

# MAINE STATE LEGISLATURE

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L.D. 1957

(Filing No. H-694)

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

HOUSE 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.  
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                   .

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

16                   

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

20                   

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

24                   

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

26                   

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

35                   

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

37                   

38                   §2365-A. Medical expense deductibles

39                   

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

44                   

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

48

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

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

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

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

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

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

30 (1) The employer has at least 2 lost-time claims over  
31 \$10,000 and a loss ratio greater than 1.00 over the  
32 last 3 years for which data is available; and

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

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

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

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

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

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

18 (3) Has been in business for less than 3 years,  
20 provided that the eligibility shall ~~---terminate~~  
22 terminates if his the employer's loss ratio exceeds 1.0  
24 and the employer has at least 2 lost-time claims over  
26 \$10,000 each at the end of any year.

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

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

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

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

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

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

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

2           G. "Average weekly wages, earnings or salary" does not  
4           include fringe benefits, regardless of whether in lieu of or  
6           in addition to wages, earnings or salary, including but not  
8           limited to employer payments for or contributions to a  
          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.

10           Sec. 14. 39 MRSA §2, sub-§3, as repealed and replaced by PL  
12           1983, c. 479, §4, is repealed and the following enacted in its  
14           place:

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

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

20           3-B. Court. "Court" means the Administrative Court, as  
22           established under Title 4, section 1151, unless another court is  
          specifically referenced.

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

26           §5. Determination of independent contractor status

28           1. Determination permitted. A worker, an employer or a  
30           workers' compensation insurance carrier, or any combination  
32           thereof, may apply to the commissioner for a determination of  
34           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.

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

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

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

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

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

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

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

30        5. Certificate. The commissioner shall provide the  
32        petitioning party a certified copy of the decision regarding  
34        determination that may be used as evidence of the commissioner's  
36        decision regarding determination at a later hearing concerning  
38        benefits.

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

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

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

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

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

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

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

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

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



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

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

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

8 A. Has positive net earnings; or

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

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

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

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

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

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

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

32  
33 Sec. 20. 39 MRSA §51, sub-§4 is enacted to read:

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

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

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

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

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

40           If, at the end of the 14-day period in subsection 3 or the 90-day  
41           or 75-day periods in subsection 4, the employer has not filed the  
42           notice required by this subsection, the employer shall begin  
43           payments as required under those subsections. In the case of  
44           compensation for incapacity under subsection 3, the employer may  
45           cease payments and file with the seemission Division of Workers'  
46           Compensation a notice of controversy, only as provided in this  
47           subsection, no later than -44- 60 days after an-event-which-gives  
48             
49             
50

~~rise to an obligation to make payments under subsection 3~~ receipt  
2 of the initial diagnostic medical report. Failure to file the  
3 required notice of controversy prior to the expiration of the  
4 44-day 60-day period, in the case of compensation under  
5 subsection 3, constitutes acceptance by the employer of the  
6 compensability of the injury or death. Failure to file the  
7 required notice of controversy does not constitute such an  
8 acceptance by the employer when it is shown that the failure was  
9 due to employee fraud or excusable neglect by the employer,  
10 except when payment has been made and a notice of controversy is  
11 not filed within 44 60 days of that payment. Failure to file the  
12 required notice of controversy prior to the expiration of the  
13 90-day period under subsection 4 constitutes acceptance by the  
14 employer of the extent of impairment claimed. Failure to file  
15 the required notice of controversy prior to the expiration of the  
16 75-day period under subsection 4 for compensation for medical  
17 expenses, aids or other services pursuant to section 52  
18 constitutes acceptance by the employer of the reasonableness and  
19 propriety of the specific medical services for which compensation  
20 is claimed and requires payment for those services, but does not  
21 constitute acceptance of the compensability of the injury or  
22 death.

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

28  
29 Sec. 23. 39 MRSA §51-B, sub-§8, as amended by PL 1983, c. 682,  
30 §6, is further amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

36 Sec. 26. 39 MRSA §52-A, sub-§2, as enacted by PL 1981, c. 514,  
38 §2, is repealed and the following enacted in its place:

40 2. Duties of health care providers. Duties of health care  
42 providers are as follows.

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

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

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

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

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

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

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

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

38 1-A. Restriction on reimbursement for health care  
39 providers. In order to qualify for reimbursement for health care  
40 services provided to employees under this Title, health care  
41 providers providing individual health care services and courses  
42 of treatment may not charge more for the services or courses of  
43 treatment for employees than is charged to private 3rd-party  
44 payers for similar services or courses of treatment. An employer  
45 may not charge more for the services or courses of treatment for  
46 employees than is charged to private 3rd-party payers for similar  
47 services or courses of treatment. An employer may not charge more  
48 for the services or courses of treatment for employees than is  
49 charged to private 3rd-party payers for similar services or  
50 courses of treatment. An employer may not charge more for the

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

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

8 §52-C. Medical health care review

10 1. Purpose. In order to ensure quality treatment for  
11 injured employees and proper cost of services, the commissioner,  
12 after consulting the Board of Registration in Medicine, shall  
13 adopt rules that provide for review of health care providers who  
14 render services to injured employees by establishing a quality  
15 control system consistent with the requirements of this section.  
16 Review of individual cases must be undertaken by an independent  
17 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  
21 services to an injured employee for more than 2 months from  
22 the date of injury or medical costs that exceed \$10,000 must  
23 be referred to an independent medical examiner for  
24 monitoring of health care provider services and hospital  
25 utilization. This monitoring must include determinations  
26 concerning the appropriateness of the service, whether the  
27 treatment is necessary and effective, the proper cost of  
28 services, the quality of the treatment and the right of  
29 providers to receive payment under the Act for services  
30 rendered. The examiner shall also monitor services provided  
31 by health care professionals who have been the subject of  
32 complaints and cases selected on a random basis for purposes  
33 of evaluating the appropriateness of charges and  
34 performance. The examiner shall report the results of this  
35 monitoring to the employee, the employer, and the Department  
36 of Labor not less frequently than monthly.

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

40 3. Case management. The commissioner, with the advice of  
41 the independent medical examiners, shall adopt rules establishing  
42 a case management program for cases involving provision of  
43 medical services for more than 2 months from the date of injury  
44 or medical costs that exceed \$10,000 or at the request of the  
45 employee or employer. The rules must require prior approval by  
46 the employer or an independent medical examiner of any surgical  
47 procedure and any hospitalization and further require the  
48 employer's or an independent medical examiner's prior approval of  
49 proposed treatment, with appropriate exceptions for emergencies.  
50

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

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

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

20 §53-C. Effect of volunteer services

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

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

32 §55-B. Compensation for partial incapacity

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

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

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

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

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

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

29  
30 B. Three weeks for each percent of permanent impairment to  
31 the body as a whole from 15% to 50%;

32  
33 C. Four and 1/2 weeks for each percent of permanent  
34 impairment to the body as a whole from 51% to 85%; and

35  
36 D. Eight weeks for each percent of permanent impairment to  
37 the body as a whole greater than 85%.

38  
39 Compensation under this section is ~~in addition to~~ reduced by any  
40 compensation under section 54-B or 55-B received by the employee.

41  
42 **Sec. 32. 39 MRSA §61** is amended to read:

43  
44 **§61. Injury or death due to willful intention or intoxication**

45  
46 No compensation or other benefits shall ~~may~~ be allowed for  
47 the injury or death of an employee where when it is proved that  
48 such was occasioned by ~~his~~ the employee's willful intention to  
49 bring about the injury or death of ~~himself~~ the employee or of  
50 another, or that the same resulted from ~~his~~ the employee's

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

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

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

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

26  
27 **Sec. 34. 39 MRSA §65, first ¶, as amended by PL 1965, c. 513,**  
28 **§81, is further amended to read:**

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

43  
44 **Sec. 35. 39 MRSA §66-A, sub-§3, as amended by PL 1989, c. 388,**  
45 **is further amended to read:**

46  
47 **3. Time period; discrimination prohibited.** The employer's  
48 obligation to reinstate the employee continues until one year, or  
49 2 years if the employer has over 250 employees, after the  
50

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

11 Sec. 36. 39 MRSA §71-A, as amended by PL 1989, c. 502, Pt. A,  
12 §§150 and 151, is repealed and the following enacted in its place:

13 §71-A. Lump sum payments

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

18  
19 Sec. 37. 39 MRSA §82, sub-§1, as enacted by PL 1985, c. 372,  
20 Pt. A, §29, is amended to read:

21  
22 1. Office of Employment Rehabilitation; appointment. An  
23 Office of Employment Rehabilitation shall must be maintained  
24 under the direction of a rehabilitation administrator, in this  
25 subchapter referred to as the "administrator." The ~~chairman~~  
26 commissioner may appoint and remove the administrator and  
27 assistant administrators ~~with the concurrence of the commission.~~  
28 The administrator shall report to and be directed by the ~~chairman~~  
29 commissioner and shall carry out the duties assigned to the  
30 administrator in this Act.  
31

32  
33 Sec. 38. 39 MRSA §82, sub-§3, ¶C, as amended by PL 1989, c.  
34 580, §7, is further amended to read:

35  
36 C. The administrator shall approve agreements regarding  
37 rehabilitation if the administrator finds that they are  
38 consistent with the purpose and requirements of this  
39 subchapter and the rules ~~of the commission pursuant to this~~  
40 subchapter and shall order the implementation of plans only  
41 as provided in section 85, subsection 2-A.  
42

43 Sec. 39. 39 MRSA §82, sub-§3, ¶D, as enacted by PL 1985, c.  
44 372, Pt. A, §29, is amended to read:

45  
46 D. The administrator shall ~~assist the chairman in~~  
47 developing adopt rules under ~~section 92, subsection 1 in~~  
48 accordance with the Maine Administrative Procedure Act,  
49 regarding rehabilitation, including, but not limited to,  
50

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

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

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

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

30       **Sec. 41. 39 MRSA §82, sub-§3, ¶F,** as enacted by PL 1985, c.  
31       372, Pt. A, §29, is amended to read:

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

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

44       (2) The administrator may grant prior approval of a  
45       fee higher than the maximum in the rate schedule in  
46       exceptional circumstances.

48       (3) Fee schedules developed under this paragraph do  
49       not apply to services provided by in-house providers of  
50       rehabilitation services.



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

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

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

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

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

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

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

38           **Sec. 44. 39 MRSA §83, sub-§§2 to 4, as amended by PL 1989, c.**  
40           **580, §9, are further amended to read:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 §83-A. Early evaluation screening

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

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

40 1. Applicability. This section applies to all employers in  
41 the State which ~~that maintain,--on January 1,--1986,~~ a certified  
42 rehabilitation counselor on premises to provide rehabilitation  
43

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

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

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

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

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

27  
28 B. The settlement of a claim between an employee and an  
29 employer does not affect the employer's obligation to the  
30 fund under this section or under section 57-B, subsection 6,  
31 paragraph B, subparagraph (2).

32  
33 Sec. 49. 39 MRSA §86, sub-§7, as amended by PL 1989, c. 580,  
34 §12, is further amended to read:

35  
36 7. Career retraining. A goal-oriented period of formal  
37 training which that is designed to lead to employment in another  
38 career field. Retraining may include education of the employee  
39 when appropriate. The proposed rehabilitation plan may not  
40 exceed 2 scholastic years or \$5,000.

41  
42 Sec. 50. 39 MRSA §90, sub-§3, as enacted by PL 1989, c. 580,  
43 §19, is amended to read:

44  
45 3. Report to Legislature. The ~~chair~~ Commissioner of Labor  
46 shall report to the ~~First~~ Second Regular Session of the ~~116th~~  
47 115th Legislature concerning the effectiveness of restoring  
48 injured workers to suitable employment through orders for plan

implementation under section 85, subsection 2-A. This report shall must include:

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

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

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

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

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

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

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

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

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

SUBCHAPTER IV

ADMINISTRATION; PROCEDURE; REVIEW; PENALTIES

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

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

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

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

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

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

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

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

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

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

This subsection is repealed January 1, 1994.

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

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

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

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

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

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

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

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

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

43 5.---Active-retired-commissioners.---Any-commissioner-having  
44 retired--from--the--commission--is--eligible--for--appointment--as--an  
45 active-retired-commissioner. The Governor,--subject--to--review--by  
46 the--joint--standing--committee--of--the--Legislature--having  
47 jurisdiction--over--judiciary--and--to--confirmation--by--the  
48 Legislature,--may,--upon--being--notified--of--the--retirement--of--a  
49 commissioner,--appoint--that--commissioner--to--be--an--active--retired  
50  
51  
52



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

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

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

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

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

The commissioner shall appoint 6 employee assistants and a  
supervisor of employee assistants no later than January 1, 1992.  
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.

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

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

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

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

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

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

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

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

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

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

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

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

21 §92-A. Independent medical examiners

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

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

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

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

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

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

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

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

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

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

9 5. Right of appeal. The employer or the employee may  
10 appeal the examiner's findings up to 20 days from receipt of an  
11 independent medical examiner's report. The notice of appeal must  
12 identify the findings and conclusions that are objected to and  
13 the grounds for the objection. If an appeal is not filed, the  
14 findings of the examiner are binding on the parties and the  
15 Division of Workers' Compensation.

16 6. Appeal procedure. Upon receipt of a request for review  
17 of the examiner's findings, the case must be assigned to a  
18 3-person panel for a review of the record. The panel must  
19 consist of physicians or other appropriate providers who meet the  
20 qualifications in section 92, subsection 10 and who have no  
21 independent knowledge of the first review. The panel shall  
22 review the report of the first examiner and the available medical  
23 records and if necessary shall examine the employee. Upon  
24 completion of this review, the panel shall submit a report to the  
25 court that must contain conclusions as to whether the challenged  
26 findings or conclusions are clearly erroneous and, if so, in what  
27 respects. This report must contain findings or conclusions on  
28 any issue as to which the panel found the first examiner's report  
29 to be clearly erroneous. The findings of the panel are binding  
30 on the court. If the panel does not find one or more material  
31 findings or conclusions of the first examiner to be clearly  
32 erroneous, the cost of the appeal must be paid by the party  
33 requesting the review; if one or more of the material findings or  
34 conclusions is found to be clearly erroneous, these costs must be  
35 paid by the employer.

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

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

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

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

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

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

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

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

52

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

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

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

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

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

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

§94. Approval of compensation agreement; petition for award

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

14  
15 If, following an injury which that causes no incapacity for  
16 work, the employer and employee reach an agreement that the  
17 employee has received a personal injury arising out of and in the  
18 course of employment, a memorandum of such agreement signed by  
19 the parties may be filed ~~in-the-office-of~~ with the ~~commission~~  
20 Division of Workers' Compensation. Such The memorandum shall must  
21 set forth the names and residences of the parties, the facts  
22 relating to the employment at the time of the injury, the time,  
23 place and cause of the injury, and the nature and extent of the  
24 injury. Any member-of-the-commission-shall-be-empowered-without-  
25 ~~the-necessity-of-the-filing-of-a-petition-for-award,~~ to hearing  
26 officer may render a protective decree based upon such memorandum  
27 without the filing of a petition for award.

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

31  
32 §94-A. Commissioner of Labor actions

33  
34 In addition to other actions required of or permitted to the  
35 ~~commission~~ commissioner under this Act, in order to assure ensure  
36 just and efficient administration of claims, the ~~commission~~  
37 commissioner shall perform the actions required by this section.

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

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

49  
50 A. Either payments are initiated or notice of controversy  
51 is filed within the time limits established in section 51-B,  
52 subsections 3, 4 and 7; and

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

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

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

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

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

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

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

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

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



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

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

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

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

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

36 **§95. Time for filing petitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48 §97. Filing of answers

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

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

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

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

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

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

50 **§99. Hearing and decision**

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

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

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

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

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

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

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

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

30 **§99-C. Petition for reopening**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4                   (3)--The-employee-has-resumed-work;

6                   G.---The-employer-or-his-insurance-carrier-files-a  
certificate-with-the-commission-stating-that-the-employee  
8                   refuses-to-submit-to-an-examination,-or

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

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

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

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

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

46                  (5)--If-benefits-are-suspended-or-reduced-under-this  
48                  paragraph-and-the-commission,-after-hearing,-reverses  
the-provisional-order,-either-in-whole-or-in-part,-the  
50                  commission-shall-order-a-lump-sum-payment-of-all



~~benefits withheld together with interest at the rate of  
6% a year. The employer shall pay this lump sum within  
10 days of the order.~~

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

A. If the employee refuses an offer of reinstatement to a  
position that is suitable to the employee's physical  
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;

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

C. If the employee returns to work;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 §102. Reopening for mistake of fact or fraud

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

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

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

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

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

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

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

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

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

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

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

4  
6 2-A. Basis. There shall may be no appeal upon questions of  
fact found by the ~~commission or by any commissioner~~ the hearing  
officer.

8  
10 3. Action. The ~~division court~~, after due consideration,  
may reverse or modify any decree of the ~~commission~~ Division of  
Workers' Compensation and shall issue a written decision. The  
12 written decision of the ~~division~~ shall court must be filed with  
the ~~commission~~ commissioner and mailed to the parties or their  
14 counsel.

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

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

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

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

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

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

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

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

28           4. Costs. In all cases of appeal to the Law Court in which  
30 the employee prevails, it may order a reasonable allowance to be  
32 paid to the employee by the employer for expenses incurred in the  
34 proceedings of the appeal, including the record, but not  
36 including expenses incurred in other proceedings in the case.  
38 Reasonable attorneys' fees shall must be allowed as provided for  
40 under section 110. No attorney who represents an employee who  
42 prevails in an appeal before the court may recover any fee from  
44 that client for that representation. Any attorney who violates  
46 this paragraph shall ~~lose his~~ loses the fee and is liable in a  
48 court suit to pay damages to the client equal to 2 times the fee  
50 charged that client.

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

34           §103-D. Report to the Law Court

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

42           Sec. 76. 39 MRSA §103-E, as amended by PL 1981, c. 698, §198,  
44 is further amended to read:

46           §103-E. Enforcement of decisions of Division of Workers'  
48 Compensation

50           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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

48 Sec. 78. 39 MRSA §104-B, sub-§§3 and 4, as enacted by PL 1981,  
c. 474, §4, are amended to read:

50

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

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

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

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

30 1. **Injuries.** Whenever any employee has reported to an  
31 employer under the Act any injury arising out of and in the  
32 course of his the employee's employment which that has caused the  
33 employee to lose a day's work ~~or has required the services of a~~  
34 ~~physician~~, or whenever the employer has knowledge of any such  
35 injury, the employer shall report the injury to the ~~commissioner~~  
36 Department of Labor within 7 days after he the employer receives  
37 notice or has knowledge of the injury. The employer shall also  
38 report the average weekly wages or earnings of the employee,  
39 together with any other information required by the ~~commissioner~~  
40 Department of Labor. The employer shall report whenever the  
41 injured employee resumes his employment and the amount of his the  
42 employee's wages or earnings at that time. The employer shall  
43 keep a record of all injuries that require medical treatment.

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

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

10 2-A. Settlements. Settlements are subject to this  
11 subsection.

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

24 B. At least 14 days prior to submitting any residual market  
25 settlement agreement having a present value in excess of  
26 \$10,000 to the Division of Workers' Compensation for  
27 approval, the insurance carrier must give notice of the  
28 settlement to the employer. If the employer objects to the  
29 settlement agreement, the employer must give notice of the  
30 grounds for objection to the carrier within 7 days of  
31 receipt of the agreement. After giving notice of objection,  
32 the employer may appeal inclusion of all or part of the  
33 settlement payment in calculation of the experience  
34 modification factor to the Superintendent of Insurance.  
35 Within 30 days from the date notice of appeal was filed,  
36 both parties must submit any relevant information to the  
37 superintendent, and within 60 days from receipt of the  
38 appeal notice, the superintendent shall issue a decision  
39 based upon the written submissions of the parties. Upon  
40 issuance of a decision by the superintendent, either party  
41 may request a hearing before the superintendent pursuant to  
42 Title 24-A, section 229. The procedures set forth in Title  
43 24-A, section 2320 do not apply to appeals pursuant to this  
44 section.

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

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

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

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

11  
12 Within 15 days of receipt of an employer's notice of injury,  
13 as required by section 106, unless it has received a petition for  
14 award of compensation relating to the injured employee, the  
15 ~~commissioner~~ Division of Workers' Compensation shall take  
16 reasonable steps to notify the employee that, unless the employer  
17 disputes the claim, the employer is required to pay compensation  
18 within the time limits established in section 51-B, subsections 3  
19 and 4; that a petition for award may be filed; section 110 of the  
20 Act provides for the payment of attorney's fees under certain  
21 circumstances; and rights under the Act may not be protected  
22 unless a petition of award or memorandum of payment is on file  
23 with the ~~commissioner~~ Division of Workers' Compensation within 2  
24 years of the injury.

25  
26 **Sec. 81. 39 MRSA §107, sub-§1**, as repealed and replaced by PL  
27 1989, c. 434, §9, is amended to read:

28  
29 1. **Completion of forms.** Every insurance company insuring  
30 employers under this Act shall fill out any blanks and answer all  
31 questions submitted that may relate to policies, premiums, amount  
32 of compensation paid and such other information as the ~~commissioner~~  
33 commissioner or the Superintendent of Insurance may determine  
34 important, either for the proper administration of this Act or  
35 for statistical purposes.

36  
37 **Sec. 82. 39 MRSA §108-A**, as enacted by PL 1987, c. 559, Pt.  
38 B, §49, is amended to read:

39 **§108-A. Reports and data collection**

40  
41 1. **Occupational injuries and illnesses.** The Director of  
42 the Bureau of Labor Standards shall provide an annual report  
43 concerning the number and character of occupational injuries and  
44 illnesses and their effects, as required under Title 26, section  
45 42.

46  
47 The ~~chairman of the commission~~ commissioner shall assist the  
48 Director of the Bureau of Labor Standards to ensure that  
49  
50

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

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

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

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

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

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

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

44  
45 1. **Injuries prior to June 30, 1985.** When the ~~commissioner-of~~  
46 ~~commissioner~~ Division of Workers' Compensation finds that an  
47 employee has instituted proceedings under this chapter on  
48 reasonable grounds and in good faith or that the employer through  
49 or under his the employer's insurance carrier has instituted  
50

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

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

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

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

29  
30 2. Injuries on or after June 30, 1985. If an employee  
31 prevails in any proceeding involving a controversy under this  
32 Act, the ~~commissioner or commissioner~~ Division of Workers'  
33 Compensation may assess the employer costs of a reasonable  
34 attorney's fee and witness fees whenever the witness was  
35 necessary for the proper and expeditious disposition of the case.

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

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

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

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

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

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

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

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

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

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

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

50 **§111. Discrimination**

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

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

20 **Sec. 86. 39 MRSA §111-A, sub-§3, ¶C,** as enacted by PL 1989, c.  
22 468, is repealed.

24 **Sec. 87. 39 MRSA §112,** as amended by PL 1985, c. 372, Pt. A,  
26 §44, is further amended to read:

26 **§112. Protection**

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

36 1. **In writing.** It is in writing;

38 2. **Delivery of true copy to employee.** A true copy of said  
40 statement is delivered to the employee by certified mail;

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

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

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

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



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

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

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

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

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

20 **§113. Penalties**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 SUBCHAPTER V

42 MEDICAL COORDINATION

44 §131. Rules

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

2 particularly to injured workers participating in rehabilitation  
3 under this Title.

4 §132. Office of Medical Coordination; Medical coordinator

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

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

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

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

26 B. The coordinator shall:

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

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

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

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

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

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

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

12       D. The coordinator shall make efforts to educate and  
14       disseminate information to all persons interested in medical  
16       and occupational health services as they relate to injured  
18       workers.

20       The coordinator may not provide direct medical services under  
22       this subchapter. Those services must be provided by private and  
24       public medical professionals and occupational health centers.  
26       Nothing in this subsection should be interpreted to limit  
28       programs and services that may be provided by other state  
30       agencies or the coordination of providers with those program and  
32       services.

34       4. Access to records. Except for purposes directly  
36       connected with the administration of the Office of Medical  
38       Coordination, a person may not solicit, disclose, receive or make  
40       use of, or authorize, knowingly permit, participate in or  
42       acquiesce in the use of, any list of names of individuals or any  
44       information concerning individuals applying for or receiving  
46       rehabilitation services, directly or indirectly derived from the  
48       records, papers, files or communications of the Office of Medical  
      Coordination or acquired in the course of the performance of  
      official duties. This subsection does not prevent any employee  
      or that person's employer from obtaining or viewing information  
      relating to the medical coordination services provided to that  
      employee under this subchapter.

34       **Sec. 90. 39 MRSA §192, as amended by PL 1977, c. 696, §415,**  
36       **is further amended to read:**

38       **§192. Impartial medical advice**

40       On request of a party or on its own motion the ~~commissioner~~  
42       ~~Division of Workers' Compensation~~ may in occupational disease  
44       ~~cases appoint one or more competent and impartial physicians,~~  
46       ~~their reasonable fees and expenses to be fixed and paid by the~~  
48       ~~commissioner~~ 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

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

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

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

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

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

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

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

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

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

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

14  
15  
16 **STATEMENT OF FACT**  
17

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

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

27  
28 Specifically, this amendment:

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

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

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

44  
45 4. Creates optional medical deductibles to permit certain  
46 employers to pay directly claims of \$500 or less and provides for  
47 mandatory deductibles for certain employers;  
48

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 42. Places limitations on attorney's fees;

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

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

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

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

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

