensation a petition
29 for award of compensation, setting forth the names and residences
30 of the parties, the facts relating to the employment at the time
31 of the injury, the knowledge of the employer or notice of the
32 occurrence thereof, the character and extent of the injury and
33 the claims of the petitioner with reference thereto, together
34 with such other facts as may be necessary and proper for the
35 determination of the rights of the petitioner.

36 If, following an injury which that causes no incapacity for
37 work, the employer and employee reach an agreement that the
38 employee has received a personal injury arising out of and in the
39 course of employment, a memorandum of such agreement signed by
40 the parties may be filed ~~in the office of~~ with the commissioner
41 Division of Workers' Compensation. Such The memorandum shall must
42 set forth the names and residences of the parties, the facts
43 relating to the employment at the time of the injury, the time,
44 place and cause of the injury, and the nature and extent of the
45 injury. Any member ~~of the commission shall be empowered, without~~
46 ~~the necessity of the filing of a petition for award, to~~ hearing
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2 officer may render a protective decree based upon such memorandum
3 without the filing of a petition for award.

4 Sec. 46. 39 MRSA §94-A, as amended by PL 1985, c. 372, Pt. A,
5 §34, is further amended to read:

6 §94-A. Commissioner of Labor actions
7

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

12
13 1. Inform employee. Immediately upon receipt of the
14 employer's notice of injury required by section 106, the
15 ~~commissioner~~ commissioner shall contact the employee and provide
16 information explaining the compensation system and the employee's
17 rights. The ~~commissioner~~ commissioner shall advise the employee
18 how to contact the ~~commissioner~~ commissioner for further assistance
19 and shall provide that assistance.

20
21 2. Monitor payments. The ~~commissioner~~ commissioner shall
22 monitor cases in order to assure ensure that:

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

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

29
30 3. Construction. In interpreting this Act, the ~~commissioner~~
31 commissioner shall construe it so as to ensure the efficient
32 delivery of compensation to injured workers at a reasonable cost
33 to employers. All workers' compensation cases shall must be
34 decided on their merits and the rule of liberal construction
35 shall does not apply to those cases. Accordingly, this Act is
36 not to be given a construction in favor of the employee, nor are
37 the rights and interests of the employer to be favored over those
38 of the employee.

39
40 4. Information. The ~~commissioner~~ commissioner shall require
41 the employee, employer or insurer to provide ~~it~~ with any
42 information ~~it~~ reasonably deems considered necessary to monitor
43 cases, including, but not limited to, ~~pre-injury~~ preinjury and
44 ~~post-injury~~ postinjury wage statements.

45
46 Sec. 47. 39 MRSA §94-B, as enacted by PL 1983, c. 479, §19,
47 is amended to read:
48

2 §94-B. Procedure upon notice of controversy; informal conference

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

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

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

24 3. Representation. In preparation for and at the
conference, the ~~commissioner~~ hearing officer shall assure ensure
26 that competent technical staff from the Office of Employee
Assistants is available to provide advice and assistance to the
28 employee.

30 If, at this stage, the employer or insurer elects to be
represented by legal counsel, the employee is entitled to be
32 similarly represented by legal counsel of his the employee's
choice, with all reasonable attorney fees to be assessed against
34 the employer. If no adverse party elects to be so represented,
the employee retains the right to secure legal counsel at his the
36 employee's own expense.

38 4. Action upon opinion. Within 7 days of the conference,
the employer may file with the ~~commissioner~~ Division of Workers'
40 Compensation a memorandum of payment evidencing the initiation of
compensation payments or, if there is further controversy, any
42 party may then file a petition as provided in this Act.

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

2 **6. Employer representation.** The employer or representative
4 of the employer or insurer who attends the informal conference
6 must be familiar with the employee's claim and has full authority
8 to make decisions regarding the claim. The hearing officer may
10 assess a penalty in the amount of \$100 against any employer or
12 representative of the employer or insurer who attends the
14 conference without full authority to make decisions regarding the
16 claim.

18 **Sec. 48. 39 MRSA §95,** as amended by PL 1989, c. 256, §4, is
20 further amended to read:

22 **§95. Time for filing petitions**

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

42 **Sec. 49. 39 MRSA §96-A,** as enacted by PL 1981, c. 199, §2, is
44 amended to read:

46 **§96-A. Procedure for filing petitions**

48 **1. Filing with Division of Workers' Compensation.** Any
interested party may seek a determination of his that party's
rights under this Act by filing with the ~~commission~~ Division of
Workers' Compensation any petition authorized under this Act.

2 The fee for filing any petition is \$25. Any filing fee paid by
3 an employee is not reimbursable by the employer.

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

12 **Sec. 50. 39 MRSA §96-B,** as amended by PL 1985, c. 249, §5, is
13 further amended to read:

14 **§96-B. Expedited decision on claim of agricultural or**
15 **aquacultural exemption**

16 1. **Claim of exemption; answer.** If an employer carries
17 employer liability insurance as required by sections 2 and 21-A
18 and claims to fall within one of the agricultural or aquacultural
19 exemptions in section 2 or 21-A, the employer may raise this
20 either in an answer filed under section 97 or by motion. The
21 employer shall file such a motion with the commission Division of
22 Workers' Compensation within 5 days after receipt of the
23 employee's petition and shall mail a copy thereof to the
24 employee. The employer shall file affidavits, records, proof of
25 insurance and other evidence supporting his the employer's claim
26 for an exemption, together with the motion. Within 5 days after
27 receipt of the employer's motion, the employee may file a reply
28 with the commission Division of Workers' Compensation, together
29 with affidavits, records and other evidence supporting his the
30 employee's claim that the employer does not fall within an
31 agricultural or aquacultural exemption. If the employee files a
32 reply, a copy thereof shall must be mailed to the employer.

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

42 If the commission hearing officer rules that the employer does
43 not fall within an agricultural or aquacultural exemption, he the
44 hearing officer shall schedule a hearing on the employee's

2 petition as provided in section 98. At that hearing, the
employer may again raise the issue of exemption.

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

8 3. Appeal. There is no appeal from the ~~commission's~~
9 hearing officer's decision, prior to a hearing on the employee's
10 petition, ruling against the employer's exemption. If the
11 ~~commission~~ hearing officer is of the opinion that a question of
12 law involved in the ruling ought to be determined by the
13 ~~Appellate--Division~~ Administrative Court prior to any further
14 proceedings, ~~it~~ the hearing officer may on motion of the
15 aggrieved party report the case to the ~~division~~ court for that
16 purpose and stay all further proceedings, except those which that
17 are necessary to preserve the rights of the parties without
18 making a decision.

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

24 **Sec. 51. 39 MRSA §97**, as amended by PL 1985, c. 506, Pt. A,
25 §82, is further amended to read:

28 **§97. Filing of answers**

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

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

48 **Sec. 52. 39 MRSA §98**, as repealed and replaced by PL 1983, c.
49 479, §21, is amended to read:

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§98. Time and place of formal hearing

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

26 **Sec. 53. 39 MRSA §99**, as amended by PL 1981, c. 698, §§193 to
27 195, is further amended to read:

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§99. Hearing and decision

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32 If from the petition and answer there appear to be facts in
33 dispute, the ~~commissioner~~ hearing officer shall then hear such
34 witnesses as may be presented, or by agreement the claims of both
35 parties as to such facts may be presented by affidavits. If the
36 facts are not in dispute, the parties may file with the
37 ~~commissioner~~ Division of Workers' Compensation an agreed statement
38 of facts for a ruling upon the law applicable thereto. From the
39 evidence or statements thus furnished the ~~commissioner~~ Division
40 of Workers' Compensation shall in a summary manner decide the
41 merits of the controversy. ~~His~~ The decision, ~~shall must~~ be filed
42 in the office of the ~~commissioner~~ Division of Workers'
43 Compensation, and a copy thereof attested by the clerk of the
44 ~~commissioner~~ hearing officer mailed forthwith to all parties
45 interested or to the attorney of record of each party. ~~His~~ The
46 decision, in the absence of fraud, upon all questions of fact
47 shall ~~be~~ is final, but whenever in a decree the ~~commissioner~~
48 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

COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957

2 be is deemed to be a conclusion of law and shall-be reviewable as
such.

4 The ~~commissioner~~ hearing officer shall, upon the request of
6 a party made as a motion within 20 days after notice of the
8 decision, or may upon ~~its~~ the hearing officer's own motion find
10 the facts specially and state separately its conclusions of law
12 thereon and file the appropriate decision if it differs from the
14 decision filed before the request was made. Those findings,
16 conclusions and revised decision shall must be filed in the
18 office of the ~~commission~~ Division of Workers' Compensation, and a
20 copy thereof attested by the clerk of the ~~commission--~~shall
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.

22 Clerical mistakes in decrees, orders or other parts of the
24 record and errors therein arising from oversight or omission may
26 be corrected by the ~~commission~~ hearing officer at any time ~~of--~~its
28 on the hearing officer's own initiative or on the motion of any
30 party and after notice to the parties. During the pendency of an
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
Supreme Judicial Court.

32 In any case upon which a ~~commissioner~~ hearing officer whose
34 term has expired has completed hearing all of the evidence, that
36 ~~commissioner~~ hearing officer shall render a decision on that case
38 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.

40 **Sec. 54. 39 MRSA §99-B**, as amended by PL 1983, c. 479, §22,
42 is further amended to read:

44 **§99-B. Prompt decision required**

46 The ~~commissioner~~ hearing officer who hears a case pursuant
48 to section 99 shall render his a decision no later than 30 days
after each party has completed presenting its case. Whenever the
50 ~~commissioner~~ hearing officer exceeds the limit contained in this
section, compensation to ~~him--~~shall the hearing officer must be

2 forfeited effective the day after the 30th day and for each day
3 until the decision has been issued; provided that this provision
4 shall does not apply in any case for which the ~~commissioner~~
5 hearing officer has shown just cause, as determined by rules of
6 the ~~commission~~ commissioner made pursuant to section 92,
subsubsection 1, for delay beyond 30 days.

8 Sec. 55. 39 MRSA §99-C, as amended by PL 1983, c. 479, §23,
9 is further amended to read:

10 **§99-C. Petition for reopening**

12 Upon the petition of either party, a ~~single-commissioner~~
13 hearing officer may reopen and review any compensation payment
14 scheme, award or decree upon the grounds of newly discovered
15 evidence which by due diligence could not have been discovered
16 prior to the time the payment scheme was initiated or prior to
17 the hearing on which the award or decree was based. The petition
18 must be filed within 30 days of the payment scheme, award or
19 decree.
20

22 Sec. 56. 39 MRSA §100, as amended by PL 1987, c. 559, Pt. B,
23 §§41 and 42, is further amended to read:

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

26 1. **Relief available.** Upon the petition of either party, a
27 ~~single-commissioner~~ the Division of Workers' Compensation shall
28 review any unilateral action by an employer pursuant to
29 subsection 4-A or any compensation payment scheme required by
30 this Act for the purposes of ordering the following relief, as
31 the justice of the case may require:
32

34 A. Increase, decrease, restoration or discontinuance of
35 compensation.

36 2. **Standard for review.** The basis for granting relief under
37 this section is as follows.

38 A. On the first petition for review brought by a party to
39 an action, the ~~commissioner~~ hearing officer shall determine
40 the appropriate relief, if any, under this section by
41 determining the employee's present degree of incapacity.
42

43 B. Once a party has sought and obtained a determination
44 under this section, it is the burden of that party in all
45 proceedings on his subsequent petitions under this section
46 to prove that the employee's earning incapacity attributable
47 to the work-related injury has changed since that
48 determination.
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2 C. When an order has been issued pursuant to subsection 4-A
4 denying the employee's petition for reinstatement of
 benefits, the hearing officer shall not reinstate benefits
6 after a hearing if any of the conditions in subsection 4-A
 are met.

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

10 ~~3-A.--Petitions during rehabilitation.--A petition may not~~
12 ~~be brought during the development or implementation of a~~
 ~~rehabilitation plan under section 83, subsection 3 or 4, except~~
14 ~~in the event of substantial change in the employee's medical~~
 ~~condition.~~

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

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

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

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

32 ~~(2)--The employee's whereabouts are unknown, or~~

34 ~~(3)--The employee has resumed work;~~

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

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

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

2 he had accepted reinstatement or returned to available
suitable work.

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

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

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

26 (5) If benefits are suspended or reduced under this
28 paragraph and the commission, after hearing, reverses
the provisional order, either in whole or in part, the
30 commission shall order a lump sum payment of all
benefits withheld together with interest at the rate of
32 6% a year. The employer shall pay this lump sum within
10 days of the order.

34 4-A. Unilateral discontinuance of benefits. Upon written
36 notice to the employee and to the Division of Workers'
38 Compensation that benefits are being suspended or reduced,
40 together with any information relied on by the employer to
support the suspension or reduction, an employer may discontinue
or reduce benefits:

42 A. If the employee refuses an offer of reinstatement to a
44 position that is suitable to the employee's physical
46 condition and the employee's physician or an independent
medical examiner has determined that the employee is
medically able to perform the employment being offered;

48 B. If the employee is able to return to work and there is
50 work available that is suitable to the employee's physical
condition within the community or, after 52 weeks from the

COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957

2 date of injury, within the State and the employee's
3 physician or the independent medical examiner has determined
4 that the employee is medically able to perform the available
5 employment;

6 C. If the employee returns to work;

8 D. If the employee refuses to submit to a medical
9 examination pursuant to subsection 5;

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

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

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

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

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

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

37 4-B. Employee's right to a hearing. In the event that
38 compensation is discontinued by the employer pursuant to
39 subsection 4-A, the employee has a right to file a petition for
40 review and to submit to the Division of Workers' Compensation any
41 additional information relating to continued entitlement to
42 benefits.

44 A. The Division of Workers' Compensation, within 2 weeks
45 after the employee files a petition for review, shall enter
46 an order providing for the suspension, reduction or
47 continuation of benefits pending a hearing on the petition.
48 The order must be based upon the information submitted by
49 both the employer and the employee under this section. The
50 Division of Workers' Compensation may not issue an order

2 reinstating benefits unless there is clear and convincing
evidence that the employee will prevail at the hearing.

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

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

20 A. The physician or surgeon certifies to the commission
22 after examination that in his opinion the employee is able
to resume work; or

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

26 6. Recovery of overpayments. Compensation Any compensation
28 paid by the employer after the employee has resumed work may be
recovered to an employee from the date the employee is not
30 qualified for compensation to the date the employer unilaterally
discontinued benefits pursuant to subsection 4-A is recoverable
32 from the employee in a legal action brought by the employer if:
the employer discontinued compensation pursuant to subsection
34 4-A, paragraphs C to G.

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

40 B. After the hearing the commissioner finds that the
42 petition was properly filed and decrees that compensation
cease.

44 Sec. 57. 39 MRSA §100-A, as amended by PL 1989, c. 580, §20,
46 is repealed and the following enacted in its place:

48 §100-A. Orders or agreements for trial work periods

50 The Division of Workers' Compensation may approve an
agreement of the parties to a trial work period at a specified

2 job for a period not to exceed 3 months. During this trial work
3 period and the payment of wages for that work, the payment of
4 compensation is suspended.

6 The suspension ceases and weekly compensation must be
7 restored in the amount paid prior to the commencement of the
8 trial work period immediately upon termination of employment
9 during the trial work period if the reason for termination is an
10 inability to work because of the present injury for which there
11 was prior compensation.

12 If the termination of the trial work period is not related
13 to the injury for which there was prior compensation and the
14 employer does not restore benefits, the continued suspension of
15 benefits is considered a unilateral discontinuance of benefits by
16 the employer and the procedures set forth in section 100,
17 subsection 4-A apply.

18
19 **Sec. 58. 39 MRSA §102**, as repealed and replaced by PL 1989,
20 c. 294, §1, is amended to read:

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

24 **1. Agreements.** Upon the petition of either party at any
25 time, the ~~commission~~ Division of Workers' Compensation may annul
26 any agreement which that has been approved by the ~~commission~~
27 Division of Workers' Compensation if it finds that the agreement
28 has been entered into through mistake of fact by the petitioner
29 or through fraud. Except in the case of fraud on the part of the
30 employee, an employee is not barred by any time limit from filing
31 a petition to have the matters covered by the agreement
32 determined in accordance with this Act as though the agreement
33 had not been approved.

34
35 **2. Compensation payment scheme.** Notwithstanding section
36 51-B, subsection 7, a party may petition the ~~commission~~ Division
37 of Workers' Compensation within one year of initiation of the
38 payment scheme, award or decree to reopen any case in which fraud
39 on the part of the opposing party is alleged. If the ~~commission~~
40 hearing officer finds that the petitioning party had exercised
41 due diligence in investigating the initial claim and further
42 finds that fraud occurred, the ~~commission~~ hearing officer may
43 reopen the case as to any issue which that may have been affected
44 by the fraudulent act and may terminate or modify an employer's
45 obligation to make payment upon a finding that fraud on the part
46 of a party affected the employer's obligation to make payment.

48 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

2 to have any issues determined in accordance with this Act as
3 though the payment scheme had not been initiated.

4 Sec. 59. 39 MRSA §103-A, as enacted by PL 1981, c. 514, §6,
5 is repealed.

6 Sec. 60. 39 MRSA §103-B, as amended by PL 1989, c. 412, §§1,
7 2, 4 and 5, is further amended to read:

8
9 **§103-B. Appeal from the Division of Workers' Compensation
10 decision**

11
12 1. Procedure. An appeal shall may be taken from the
13 ~~commissioner~~ hearing officer's decision by filing a copy of the
14 decision, order or agreement, with the ~~division~~ Administrative
15 Court within 20 days after receipt of notice of the filing of the
16 decision by the ~~commissioner~~ hearing officer.

17
18 Any party in interest may present copies of any order, decision
19 or agreement to the clerk of the ~~division~~ court. Appeals are to
20 a single Judge of the Administrative Court or an Associate Judge
21 of the Administrative Court.

22
23 The failure of an appellant who timely notifies the ~~division~~
24 court of his the desire to appeal to provide a copy of the
25 decision, order or agreement appealed from shall does not affect
26 the jurisdiction of the ~~division~~ court to determine the appeal on
27 its merits unless the appellee shows substantial prejudice from
28 that failure.

29
30 ~~2. Basis. There shall be no appeal upon questions of fact
31 found by the commission or by any commissioner, except to correct
32 manifest error or injustice.~~

33
34 2-A. Basis. There shall may be no appeal upon questions of
35 fact found by ~~the commission or by any commissioner~~ the hearing
36 officer.

37
38 3. Action. The ~~division~~ court, after due consideration,
39 may reverse or modify any decree of the ~~commission~~ Division of
40 Workers' Compensation and shall issue a written decision. The
41 written decision of the ~~division~~ court must be filed with
42 the ~~commissioner~~ commissioner and mailed to the parties or their
43 counsel.

44
45 4. Costs. If the employee prevails, costs of appeal shall
46 must be allowed, including the record, and including reasonable
47 attorneys' fees as provided for under section 110. No attorney
48 who represents an employee who prevails in an appeal before the
49 ~~division~~ court may recover any fee from that client for that
50

2 representation. Any attorney who violates this paragraph shall
3 ~~lose-his~~ loses that fee and is liable in a court suit to pay
4 damages to the client equal to 2 times the fee charged that
5 client.

6 **5. Publication of decisions.** The ~~division~~ court shall
7 biennially publish its significant workers' compensation
8 decisions and make them available to the public at such cost as
9 is required to pay for suitable publication. Copies of all
10 written decisions shall must be distributed to the State Law
11 Library and the county law libraries.

12 **Sec. 61. 39 MRSA §103-C**, as amended by PL 1985, c. 372, Pt.
13 A, §41, is further amended to read:

14 **§103-C. Appeal from a decision of the Administrative Court**

15 **1. Procedures.** Any party in interest may present a copy of
16 the decision of the ~~division~~ court to the clerk of the Law Court
17 within 20 days after receipt of notice of the filing of the
18 decision ~~by the division~~. Within 20 days after the copy is filed
19 with the Law Court, the party seeking review by the Law Court
20 must file a petition seeking appellate review with the Law Court,
21 setting forth a brief statement of the facts, the error or errors
22 of law which that are alleged to exist and legal authority
23 supporting the position of the appellant.

24 **2. Rules.** The Law Court shall establish and publish
25 procedures for the review of petitions for appellate review of
26 decisions of the ~~division~~ court.

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

33 If the petition for appellate review is granted, then the clerk
34 of the Law Court shall notify the parties of the briefing
35 schedule consistent with the Maine Rules of Civil Procedure, and
36 in all respects the appeal before the Law Court shall must be
37 treated as an appeal in an action in which equitable relief has
38 been sought. The Law Court may, after due consideration, reverse,
39 modify or affirm any decision of the ~~division~~ court.

40 **4. Costs.** In all cases of appeal to the Law Court in which
41 the employee prevails, it may order a reasonable allowance to be
42 paid to the employee by the employer for expenses incurred in the
43 proceedings of the appeal, including the record, but not
44

including expenses incurred in other proceedings in the case. Reasonable attorneys' fees shall must be allowed as provided for under section 110. No attorney who represents an employee who prevails in an appeal before the court may recover any fee from that client for that representation. Any attorney who violates this paragraph shall ~~lose his~~ loses the fee and is liable in a court suit to pay damages to the client equal to 2 times the fee charged that client.

Sec. 62. 39 MRSA §103-D, as amended by PL 1981, c. 698, §197, is further amended to read:

§103-D. Report to the Law Court

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

Sec. 63. 39 MRSA §103-E, as amended by PL 1981, c. 698, §198, is further amended to read:

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

Any decision of the ~~commissioners or the division shall be~~ Division of Workers' Compensation is enforceable by the Superior Court Division of Workers' Compensation by any suitable process including execution against the goods, chattel and real estate and including proceedings for contempt for willful failure or neglect to obey the orders, decisions or decrees agreements of the court Division of Workers' Compensation, or in any other manner that decrees for equitable relief may be enforced. Any party ~~in interest may present copies, certified by the clerk of the commission or of the division, of any order or decision of the commission or of the division, or of any memorandum of agreement approved by the commission to the clerk of courts for the county in which the injury occurred, or if the injury occurred without the State, to the clerk of courts for the County of Kennebec. Whereupon any Justice of the Superior Court~~ hearing officer shall render a pro forma decision in accordance therewith with any order or decision of the Division of Workers' Compensation and cause all interested parties to be notified. The decision shall ~~have~~ has the same effect and all proceedings in relation thereto shall must thereafter be the same as though rendered in an action in which equitable relief is sought, duly heard and determined by the court Division of Workers' Compensation. The decision shall must be for enforcement of a ~~commission~~ Division of Workers' Compensation decision, order or agreement; ~~appeals~~ Appeals from a ~~commission~~ Division of

2 Workers' Compensation decision, order or agreement shall must be
in accordance with section 103-B.

4 **Sec. 64. 39 MRSA §104-A**, as amended by PL 1989, c. 503, Pt.
B, §180, is further amended to read:

6 **§104-A. Compensation payments; penalty**

8 The employer or insurance carrier shall make compensation
10 payments as follows:

12 1. **Order or decision.** With regard to injuries occurring
14 prior to January 1, 1984, within 10 days after the receipt of
notice of an approved agreement for payment of compensation, or
16 with regard to injuries occurring after December 31, 1983, within
the time limits specified in section 51-B, or within 10 days
18 after any order or decision of the ~~commission~~ Division of
Workers' Compensation awarding compensation. Payment shall may
not be suspended thereafter in the event of appeal to the
20 ~~Appellate-Division~~ Administrative Court as provided in section
103-B or, if the ~~division~~ court finds that the employee is
22 entitled to compensation, in the event of appeal to the Law Court
from a decision of the ~~division~~ court as provided in section
24 103-C, except that the ~~commission~~ Division of Workers'
Compensation shall retain jurisdiction, pending the decision on
26 appeal, to enter orders or decisions as provided in section 100.
If the ~~commission~~ Division of Workers' Compensation, after a
28 review of incapacity under section 100, issues an order or
decision denying compensation to an employee, compensation shall
30 must be suspended from the date of the ~~commission's~~ order or
decision, notwithstanding any appeal of that order or decision to
32 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
34 103-D. The employer or insurer may recover from an employee
payments made pending appeal to the ~~Appellate-Division~~ court or
36 pending report or appeal to the Law Court if and to the extent
that the ~~Appellate-Division~~ Administrative Court or the Law Court
38 has decided that the employee was not entitled to the
compensation paid. The ~~commission-shall-have~~ Division of Workers'
40 Compensation has full jurisdiction to determine the amount of
overpayment, if any, and the amount and schedule of repayment, if
42 any. The ~~commission~~ Division of Workers' Compensation, in
determining whether or not repayment should be made and the
44 extent and schedule of repayment, shall consider the financial
situation of the employee and ~~his~~ the employee's family and shall
46 may not order repayment which that would work hardship or
injustice.

48 2-A. **Failure to pay within time limits.** An employer or
50 insurance carrier who fails to pay compensation, as provided in

2 this section, shall must be penalized as provided in this
subsubsection.

4 A. Except as otherwise provided by section 51-B, subsection
6 9, if an employer or insurance carrier fails to pay
8 compensation as provided in this section, the ~~commission~~
Superintendent of Insurance shall assess against the
10 employer or insurance carrier a forfeiture of up to \$100
12 \$200 for each day of noncompliance. If the ~~commission~~
superintendent finds that the employer or insurance carrier
was prevented from complying with this section because of
circumstances beyond their control, no forfeiture may be
assessed.

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

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

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

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

36 2-B. Failure to secure payment. If any employer, who is
38 required to secure the payment to his employees of the
compensation provided for by this Act, fails to do so, the
40 employer is subject to the penalties set out in paragraphs A, B
and C. The failure of any employer to procure insurance coverage
42 for the payment of compensation and other benefits to his
employees in compliance with sections 21-A and 23 constitutes a
44 failure to secure payment of compensation within the meaning of
this subsection.

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

48 B. The employer is liable to pay a civil penalty of up to
50 \$10,000, payable to the Second Injury Fund.

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

10 Prosecution under paragraph A does not preclude action under
12 paragraph B or C.

14 If the employer is a corporation, any agent of the corporation
having primary responsibility for obtaining insurance coverage is
16 liable for punishment under this section. Criminal liability
shall must be determined in conformity with Title 17-A, sections
18 60 and 61.

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

28 **Sec. 65. 39 MRSA §104-B, sub-§§3 and 4**, as enacted by PL 1981,
c. 474, §4, are amended to read:

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

2 apportionment disputes among insurers and the decision of the
3 arbitrator is conclusive and binding among all parties involved.

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

7 Sec. 66. 39 MRSA §106, as repealed and replaced by PL 1987,
8 c. 559, Pt. B, §46, is amended to read:

9 §106. Reports to Department of Labor; notice to employer of
10 settlement
11

12 1. Injuries. Whenever any employee has reported to an
13 employer under the Act any injury arising out of and in the
14 course of his the employee's employment which that has caused the
15 employee to lose a day's work ~~or has required the services of a~~
16 ~~physician,~~ or whenever the employer has knowledge of any such
17 injury, the employer shall report the injury to the ~~commission~~
18 Department of Labor within 7 days after he the employer receives
19 notice or has knowledge of the injury. The employer shall also
20 report the average weekly wages or earnings of the employee,
21 together with any other information required by the ~~commission~~
22 Department of Labor. The employer shall report whenever the
23 injured employee resumes his employment and the amount of his the
24 employee's wages or earnings at that time. The employer shall
25 keep a record of all injuries that require medical treatment.

26
27 2. ~~Settlements.~~ ~~Whenever any settlement is made with an~~
28 ~~injured employee by the employer or insurance carrier for~~
29 ~~compensation covering any specific period under an approved~~
30 ~~agreement or a decree, or covering any period of total or partial~~
31 ~~incapacity that has ended, the employer or carrier shall file~~
32 ~~with the commission a duplicate copy of the settlement receipt or~~
33 ~~agreement signed by the employee showing the total amount of~~
34 ~~money paid to him for that period or periods, but the settlement~~
35 ~~receipt or agreement is not binding without the commission's~~
36 ~~approval.~~

37 2-A. Settlements. Settlements are subject to this
38 subsection.

39 A. Whenever any settlement is made with an injured employee
40 by the employer or insurance carrier for compensation
41 covering any specific period under an approved agreement or
42 a decree, or covering any period of total or partial
43 incapacity that has ended, the employer or carrier shall
44 file with the Division of Workers' Compensation a duplicate
45 copy of the settlement receipt or agreement signed by the
46 employee showing the total amount of money paid to the
47
48
49
50

2 employee for that period or periods, but the settlement
3 receipt or agreement is not binding without the approval of
4 the Division of Workers' Compensation.

5
6 B. At least 14 days prior to submitting any residual market
7 settlement agreement having a present value in excess of
8 \$10,000 to the Division of Workers' Compensation for
9 approval, the insurance carrier must give notice of the
10 settlement to the employer. If the employer objects to the
11 settlement agreement, the employer must give notice of the
12 grounds for objection to the carrier within 7 days of
13 receipt of the agreement. After giving notice of objection,
14 the employer may appeal inclusion of all or part of the
15 settlement payment in calculation of the experience
16 modification factor to the Superintendent of Insurance.
17 Within 30 days from the date notice of appeal was filed,
18 both parties must submit any relevant information to the
19 superintendent, and within 60 days from receipt of the
20 appeal notice, the superintendent shall issue a decision
21 based upon the written submissions of the parties. Upon
22 issuance of a decision by the superintendent, either party
23 may request a hearing before the superintendent pursuant to
24 Title 24-A, section 229. The procedures set forth in Title
25 24-A, section 2320 do not apply to appeals pursuant to this
26 section.

27
28 **3. Return to employment.** Any person receiving compensation
29 under this Act who returns to employment or engages in new
30 employment after his that person's injury shall file a written
31 report of that employment with the ~~commission~~ Department of Labor
32 and his the previous employer within 7 days of his that person's
33 return to work. This report shall must include the identity of
34 the employee, his the employer and the amount of his the
35 employee's weekly wages or earnings received or to be received by
36 the employee. The Department of Labor shall notify the employee
37 in writing of the employee's obligations under this subsection
38 and of the penalties applicable under section 113.

39 **Sec. 67. 39 MRSA §106-A,** as amended by PL 1983, c. 682, §8,
40 is further amended to read:

41 **§106-A. Notice by the Division of Workers' Compensation**

42
43 Within 15 days of receipt of an employer's notice of injury,
44 as required by section 106, unless it has received a petition for
45 award of compensation relating to the injured employee, the
46 ~~commission~~ Division of Workers' Compensation shall take
47 reasonable steps to notify the employee that, unless the employer
48 disputes the claim, the employer is required to pay compensation
49 within the time limits established in section 51-B, subsections 3
50

2 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
4 circumstances; and rights under the Act may not be protected
unless a petition of award or memorandum of payment is on file
6 with the ~~commission~~ Division of Workers' Compensation within 2
years of the injury.

8 **Sec. 68. 39 MRSA §107, sub-§1**, as repealed and replaced by PL
1989, c. 434, §9, is amended to read:

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

18 **Sec. 69. 39 MRSA §108-A**, as enacted by PL 1987, c. 559, Pt.
20 B, §49, is amended to read:

22 **§108-A. Reports and data collection**

24 1. **Occupational injuries and illnesses.** The Director of
the Bureau of Labor Standards shall provide an annual report
26 concerning the number and character of occupational injuries and
illnesses and their effects, as required under Title 26, section
28 42.

30 The ~~chairman of the commission~~ commissioner shall assist the
Director of the Bureau of Labor Standards to ensure that
32 necessary information regarding the administrative processes,
costs and other factors related to the Workers' Compensation Act
34 and the ~~occupational-disease-law~~ Occupational Disease Law are
included in the report. The Commissioner of Human Services and
36 the Director of the Bureau of Health shall provide the Director
of the Bureau of Labor Standards with any information in their
38 possession related to occupational injuries and illnesses. The
Superintendent of Insurance shall provide the following
40 information to the Director of the Bureau of Labor Standards on
an annual basis:

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

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

2 **2. Workers' compensation system.** The Director of the Bureau
of Labor Standards, the Superintendent of Insurance and the
4 ~~chairman-of-the-commission~~ commissioner shall meet at least 3
times a year with appropriate staff and other state agencies to
6 review the areas of data collection pertaining to the workers'
compensation system, as well as interpret and coordinate
8 appropriate data collection programs. The ~~director~~ commissioner
shall chair this group. The group shall submit an annual report
10 to the Governor and the Legislature as to the results of their
data collection, as well as a profile of the workers'
12 compensation system, including costs, administration, adequacy
and timeliness of benefits and an evaluation of the entire
workers' compensation system.

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

22 **Sec. 70. 39 MRSA §110**, as amended by PL 1985, c. 431, §2, is
further amended to read:

24 **§110. Witness and attorney's fees allowable**

26 **1. Injuries prior to June 30, 1985.** When the ~~commissioner~~
28 ~~commissioner's~~ Division of Workers' Compensation finds that an
employee has instituted proceedings under this chapter on
30 reasonable grounds and in good faith or that the employer through
or under his the employer's insurance carrier has instituted
32 proceedings under this chapter, the ~~commissioner~~
Division of Workers' Compensation may assess the employer costs
34 of witness fees and a reasonable attorney's fee, when in the
~~commissioner's~~
36 ~~or-commissioner's~~ judgment of the hearing officer,
the witnesses and the services of the attorney were necessary to
the proper and expeditious disposition of the case. The employer
38 may not be assessed costs of an attorney's fee attributable to
services rendered prior to one week after the informal conference
40 under section 94-B or, if the informal conference is waived,
services rendered prior to the date of that waiver, unless a
42 party adverse to the employee was so represented at that stage.

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

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

4 ~~Notwithstanding any other provision of this subsection, the~~
5 ~~employer may be assessed a reasonable attorney's fee for services~~
6 ~~rendered to the employee in executing an agreement under section~~
7 ~~100, subsection 4, paragraph A.~~

8 This subsection ~~does not apply~~ applies to injured employees
10 injured governed by subsection 2 prior to June 30, 1985.

12 2. Injuries on or after June 30, 1985. If an employee
13 prevails in any proceeding involving a controversy under this
14 Act, the ~~commission or commissioner~~ Division of Workers'
15 Compensation may assess the employer costs of a reasonable
16 attorney's fee and witness fees whenever the witness was
17 necessary for the proper and expeditious disposition of the case.

18 The employer may not be assessed costs of an attorney's fee
19 attributable to services rendered prior to one week after the
20 informal conference under section 94-B or, if the informal
21 conference is waived, services rendered prior to the date of that
22 waiver, unless a party adverse to the employee was so represented
23 at that stage.

24 No attorney representing an employee who prevails in a proceeding
25 involving a controversy under this Act may receive any fee from
26 that client for an appearance before the ~~commission~~ Division of
27 Workers' Compensation, including preparation for that appearance,
28 except as provided in section 83, subsection 7 and section 94-B,
29 subsection 3. Any attorney who violates this paragraph ~~shall~~
30 ~~lose his~~ provision loses that fee and be is liable in a court
31 suit to pay damages to his the client equal to 2 times the fee
32 charged for that client.

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

35 A. For the purposes of this subsection, "prevail" means to
36 obtain or retain more compensation or benefits under the Act
37 than were offered to the employee by the employer in writing
38 before the proceeding was instituted. If no such offer was
39 made, "prevail" means to obtain or retain compensation or
40 benefits under the Act.

41 B. Any employee, employer or insurance carrier involved in
42 any proceeding involving a controversy under this Act shall
43 report to the ~~commission~~ Division of Workers' Compensation,
44 on forms provided by the ~~commission~~ commissioner, any
45 amounts that he that employee, employer or insurance carrier

2 has paid for legal assistance in that proceeding, including
any amount paid for an employee's legal fees under this
subsubsection.

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

14 **Sec. 71. 39 MRSA §110-A,** as enacted by PL 1987, c. 559, Pt.
16 B, §50, is amended to read:

18 **§110-A. Appearance by officer or employee of corporation or**
20 **partnership**

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

28 **Sec. 72. 39 MRSA §111,** as amended by PL 1989, c. 251, §2, is
further amended to read:

30 **§111. Discrimination**

32 No employee shall may be discriminated against by any
34 employer in any way for testifying or asserting any claim under
this Act. Any employee who is so discriminated against may file a
petition alleging a violation of this section. The matter shall
36 must be referred to a ~~commissioner~~ hearing officer for a formal
38 hearing under section 98, but any ~~commissioner~~ hearing officer
who has previously rendered any decision concerning the claim
40 must be excluded. If the employee prevails at this hearing, the
~~commissioner~~ hearing officer may award the employee reinstatement
42 to his the employee's previous job, payment of back wages,
reestablishment of employee benefits and reasonable attorneys'
44 fees.

46 This section applies only to an employer against whom the
employee has testified or asserted a claim under this Act.
48 Discrimination by an employer who is not the same employer
against whom the employee has testified or asserted a claim under

COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957

2 this Act is governed by Title 5, section 4572, subsection 1,
paragraph A.

4 Sec. 73. 39 MRSA §111-A, sub-§3, ¶C, as enacted by PL 1989, c.
468, is repealed.

6 Sec. 74. 39 MRSA §112, as amended by PL 1985, c. 372, Pt. A,
8 §44, is further amended to read:

10 **§112. Protection**

12 No statement, except made in proceedings before the ~~Workers'~~
14 ~~Compensation-Commission~~ Division of Workers' Compensation, to any
investigator or employer's representative, of any kind, oral or
16 shall may be admissible in evidence or considered in any way in
a proceeding under this Title unless:

18 1. In writing. It is in writing;

20 2. Delivery of true copy to employee. A true copy of said
22 statement is delivered to the employee by certified mail;

24 3. Employee advised in writing. The employee has been
previously advised in writing:

26 A. That the statement may be used against him the employee;

28 B. That the employer (insurance carrier) may have pecuniary
30 interest adverse to the employee;

32 C. The employee may consult with counsel prior to making
any statements;

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

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

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

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

2 Sec. 75. 39 MRSA §113, as enacted by PL 1987, c. 559, Pt. B,
§51, is amended to read:

4 **§113. Penalties**

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

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

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

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

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

32 3. **Appeal.** Imposition of a penalty under this section is
deemed to be final agency action subject to appeal to the
34 Superior Court, as provided in Title 5, chapter 375, subchapter
VII. Notwithstanding Title 5, section 11004, execution of a
36 penalty assessed under this section is stayed during the pendency
of any appeal under this subsection. The Attorney General shall
38 represent the ~~commissioner~~ commissioner in any appeal under this
subsection or the ~~commissioner~~ commissioner may retain private
40 counsel for that purpose.

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

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

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

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

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

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

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

22 Sec. 76. 39 MRSA c. 1, sub-c. V is enacted to read:

24 SUBCHAPTER V

26 REHABILITATION COORDINATION

28 §131. Rules

30 The commissioner may adopt rules, subject to section 92,
32 subsection 1, to coordinate rehabilitation services to injured
employees to assure the delivery of appropriate medical and
34 occupational health services.

36 §132. Office of Rehabilitation Coordination; Rehabilitation
Coordinator

38 1. Office of Rehabilitation Coordination; appointment. The
40 Office of Rehabilitation Coordination is established and must be
maintained under the direction of a rehabilitation coordinator,
42 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.

44 2. Qualifications. The coordinator must be qualified by
46 training, professional experience or education in employment
rehabilitation and must be familiar with the workers'
48 compensation system.

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

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

9 B. The coordinator shall:

10 (1) Monitor rehabilitation services provided to
11 injured workers under this Title;

12 (2) Encourage agreement and attempt to conciliate
13 differences regarding rehabilitation services issues;
14 and

15 (3) Encourage the development of quality, private
16 programs to assist claimants in regaining the capacity
17 to return to gainful employment.

18 C. The coordinator shall assist the commissioner in
19 developing rules regarding the provision of appropriate
20 rehabilitation services to injured workers, including those
21 services designed to foster the ability to return to active
22 employment.

23 D. The coordinator shall make efforts to educate and
24 disseminate information to all persons interested in
25 rehabilitation services as they relate to injured workers.

26 The coordinator may not provide direct rehabilitation services
27 under this subchapter. Those services must be provided by
28 private and public rehabilitation professionals. Nothing in this
29 subsection should be interpreted to limit programs and services
30 that may be provided by other state agencies or the coordination
31 of providers with those program and services.

32 4. Access to records. Except for purposes directly
33 connected with the administration of the Office of Rehabilitation
34 Coordination, a person may not solicit, disclose, receive or make
35 use of, or authorize, knowingly permit, participate in or
36 acquiesce in the use of, any list of names of individuals or any
37 information concerning individuals applying for or receiving
38 rehabilitation services, directly or indirectly derived from the
39 records, papers, files or communications of the Office of
40 Rehabilitation Coordination or acquired in the course of the
41 performance of official duties. This subsection does not prevent
42 any employee or that person's employer from obtaining or viewing
43 any employee or that person's employer from obtaining or viewing
44 any employee or that person's employer from obtaining or viewing
45 any employee or that person's employer from obtaining or viewing
46 any employee or that person's employer from obtaining or viewing
47 any employee or that person's employer from obtaining or viewing
48 any employee or that person's employer from obtaining or viewing
49 any employee or that person's employer from obtaining or viewing
50 any employee or that person's employer from obtaining or viewing

information relating to the rehabilitation coordination services provided to that employee under this subchapter.

Sec. 77. 39 MRSA §192, as amended by PL 1977, c. 696, §415, is further amended to read:

§192. Impartial medical advice

On request of a party or on its own motion the ~~commission~~ Division of Workers' Compensation may in occupational disease cases ~~appoint one or more competent and impartial physicians, their reasonable fees and expenses to be fixed and paid by the commission~~ make referrals to an independent medical examiner. ~~These appointees~~ The independent medical examiner shall examine the employee and inspect the industrial conditions under which he the employee has worked in order to determine the nature, extent and probable duration of his the employee's occupational disease, the likelihood of its origin in the industry and the date of incapacity. Section 65 of the Workers' Compensation Act shall ~~apply~~ applies to the filing and subsequent proceedings on their report, and to examinations and treatments by the employer.

If claim is made for death from an occupational disease, an autopsy may be ordered by the ~~commission~~ Division of Workers' Compensation under the supervision of ~~such impartial appointees~~ 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.

Sec. 78. Study. The Superintendent of Insurance shall conduct 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 Standing Committee on Labor by January 1, 1992.

Sec. 79. Transition provision. Within 90 days from the effective date of this Act, the Superintendent of Insurance shall hold a hearing and issue a decision that determines the effect of the changes in law provided for in this Act on workers' compensation rates. Insurers shall provide whatever information is requested to assist the superintendent in making a determination pursuant to this section. Evidence and argument must be limited to matters relevant to evaluation of the effect of these changes on rates, and the time limitations of the Maine Revised Statutes, Title 24-A, section 2363, subsections 3, 6, 11, and 12 do not apply.

The Workers' Compensation Commission shall transfer to the Commissioner of Labor all records relevant to those

2 responsibilities given to the Commissioner of Labor under this
3 Act on or before January 1, 1992. The commission shall cooperate
4 with the commissioner in making all records and computerized
5 systems available to department personnel so as to facilitate the
6 transition between the commission and the Division of Workers'
7 Compensation.

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

12 **Sec. 80. Application.** The following sections apply only to
13 injuries occurring on or after the effective date of this Act:
14 sections 3, 19 to 29, 34 to 38, 43, 48, 49, 56, 57, 65, 66, 76
15 and 77. Section 30 of this Act as it amends the Maine Revised
16 Statutes, Title 39, section 55-B, 3rd paragraph applies only to
17 injuries occurring after the effective date of this Act. Section
18 47 of this Act as it enacts Title 39, section 94-B, subsections 5
19 and 6, applies only to injuries occurring after the effective
20 date of this Act. Section 70 of this Act as it enacts Title 39,
21 section 110, subsection 3, applies only to injuries occurring
22 after the effective date of this Act. Sections 1, 2, 4 to 10, 33
23 and 59 apply only to injuries occurring on or after January 1,
24 1992.

26 **Sec. 81. Effective date.** Section 2 of this Act takes effect
27 January 1, 1992.

28 **Sec. 82. Retroactive provisions.** Section 12 of this Act applies
29 to employees injured either before or after the effective date of
30 this Act. If this retroactivity provision is held invalid,
31 section 12 applies only to employees injured on or after the
32 effective date of this Act.

34 **Sec. 83. Transfer of funds.** All funds held by the Treasurer of
35 State in the Employment Rehabilitation Fund established by the
36 Maine Revised Statutes, Title 39, section 57-B must be
37 transferred to the Safety Education and Training Fund established
38 and maintained pursuant to Title 26, section 61 when the
39 Commissioner of Labor determines that all reasonably likely
40 claims against the Employment Rehabilitation Fund have been
41 closed.'

44 **STATEMENT OF FACT**

46 This amendment represents the minority report of the Joint
47 Standing Committee on Banking and Insurance and the Joint
48 Standing Committee on Labor.
49
50

COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957

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

6 Specifically, this amendment:

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

10 2. Requires insurers to separately identify in all bills
12 issued to employers the base rate, experience modification
14 factors for each year, and the medical, indemnity and
administrative components of premiums and the portion of the
16 premium attributable to the mandatory workplace health and safety
consultation services charged;

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

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

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

30 6. Amends the eligibility requirements of the Accident
32 Prevention Account to prevent employers from being placed in the
higher-rated pool because of a single lost-time claim;

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

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

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

46 10. Defines "average weekly wages, earnings or salary" to
exclude fringe benefits, abrogating the result in Ashby v. Rust
48 Engineering, 559 A.2d 774 (Me. 1989) and subsequent related

COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957

2 decisions of the Appellate Division of the Workers' Compensation
Commission;

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

6 12. Establishes a procedure for determination of
8 independent contractor status;

10 13. Requires employers with an experience modification
12 factor of 2 or more to participate in workplace health and safety
training programs that are certified under rules to be adopted by
14 the Commissioner of Labor. Failure to comply results in
16 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;

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

22 15. Limits entitlement to workers' compensation benefits
24 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
26 from the "by accident" requirement that existed in Maine prior to
the enactment of Public Law 1973, chapter 389. It is intended to
28 modify interpretations of that prior standard that had not
required the work-related incident to have an immediate effect
30 upon the worker, McDougal's Case, 127 Me. 491, 144 A. 446 (1929)
and that had included as an "accident" a weakness in bodily
32 structure that gradually worsens and breaks down in the stress of
usual work, Bernier v. Coca-Cola Bottling Co., 250 A.2d 820
34 (1969);

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

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

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

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

12
13 20. Repeals the requirement for a medical certificate of
14 authorization signed by the employee and requires that if
15 compensation is sought for a lost-time claim the health care
16 provider must automatically forward a written report to the
17 employee and employer within 5 business days and every 30 days
18 thereafter if treatment is ongoing. No authorization from the
19 employee is needed for additional information pertaining to the
20 work-related condition;

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

24
25 22. Requires that the Commissioner of Labor establish a
26 medical quality control system including peer review of medical
27 services more than 2 months after the date of injury or for which
28 costs exceed \$10,000 and case management for cases involving
29 medical treatment continuing 2 months from the date of injury or
30 costing in excess of \$10,000;

31
32 23. Provides that injured employees, subject to some
33 limitations, may serve as volunteers to public or nonprofit
34 organizations without prejudice to compensation;

35
36 24. Establishes a limit on duration of permanent partial
37 claims of 413 weeks from the date of injury and requires the
38 court to consider the availability of work on a statewide basis
39 with respect to benefits paid for periods more than 52 weeks
40 following the date of injury;

41
42 25. Provides for total and partial incapacity benefits to
43 be offset against permanent impairment benefits;

44
45 26. Repeals current law relating to the Employment
46 Rehabilitation Fund and transfers money currently in that fund to
47 the Safety and Education Training Fund;

48
49 27. Repeals current law that provides for a funding
50 mechanism for the Employment Rehabilitation Fund;

51
52

COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957

2 28. Defines intoxication for purposes of the Workers'
3 Compensation Act to .08 blood-alcohol content and includes
4 on-duty use of nonprescribed controlled substances as a basis for
5 disallowing benefits for resulting injuries; a rebuttable
6 presumption of causation arises from proof by a preponderance of
7 the evidence of intoxication or use of a controlled substance;

8 29. Requires the hearing officer to review subsequent
9 injury cases to ensure that duplicative benefits are not paid for
10 a single period of disability;

12 30. Changes the reinstatement obligation of an employer
13 with over 250 employees to a period of 2 years from the date of
14 injury;

16 31. Limits lump sum settlements to \$5000. The requirement
17 of review by the Workers' Compensation Commission and approval of
18 lump sum settlements is deleted;

20 32. Repeals the rehabilitation provisions of the Workers'
21 Compensation Act;

22 33. Establishes a new system for administration of the
23 Workers' Compensation Act. The Workers' Compensation Commission
24 is eliminated. The Commissioner of Labor is given responsibility
25 for general supervision of the Act and the Division of Workers
26 Compensation is given the exclusive jurisdiction to hear and
27 decide claims relative to workers' compensation;

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

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

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

46 37. Amends the section of the Workers' Compensation Act on
47 petitions for review to permit discontinuance of benefits by the
48 employer if the employee refuses an offer of reinstatement of
49 suitable work or returns to work or refuses to submit to a
50 medical examination, if the employer and employee reach
51 agreement, if the employee has left the State or the employee's
52 whereabouts is unknown or the employee is able to return to

COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957

2 work. If compensation is discontinued by the employer, the
employee has the right to file for review by the Division of
4 Workers' Compensation and within 2 weeks the court must enter a
provisional order suspending, reducing or continuing benefits
6 pending a hearing. If a provisional order upholding suspension
is subsequently reversed, the employee is entitled to back
payments plus interest;

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

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

16
18 40. Establishes an arbitration procedure for the
apportionment between insurers;

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

30 42. Places limitations on attorney's fees;

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

36
38 44. Establishes the Office of Rehabilitation Coordination
within the Department of Labor. This office will oversee all
rehabilitation aspects of workers' compensation claims. The
40 office will also provide leadership in the development of private
programs to assist claimants in regaining the capacity to return
42 to gainful employment;

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

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

50
52 47. Requires the Superintendent of Insurance to commence a
hearing within 60 days of the effective date of this Act to

COMMITTEE AMENDMENT "A" to H.P. 1372, L.D. 1957

2 determine the effect of the law changes on workers' compensation
insurance rates; and

4 48. Specifically identifies sections of the Act that apply
6 only to injuries occurring on or after the effective date of the
Act.

8 49. Limits the amount of attorney's fees that insurers may
10 utilize in the calculation of rates to those amounts specified in
the Maine Revised Statutes, Title 39, section 110.

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