

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1957

H.P. 1372

House of Representatives, June 25, 1991

Reported by the Majority from the Committee on Labor and the Committee on Banking and Insurance pursuant to H.P. 1178 and printed under Joint Rule 2.

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

EDWIN H. PERT, Clerk

STATE OF MAINE

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

An Act to Improve the Maine Workers' Compensation System.

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

2
3 Sec. 1. 5 MRSA §12004-F, sub-§16 is enacted to read:

4 16. Maine \$50/Day 39 MRSA §252
5 Employers' Mutual and Expenses
6 Insurance Fund

7
8 Sec. 2. 20-A MRSA §12704, sub-§1, as enacted by PL 1985, c.
9 695, §11, is amended to read:

10 1. Long-term and short-term training. Providing, in close
11 cooperation with the private sector, both the long-term education
12 and training required for certain vocational and technical
13 occupations, including occupational health and safety aspects of
14 those occupations and the short-term training necessary to meet
15 specific private sector and economic development needs;

16
17 Sec. 3. 24-A MRSA §401, as enacted by PL 1969, c. 132, §1, is
18 amended to read:

19 §401. "Mutual" insurer defined

20
21 A "mutual" insurer is an incorporated insurer without
22 permanent capital stock, and the governing body of which is
23 elected by its policyholders or those policyholders specified in
24 its charter, or by any reasonable combination of its
25 policyholders, guaranty fund stockholders, or guaranty fund
26 certificate holders, or by other reasonable method. The Maine
27 Employers' Mutual Insurance Fund created in Title 39, chapter 7
28 is deemed to be a "mutual" insurer.

29 Sec. 4. 24-A MRSA §1853, last ¶ is enacted to read:

30
31 In addition to the causes provided in section 1539, the
32 superintendent may suspend, revoke or refuse a license of an
33 adjuster for failure to perform the duties of the adjuster in a
34 professional manner. The superintendent shall adopt rules to
35 establish the standards for performance of the duties of the
36 adjuster.

37 Sec. 5. 24-A MRSA §2362-A is enacted to read:

38 §2362-A. Disclosure of premium information

39 All bills and invoices issued to employers for workers'
40 compensation insurance must disclose clearly to the employer as
41 separate figures the base rate, the employer's experience
42 modification factor for each year included in the formula
43 pursuant to section 2364, the medical, indemnity and
44

2 administrative portions of the premium and the portion of the
3 premium attributable to the workplace health and safety
4 consultation services.

5 When the annual bill or invoice is issued to employers for
6 workers' compensation insurance it must be accompanied by a
7 statement disclosing the percentages of premium expended during
8 the previous year by the insurer for claims paid, loss control
9 and other administrative costs, medical provider expenses,
10 insurer and employee attorney's fees and private investigation
11 costs.

12 Sec. 6. 24-A MRSA §2362-B is enacted to read:

13 §2362-B. Workplace health and safety consultations

14 Workplace health and safety consultation services provided
15 by workers' compensation insurance carriers to new employers and
16 employers with an experience rating factor of one or more are
17 subject to the following.

18 1. Definitions. As used in this section, unless the
19 context otherwise indicates, the following terms have the
20 following meanings.

21 A. "Workplace health and safety consultations" means a
22 service provided to an employer to advise and assist the
23 employer in the identification, evaluation and control of
24 existing and potential accident and occupational health
25 problems.

26 2. Standards for workplace health and safety
27 consultations. The superintendent shall adopt rules establishing
28 the standards for approval of workplace health and safety
29 consultations provided to employers by insurance carriers,
30 including provision of adequate facilities, qualifications of
31 persons providing the consultations, specialized techniques and
32 professional services to be used and educational services to be
33 offered to employers.

34 3. Required coverage and premium. All insurance carriers
35 writing workers' compensation coverage in this State shall offer
36 workplace health and safety consultations to each employer as
37 part of the workers' compensation insurance policy. The premium
38 for the workplace health and safety consultation must be
39 identified as a separate amount that must be paid.

40 4. Optional purchase from another provider. An employer
41 may elect to purchase workplace health and safety consultation
42 services from a provider other than the insurer. Upon submission
43 of a request for such services, the insurer shall provide the
44 employer with a list of providers who are qualified to provide
45 such services.

2 by the employer of a certificate of completion of workplace
3 health and safety consultation services from another approved
4 provider, the insurance carrier must refund to the employer the
5 portion of the premium attributable to the workplace health and
6 safety consultation.

7 5. Notification to employer; request for consultation
8 services. An insurance carrier writing workers' compensation
9 insurance coverage shall notify each employer of the type of
10 workplace health and safety consultation services available and
11 the address or location where these services may be requested.
12 The insurer shall respond within 30 days of receipt of a request
13 for workplace health and safety consultation services.

14 6. Reports to employers. In any workplace health and
15 safety consultation that includes an on-site visit, the insurer
16 shall submit a report to the employer describing the purpose of
17 the visit, a summary of the findings of the on-site visit and
18 evaluation and the recommendations developed as a result of the
19 evaluation. The insurer shall maintain for a period of 3 years a
20 record of all requests for workplace health and safety
21 consultations and a copy of the insurer's report to the employer.

22 7. Safe workplace responsibility. Workplace health and
23 safety consultations provided by an insurer do not diminish or
24 replace an employer's responsibility to provide a safe
25 workplace. An insurance carrier or its agents or employees do
26 not incur any liability for illness or injuries that result from
27 any consultation or recommendation.

28 Sec. 7. 24-A MRSA §2363, sub-§§1 and 2, as enacted by PL 1987,
29 c. 559, Pt. A, §4, are amended to read:

30 1. Policies. Every insurance company or insurer issuing
31 workers' compensation insurance policies covering the payment of
32 compensation and benefits provided for in this subchapter shall
33 must use only policy forms approved pursuant to section 2412.

34 2. Determination of rates. Every insurer issuing workers'
35 compensation insurance policies shall file with the
36 superintendent its classification of risks and maximum premium
37 rates, which may not take effect until the superintendent has
38 approved them. The superintendent shall apply the procedures and
39 standards of this section in investigating, reviewing and
40 determining just and reasonable rates. The superintendent may:

41 A. Require the filing of specific rates for workers'
42 compensation insurance, including classification of risks,
43 experience or any other rating information from insurance
44 carriers.

2 companies carriers authorized to transact insurance in this
State;

4 B. Make or cause to be made investigations as he ~~deems~~ the
6 superintendent considers necessary to ~~satisfy--himself~~
determine that the rates to be promulgated are just and
reasonable; and

8 C. At any time, after public hearing, withdraw his the
10 superintendent's approval of a previously approved rate
filing.

12 **Sec. 8. 24-A MRSA §2363, sub-§4, ¶A,** as repealed and replaced
14 by PL 1989, c. 423, §1, is amended to read:

16 A. Maine premium, loss and loss adjustment experience.
18 Maine premium, loss and loss adjustment experience shall
must show:

20 (1) Data from all companies carriers writing workers'
22 compensation insurance in this State. If a company is
24 excluded from the rate level, trend, loss development,
26 expense determination, classification differentials or
investment income calculations, that company and its
market share shall must be identified and an
explanation provided for its exclusion;

28 (2) Premiums calculated at current rate level.
30 Whenever on-level factors are used, their derivation
32 shall must be shown. The derivation of the percentages
of total premium written and earned at various rate
levels shall must also be shown;

34 (3) The amount of premium collected from the expense
36 constant. This premium shall must be provided in
dollars and as a percentage of the standard earned
38 premium and as a percentage of net earned premium. If
the percentage of premium collected in this manner is
40 expected to change, the extent of the change shall must
be estimated and the details of this estimation
42 provided;

44 (4) The amount of premium collected by the minimum
46 premium. This premium shall must be provided in
dollars and as a percentage of standard earned premium
48 and as a percentage of earned premium. If the
percentage of premium collected in this manner is
50 expected to change, the extent of the change shall must
be estimated and the details of this estimation
provided;

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(5) Earned premiums, which shall must include premium collected from the specific disease loading. If disease loadings have been excluded, a justification shall must be provided;

(6) The latest earned premiums and market shares for the 10 largest workers' compensation insurers, by group, in this State;

(7) The following information on companies carriers deviating from bureau workers' compensation rates for each of the last 3 years:

- (a) A list of all deviating companies carriers;
- (b) The total standard premium written at deviated rates;
- (c) The percentage of the entire statewide standard premium written at deviated rates;
- (d) The total amount of deviations in dollars;
- (e) The average percentage deviation for deviating companies; and
- (f) The average percentage deviation for all companies carriers;

(8) The following information on company carriers' workers' compensation dividend practices for each of the last 3 years:

- (a) A list of all companies carriers issuing dividends;
- (b) The total amount of dividends in dollars;
- (c) The average percentage dividend issued by companies carriers issuing dividends; and
- (d) The average percentage dividend issued by all companies carriers;

(9) All policy year and accident year incurred loss data used in the filing, provided in the aggregate and also separated into paid losses, case-incurred and incurred but not reported losses; and

2 (10) The related incurred losses for all incurred loss
adjustment expense data contained in the filing;

4 **Sec. 9. 24-A MRSA §2363, sub-§4, ¶N**, as enacted by PL 1989, c.
423, §1, is amended to read:

6 N. The level of capital and surplus needed. The following
8 information relating to the level of capital and surplus
shall must be provided:

10 (1) Aggregate premium to surplus ratios and reserve to
12 surplus ratios for the latest 5 calendar years for all
14 ~~companies~~ carriers writing workers' compensation
insurance in this State; and

16 (2) Estimates of comparable ratios for the years
18 during which the rates will be in effect; and

20 **Sec. 10. 24-A MRSA §2363, sub-§5-A**, as enacted by PL 1989, c.
423, §3, is repealed.

22 **Sec. 11. 24-A MRSA §2363, sub-§7, ¶B**, as enacted by PL 1987,
c. 559, Pt. A, §4, is amended to read:

24 B. In establishing just and reasonable rates, the
26 superintendent shall consider:

28 (1) ~~The~~ When applicable, the reasonableness of any
30 return on capital and surplus allocable to the coverage
of risks in this State;

32 (2) The reasonableness of the amounts of capital and
34 surplus allocable to the coverage of risks in this
State;

36 (3) The reported investment income earned or realized
38 from funds generated from business in this State;

40 (4) The reported loss reserves, including the methods
42 and the interest rates used in determining the present
value for reported reserves and the use of those
reserves in the determination of the proposed rates;

44 (5) The reported annual losses and loss adjustment
46 expenses;

48 (6) The measures taken to contain costs, including
50 loss control, loss adjustment and employee safety
engineering programs;

- 2 (7) The relationship of the aggregate amount of
operating expenses reported by all companies carriers
4 to the annual operating expenses reported in the filing
and the annual insurance expense exhibits filed by each
6 company carrier with the superintendent;
- 8 (8) The impact of operating and management efficiency
of the companies carriers on expense levels and the
effect of variations in expense levels on rates; and
- 10 (9) Any premium surcharges or credits ordered by the
12 superintendent pursuant to section 2367.

14 **Sec. 12. 24-A MRSA §2363, sub-§7, ¶C**, as amended by PL 1987,
c. 769, Pt. A, §94, is further amended to read:

16 C. The justness and reasonableness of rates shall must be
18 determined for the period in which the rates are in effect.
20 ~~Deficits in the residual market in any preceding year may
not be included in the determination of rates.~~

22 **Sec. 13. 24-A MRSA §2363, sub-§7-A**, as enacted by PL 1989, c.
467, §2, is amended to read:

24 7-A. **Fee for servicing residual market.** In every rate
26 filing in which a rating bureau requests a rate adjustment, the
superintendent shall take evidence on the issue of whether the
28 fee for servicing the residual market is reasonable. Concurrent
with the decision on the rate adjustment, the superintendent
30 shall issue a decision on whether the fee is reasonable, taking
into account the rate adjustment approved. If the superintendent
32 determines that the fee is not reasonable, the superintendent
shall order an adjustment to the fee, as necessary, to ensure
34 that the fee is reasonable. The superintendent shall adopt rules
establishing standards for the performance of adjustment services
36 and requiring that servicing fees for individual insurance
carriers be separately set, considering the performance of
38 adjustment services and accident loss ratios and increasing the
servicing fee for decreases in loss ratios.

40 **Sec. 14. 24-A MRSA §2364, sub-§4, ¶A**, as enacted by PL 1987,
42 c. 559, Pt. A, §4, is amended to read:

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

50

- 2 (1) The claims and exposure for the most recent year
3 for which data is available must be given 45% weight.
- 4 (2) The claims and exposure for the 2nd most recent
5 year for which data is available must be given 35%
6 weight.
- 7 (3) The claims and exposure for the 3rd most recent
8 year for which data is available must be given 20%
9 weight.

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

16 **Sec. 15. 24-A M RSA §2364, sub-§4, ¶C-1 is enacted to read:**

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

26 **Sec. 16. 24-A M RSA §2365-A is enacted to read:**

28 §2365-A. Medical expense deductibles

30 Each insurer transacting or offering to transact workers'
31 compensation insurance in this State shall offer deductibles for
32 medical expenses as follows.

34 1. Optional deductible of \$250. To employers who are not
35 experience rated, insurers must offer a deductible of \$250 per
36 occurrence.

38 2. Optional deductible of \$250 or \$500. To employers whose
39 premium is between 100% and 500% of the premium qualifying for
40 experience rating, insurers must offer a deductible of \$250 or
41 \$500 per occurrence.

44 3. Mandatory deductible of \$500. A deductible of \$500 per
45 occurrence must apply to all employers whose premiums are over
46 500% of the premium qualifying for experience rating.

48 **Sec. 17. 24-A M RSA §2366, sub-§1-A is enacted to read:**

2 1-A. Rules. The superintendent shall adopt rules for the
3 purpose of encouraging workers' compensation insurance carriers
4 to issue insurance in the voluntary market by establishing
5 credits applicable to any assessments that may be ordered under
6 section 2367 or by any other means.

7 Sec. 18. 24-A MRSA §2366, sub-§2, ¶B, as enacted by PL 1987,
8 c. 559, Pt. A, §4, is amended to read:

9 B. An employer is eligible for insurance from the Accident
10 Prevention Account if:

11 (1) The employer has at least 2 lost-time claims over
12 \$10,000 and a loss ratio greater than 1.00 over the
13 last 3 years for which data is available; and

14 (2) The employer has attempted to obtain insurance in
15 the voluntary market and has been refused by at least 2
16 insurers which that write that insurance in this
17 State. For the purpose of this section, an employer
18 shall-be is considered to have been refused if offered
19 insurance only under a retrospective rating plan or
20 plans.
21

22 Sec. 19. 24-A MRSA §2366, sub-§4, ¶A-1 is enacted to read:

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

26 Sec. 20. 24-A MRSA §2366, sub-§5, ¶C is enacted to read:

27 C. In a residual market rate proceeding, the superintendent
28 may order payment of dividends to insureds in the Safety
29 Pool to the extent that the pool's experience supports
30 them. The superintendent may adopt rules establishing a
31 dividend plan for the Safety Pool to provide an incentive
32 for implementation of safety programs by insureds in the
33 pool. The superintendent may employ outside consultants to
34 assist in the development of these rules, the costs of which
35 must be paid by the Safety Education and Training Fund
36 established under Title 26, section 61 to the extent that
37 funds are available.

38 Sec. 21. 24-A MRSA §2366, sub-§7-A is enacted to read:

39 7-A. Credits for qualifying safety programs. The
40 superintendent may adopt rules to establish dividend plans and
41 premium credits of up to 10% of net annual premiums for
42 policyholders that establish qualifying safety programs. The
43

2 rules must identify the classifications by which policyholders
3 are eligible for the credits and establish criteria for
4 qualifying safety programs and procedures to be followed by
5 servicing carriers in approving and auditing compliance with the
6 safety programs. The superintendent may employ outside
7 consultants to assist in the development of rules under this
8 subsection, the costs of which must be paid by the Safety
9 Education and Training Fund established under Title 26, section
10 61 to the extent that funds are available.

11 Sec. 22. 24-A MRSA §2366, sub-§11 is enacted to read:

12 11. Phasing out of residual market. Workers' compensation
13 insurance policies in the workers' compensation insurance
14 residual market mechanism may not be issued to employers by
15 insurance carriers after June 30, 1992.

16 Sec. 23. 24-A MRSA §2367-A is enacted to read:

17 §2367-A. Maine Employers' Mutual Insurance Fund reserve
18 adjustment

19 Beginning in 1993, for policy years 1988, 1989 and 1990 and
20 for each policy year thereafter for the 2nd calendar year after
21 the close of the policy year, the superintendent shall determine
22 whether premiums collected from risks in the Maine Employers'
23 Mutual Insurance Fund, in this section called the "fund," and
24 investment income allocable to those premiums are greater or less
25 than the incurred losses and expenses associated with the fund.
26 The superintendent shall hold a hearing before making the
27 determination and shall issue a determination by the earlier of
28 June 1st or the date of decision concerning any request for a
29 fund rate change pending before the superintendent on January 1st
30 of that year. In establishing reserve adjustments under this
31 section, the superintendent may approve application of reserve
32 adjustments to policies issued on or after January 1st but before
33 the date of the superintendent's order, provided that the
34 policies contain language approved by the superintendent that is
35 sufficient to notify policyholders that they may be subject to
36 adjustments approved after the effective date of their policies.
37 For purposes of this section, the fund consists of the Accident
38 Prevention Account and the Safety Pool. For purposes of this
39 section, "deficit" means the amount by which incurred losses and
40 expenses associated with the fund exceed premiums collected from
41 risks in that fund and investment income allocable to those
42 premiums. After the first deficit determination for each policy
43 year, the superintendent shall redetermine the amount of the
44 deficit for that policy year every 2 years. The superintendent
45 may make timely and appropriate requests for any data considered
46 necessary by the superintendent to make these determinations.

2 In making the determinations required by this section, the
3 superintendent shall apply statutory insurance accounting
4 standards and utilize sound actuarial principles. Losses for
5 policies issued before January 1, 1988 may not be considered.
6 Each review must be on a policy-year basis and apply to the
7 policy year prior to the year in which the review is being made
8 and all other prior policy years beginning on or after January 1,
9 1988. The superintendent must make the calculations and
10 determinations required on a cumulative basis for each policy
11 year under consideration so that each year's determination is
12 based on all available data relating to a given policy year. For
13 each year under review, the superintendent shall determine the
14 following.

15 1. Reserve surplus. If the superintendent determines that
16 premiums collected from the insureds in the fund and investment
17 income allocable to those premiums are greater than the incurred
18 losses and expenses attributable to the risks in the fund, the
19 superintendent shall order an appropriate adjustment credited to
20 the premiums paid by policyholders in the fund and employers who
21 were policyholders during the policy year for which the surplus
22 was determined but who have since become self-insured.
23

24 2. Reserve deficit. If the superintendent determines that
25 premiums and investment income attributable to those premiums are
26 less than incurred losses and expenses in the fund, the
27 superintendent shall order an appropriate rate adjustment charged
28 to the premiums paid by policyholders in the fund and employers
29 who were policyholders during the policy year for which the
30 deficit was determined but who have since become self-insured.
31

32 3. Application of adjustment. Credits or surcharges
33 ordered by the superintendent apply to policies issued or renewed
34 during the calendar year after the order of the superintendent is
35 issued or for such other period as the superintendent may order.
36 If an employer was insured during the policy year for which the
37 surplus or deficit was determined but was self-insured in the
38 year in which the reserve adjustment is ordered, individually or
39 as part of a group, the reserve adjustment must be applied to the
40 lowest of the:
41

42 A. Discounted standard premium applicable to the employer
43 for the period during which the employer was insured in the
44 policy year the deficit was created;
45

46 B. Manual premium applicable to the employer for the year
47 prior to the year to which the reserve adjustment is
48 applied, multiplied by a fraction, the numerator of which is
49 the number of days the employer was insured in the policy
50

2 year the deficit was created and the denominator of which is
3 365; or

4 C. Discounted standard premium applicable to the employer
5 for the year prior to the year to which the reserve
6 adjustment is applied, multiplied by a fraction, the
7 numerator of which is the number of days the employer was
8 insured in the policy year the deficit was created and the
9 denominator of which is 365.

10 The superintendent shall adopt rules to determine the method of
11 collecting or paying any reserve adjustment ordered with respect
12 to self-insured employers subject to reserve adjustment.

13 4. Public Advocate participation. The Public Advocate may
14 participate as follows.

15 A. The Public Advocate, as appointed under Title 35-A,
16 section 1701, may participate as a party in the hearing in
17 which the superintendent makes the determinations required
18 by this section. The Public Advocate may make timely and
19 appropriate requests for data necessary to participate in
20 those determinations.

21 B. At the time the superintendent begins the proceeding
22 required by this subsection, the manager of the fund shall
23 pay to the superintendent a fee of \$20,000, which the
24 superintendent shall immediately credit to the Public
25 Advocate. If the manager of the fund files the data
26 necessary for the superintendent's determination under this
27 section when the manager files for a rate change under
28 section 2363, the fee is only \$10,000. The fee must be
29 segregated and expended for employing outside consultants
30 and paying other expenses, including staff salaries, to
31 fulfill the requirements of this subsection. Any portion of
32 the fee not so expended must be returned to the fund.

33 5. Final determination of deficit or surplus; timetable for
34 surcharge or credit. The superintendent shall make a final
35 determination under this section regarding a policy year deficit
36 or surplus no later than the 8th calendar year following the
37 close of the policy year under review. If the superintendent
38 determines that there is a surplus for that policy year, the
39 superintendent shall order a credit under subsection 1. If the
40 superintendent determines that there is a deficit for that policy
41 year, the superintendent shall establish a schedule of surcharges
42 to recover the remainder of the deficit for that policy year over
43 a period not to exceed 10 years.

2 Sec. 24. 26 MRSA §42-A, sub-§2, ¶E-1, as enacted by PL 1987, c.
782, §3, is amended to read:

4 E-1. The development and administration of programs to
educate employers and employees regarding the
6 Whistleblowers' Protection Act, chapter 7, subchapter V-B;
and

8 Sec. 25. 26 MRSA §42-A, sub-§2, ¶E-2 is enacted to read:

10 E-2. The support for the development of long-term
12 strategies to improve occupational health and safety
14 professional education and resources. The department may
16 award contracts to public and private nonprofit
18 organizations as seed money to develop programs that will
20 serve this purpose and that will develop other funding
22 sources in the future; and

24 Sec. 26. 39 MRSA §2, sub-§2, ¶A, as amended by PL 1983, c.
338, is further amended to read:

26 A. "Average weekly wages, earnings or salary" of an injured
employee ~~shall be taken as~~ is the amount ~~which he~~ that the
28 employee was receiving at the time of the injury for the
hours and days constituting a regular full working week in
the employment or occupation in which he ~~that employee~~ was
engaged when injured except that, this shall does not
include any reasonable and customary allowance given to the
employee by the employer for the purchase, maintenance or
use of any chainsaws or skidders used in the employee's
occupation, provided ~~such~~ the employment or occupation had
continued on the part of the employer for at least 200 full
working days during the year immediately preceding that
injury. For purposes of this paragraph, a "reasonable and
customary allowance" is the allowance provided in a
negotiated contract between the employee and the employer,
or if not provided for by a negotiated contract, an
allowance determined by the Department of Labor, Bureau of
Employment Security. Except that, in the case of piece
workers and other employees whose wages during that year
have generally varied from week to week, ~~such~~ those wages
shall must be averaged in accordance with the method
provided under paragraph B. The Superintendent of Insurance
34 shall adopt rules to establish the standards for deducting
36 an equipment allowance from the compensation of all loggers
38 in determining loggers' wages for workers' compensation
40 premium purposes.

42 Sec. 27. 39 MRSA §2, sub-§2, ¶G is enacted to read:

50

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

16 Sec. 28. 39 MRSA §2, sub-§7, as amended by PL 1977, c. 696,
18 §395, is further amended to read:

20 7. Workers' compensation insurance policy. "Workers'
22 compensation insurance policy" shall ~~mean~~ means a policy in such
24 form as the Insurance Superintendent of Insurance approves,
26 issued by any stock or mutual casualty insurance company or
28 association that ~~may now or hereafter be~~ is authorized to do
30 business in this State or ~~issued by the Maine Employers' Mutual~~
32 Insurance Fund, which ~~that~~ in substance and effect guarantees the
34 payment of the compensation, medical benefits and expenses of
36 burial provided for, in such installment, at such time or times,
38 and to such person or persons and ~~upon~~ on such conditions as
40 provided in this Act provided. Whenever a copy of a policy is
42 filed, such ~~the~~ copy certified by the Insurance Superintendent
44 shall ~~be of Insurance is~~ admissible as evidence in any legal
46 proceeding ~~wherein~~ when the original would be admissible.

48 Sec. 29. 39 MRSA §2, sub-§8, as amended by PL 1977, c. 696,
50 §396, is further amended to read:

2 8. Insurance company. "Insurance company" shall ~~mean~~ means
4 any casualty insurance company or association authorized to do
6 business in this State which ~~, including the Maine Employers'~~
8 Mutual Insurance Fund, that may issue policies conforming to
10 subsection 7. Whenever in this Act relating to procedure the
12 words "insurance company" are used, they shall apply only to
14 cases in which the employer has secured the payment of
16 compensation and other benefits by insuring such payment under an
18 a workers' compensation insurance policy, instead of furnishing
20 satisfactory proof of his ~~the~~ employer's ability to pay
22 compensation and benefits ~~direct~~ directly to his ~~the~~ employer's
24 employees.

26 No An insurance carrier shall ~~be~~ is not qualified to issue an a
28 workers' compensation insurance policy covering any employees
30 working in this State unless it has and continuously maintains an
32 employee or claims agent ~~within~~ in this State empowered to
34 investigate claims arising under this chapter; sign agreements
36 for the payment of compensation as provided by this chapter; and
38 issue drafts or checks in payment of obligations arising under
40 this chapter in amounts of at least \$1,000.

2 Sec. 30. 39 MRSA §2, sub-§13, as enacted by PL 1987, c. 409,
3 §2, is amended to read:

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

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

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

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

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

19 E. Whether or not the work is part of the regular business
20 of the employer;

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

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

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

25
26 In applying these factors, the commission shall ~~may~~ not give any
27 particular factor a greater weight than any other factor, nor
28 shall ~~may~~ the existence or absence of any one factor be
29 decisive. The commission shall consider the totality of the
30 relationship in determining whether an employer exercises
31 essential control or superintendence of the person.

32
33 "Independent contractor" does not include any person engaged in
34 the logging industry other than a person whose logging activities
35 are limited to the sale of firewood to consumers or any person
36 participating in any construction project involving a
37 nonresidential project or the initial construction of any
38 residence.

39 Sec. 31. 39 MRSA §5 is enacted to read:

40
41 §5. Predetermination of independent contractor status

2 1. Predetermination permitted. A worker, an employer or a
workers' compensation insurance carrier, or any together, may
4 apply to the commission for a predetermination of whether the
status of an individual worker, group of workers or a job
6 classification associated with the employer is that of an
employee or an independent contractor.

8
 A. The predetermination by the commission creates a
10 rebuttable presumption that the determination is correct in
any later claim for benefits under this Act.

12
 B. Nothing in this section requires a worker, an employer
14 or a workers' compensation insurance carrier to request
predetermination.

16
 2. Premium adjustment. If it is determined that a
18 predetermination does not withstand commission or judicial
scrutiny when raised in a subsequent workers' compensation claim,
20 then, depending on the final outcome of that subsequent
proceeding, either the workers' compensation insurance carrier
22 shall return excess premium collected or the employer shall remit
premium subsequently due in order to put the parties in the same
24 position as if the final outcome under the contested claim were
predetermined correctly.

26
 3. Predetermination submission. A party may submit, on
28 forms approved by the commission, a request for predetermination
regarding the status of a person or job description as an
30 employee or independent contractor.

32 A. The status requested by a party is deemed to have been
approved if the commission does not deny or take other
34 appropriate action on the submission within 14 days.

36 B. The chair of the commission is authorized to delegate
the authority to make a predetermination to one other than a
38 commissioner, such as the commission's legal counsel, as
long as that person or persons act as the primary decision
40 maker.

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

46 5. Certificate. The commission shall provide the
48 petitioning party a certified copy of the decision regarding
predetermination that is to be used as evidence at a later
50 hearing on benefits of the commission's decision regarding
predetermination.

2 6. Rulemaking. The commission is authorized to promulgate
4 reasonable rules pursuant to the Maine Administrative Procedure
6 Act to implement the intent of this section, which is to afford
 speedy and equitable predetermination of employee and independent
 contractor status.

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

10 4. Workplace health and safety training programs. The
12 following workplace health and safety plan requirements apply to
14 all employers in the State required to secure payment of
 compensation in conformity with this Title.

16 A. The Commissioner of Labor or the commissioner's designee
 shall adopt rules regarding workplace health and safety
18 programs.

20 B. The Superintendent of Insurance shall communicate to the
 Department of Labor the names of employers that receive in
22 any policy year an experience rating of 2 or more. The
24 Department of Labor shall notify each employer on that list
 that the employer is required to undertake a workplace
 health and safety program, shall provide a statistical
26 evaluation of the employer's workplace health and safety
 experience and shall enclose a set of workplace health and
28 safety options, including on-site consultation, education
 and training activities and technical assistance.

30 C. The employer shall submit a workplace health and safety
 plan to the Department of Labor for review and comment,
32 complete the elements of the plan and notify the Department
34 of Labor of its completion. The plan may include attendance
 at a Maine Technical College or the Department of Labor
36 workplace health and safety training programs.

38 D. The Department of Labor shall notify the Superintendent
 of Insurance of any employer that fails to complete the
40 workplace health and safety program as required by this
 section and the rules. The superintendent shall assess a
42 surcharge of 10% on that employer's workers' compensation
 insurance premium or the imputed premium for self-insurers,
44 to be paid to the Treasurer of State and credited by the
 Treasurer of State 1/2 to the Safety Education and Training
46 Fund, Title 26, section 61 and 1/2 to the Occupational
 Safety Loan Fund, Title 26, section 62.

48 E. The Commissioner of Labor shall report to the joint
 standing committee having jurisdiction over banking and
50 insurance matters and the joint standing committee having

2 jurisdiction over labor matters by October 1, 1993 on the
3 rules adopted, performance by employers and any surcharges
4 imposed by the Superintendent of Insurance.

6 Sec. 33. 39 MRSA §22-E is enacted to read:

8 §22-E. Proof of insurance; logging and nonresidential
9 construction industries

10 Any person who employs, contracts with or otherwise engages
11 for compensation an individual who is engaged in the logging
12 industry or participating in a construction project and is
13 excluded from the definition of independent contractor under
14 section 2, subsection 13 must require proof of workers'
15 compensation coverage before engaging the individual's services.
16 The Superintendent of Insurance shall prescribe the form of the
17 certificate to be provided by any workers' compensation insurer
18 as proof of coverage. Any person who fails to require proof of
19 insurance as required by this section may be assessed a civil
20 penalty not to exceed \$1,000 by the chair of the commission.

22 Sec. 34. 39 MRSA §23, sub-§1-A is enacted to read:

24 1-A. Pilot projects. Workers' compensation health benefits
25 pilot projects are authorized under the following provisions.

26 A. The Superintendent of Insurance shall adopt rules to
27 enable employers and employees to enter into agreements to
28 provide the employees with workers' compensation medical
29 payments benefits through comprehensive health insurance
30 that covers workplace injury and illness. The
31 superintendent shall review all pilot project proposals and
32 may approve a proposal only if it confers medical benefits
33 upon injured employees substantially similar to benefits
34 available under this Title. The superintendent shall revoke
35 approval if the pilot project fails to deliver the intended
36 benefits to the injured employees.

38 B. The comprehensive health insurance may provide for
39 health care by a health maintenance organization or a
40 preferred provider organization. The premium must be paid
41 entirely by the employer. The program may use deductibles,
42 coinsurance and copayment by the employees not to exceed \$5
43 per visit or \$50 maximum per occurrence.

46 C. The superintendent shall report annually to the joint
47 standing committees of the Legislature having jurisdiction
48 over banking and insurance and labor matters by November 1st
49 on the status of any pilot projects approved by the
50 superintendent.

2 D. Unless continued or modified by law, this section is
3 repealed on October 31, 1996.

4
5 **Sec. 35. 39 MRSA §23, sub-§2, as amended by PL 1989, c. 435,**
6 **§2, is further amended to read:**

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

29
30 The superintendent shall adopt rules to establish the
31 qualifications for financial institutions issuing irrevocable
32 standby letters of credit, which must include maintenance of a
33 long-term unsecured debt rating of at least A by either Moody's
34 Investors Service, Inc. or Standard and Poor's Corporation, and
35 to prescribe the form of the irrevocable standby letter of credit
36 that may be used to satisfy, in whole or in part, the employer's
37 responsibility under this subsection to post security. The
38 irrevocable standby letter of credit must be the individual
39 obligation of the issuing financial institution, may not be
40 subject to any agreement, condition or qualification between the
41 financial institution and the employer and may not in any way be
42 contingent upon reimbursement by the employer. If the rating of
43 an issuing financial institution that has issued an irrevocable
44 standby letter of credit pursuant to this subchapter falls below
45 the required standard, the employer must obtain a new irrevocable
46 standby letter of credit from a qualified financial institution
47 or must provide substitute proof of solvency and financial
48 ability to pay consistent with this section. The irrevocable
49 standby letter of credit is automatically extended for one year
50

2 from the date of expiration unless, 90 days prior to any
3 expiration date, the issuing financial institution notifies the
4 Superintendent of Insurance that the financial institution elects
5 not to renew the irrevocable standby letter of credit. The
6 Superintendent of Insurance shall consider the following form of
7 letter acceptable.

8 IRREVOCABLE STANDBY LETTER OF CREDIT

10 Irrevocable letter of credit no.

12 We hereby issue our irrevocable standby letter of credit
13 (hereinafter referred to as "letter of credit") in favor of
14 the Treasurer of State, State of Maine for drawings up to
15 U.S. \$..... effective immediately and expiring
16 immediately at our(bank address)..... with our close
17 of business on

18 We hereby undertake to honor promptly your sight draft(s)
19 drawn on us, indicating our letter of credit no.,
20 for all or part of this letter of credit if presented at
21(bank address)..... on or before the expiration date
22 or any automatically extended date.

24 Except as stated in this letter of credit, this undertaking
25 is not subject to any condition or qualification. The
26 obligation of the bank under this letter of credit is the
27 individual obligation of the bank, in no way contingent upon
28 reimbursement with respect thereto.

30 It is a condition of this letter of credit that it is
31 automatically extended without amendment for one year from
32 the expiration of this letter of credit, or any future
33 expiration date, unless 90 days prior to any expiration date
34 we notify the chair of the Workers' Compensation Commission
35 and the Superintendent of Insurance by registered mail that
36 we elect not to consider this letter of credit renewed for
37 any additional period.

40 It is a further condition of this letter of credit that any
41 interruptions of the bank's conduct of business caused by an
42 Act of God, riot, civil commotion, insurrection, war or
43 other cause beyond the bank's control will automatically
44 extend the expiration date of the letter of credit, as well
45 as any future expiration date, by the period of the
46 interruption.

48 To the extent not inconsistent with Maine law, this letter
49 of credit is subject to and governed by the Uniform Customs
50 and Practice for Documentary Credits, 1983, International

2 Chamber of Commerce Publication No. 400. If any legal
3 proceedings are initiated with respect to payment of this
4 letter of credit, it is agreed that such proceedings are
5 subject to Maine courts and law.

6 The superintendent shall prescribe the form of the surety bond,
7 which may be used to satisfy, in whole or in part, the employer's
8 responsibility under this section to post security. The bond
9 shall must be continuous, shall be subject to nonrenewal only
10 upon not less than 60 days' notice to the superintendent and
11 shall, cover payment of all present and future liabilities
12 incurred under the Act while the bond is in force and cover
13 payments which that become due while the bond is in force which
14 that are attributable to injuries incurred in prior periods and
15 which that are otherwise unsecured by cash, irrevocable standby
16 letters of credit or acceptable securities. A bond shall must be
17 held until all payments secured ~~thereby~~ by the bond have been
18 made or until it has been replaced by a bond, issued by a
19 qualified successor surety which, that covers all outstanding
20 liabilities. Payments under the bond shall ~~be~~ are due within 30
21 days after notice has been given to the surety by the chair of
22 the commission that the principal has failed to make a payment
23 required under the terms of an award, agreement or governing
24 law. A surety bond shall may not be used to fund a trust
25 established to satisfy the requirements of this section.

26
27 As an alternative to the method described in ~~the first paragraph~~
28 ~~of~~ this subsection, an eligible employer may establish an
29 actuarially fully funded trust, funded at a level sufficient to
30 discharge those obligations incurred by the employer pursuant to
31 this Act as they become due and payable from time to time,
32 provided that the superintendent requires that the value of trust
33 assets shall ~~be~~ is at least equal to the present value of
34 ultimate expected incurred claims and claims settlement costs.
35 The present value of ultimate expected incurred claims and claims
36 settlement costs for a group self-insurer may be no more than the
37 amount actuarially determined considering the value of trust
38 assets and excess insurance to satisfy a 90% confidence level. A
39 group self-insurer may elect to fund at a higher confidence level
40 through the use of cash, marketable securities, surety bonds,
41 irrevocable letters of credit or excess insurance. If a member
42 of a group self-insurer terminates its membership in the group
43 for any reason, then that member shall fund its proportionate
44 share of liabilities and obligations of the trust to the 95%
45 confidence level. If for any reason the departing member fails
46 to fund its proportionate share of the trust's exposure to the
47 95% confidence level, then the remaining members of the group
48 shall make such additional contribution no later than the
49 anniversary date of the program as required to fund the departing
50 member's exposure in accordance with this provision. The ~~trust~~

2 Trust assets shall must consist of cash or marketable securities
of a type and risk character as specified in subsection 7, and
4 shall have a situs in the United States. The trustee shall
submit a report to the superintendent, not less frequently than
6 quarterly ~~which~~, that lists the assets comprising the corpus of
the trust, including a statement of their market value and the
8 investment activity during the period covered by the report. The
trust shall must be established and maintained subject to the
condition that trust assets ~~cannot~~ may not be transferred or
10 revert in any manner to the employer except to the extent that
the superintendent finds that the value of the trust assets
12 exceeds the present value of incurred claims and claims
settlement costs with an actuarially indicated margin for future
14 loss development. In all other respects, the trust instrument,
including terms for certification, funding, designation of
16 trustee and pay out shall, must be as approved by the
superintendent; provided, that the value of the trust account
18 shall--be is actuarially calculated at least annually by a
casualty actuary who is a member of the American Academy of
20 Actuaries and is adjusted to the required level of funding. For
purposes of this paragraph subsection, an "eligible employer" is
22 one who is found by the superintendent to be capable of paying
compensation and benefits required by this Act and:

24

A. Has positive net earnings; or

26

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

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

46 In consideration of a self-insuring entity's application for
authorization to operate a plan of self-insurance, the
48 superintendent may require or permit an applicant to employ valid
risk transfer by the utilization of primary excess insurance,
50 subject to the provisions of subsection 6. Standards respecting

2 the application of primary excess insurance shall must be
3 contained in a ~~regulation--promulgated~~ rule adopted by the
4 superintendent pursuant to the Maine Administrative Procedure
5 Act, Title 5, chapter 375. Primary excess insurance shall ~~be~~ is
6 defined as insurance covering workers' compensation exposures in
excess of risk retained by a self-insurer.

8 As a further alternative to the methods described in this
9 subsection, an employer shall ~~be~~ is eligible for approved
10 self-insurance status pursuant to this Act if the employer
11 submits a written guarantee of the obligations incurred pursuant
12 to this Act, the guarantee to be issued by a United States or
13 Canadian corporation which that is a member of an affiliated
14 group of which the employer is a member, and ~~which cooperation~~ is
15 solvent and demonstrates an ability to pay the compensation and
16 benefits, and the guarantee is in a form acceptable to the
17 superintendent. The guarantor shall provide quarterly financial
18 statements, audited annual financial statements and such other
19 information as the superintendent may require, and the employer
20 shall provide a bond as otherwise required by this Act in an
21 amount not less than \$1,000,000. Any such guarantor shall ~~be~~ is
22 deemed to have submitted to the jurisdiction of the Workers'
23 Compensation Commission and the courts of this State for purposes
24 of enforcing any such guarantee. The guarantor, in all respects,
25 shall ~~be~~ is bound by and subject to the orders, findings,
26 decisions or awards rendered against the employer for payment of
27 compensation and any penalties or forfeitures provided under this
28 Act. The superintendent, following hearing, may revoke the
29 self-insured status of the employer if at any time the assets of
30 the guarantor become impaired, encumbered or are otherwise found
31 to be inadequate to support the guarantee.

32 Notwithstanding any other provisions of this section, a
33 self-insuring entity may, with the approval of the
34 superintendent, use a combination of financial assets, including
35 cash deposits, securities, irrevocable letters of credit, surety
36 bonds or fully or partially funded trusts, to satisfy the
37 solvency and ability-to-pay requirements of this section.

40 Sec. 36. 39 MRSA §23, sub-§7, as amended by PL 1989, c. 435,
41 §10, is further amended to read:

42
43 7. **Acceptable deposit funds or surety bonds; letters of**
44 **credit.** In addition to cash, the deposit funds acceptable to the
45 superintendent as a security deposit shall include United States
46 Government bonds, notes or bills, issued or guaranteed by the
47 United States of America; bonds secured by the full faith, credit
48 and taxing power of political subdivisions of the United States
49 rated in the 3 highest grades by a national rating agency such as
50 Moody's, Standard and Poor's or Fitch, as of the foregoing year

2 end ~~year-end~~; money market funds which--are invested only in
United States Government or government agency obligations with a
4 maturity not exceeding one year; high grade commercial paper
rated as either A-1 or P-1 by a nationally recognized bond rating
6 service such as Moody's, Standard and Poor's or Fitch, or money
market funds invested in such paper; certificates of deposit
8 issued by a duly chartered commercial bank or thrift institution
in the State which--is protected by the Federal Deposit Insurance
10 ~~corporation~~,--and Corporation if such a bank or institution
possesses assets of at least \$100,000,000 and maintains a ratio
12 of capital to assets equal to or greater than 6 1/2%; savings
certificates issued by any savings and loan association in the
14 State which--are protected by the Federal Savings and Loan
Insurance Corporation,--and if such an association possesses
16 assets of at least \$100,000,000 and maintains a ratio of capital
to assets equal to or greater than 6 1/2%; surety bonds in a form
18 prescribed by the superintendent which--are issued by any
corporate surety which that meets the qualifications prescribed
20 by rule of the superintendent, and such other investments
approved by the superintendent; and irrevocable standby letters
22 of credit issued to the Treasurer of State by financial
institutions with long-term unsecured debt ratings of at least A
24 by either Moody's Investors Service, Inc. or Standard and Poor's
Corporation or with commercial paper within the 3 highest
26 short-term rating categories established by Moody's Investors
Service, Inc. or Standard and Poor's Corporation. An irrevocable
28 letter of credit binds a financial institution to pay one or more
drafts drawn by the Treasurer of State, as long as the draft does
30 not exceed the total amount of the irrevocable standby letter of
32 credit, if accompanied by the following document: a certificate
signed by the Superintendent of Insurance stating that the
34 irrevocable standby letter of credit in question expires by its
terms in 30 days or less and that it has not been replaced by a
36 substitute irrevocable standby letter of credit having an
expiration date at least 12 months subsequent to the expiration
38 of the existing irrevocable standby letter of credit, or cash
deposits, securities, surety bonds or trust funds or any
40 combination thereof satisfying the requirements of this chapter
and that the full amount of the existing letter of credit less
any amounts previously drawn must be paid to the Treasurer of
State.

42
44 If the Superintendent of Insurance issues a certificate under
this subsection, the Treasurer of State shall draw a draft in the
46 full amount of the letter of credit and shall hold the proceeds
for and on behalf of the State until the superintendent either
48 certifies to the Treasurer of State that replacement security in
compliance with this Title has been provided, in which case the
50 proceeds must be returned to the employer, or directs the payment
of the proceeds in accordance with this Title.

2 Sec. 37. 39 MRSA §26-A is enacted to read:

4 §26-A. Workers' compensation coverage card

6 1. Posting. The chair of the commission shall adopt rules
8 requiring the posting or presence at every work site of a
 workers' compensation coverage card.

10 2. Effective date. This section takes effect July 1, 1992.

12 Sec. 38. 39 MRSA §51, sub-§4 is enacted to read:

14 4. Subsequent nonwork injuries. If an employee suffers a
16 nonwork-related injury or disease which is not causally connected
 to a previous compensable injury, the subsequent nonwork-related
 injury or disease is not compensable under this Act.

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

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

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

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

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

24 **Sec. 40. 39 MRSA §51-B, sub-§8, as amended by PL 1983, c. 682,**
26 **§6, is further amended to read:**

28 **8. Effect of payment.** If, within the 44-day period
30 established in subsection 7 and after the payment of compensation
32 for incapacity without an award, the employer elects to
34 controvert the claim to compensation for incapacity, the payment
36 of compensation shall may not be considered to be an acceptance
38 of the claim or an admission of liability. Notwithstanding the
40 provisions of section 99-C, the acceptance of compensation in any
case, except by decision or agreement, by the injured employee or
his the employee's dependents shall is not be considered an
admission by the employee or his the employee's dependents as to
the nature and scope of the employer's liability or a waiver of
the right to question the amount of compensation or the duration
of the same or the nature of the injury and its consequences.

42 The employer may continue the payment of compensation for
44 incapacity under subsection 3 following the filing of a notice of
46 controversy and up to the convening of the informal conference,
48 if the notice of controversy was filed prior to the expiration of
50 the 44-day period established in subsection 7. The employer may
continue these payments at any level, but once payments have been
continued beyond the 44-day period, the employer may not vary the
level of payments or cease payments until the informal conference
is convened. The continuation of payments under these

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

4 Sec. 41. 39 MRSA §52, as amended by PL 1989, c. 434, §8, is
5 further amended by adding at the end a new paragraph to read:

6 An employee shall purchase generic drugs for the treatment
7 of an injury or disease for which compensation is claimed if the
8 prescribing physician indicates that generic drugs may be used
9 and if generic drugs are available at the time and place of
10 purchase. Providers shall prescribe generic drugs whenever
11 medically advisable for the treatment of an injury or disease for
12 which compensation is claimed. If an employee purchases a
13 nongeneric drug when the prescribing physician has indicated that
14 a generic drug may be used and a generic drug is available at the
15 time and place of purchase, the insurer or self-insurer is
16 required to reimburse the employee for the cost of the generic
17 drug only. For purposes of this section, "generic drug" has the
18 same meaning found in Title 32, section 13702, subsection 11.

19
20 Sec. 42. 39 MRSA §52-A, as amended by PL 1989, c. 668, is
21 further amended to read:

22
23 **§52-A. Medical information**

24
25 1. Certificate of authorization. Any employee who makes
26 any claim for compensation, enters into any agreement for
27 compensation or is receiving compensation shall, upon request by
28 the employer, execute a certificate, in a form prescribed by the
29 commission, authorizing the employer to obtain, after payment of
30 a reasonable fee, from any physician, osteopath, chiropractor or
31 any other health care provider any written information which that
32 is or has been obtained in connection with the examination or
33 treatment of the employee and which relates to any injury or
34 disease for which compensation is claimed. A certificate of
35 authorization remains valid and must be honored for as long as
36 the employee continues to make any claim for compensation, the
37 agreement for compensation remains in effect or the employee
38 receives compensation. The commission shall include a
39 certificate of authorization as part of the form provided for an
40 employer's first report of injury under section 106. The
41 employee shall execute the certificate of authorization on the
42 first report of injury upon request of the employer. If the
43 employee fails to or is unable to execute the certificate, the
44 employer must submit the first report form to the commission
45 without the certificate executed within the time prescribed in
46 section 106. The commission shall actively assist the employee
47 in the timely completion and submission of a certificate of
48 authorization when necessary.

49
50

2 An employer may request that an employee execute a certificate of
3 authorization by certified mail, return receipt requested. If
4 any employee fails to execute such-a the certificate within 20
5 days after receiving a the request made-by-certified-mail,-return
6 receipt-requested:

7 A. As to any employee who is making a claim for
8 compensation, any action on the employee's claim shall must
9 be suspended, without interest under section 72, until the
10 certificate is executed; and

11 B. As to any employee who is receiving compensation or who
12 has entered into an agreement for the payment of
13 compensation, payment of compensation shall must be
14 suspended until the certificate is executed.

15 The date on a returned receipt of delivery is prima facie
16 evidence of the employee's receipt of the request on that date.
17 The request must contain a notice to the employee that if he the
18 employee fails to execute the certificate within 20 days after
19 receiving the request, any action on his the claim for
20 compensation will be suspended or his compensation will be
21 suspended.

22
23 **2. Duties of health care providers.** ~~Upon payment of a~~
24 ~~reasonable fee, all written information which relates to an~~
25 ~~injury or disease for which compensation is claimed shall, within~~
26 ~~10 days after written request by the employer or the employee, be~~
27 ~~made available to the party making the request. In the case of a~~
28 ~~request by the employer, the request shall be accompanied by a~~
29 ~~copy of a certificate of authorization as described in subsection~~
30 ~~1.~~ Any health care provider treating an employee for a personal
31 injury that may be compensable under this Act shall submit an
32 initial report of treatment and injury to the employer and the
33 employer's carrier, if the employer is insured, within 5 working
34 days of the first treatment of the employee, if the employee
35 agrees to release the information to the employer and the
36 carrier. If the employee does not agree to release the
37 information, the provider shall submit the initial report within
38 5 working days after written request by the employer accompanied
39 by a certificate of authorization described in subsection 1. The
40 provider shall submit to the employer and the carrier a final
41 report of treatment within 10 working days of the termination of
42 treatment, except that only an initial report must be submitted
43 if the provider treated the employee on a single occasion. The
44 provider shall make additional records or information available
45 to any party within 10 days after a written request.

46
47 The provider shall submit the initial report and final report on
48 forms prescribed by the commission. A provider may also submit
49

2 notes, office charts or other records, but this documentation may
3 not be submitted in lieu of the reports required by this
4 subsection.

5 The commission shall prescribe forms for use in making the
6 reports required by this subsection. The initial report of
7 treatment and injury must, at a minimum, contain a preliminary
8 diagnosis; evaluations of the employee's ability to return to
9 work and what limitations to work capacity are present; and an
10 evaluation of whether the injury appears to be work-related.

11 The provider may not charge the employer or carrier an amount in
12 excess of the fees prescribed by the commission pursuant to
13 section 52-B for the submission of reports prescribed by this
14 section and for the submission of any additional records. An
15 insurer or self-insurer may withhold payment of fees for the
16 submission of reports of treatment required by this section to
17 any provider who fails to submit the reports on the forms
18 prescribed by the commission and within the time limits
19 provided. The insurer or self-insurer is not required to file a
20 notice of controversy under these circumstances, but must notify
21 the provider that payment is being withheld due to the failure to
22 use prescribed forms or to submit the reports in a timely
23 fashion. In the case of dispute, any interested party may
24 petition the commission to resolve the dispute.

25 Sec. 43. 39 MRSA §52-B, sub-§2, as enacted by PL 1987, c. 559,
26 Pt. B, §22, is amended to read:

27 2. Depositions or hearings. Various fees for preparation
28 of materials, including reports of treatment required by section
29 52-A, subsection 2, or attendance at depositions or hearings as
30 may be required under this Act.

31 Sec. 44. 39 MRSA §52-B, as enacted by PL 1987, c. 559, Pt. B,
32 §22, is amended by adding at the end a new paragraph to read:

33 In order to qualify for reimbursement for health care
34 services provided to employees under this Title, health care
35 providers providing individual health care services and courses
36 of treatment may not charge more for the services or courses of
37 treatment for the employee than is charged to private 3rd-party
38 payors for similar services or courses of treatment.

39 Sec. 45. 39 MRSA §52-C is enacted to read:

40 §52-C. Restriction on reimbursement for health care providers

41 To qualify for reimbursement for health care services
42 provided after October 31, 1995, to employees under this Title,
43

2 health care providers providing individual health care services
3 and courses of treatment must have successfully completed the
4 Occupational Health Training Program established in section 83-A.

6 Sec. 46. 39 MRSA §52-D is enacted to read:

8 §52-D. Medical utilization review

10 In order to ensure quality treatment for injured employees
11 and to provide reasonable and proper health care services, the
12 commission shall develop and implement a system of medical
13 utilization review consistent with the requirements of this
14 section.

16 1. List of providers. The commission shall create and
17 maintain a list of health care providers experienced and
18 competent in the treatment of work-related injuries to serve on
19 review panels from each of the medical fields that the commission
20 finds most commonly used by injured employees.

22 2. Request for review. A commissioner, employee, employer
23 or insurer may request a medical utilization review of services
24 rendered by a health care provider when the treatment or proposed
25 treatment of an employee raises any of the following issues:

26 A. Whether treatment or proposed treatment is excessive,
27 unreasonable or improper;

28 B. Whether the services rendered are inadequate with
29 respect to either the level or quality of care;

30 C. Whether fees charged by a provider are in excess of the
31 medical fee schedule under section 52-B;

32 D. Whether a provider charged more for services provided to
33 an employee under this Act than charged for services to a
34 private 3rd-party payor in violation of section 52-B; or

35 E. Whether a proposed surgical procedure is reasonable and
36 necessary to the proper treatment of an employee.

37 The issues that may be presented to a review panel may be
38 expanded through rulemaking by the commission.

39 3. Notice of review; appointment. An employee, employer or
40 insurer may initiate the medical utilization review process by
41 submitting to the commission, the other parties and the provider
42 whose treatment will be reviewed, a request on forms prescribed
43 by the commission. Within 15 days after a request for medical
44 utilization review has been submitted, the chair shall appoint a
45 review panel.

2 panel of up to 3 providers to perform the review and notify the
3 parties and the provider whose treatment will be reviewed of the
4 appointment. Members of the panel may not have any prior
5 knowledge of the case or have examined the employee at an earlier
6 time in connection with the case.

7 4. Review process. When the parties are notified that a
8 panel has been appointed, all parties shall immediately supply
9 copies of any medical reports or statements relating to the
10 treatment under review to the panel. Upon request of the panel,
11 the provider shall submit any additional medical records or
12 information within 3 working days of the panel's request. The
13 panel shall convene and review medical information and records
14 regarding the services that are the subject of the review. The
15 panel may interview and examine the employee, or order the
16 performing of additional medical tests if necessary to the
17 panel's decision.

18 5. Examination. If determined necessary by the panel, the
19 employee shall submit to an examination by a member of the panel
20 at any reasonable time during the review process. The rights of
21 an employee with respect to examinations and penalties as
22 described in section 65 are applicable to this section.

23 6. Findings. The panel shall submit its findings and
24 recommendations to the parties, the provider and the commission
25 within 30 days from the appointment of the panel. The findings
26 and recommendation of the panel must be prepared in a form and
27 manner prescribed by the commission. The panel may make
28 recommendations appropriate to the issue that is the subject of
29 the review, including but not limited to:

30 A. That a provider be paid or not be paid for services that
31 were inappropriate, unreasonable or excessive;

32 B. That a provider be partially paid for services charged
33 in excess of the medical fee schedule;

34 C. That a provider be partially paid for services provided
35 to an employee under this Act that exceeded the provider's
36 charge for services to a private 3rd-party payor in
37 violation of section 52-B;

38 D. That a provider reimburse an employer or insurer for
39 services that were paid for and are found to be
40 inappropriate, unreasonable or excessive; or

41 E. That a proposed surgical procedure is not reasonable and
42 necessary to the proper treatment of an employee.

2 7. Petition. Any employee, employer, insurer or provider
4 that seeks to implement the recommendations of the medical panel
6 or that seeks resolution of a dispute related to the treatment
8 under review may file a petition with the commission. The
10 findings and recommendations of the medical panel may be used as
12 evidence at any commission proceeding relating to the medical
14 treatment reviewed by the panel.

16 8. Penalties. If the chair finds from a review of the
18 findings of medical panels that a provider has demonstrated a
20 pattern of overcharging for services or of rendering services
22 that are inappropriate, unreasonable or excessive, the chair
24 shall provide the licensing board of the provider with full
26 documentation of this determination. The chair may assess, after
28 hearing, civil penalties as provided in section 113, subsection 2
30 upon a finding that a provider has willfully overcharged for
32 services or willfully rendered services that are inappropriate,
34 unreasonable or excessive.

36 9. Costs. The party requesting the review shall pay the
38 costs of the review. The commission shall establish a reasonable
40 per diem to be paid to panel members and set a maximum charge for
42 other expenses the commission finds necessary for the review
44 process.

46 10. Rules. The commission shall adopt rules pursuant to
48 Title 5, chapter 375 to carry out the purposes of this section.
50 In establishing these rules, the commission shall consult with
 organizations knowledgeable about health care utilization and
 cost containment, including health care providers and insurers
 that have implemented utilization review.

 Sec. 47. 39 MRSA §53-C is enacted to read:

§53-C. Effect of volunteer service

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

 Sec. 48. 39 MRSA §54-B, sub-§§2 and 3, as enacted by PL 1987,
 c. 559, Pt. B, §27, are amended to read:

2. Limitation. Any employee who has--reached--maximum
 medical-improvement-and is able to perform full-time remunerative
 work that is available in the ordinary competitive labor market

2 ~~in the State, regardless of the availability of such work in and~~
3 ~~around his community, within a reasonable commuting distance from~~
4 ~~the employee's residence is not eligible for compensation under~~
5 ~~this section, but may be eligible for compensation under section~~
6 ~~55-B. Reasonable moving and relocation expenses for employees~~
7 ~~who are retrained or rehabilitated under this Act are available~~
8 ~~as provided in section 87, subsection 2. In determining the~~
9 ~~availability of work for purposes of this section, the employee~~
10 ~~has the initial burden of conducting a work search within the~~
11 ~~employee's community. If the results of that work search~~
12 ~~demonstrate that no work is available to that employee within the~~
13 ~~community, the employer has the burden of showing that work is~~
14 ~~available to the employee within a reasonable commuting~~
15 ~~distance. In determining whether the commuting distance is~~
16 ~~reasonable, the commission must consider the cost of commuting,~~
17 ~~the net wages of the prospective employment and the limitations~~
18 ~~on the employee's ability to commute, if any, due to the work~~
19 ~~injury. The commission may not find that commuting over 100~~
20 ~~miles one-way is reasonable.~~

21 3. **Presumption.** For the purposes of this Act, in the
22 following cases, it is conclusively presumed that the injury
23 resulted in permanent total incapacity ~~and that the employee is~~
24 ~~unable to perform full-time remunerative work in the ordinary~~
25 ~~competitive labor market in the State~~ if the injury caused:

- 26 A. The total and irrevocable loss of sight of both eyes;
27
28 B. The loss of both hands at or above the wrist;
29
30 C. The loss of both feet at or above the ankle;
31
32 D. The loss of one hand and one foot;
33
34 E. An injury to the spine resulting in permanent and
35 complete paralysis of the arms or legs; or
36
37 F. An injury to the skull resulting in incurable imbecility
38 or insanity.

39 **Sec. 49.** 39 MRSA §55-B, first ¶, as enacted by PL 1987, c. 559,
40 Pt. B, §30, is amended to read:

41 While the incapacity for work resulting from the injury is
42 partial, the employer shall pay the injured employee a weekly
43 compensation equal to 2/3 the difference, due to the injury,
44 between ~~his~~ the employee's average gross weekly wages, ~~earning~~
45 earnings or salary before the injury and the weekly wages,
46 ~~earnings or salary which he~~ that the employee is able to earn
47 after the injury, but not more than the maximum benefit under

2 section 53-B. ~~Payments under this section shall not continue for~~
3 ~~longer than 400 weeks after maximum medical improvement. An~~
4 ~~employee is not eligible to receive compensation under this~~
5 ~~section after the employee has received 520 weeks of compensation~~
6 ~~under section 54-B, this section or both sections.~~

7
8 **Sec. 50. 39 MRSA §57**, as amended by PL 1985, c. 372, Pt. A,
9 §22, is repealed.

10 **Sec. 51. 39 MRSA §57-B, sub-§13**, as enacted by PL 1985, c.
11 372, Pt. A, §23, is amended to read:

12
13 **13. Applicability.** Reimbursement under this section is
14 available solely with respect to employees who are injured and
15 rehabilitated after the effective date of this section. If
16 reimbursement is available from the Employment Rehabilitation
17 Fund under this section, reimbursement shall may not be available
18 ~~from the Second Injury Fund~~ under section 57 57-D.

19 **Sec. 52. 39 MRSA §57-C, sub-§3**, as enacted by PL 1985, c. 372,
20 Pt. A, §23, is amended to read:

21
22 **3. Assessment waived.** If, at the end of a calendar
23 quarter, the amount of deposit in the Employment Rehabilitation
24 Fund, in that portion attributable to this section, is equal to
25 or exceeds the amount derived from the last assessment, the
26 assessment for that quarter shall must be waived and not levied
27 or imposed.

28
29
30 **A.** The Treasurer of State shall notify the State Tax
31 Assessor on the day after the end of the calendar quarter,
32 if the fund equals or exceeds that amount.

33 **B.** If so notified, the State Tax Assessor shall immediately
34 notify each insurer that the assessment is waived for that
35 quarter.

36
37 **Sec. 53. 39 MRSA §57-D** is enacted to read:

38
39 **§57-D. Permanent total incapacity due partly to prior injury**

40
41 **1. Payment for second injuries.** If an employee who has a
42 permanent impairment from any cause or origin that is, or is
43 likely to be, a hindrance or obstacle to employment, sustains a
44 personal injury arising out of and in the course of employment
45 that, in combination with the earlier preexisting impairment
46 results in total permanent incapacity, the employer or the
47 employer's insurance carrier is liable for all compensation
48 provided by this section. The employer or insurance carrier must

2 be reimbursed from the Employment Rehabilitation Fund for
3 compensation payments not attributable to the second injury.

4 2. Permanent impairment. As used in this section,
5 "permanent impairment" means any permanent physical or mental
6 condition, whether congenital or due to injury or disease, of
7 such seriousness as to constitute a hindrance or obstacle to
8 obtaining employment or to obtaining reemployment if the employee
9 should become unemployed.

10
11 3. Employer knowledge. In order to qualify under this
12 section for reimbursement from the Employment Rehabilitation
13 Fund, the employer must establish that the employer had knowledge
14 of the permanent impairment at the time that the employee was
15 hired or at the time the employee was retained in employment
16 after the employer acquired that knowledge.

17 4. Jurisdiction. The Workers' Compensation Commission has
18 jurisdiction over all claims brought by employers or insurance
19 carriers against the Employment Rehabilitation Fund. The
20 Employment Rehabilitation Fund may not be bound as to any
21 question of law or fact by reason of any award or any
22 adjudication to which it was not a party or in relation to which
23 it was not notified, at least 3 weeks prior to the award or
24 adjudication, that it might be subject to liability for the
25 injury or death. An employer or its insurance carrier shall
26 notify the Workers' Compensation Commission of any possible claim
27 against the Employment Rehabilitation Fund as soon as
28 practicable, but in no event later than 3 years after the injury
29 or death.

30
31 5. Legal representation. The Attorney General shall
32 provide legal representation for any claim made under this
33 section. The reasonable expenses of prosecution or defense by
34 the Attorney General of claims against the Employment
35 Rehabilitation Fund, subject to the approval of the Workers'
36 Compensation Commission, are payable out of the Employment
37 Rehabilitation Fund. The Attorney General may not defend the
38 Employment Rehabilitation Fund against any claim brought by the
39 State. The Workers' Compensation Commission is authorized to
40 hire, using funds from the Employment Rehabilitation Fund,
41 private counsel to defend any claim brought against the
42 Employment Rehabilitation Fund by the State.

43
44 6. Contributions to Employment Rehabilitation Fund. In
45 every case of the death of any employee where there is no person
46 entitled to compensation, the employer shall pay to the Treasurer
47 of State a sum equal to 100 times the average weekly wage in the
48 State as computed by the Employment Security Commission for
49 benefit of the Employment Rehabilitation Fund in that portion of
50

2 the fund attributable to a death under this section. The chair
3 of the Workers' Compensation Commission shall direct the
4 distribution thereof in a manner consistent with this section.

5 All money in the Second Injury Fund upon the effective date of
6 this section must be deposited with the Treasurer of State as
7 part of the Employment Rehabilitation Fund.

8
9 7. Transitional eligibility. Employers and insurance
10 carriers that were eligible for or were receiving reimbursement
11 under the Second Injury Fund are eligible for reimbursement under
12 this section.

13 8. Applicability. This section does not apply to cases in
14 which reimbursement is available from the Employment
15 Rehabilitation Fund under section 57-B.

16
17 **Sec. 54. 39 MRSA §57-E is enacted to read:**

18
19 **§57-E. Contribution from employers; transfer from Second Injury**
20 **Fund**

21
22 In every case of the death of an employee where there is no
23 person entitled to compensation, the employer shall pay to the
24 Treasurer of State a sum equal to 100 times the average weekly
25 wage in the State as computed by the Employment Security
26 Commission for benefit of the Employment Rehabilitation Fund.

27
28 When the chair of the commission determines that the Second
29 Injury Fund established pursuant to former section 57 is no
30 longer required for payments to employers or insurance carriers,
31 the chair shall direct that the Treasurer of State transfer the
32 balance in the account to the Employment Rehabilitation Fund and
33 the Treasurer of State shall deposit the balance to the
34 Employment Rehabilitation Fund.

35
36 **Sec. 55. 39 MRSA §65, 2nd ¶, as repealed and replaced by PL**
37 **1965, c. 408, §8, is amended to read:**

38
39 The commission or any commissioner may at any time after the
40 injury appoint a competent and impartial physician or surgeon to
41 act as medical examiner, the reasonable fees of whom shall be
42 fixed by the commission. Upon order of the commission or any
43 commissioner, the fee for the examination must be paid by the
44 employer. Such medical examiner, after being furnished with such
45 information in regard to the matter as may be deemed essential
46 for the purpose, shall thereupon and as often as the commission
47 or the said commissioner may direct, examine such injured
48 employee in order to determine the nature, extent and probable
49 duration of the injury, or the percentage of permanent
50

2 impairment. ~~He~~ The medical examiner shall file in the office of
3 the commission a report of every such examination, and a copy
4 thereof shall must be sent to each of the interested parties, who
5 upon request therefor shall must be given the opportunity at a
6 hearing, before decree is rendered, to question said impartial
7 examiner as to any matter included in such report.

8 **Sec. 56.** ~~39~~ MRSA §65, 4th ¶, as repealed and replaced by PL
9 1965, c. 408, §8, is amended to read:

10 If any employee refuses or neglects to submit himself to any
11 reasonable examination provided for in this Act, or in any way
12 obstructs any such examination, or if he the employee declines a
13 service which that the employer is required to provide under this
14 Act, then, upon the filing of a petition of-said by the employer
15 ~~and hearing before the commission pursuant to section 100 or upon~~
16 the filing of a certificate by the employer pursuant to section
17 99-D, such employee's rights to compensation shall--be are
18 forfeited during the period of said infractions if the commission
19 finds that there is adequate cause to do so.

22 **Sec. 57.** ~~39~~ MRSA §66-A, sub-§3, as amended by PL 1989, c. 388,
23 is further amended to read:

24 **3. Time period; discrimination prohibited.** The employer's
25 obligation to reinstate the employee continues until one year, or
26 2 3 years if the employer has over 250 20 employees, after the
27 ~~employee has reached the stage of maximum medical improvement in~~
28 ~~the judgment of the commission~~ date of the injury. An employer
29 who reinstates an employee under this section may not
30 subsequently discriminate against that employee in any employment
31 decision, including decisions related to tenure, promotion,
32 transfer or reemployment following a layoff, because of the
33 employee's assertion of a claim or right under this Act. Nothing
34 in this subsection may be construed to limit any protection
35 offered to an employee by--~~section-111~~ under the Maine Human
36 Rights Act.

38 **Sec. 58.** ~~39~~ MRSA §66-A, sub-§4, as enacted by PL 1987, c. 559,
39 Pt. B, §35, is repealed.

42 **Sec. 59.** ~~39~~ MRSA §66-B is enacted to read:

44 **§66-B. Light-duty work pools**

46 Employers may form light-duty work pools for the purpose of
47 encouraging the return to work of injured employees.

48 **Sec. 60.** ~~39~~ MRSA §71-A, sub-§2, ¶C, as enacted by PL 1987, c.
50 559, Pt. B, §37, is amended to read:

2 C. The employee's post-injury earnings and prospects,
3 considering all means of support, including the projected
4 income and financial security resulting from proposed
5 employment, self-employment, any business venture or
6 investment and the prudence of consulting with a financial
7 or other expert to review the likelihood of success of such
8 projects; and

10 Sec. 61. 39 MRSA §71-A, sub-§2, ¶D, as enacted by PL 1989, c.
11 502, Pt. A, §150, is repealed and the following enacted in its
12 place:

14 D. The ages of the employee and of the employee's
15 dependents and the potential effect of the settlement upon
16 the dependents' support;

18 Sec. 62. 39 MRSA §71-A, sub-§2, ¶¶F, G and H are enacted to
19 read:

20 F. The need or desirability of providing for a structured
21 payment of all or part of the lump sum settlement, including
22 the possible purchase of an annuity or the withholding of
23 funds by the employer contingent upon the employee incurring
24 future medical expenses;

26 G. The need or desirability of providing for the payment of
27 rehabilitation, retraining or education expenses as part of
28 the lump sum settlement; and

30 H. Any other information that would bear upon whether the
31 settlement is in the employee's best interest.

34 Sec. 63. 39 MRSA §71-A, sub-§3, as enacted by PL 1987, c. 559,
35 Pt. B, §37, is amended to read:

36
37 3. Approval. A commissioner may not approve any lump sum
38 settlement unless he the commissioner finds the settlement to be
39 in the employee's best interest in light of the factors reviewed
40 with the employee under subsection 2. In addition, a commissioner
41 may not approve a lump sum settlement which that requires the
42 release of an employer's liability for future medical expenses of
43 the employee unless the parties would be unlikely to reach
44 agreement on the amount of the lump sum payment without the
45 release of liability for future medical expenses. A commissioner
46 may not approve a lump sum settlement involving a single payment
47 unless the commissioner finds that method of payment to be
48 justified by the particular circumstances of the case, including
49 the size of the settlement, expenses associated with a planned
50 business venture, the necessitous financial condition of the

2 employee or the employee's dependents, or other factors
3 indicating that a single payment is in the employee's best
4 interest. A commissioner may require as a condition of approval
5 that a proposed settlement be altered to ensure that the
6 settlement is in the employee's best interests in consideration
7 of any factor considered under subsection 2.

8 **Sec. 64. 39 MRSA §71-A, sub-§4 is enacted to read:**

10 4. Employer notification. If the employer is insured, the
11 employer's carrier shall advise the employer of the terms of the
12 proposed lump sum settlement prior to the review.

14 **Sec. 65. 39 MRSA §72, as amended by PL 1981, c. 291, §1, is**
15 **further amended to read:**

16 **§72. Interest on awards**

18
19 Upon each award of the Workers' Compensation Commission,
20 interest shall ~~must~~ be assessed from the date on which the
21 petition is filed at a rate of 6% ~~8%~~ per year, ~~provided~~ except
22 that if the prevailing party at any time requests and obtains a
23 continuance for a period in excess of 30 days interest will be
24 suspended for the duration of the continuance. From and after the
25 date of the decree, interest shall-be is allowed at the rate of
26 10% 15% per year. Payment of any interest allowed after the date
27 of the decree is not an element of loss for the purpose of
28 establishing rates for workers' compensation insurance. This
29 section shall must be enforced by the Workers' Compensation
30 Commission.

32 **Sec. 66. 39 MRSA §82, sub-§3, ¶D, as enacted by PL 1985, c.**
33 **372, Pt. A, §29, is amended to read:**

34
35 D. The administrator shall assist the ~~chairman~~ chair in
36 developing rules under section 92, subsection 1, regarding
37 rehabilitation, including, but not limited to, rules
38 governing minimum standards for providers of rehabilitation
39 services, the types of services each category of provider is
40 qualified to provide and procedures for rehabilitation cases.

42 The minimum standards for approved providers of
43 rehabilitation services must include a combination of
44 medical and employment rehabilitation education and
45 experience and are governed by the following requirements.

46
47 (1) The standards must separately consider the
48 providers of the 3 employment rehabilitation services:

2 (a) Evaluations of suitability for employment
rehabilitation;

4 (b) Development of a plan for employment
rehabilitation; and

6 (c) Implementation of the employment
8 rehabilitation plan.

10 (2) The standards must include minimum levels of
12 success in the completion by the employee of the
14 rehabilitation plan in placement in suitable employment
as similar as possible to the employee's regular
employment at a wage as close as possible to the
16 employee's wage at the time of injury.

18 **Sec. 67. 39 MRSA §82, sub-§3, ¶F, as enacted by PL 1985, c.**
372, Pt. A, §29, is amended to read:

20 **F. The administrator shall develop fee schedules for**
22 **providers of rehabilitation services, listing the maximum**
24 **allowable fees for testing, evaluations of suitability,**
development of rehabilitation plans and other rehabilitation
services.

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

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

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

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

44 **Sec. 68. 39 MRSA §83, sub-§1, as enacted by PL 1985, c. 372,**
Pt. A, §29, is amended to read:

46 **1. Reports. Within 120 90 days following an injury which**
48 **that gives rise to a claim under this Act, or within 120 90 days**
following the first day of a subsequent period of incapacity due
50 **to that injury, where when an employee has not returned to his**

2 the employee's previous employment, the employer shall submit a
report to the administrator to assist in the early identification
4 of those employees who may need rehabilitation to achieve job
placement.

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

12 B. The report shall must be forwarded to the administrator
and a copy provided to the employee.

14 C. If the employer is unable to determine whether the
16 employee is likely to return to his the employee's previous
employment, the employer shall include in the report a date
18 by which he the employer expects this determination to be
made and the basis for selecting that date.

20 D. If the employer reports that the employee is likely to
22 return to his the employee's previous employment, the
employer shall include in the report the date by which he
24 the employer expects the employee to return to work and the
basis for selecting that date.

26 E. ~~In either instance, the~~ The employer shall file a
28 supplemental report under this subsection on or before ~~that~~
the date selected in paragraph C or D unless the
30 administrator requires otherwise.

32 Sec. 69. 39 MRSA §83, sub-§2, ¶D, as enacted by PL 1989, c.
580, §9, is amended to read:

34 D. The provider shall evaluate the employee's suitability
36 for rehabilitation under this subchapter. Ne An employee
may not be found to be suitable unless the following
38 findings are made by the provider:

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

42 (2) The employee's treating physician certifies that
44 some reasonable assessment of the employee's residual
functioning capacities can be made. An employee who is
46 found not to be suitable for rehabilitation because of
a failure to meet the criteria of this subparagraph may
48 be reevaluated at a later date when those criteria can
be met;

50

2 (3) The employee's former employer certifies that the
3 employer is unlikely to return the employee to the
4 employee's former employment position without
5 rehabilitation services or the rehabilitation provider
6 has made reasonable efforts to obtain this
7 certification without response from the employer; and

8 (4) The employee is unlikely to return to suitable
9 employment without the provision of rehabilitation
10 services; ~~and.~~

12 ~~(5) No litigation is pending concerning the
13 compensability of the employee's injury or benefits or
14 compensation due to the employee under this Act.~~

16 ~~An employee who is found not to be suitable for
17 rehabilitation because of a failure to meet the criteria of
18 subparagraph (2) or (5), may be reevaluated at a later date
19 when these criteria can be met.~~

20 **Sec. 70. 39 MRSA §83, sub-§3, ¶D is enacted to read:**

22 D. The plan must consider the relative costs of proposed
23 services to the employer. In no case may a plan last longer
24 than 2 years nor cost more than \$5,000 without demonstration
25 of special and unusual circumstances in that case.

28 **Sec. 71. 39 MRSA §83, sub-§9 is enacted to read:**

30 9. Pending litigation. If litigation is pending concerning
31 the compensability of the employee's injury or benefits or
32 compensation due to the employee under this Act, the employee is
33 eligible for evaluation of suitability, development of a plan and
34 implementation of a plan. If a determination is made by the
35 commission that the employee is not eligible for compensation or
36 benefits under this Act, the employer must be reimbursed from the
37 Employment Rehabilitation Fund for any amount paid by the
38 employer for employment rehabilitation for the employee.

40 **Sec. 72. 39 MRSA §83-A is enacted to read:**

42 **§83-A. Early evaluation screening**

44 The administrator shall adopt rules establishing criteria
45 for early evaluation screening to identify disabilities
46 appropriate for early screening and early entry into employment
47 rehabilitation. In developing the rules and in reviewing them
48 periodically, the administrator shall convene a temporary panel
49 of medical, vocational and rehabilitation experts.

50

2 The temporary panel of medical, vocational and
3 rehabilitation experts shall also do the following:

4 1. Occupational health training program. Develop a
5 short-term occupational health training program that concentrates
6 on workplace evaluation and modification to be provided by
7 physicians who are board certified in occupational medicine; and

8 2. Medical management services. Identify those
9 occupational illnesses and injuries that would benefit from
10 provision of medical management services by an approved
11 rehabilitation provider prior to beginning employment
12 rehabilitation under this Title.

13 **Sec. 73. 39 MRSA §84, sub-§1, as enacted by PL 1985, c. 372,**
14 **Pt. A, §29, is amended to read:**

15 **1. Applicability.** This section applies to all employers in
16 the State which ~~that maintain, on January 1, 1986,~~ a certified
17 rehabilitation counselor on premises to provide rehabilitation
18 services that meet the requirements of this subchapter. These
19 services must be provided only to their own employees.

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

25 **Sec. 74. 39 MRSA §85, sub-§1, as amended by PL 1989, c. 580,**
26 **§11, is further amended to read:**

27 **1. Order of evaluation.** When a compensable injury exists
28 and the employee has requested employment rehabilitation upon
29 referral by the treating physician or occupational health center,
30 when the employee meets the screening criteria for early
31 evaluation for employment rehabilitation or when the report
32 required under section 83, subsection 1, indicates that the
33 employee is not likely to return to the employee's previous
34 employment, the administrator shall order an evaluation of the
35 suitability of rehabilitation for the employee. If the parties
36 agree to an evaluation, the order is deemed to have been made by
37 the administrator unless notice to the contrary is received by
38 the parties within 14 days after written notice of the agreement
39 is sent to the administrator.

40 **Sec. 75. 39 MRSA §85, sub-§2-A, ¶F, as enacted by PL 1989, c.**
41 **580, §11, is repealed.**

42 **Sec. 76. 39 MRSA §85, sub-§4-A, ¶B is enacted to read:**

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

6
7 **Sec. 77. 39 MRSA §92, sub-§10 is enacted to read:**

8
9 10. Information. The commission shall maintain a toll-free
10 telephone number to enable employees and employers to obtain
11 information from the commission.

12
13 **Sec. 78. 39 MRSA §94-A, sub-§1-A is enacted to read:**

14
15 1-A. Notice to employer. The commission shall notify an
16 employer when an informal conference or formal hearing is
17 scheduled, when a notice of settlement is filed and when any
18 other proceeding regarding a claim of an employee of that
19 employer is scheduled.

20
21 **Sec. 79. 39 MRSA §94-B, sub-§3, as amended by PL 1987, c. 559,**
22 **Pt. B, §40, is further amended by adding a new 3rd blocked**
23 **paragraph to read:**

24
25 The employer or representative of the employer who attends the
26 informal conference must be familiar with the employee's claim
27 and must have full authority to make decisions regarding the
28 claim. The commissioner may order appropriate sanctions against
29 any person who violates the requirement of this paragraph. If a
30 representative of the employer attends the informal conference or
31 any other proceeding of the commission, the representative shall
32 notify the employer of all actions by the representative on
33 behalf of the employer and any other actions at the proceeding.

34
35 **Sec. 80. 39 MRSA §94-B, sub-§3-A is enacted to read:**

36
37 3-A. Agreement for provisional payments. The commissioner
38 shall ascertain whether the parties can agree to provisional
39 payments of compensation for incapacity under section 54-B or
40 55-B in the event that the parties fail to reach a resolution
41 during the conference. Any agreement to provide provisional
42 payments must contain the date upon which payments are to begin,
43 which must be no later than 14 days following the conference.
44 Provisional payments must continue to be paid up to the time of
45 the commissioner's final order in the matter, unless the employer
46 files a petition to suspend or decrease payments pursuant to
47 section 100 or unless the employer discontinues or reduces
48 benefits pursuant to section 99-D. The parties may agree to
49 provisional payments in any weekly amount. The commissioner need
50 not concur in the agreement for provisional payments.

2 The commissioner shall reduce to writing any agreement for
4 provisional payments upon forms prescribed by the commission, and
6 both parties shall sign the agreement at the conference. The
8 commissioner or the employee assistant shall advise the employee
prior to signing the agreement of the employer's obligations
under the agreement, the temporary nature of provisional
payments, and that the payments are not an acceptance of the
claim by the employer.

10 The commissioner shall advise the parties that if an agreement
12 for provisional payments is not reached and a petition is filed
14 following the conference, the matter will be set for an expedited
hearing as provided for in section 98.

16 In the event that a petition is filed by any party following the
18 conference, the employer shall begin making provisional payments
20 as agreed by the parties. Provisional payments are made without
22 prejudice to the employer and may not be considered an acceptance
24 of the claim or an admission of liability. The employer shall
26 receive a credit for all payments made under a provisional
payment agreement against any back benefits owed to an employee
pursuant to a final order. If the final order provides for less
compensation than paid by the employer pursuant to the
provisional payment agreement, the employer is entitled to an
offset for all provisional payments made against any obligations
imposed by final order.

28 Sec. 81. 39 MRSA §98, as repealed and replaced by PL 1983, c.
30 479, §21, is amended by adding at the end a new paragraph to read:

32 The commission shall provide for an expedited process for
34 the scheduling and hearing of all cases in which the parties have
36 not reached an agreement for provisional payment following the
38 informal conference as provided for in section 94-B, subsection
3-A. Insofar as practicable, expedited cases must be set for a
single hearing and take precedence over all other pending cases
for scheduling purposes.

40 Sec. 82. 39 MRSA §98-A is enacted to read:

42 §98-A. Provisional orders for payment

44 Notwithstanding any other provision of this Act, the
46 commission may issue a provisional order requiring that an
48 employer who controverts an employee's claim to compensation
under section 54-B or 55-B pay weekly compensation to that
employee as provided in this section. The commission may issue a
provisional order under this section only if the parties did not

2 reach an agreement for provisional payments under section 94-B,
3 subsection 3-A, or if the parties reached an agreement for
4 provisional payments and the employer did not comply with the
5 terms of the agreement following the informal conference. The
6 order must provide for the amount of the weekly payments and
7 include the date on which payments commence, which may be
8 retroactive.

9
10 1. Requirements for order. The commission may issue a
11 provisional order under this section only when there is a
12 substantial likelihood that the employee will prevail after
13 formal hearing.

14 2. Procedure. A request for a provisional order must be
15 heard at the first hearing for the claim under section 99.

16
17 3. Effect of final decision; employer reimbursement. A
18 provisional order issued under this section is binding until a
19 final decision on the employee's claim is issued under section
20 99. The employer shall receive a credit for all payments made
21 under a provisional order against any back benefits owed to an
22 employee pursuant to a final order. If the final order provides
23 for less compensation than had been paid by an employer under a
24 provisional order, the employer is entitled to an offset for all
25 payments made under a provisional order against any obligations
26 imposed by a final order.

27
28 4. Rules. Pursuant to section 92, the chair of the
29 commission shall adopt rules providing for standards and
30 procedures for determinations made under this section.

31
32 5. Report. The chair of the commission shall provide a
33 report to the joint standing committee of the Legislature having
34 jurisdiction over labor matters by January 1, 1993, describing
35 the effects of this section. The report must include:

36
37 A. The number of cases in which provisional orders were
38 issued and the number of these cases in which the employee
39 did not obtain compensation under a final decision;

40
41 B. The amount of money paid to employees under provisional
42 orders; and

43
44 C. Any other information that the chair considers useful.

45
46 Sec. 83. 39 MRSA §99-D is enacted to read:

47
48 §99-D. Discontinuance or reduction upon return to work

1. Automatic discontinuance. An employer may discontinue an employee's benefits to reflect the employee's receipt of wages, earnings or salary from employment after filing a certificate with the commission that:

A. The employee has returned to work with the employer or another employer and is receiving average weekly wages, earnings or salary in an amount at least equal to the amount necessary to eliminate the employee's right to compensation under this Act;

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

C. The employee's whereabouts are unknown; or

D. The employee refuses to submit to an examination.

An employer filing a certificate under paragraph A must also file appropriate documentation, as determined by rule of the commission, of the employee's employment and wages, earnings or salary. The employee need not sign a discontinuance form for a discontinuance under this subsection to be effective.

2. Automatic reduction. An employer may reduce an employee's benefit to reflect the employee's receipt of wages, earnings or salary from employment after filing a certificate with the commission that includes:

A. A statement that the employee has returned to work with the employer or another employer and is receiving average weekly wages, earnings or salary in an amount at least equal to the amount necessary to reduce the employee's right to compensation under this Act; and

B. Appropriate documentation, as determined by rule of the commission, of the employee's employment and wages, earnings or salary.

3. No petition necessary. An employer may file a certificate under this section for the discontinuance or reduction of benefits regardless of whether a petition for review has been filed under section 100.

4. Employee petition. An employee who believes that benefits have been wrongfully discontinued under this section may file a petition for restoration of compensation under section 100. If the employee establishes that no basis for the discontinuance or reduction existed, or that any disqualifying

2 conditions have been rectified, benefits must be restored
3 retroactively to the date of the discontinuance or reduction, or
4 to the date the disqualifying conditions were rectified.

5 5. Trial work periods. Section 100-B applies to an
6 employee whose benefits are discontinued or reduced under this
7 section.

8
9
10 **Sec. 84. 39 MRSA §100, sub-§4, ¶¶C and D, as enacted by PL**
11 **1987, c. 559, Pt. B, §42, are amended to read:**

12 C. The employer or his the employer's insurance carrier
13 files a certificate with the commission stating that the
14 employee refuses to submit to an examination; ~~er~~

15 D. The employee refuses an offer of reinstatement to a
16 position which that is suitable to his the employee's
17 physical condition or the employee is able to return to work
18 and there is work available, in or near the community in
19 which he the employee resides, which is suitable to his the
20 employee's physical condition.

21
22 (1) If the employee refuses an offer of reinstatement
23 or fails to return to available suitable work, his the
24 employee's benefits shall must be reduced in an amount
25 equal to the difference between the employee's weekly
26 benefit and the benefits he the employee would have
27 been entitled to receive if he the employee had
28 accepted reinstatement or returned to available
29 suitable work.

30
31 (2) Benefits shall may not be suspended or reduced
32 pending hearing under this paragraph unless the
33 employer has provided the employee with written notice
34 that benefits may be suspended or reduced together with
35 any information relied on by the employer to support
36 the proposed suspension or reduction. The employee has
37 20 days, after receiving that notice, to submit to the
38 commission any additional information relating to his
39 the employee's continued entitlement to benefits.

40
41 (3) Benefits shall may not be suspended or reduced
42 pending hearing under this paragraph if the employee
43 shows that, despite a good faith work search, the
44 employee is unable to obtain suitable work.

45
46 (4) Within 30 days after notice to the employee under
47 subparagraph (2), the commission shall enter a
48 provisional order providing for the suspension,
49 reduction or continuation of benefits pending a hearing
50

2 on the petition. The order shall must be based upon the
information submitted by both the employer and the
employee under this section.

4
6 (5) If benefits are suspended or reduced under this
paragraph and the commission, after hearing, reverses
8 the provisional order, either in whole or in part, the
commission shall order a lump sum payment of all
10 benefits withheld together with interest at the rate of
6% a year. The employer shall pay this lump sum within
12 10 days of the order; or

14 Sec. 85. 39 MRSA §100, sub-§4, ¶E is enacted to read:

16 E. The employer has filed a certificate for the automatic
discontinuance or reduction of benefits under section 99-D.

18 Sec. 86. 39 MRSA §100-A, as amended by PL 1989, c. 580, §20,
is repealed.

20 Sec. 87. 39 MRSA §100-B is enacted to read:

22 §100-B. Trial work periods

24 An employee's return to any work, including work other than
26 the employee's preinjury position or work with a different
employer, is governed by this section.

28 1. Trial work period. A trial work period is deemed to
30 exist for the first 45 working days following an employee's
return to any work. During this time and while the employee is
32 receiving payment for the employment:

34 A. The employee's compensation may be reduced to reflect
the wages, earnings or salary received from employment; and

36 B. All obligations under subchapter III-A are suspended.

38 2. Restoration of benefits. Any reduction in the
40 employee's weekly compensation must cease and compensation must
be restored to the amount being paid before the commencement of
42 the trial work period immediately upon the filing of a petition
by the employee stating that:

44 A. The employee has attempted a trial work period and was
46 unable to adequately perform during the period due to the
effects of the employee's prior compensable injury; or

48 B. The employee's employment has been involuntarily
50 terminated or suspended. Within 14 days after filing a

2 petition under paragraph A the employee must provide a
3 report of a health care provider confirming that the
4 employee was unable to perform due to the effects of the
5 employee's prior compensable injury. If this report is not
6 provided to the commission and the employer within this time
7 period, the employee's compensation may be reduced to the
8 amount being paid immediately before the petition was filed
9 and the employee must file a petition for restoration of
10 compensation under section 100.

11 **Sec. 88. 39 MRSA §104-A, sub-§2-A, as enacted by PL 1987, c.**
12 **559, Pt. B, §45, is amended to read:**

13 **2-A. Failure to pay within time limits.** An employer or
14 insurance carrier who fails to pay compensation, as provided in
15 this section, shall must be penalized as provided in this
16 subsection.

17 A. Except as otherwise provided by section 51-B, subsection
18 9, if an employer or insurance carrier fails to pay
19 compensation as provided in this section, the ~~commission~~
20 Superintendent of Insurance shall assess against the
21 employer or insurance carrier a forfeiture of up to \$100
22 \$200 for each day of noncompliance. If the ~~commission~~
23 Superintendent of Insurance finds that the employer or
24 insurance carrier was prevented from complying with this
25 section because of circumstances beyond their control, no
26 forfeiture may be assessed.

27 (1) ~~One-half of the forfeiture shall be paid to the~~
28 ~~employee to whom compensation is due and 1/2 shall be~~
29 ~~paid~~ The forfeiture for each day of noncompliance must
30 be divided as follows: Of each day's forfeiture amount,
31 the first \$50 must be paid to the employee to whom
32 compensation is due and the remainder must be paid to
33 the commission and be credited to the General Fund.

34 (2) If a forfeiture is assessed against any employer
35 or insurance carrier under this subsection on petition
36 by an employee, the employer or insurance carrier shall
37 pay reasonable costs and attorney fees, as determined
38 by the ~~commission~~ Superintendent of Insurance, to the
39 employee.

40 (3) Forfeitures assessed under this subsection may be
41 enforced by the Superior Court in the same manner as
42 provided in section 103-E.

43 B. Payment of any forfeiture assessed under this subsection
44 shall is not be considered an element of loss for the
45

2 purpose of establishing rates for workers' compensation
insurance.

4 Sec. 89. 39 MRSA §104-B, sub-§§2 and 3, as enacted by PL 1981,
c. 474, §4, are amended to read:

6
8 2. **Liability to employee.** If an employee has sustained more
10 than one injury while employed by different employers, or if an
12 employee has sustained more than one injury while employed by the
14 same employer and that employer was insured by one insurer when
the first injury occurred and insured by another insurer when the
16 subsequent injury or injuries occurred, the insurer providing
coverage at the time of the last injury shall--initially-be is
responsible initially to the employee for all benefits payable
under this Act and must make compensation payments promptly as
provided in section 104-A.

18 3. **Subrogation.** Any insurer determined to be liable for
20 benefits under subsection 2 shall--be is subrogated to the
employee's rights under this Act for all benefits the insurer has
22 paid and for which another insurer may be liable. Any such
insurer may, in accordance with rules ~~prescribed~~ adopted by the
24 commission, file a petition for an apportionment of liability
among the responsible insurers. The commission has jurisdiction
26 over all claims for apportionment under this section. In any
proceeding for apportionment, no insurer is bound as to any
28 finding of fact or conclusion of the law made in a prior
proceeding in which it was not a party.

30 Sec. 90. 39 MRSA §104-B, sub-§3-A is enacted to read:

32 3-A. Pro rata apportionment. When the commission
34 determines that the sole issue to be determined on a petition for
apportionment is the apportionment of relative responsibility
36 among liable insurers for a period of incapacity for which each
insurer would otherwise be fully responsible, the commission
38 shall apportion liability pro rata among the insurers based upon
the number of insurers. The commission is not required to
40 apportion liability pro rata if the commission finds that the
amount of compensation due the employee, or future rights of the
employee, would be affected.

42
44 Sec. 91. 39 MRSA §106, sub-§2, as repealed and replaced by PL
1987, c. 559, Pt. B, §46, is repealed and the following enacted
46 in its place:

48 2. Settlements. Settlements are subject to this subsection
as follows.

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

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

34 C. A settlement approved under paragraph A while the
36 injured employee is participating in a rehabilitation plan
38 does not affect the injured employee's rights to complete
 the plan.

40 Sec. 92. 39 MRSA §106, sub-§3, as repealed and replaced by PL
 1987, c. 559, Pt. B, §46, is amended to read:

42 3. Return to employment. Any person receiving compensation
44 under this Act who returns to employment or engages in new
46 employment after his that person's injury shall file a written
48 report of that employment with the commission and his the
50 previous employer within 7 days of his that person's return to
 work. This report shall must include the identity of the
 employee, his the employee's employer and the amount of his
 weekly wages or earnings received or to be received by the
 employee. The commission shall send the employee notice of the

2 employee's responsibility to notify the commission and the
3 employer when the employee returns to work.

4 Sec. 93. 39 MRSA §112-B is enacted to read:

6 §112-B. Use of personal surveillance evidence

8 1. Order required. Prior to employing a private
9 investigator for personal observation or photographic or
10 videotape recording of an injured employee, an employer or
11 insurance carrier must obtain an order from a commissioner of the
12 Workers' Compensation Commission or a judge of the District
13 Court. Prior notice to the employer may be required. Prior
14 notice to the employee may not be required. The order may be
15 issued upon a finding that there are reasonable grounds to
16 believe that the employee is not entitled to workers'
17 compensation benefits as claimed by the employee.

18 2. Restriction on use of information. In proceedings
19 before the Workers' Compensation Commission, information or
20 evidence obtained in violation of this section is inadmissible.

21 3. Notice of cost. If an insurer employs a private
22 investigator pursuant to subsection 1, the insurer must notify
23 the employer every 3 months of all payments for the private
24 investigator.

25 Sec. 94. 39 MRSA c. 1, sub-c. V is enacted to read:

26 SUBCHAPTER V

27 ACCESS TO WORKERS' COMPENSATION RECORDS

28 §115. Definitions

29 As used in this subchapter, unless the context otherwise
30 indicates, the following terms have the following meanings.

31 1. Claims index. "Claims index" means a listing of
32 employees' names and information about their claims with the
33 commission.

34 2. Workers' compensation records. "Workers' compensation
35 records" means any information in the possession or custody of
36 the commission concerning an employee's workplace injury or
37 illness or workers' compensation.

38 §116. Workers' compensation records

2 1. Records open to public. All workers' compensation
3 records are available and open to the public subject to the
4 following:

5 A. Records must be provided in written form with the name
6 of the employee deleted; and

7 B. Before obtaining any records, the person requesting the
8 records must file a written request and must agree in
9 writing not to use or distribute the records for use for any
10 purpose prohibited by law.

11 2. Prohibited acts. The following acts are prohibited.

12 A. A person or entity may not compile for distribution or
13 sell a claims index. Any person or entity found by the
14 commission to have violated this section is subject to the
15 remedies provisions of the Maine Human Rights Act, Title 5,
16 sections 4613 and 4614.

17 B. A person or entity may not use workers' compensation
18 records or information taken from workers' compensation
19 records in any way in the preemployment screening of
20 applicants or in the reemployment job assignment process.

21 Any person or entity that compiles, distributes or sells a claims
22 index and any person or entity that provides that information to
23 persons involved in the employment or reemployment in the job
24 assignment process are jointly and severally liable for any
25 unlawful use of that information.

26 §117. Exception

27 1. Governmental purposes. This subchapter does not
28 prohibit the release of workers' compensation records to state or
29 federal governmental agencies for official governmental purposes.

30 2. Legislative purposes. Workers' compensation records may
31 be released to the Legislature only for public policy purposes
32 and only with the name and identification of the employee deleted.

33 3. Employer purposes. Workers' compensation records of an
34 employee may be released to an employer that has filed a first
35 report of injury regarding that employee. Information regarding
36 prior claims may be released only if the prior injury is related
37 to the present claims.

38 4. Employment rehabilitation purposes. Employment
39 rehabilitation information is governed by section 82, subsection
40 4.

2 5. Deletion of name or identification. Any entity that
3 obtains workers' compensation records under this section must
4 delete the name or identification of the employee before
5 releasing the records or any compilation or arrangement of the
6 information contained in the records.

8 Sec. 95. 39 MRSA c. 1, sub-c. VI is enacted to read:

10 SUBCHAPTER VI

12 MEDICAL COORDINATION

14 §121. Office of Medical Coordination established; rules

16 The Office of Medical Coordination is established to
17 coordinate medical and occupational health services to injured
18 employees to ensure the delivery of appropriate medical and
19 occupational health services, in particular to injured workers
20 participating in rehabilitation under this Title.

22 The chair may adopt rules, subject to section 92, subsection
23 1, to carry out the purposes of this subchapter.

24 §122. Medical Coordinator

26 1. Appointment. The Office of Medical Coordination is
27 maintained under the direction of the Medical Coordinator, in
28 this subchapter referred to as the "coordinator." The chair may
29 appoint and remove the coordinator with the concurrence of the
30 commission. The coordinator shall report to and be directed by
31 the chair and shall carry out the duties assigned to the
32 coordinator in this Act.

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

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

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

46 B. The coordinator shall:

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§251. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Assets. "Assets" means all net premium and investment income and obligations owed to the workers' compensation insurance residual market mechanism for policies written between January 1, 1988 and July 1, 1992 including amounts owed from carriers for poor servicing performance.

2. Board. "Board" means the Board of Directors of the Maine State Insurance Fund.

3. Fund. "Fund" means the Maine Employers' Mutual Insurance Fund created in section 252.

4. Liabilities. "Liabilities" means all losses, expenses and obligations of the workers' compensation insurance residual market mechanism for policies written between January 1, 1988 and July 1, 1992 and all expenses for administering the workers' compensation insurance residual market mechanism, excluding expenses that are the responsibility of servicing carriers paid for through the servicing allowance.

5. Manager. "Manager" means the Manager of the Maine Employers' Mutual Insurance Fund.

6. Workers' compensation insurance residual market mechanism. "Workers' compensation insurance residual market mechanism" means the mechanism pursuant to Title 24-A, section 2366.

§252. Creation; purpose; organization of fund

1. Fund created. The Maine Employers' Mutual Insurance Fund, as established by Title 5, section 12004-F, subsection 16, is created as a nonprofit independent public corporation. The fund must be organized as a domestic mutual insurance company under Title 24-A.

2. Purpose. The fund is established for the purpose of providing workers' compensation insurance to employers of this State at the lowest possible cost and with the highest level of service consistent with reasonable actuarial principles and the financial integrity of the fund.

3. Board. The board consists of 7 members. In addition, the Commissioner of Labor and the manager are ex officio members.

2 A. The initial board is appointed by the Governor and
4 consists of 7 members and the Commissioner of Labor. The
6 Governor shall initially appoint one member for a one-year
8 term, 2 members for a 2-year term, 2 members for a 3-year
10 term and 2 members for a 4-year term.

12 B. As the terms of the initial board members expire,
14 members are appointed by the Governor and chosen by the
16 policyholders each year as follows:

18 (1) The governor shall appoint one member; and

20 (2) If another member's term expires, the
22 policyholders shall choose one member.

24 C. After the terms of the initial board members expire,
26 each board member must represent a policyholder and may be
28 an employee of a policyholder. At least 2 board members
30 must represent private, for-profit enterprises. One of the
32 4 members appointed by the Governor must represent the
34 State. A member of the board may not represent or be an
36 employee of an insurance company.

38 D. Except as provided for initial appointments, each board
40 member shall hold office for a 4-year term or until a
42 successor is appointed and qualified. A vacancy is filled
44 for the remainder of the unexpired term in the same manner
46 as the former board member was selected.

48 E. The board shall annually elect a chair from among its
50 members and any other officers it considers necessary for
 the performance of its duties.

F. Four members constitute a quorum of the board. Business
 may not be acted on without a quorum being present. All
 board decisions must be made by majority vote of the board.
 The board shall set its own compensation, provided that the
 compensation may not exceed \$50 per day and expenses. The
 board shall adopt bylaws and determine the time and place of
 regular meetings and the method for calling special meetings.

4. Fund management. The board has exclusive management and
 control of the fund.

5. Powers and duties of board. The board has full power,
 authority and jurisdiction over the fund.

A. The board may perform all acts necessary or convenient
 in the exercise of any power, authority or jurisdiction over
 the fund, either in the administration of the fund or in

2 connection with the insurance business to be carried on by
3 it under this chapter, as fully and completely as the
4 governing body of a private insurance carrier, to fulfill
5 the purposes of this chapter.

6 B. The board shall discharge its duties with the care,
7 skill, prudence and diligence that a prudent director,
8 acting in a similar capacity, would use in conducting a
9 similar enterprise and purpose.

10 C. The board may appoint investment managers to oversee and
11 manage the transfer of assets into the fund in a manner that
12 will protect the value of those assets and maximize
13 investment income, and to manage, acquire or dispose of any
14 of the assets of the fund. An investment manager may be
15 designated as an investment agent.

16
17
18 (1) An investment manager is any fiduciary designated
19 by the board to manage, acquire or dispose of the
20 assets of the fund. The investment manager shall
21 acknowledge in writing that it is a fiduciary under the
22 fund.

23
24 (2) The board may delegate its investment powers to
25 investment managers of the fund. The purchase or sale
26 of any securities by an investment manager must be in
27 the name selected by the board. The authority of an
28 investment manager to purchase or sell any securities
29 for the fund must be evidenced by written authority
30 executed by the manager.

31
32 (3) The board may enter into agreements with an
33 investment manager setting forth the investment powers
34 and limitations of the investment manager. The
35 investment manager shall keep the board currently
36 informed of the nature and amount of the investments
37 made for the fund by the investment manager. An
38 investment manager is subject to the instructions of
39 the board.

40
41
42 6. Manager. The fund is under the administrative control
43 of the manager appointed by the board under section 255.

44 7. Personal liability excluded. The members of the board
45 and officers or employees of the fund are not liable personally,
46 either jointly or severally, for any debt or obligation created
47 or incurred by the fund.

48 §253. Power to insure
49
50

2 1. Insure workers' compensation liability. The fund may
3 insure an employer only against liability for compensation and
4 benefits under this Title or under the federal Longshore and
5 Harbor Workers' Compensation Act, 33 United States Code, Section
6 901 (1927), as amended.

7 **§254. General powers**

8 1. Powers. For the purpose of exercising the specific
9 powers granted in this chapter and effectuating the other
10 purposes of this chapter, the fund may:

11 A. Sue and be sued;

12 B. Have a seal and alter it at will;

13 C. Make, amend and repeal rules relating to the conduct of
14 the business of the fund;

15 D. Enter into contracts relating to the administration of
16 the fund or claims against employers insured by the fund and
17 for any other purpose consistent with this chapter;

18 E. Rent, lease, buy, pledge, mortgage or sell property in
19 its own name and construct or repair buildings necessary to
20 provide space for its operations;

21 F. Declare a dividend when there is an excess of assets
22 over liabilities and minimum surplus requirements consistent
23 with Title 24-A;

24 G. Pay medical expenses, rehabilitation expenses,
25 compensation due claimants of insured employers, salaries
26 and administrative and other expenses;

27 H. Hire personnel and set salaries and compensation. The
28 state personnel laws do not apply to any of the employees of
29 the fund or to the hiring of those employees. The State
30 Employees Labor Relations Act, Title 26, chapter 9-B, does
31 not apply to the fund and its employees;

32 I. Issue guaranty fund certificates, surplus notes or
33 debentures payable out of surplus, borrow money and agree to
34 pay any rate of return with respect to any guaranty fund
35 certificate, surplus note, debenture or other instrument,
36 calculated in any manner and on such other terms as the
37 board approves; and

38 J. Perform all other functions and exercise all other
39 powers of a domestic mutual insurance company.

2 §255. Manager

4 1. Appointment; qualifications. The board shall appoint
6 the Manager of the Maine State Insurance Fund to be in charge of
8 the day-to-day operation of the fund. The manager must have
10 proven successful experience as an executive at the general
12 management level. The manager is entitled to compensation as set
14 by the board and shall serve at the will of the board.

16 2. Bond. Before assuming the duties of the office, the
18 manager must qualify by giving an official bond in an amount and
20 with sureties approved by the board. The manager shall file the
22 bond with the Secretary of State. The fund must pay the premium
24 for the bond from the account established in section 257.

26 3. Discharge. The manager may be discharged only for
28 cause, after notice and investigation and by a majority vote of
30 the full membership of the board.

32 §256. Manager's power

34 Subject to the authority of the board and the provisions of
36 this chapter, the manager has the powers and duties prescribed in
38 this section.

40 1. Safety inspections; loss control services. The manager
42 shall have safety inspections of risks made and advisory services
44 on safety and health measures furnished to employers to the
46 maximum extent possible, consistent with the financial integrity
48 of the fund. An employer taking action as a result of a safety
50 inspection or advisory services does so at the employer's own
risk. The fund, the manager and any employees of the fund have
no liability in connection with action taken as a result of a
safety inspection or advisory services.

2. Disbursement of funds. The manager may act for the fund
in collecting and disbursing money necessary to administer the
fund and conduct the business of the fund.

3. Abstract summary. The manager shall have an abstract
summary of any audit or survey conducted.

4. Reinsurance. The manager may reinsure all or part of
any risk and may enter into agreements of reinsurance in the same
way and to the same extent as other insurance carriers.

5. General authority. The manager may perform all acts
necessary in the exercise of any power, authority or jurisdiction
over the fund, either in the administration of the fund or in

2 connection with the insurance business to be carried on by the
3 fund under this chapter, including the establishment of premium
4 rates.

6 §257. Account

8 1. State Compensation Account. There is created and
9 established under the jurisdiction and control of the fund a
10 revolving account known as the "State Compensation Account." The
11 account may not lapse. The manager shall deliver all money
12 collected or received under this chapter to the account. The
13 money in the account may be used by the fund in carrying out its
14 purposes under this chapter.

16 2. Property; fund. All premiums and other money paid to
17 the fund, all property and securities acquired through the use of
18 money belonging to the fund, and all interest and dividends
19 earned on money belonging to the fund and deposited or invested
20 by the fund are the sole property of the fund and are used
21 exclusively for the operation and obligations of the fund. The
22 money of the fund is not state money. The property of the fund
23 is not state property.

24 3. Funding. The fund may not receive any state
25 appropriation at any time other than for the purpose of initial
26 capitalization and initial administrative expenses, as provided
27 in section 261.

28 4. Investment of fund money. The board may invest the
29 money in the State Compensation Account in investments permitted
30 by law for a mutual insurance company. When selecting
31 investments, the primary goal of the board is the financial
32 integrity of the fund. When investments of otherwise equal
33 quality exist, the board shall give preference to any investment
34 that provides a direct benefit to the people of this State.

36 §258. Application of state laws

38 The fund is not considered a state agency or other
39 instrumentality of the State for any purpose. The fund is
40 subject to all state laws governing or applying to a private
41 mutual insurance company, including, but not limited to, Title
42 24-A, chapters 5 to 17. The insurance operations of the fund are
43 subject to all those provisions of Title 24-A and of this Title
44 applicable to a private insurance company that writes workers'
45 compensation insurance, including, but not limited to, Title
46 24-A, chapter 25, subchapter II-A. The Superintendent of
47 Insurance has the same powers with respect to the board as the
48 superintendent has with respect to a private workers'
49 compensation insurer under Title 24-A and this Title. The fund
50 is not a state agency or other instrumentality of the State for any purpose.

2 is subject to the same income tax liability as a private mutual
4 insurance company in this State under Title 36, Part 8. The fund
6 is not considered a member insurer and is not eligible for
8 participation in the Maine Insurance Guaranty Association
10 pursuant to Title 24-A, chapter 57, subchapter III.

12 **§259. Private independent insurance agents**

14 Private independent insurance agents licensed to sell
16 workers' compensation insurance in this State may sell insurance
18 coverage for the fund according to rules adopted by the board.
20 The board shall by rule establish a schedule of commissions that
22 the fund will pay for the services of an agent. This section
24 does not prevent the fund from writing insurance coverage for
26 employers without the assistance of private independent insurance
28 agents.

30 **§260. Reports and information**

32 1. Annual report. The manager shall submit an annual
34 report to the Governor and to the Legislature indicating the
36 business done by the fund during the previous year and containing
38 a statement of the resources and liabilities of the fund and any
40 other information considered appropriate by the manager.

42 2. Statistical and actuarial data. The manager shall
44 compile and maintain statistical and actuarial data related to
46 the determination of proper premium rate levels, the incidence of
48 work-related injuries, costs related to those injuries and any
50 other data that the manager considers desirable. The manager
shall provide this data to the Superintendent of Insurance, the
Chair of the Workers' Compensation Commission and the Department
of Labor upon request.

§261. Funding

1. Fund becomes operational upon transfer of funds. The
fund becomes operational only upon the receipt of funds provided
by the transfer of assets from the workers' compensation
insurance residual market mechanism.

2. Funding. Transfer of funds from the workers'
compensation insurance residual market mechanism to the fund must
take place on July 1, 1992 under the following provisions.

A. Effective July 1, 1992, all assets and liabilities of
the workers' compensation insurance residual market
mechanism attributable to policies issued on or after
January 1, 1988 become the property of the fund.

2 B. The workers' compensation insurance residual market
3 mechanism may not incur expenses for administering the
4 mechanism after July 1, 1992.

5 C. All records and reports of the workers' compensation
6 insurance residual market mechanism losses, expenses,
7 premiums, investment income, assessments, performance
8 audits, servicing contracts and policies issued, terminated
9 and renewed must be turned over to the fund on July 1, 1992.

10 3. Transitional administrative funding. If the board
11 determines that transitional administrative funding is required
12 for administrative expenses necessary to begin operation of the
13 fund prior to July 1, 1992, the board may direct the payment of
14 up to \$1,000,000 from the workers' compensation insurance
15 residual market mechanism. The mechanism must make the payment as
16 directed by the board.

17 4. Servicing carrier responsibility. The workers'
18 compensation insurance residual market mechanism shall assign to
19 the fund all servicing contracts and obligations in effect for
20 policies written between January 1, 1988 and July 1, 1992 and has
21 full responsibility for servicing all policies written during
22 that time period.

23 §262. Servicing of Maine Employers' Mutual Insurance Fund
24 policies

25 The servicing of all policies within the fund is governed by
26 the following provisions.

27 1. Policies written after July 1, 1992. The fund has
28 responsibility for managing servicing of fund policies written
29 after July 1, 1992 and may do so through its own staff or by
30 contracting with servicing agents.

31 2. Standards for award. If a servicing contract is
32 utilized, it must be awarded on the basis of acceptable price and
33 performance, giving special consideration to loss control, safety
34 engineering and other factors affecting safety. An outside
35 servicing contract must be awarded on the basis of a competitive
36 bidding process and permit access by the fund to expense, profit
37 and claims-handling information.

38 3. Servicing fees. Servicing fees paid to outside
39 servicing contractors must be determined on a competitive,
40 individual basis and contingent upon acceptable servicing
41 performance, including performance of adjustment services and
42 accident loss ratios.

2 4. Policies written before to July 1, 1992. Servicing
3 carriers for residual market policies written before July 1, 1992
4 have full responsibility to the fund for providing high-quality
5 service on those policies. The fund may monitor servicing
6 carrier performance and may have access to information on
7 servicing carrier expenses and claims adjustment performance.
8 The fund may audit servicing performance.

10 §263. Maine Employers' Mutual Insurance Fund operation

12 1. Participation. Beginning July 1, 1992, the fund has
13 responsibility for managing the workers' compensation insurance
14 residual market mechanism. The fund consists of the Accident
15 Prevention Account and the Safety Pool. The fund is exempt from
16 any budgetary control or supervision by state agencies, except to
17 the extent that insurance companies are supervised or controlled
18 by state agencies.

20 2. Accident Prevention Account; eligibility. Eligibility
21 for insurance from the Accident Prevention Account is as follows.

22 A. The Accident Prevention Account is an insurance plan
23 that provides for the equitable apportionment among insurers
24 of insurance afforded applicants who are entitled to, but
25 are unable to, procure that insurance through ordinary
26 methods because of a demonstrated accident frequency
27 problem, measurably adverse loss ratio over a period of
28 years or a demonstrated attitude of noncompliance with
29 safety requirements.

30 B. An employer is eligible for insurance from the Accident
31 Prevention Account if that employer:

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

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

41 3. Safety Pool; eligibility. Eligibility under the Safety
42 Pool is as follows.

43 A. The Safety Pool is an insurance plan that provides for
44 an alternative source of insurance for employers with good
45 safety records.

2 B. An employer is eligible for the Safety Pool if that
3 employer:

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

7 (2) Has a loss ratio that does not exceed 1.00 over
8 the last 3 years for which data is available; or

9 (3) Has been in business for less than 3 years,
10 provided that the eligibility terminates if the
11 employer's loss ratio exceeds 1.00 at the end of any
12 year.

13 C. A member of the Safety Pool who fails to meet
14 eligibility requirements under paragraph B must be ordered
15 to leave the Safety Pool after notice under section 23,
16 subsection 1.

17 4. Plan of operation. The Superintendent of Insurance shall
18 adopt rules pursuant to Title 5, chapter 375, subchapter II
19 establishing a plan of operation for the fund. The plan of
20 operation must contain performance standards and those additional
21 terms the Superintendent of Insurance determines necessary.

22 A. The plan must include an experience rating system and
23 merit rating plan providing that the premium of each
24 employer in the account is modified either prospectively or
25 retrospectively. An experience modification may be applied
26 only to the manual rate of the plan. The sensitivity of a
27 rating system may vary by size of the risk involved.

28 B. The plan must provide for premium surcharges for
29 employers in the Accident Prevention Account based on their
30 specific loss experience within a specified period or other
31 factors reasonably related to their risk of loss.

32 (1) A premium surcharge may not be applied to a risk
33 whose threshold loss ratio is less than 1.00. The
34 threshold loss ratio is based on the ratio of "L" to
35 "P" when:

36 (a) "L" is the actual incurred losses of a risk
37 during the previous 3-year experience period as
38 reported, except that the largest single loss
39 during the 3-year period is limited to the amount
40 of premium charged for the year in which the loss
41 occurred; and

2 (b) "P" is the premium charged to a risk during
3 that 3-year period.

4
5 (2) Premium surcharges apply to a premium that is
6 experience rating or merit rating modified.

7
8 (3) Premium surcharges are based on an insured's
9 adverse deviation from expected incurred losses in this
10 State. The surcharge is based on the ratio of "A" to
11 "B" when:

12 (a) "A" is the actual incurred losses of a risk
13 during the previous 3-year experience period as
14 reported; and

15 (b) "B" is the expected incurred losses of a risk
16 during that period as calculated under the uniform
17 experience rating or merit rating plan multiplied
18 by the risk's current experience rating or merit
19 rating modification factor.

20
21 (4) The premium surcharge is as follows:

<u>Ratio of "A" to "B"</u>	<u>Surcharge</u>
<u>Less than 1.20</u>	<u>None</u>
<u>1.20 or greater but</u>	
<u>less than 1.30</u>	<u>5%</u>
<u>1.30 or greater but</u>	
<u>less than 1.40</u>	<u>10%</u>
<u>1.40 or greater but</u>	
<u>less than 1.50</u>	<u>15%</u>
<u>1.50 or greater</u>	<u>20%</u>

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28 C. Commissions under the plan must be established at a
29 level that is neither an incentive nor a disincentive to
30 place an employer in the fund.

31
32
33
34 5. Rates. Rate filings for rates in the Accident
35 Prevention Account and the Safety Pool must be made together and
36 are subject to Title 24-A, section 2363.

37
38
39
40 A. A rate filing for the fund must include experience
41 rating and merit rating plans. The experience rating plan
42 must be the uniform experience rating plan. The merit
43 rating plan must provide the maximum credits possible to
44 Safety Pool members on the basis of individual loss
45 experience, including frequency and severity, consistent
46 with this chapter and sound actuarial principles.

2 B. The Superintendent of Insurance shall review the rates,
3 rating plans and rules, including rates for individual
4 classifications and subclassifications, in the Accident
5 Prevention Account and the Safety Pool at least once every 2
6 years and may review rates more frequently if necessary.

8 6. Mandatory deductible. A deductible applies to all
9 workers' compensation insurance policies issued to employers in
10 the Accident Prevention Account that meet the following
11 qualifications:

12 A. A net annual premium of \$20,000 or more subject to
13 adjustment, pursuant to this section, in this State;

14 B. A premium not subject to retrospective rating; and

15 C. The employer's threshold loss ratio, as determined under
16 subsection 4, paragraph B, subparagraph (1), is 1.00 or
17 greater.

18 The deductible is \$1,000 a claim but applies only to wage loss
19 benefits paid on injuries occurring during the policy year. The
20 sum of all deductibles in one policy year may not exceed the
21 lesser of 15% of net annual premium or \$25,000. Each loss to
22 which a deductible applies must be paid in full by the insurer.
23 After the policy year has expired, the employer shall reimburse
24 the insurer the amount of the deductibles. This reimbursement is
25 considered as premium for purposes of cancellation or nonrenewal.

26 For purposes of calculations required under this section, losses
27 are evaluated 60 days from the close of the policy year.

28 Beginning July 1, 1991, the Superintendent of Insurance shall, by
29 rule, annually adjust the \$20,000 premium level established in
30 this subsection to reflect any change in rates for the Accident
31 Prevention Account and any change in wage levels in the preceding
32 calendar year. Changes in wage levels are determined by
33 reference to changes in the state average weekly wage, as
34 computed by the Department of Labor, Bureau of Employment
35 Security. Any adjustment is rounded off to the nearest \$1,000
36 increment.

37 7. Mandatory retrospective rating. The Superintendent of
38 Insurance may impose retrospective rating plans under the
39 following circumstances.

40 A. The Superintendent of Insurance shall by rule establish
41 standards governing the application of retrospective rating
42 plans. Under the rules, the Superintendent of Insurance

2 may order, after hearing, a retrospective rating plan for an
4 employer in the Accident Prevention Account who has
sufficient size in terms of premium and number of employees
to warrant such a rating and:

6 (1) For the 3 most recent years for which data is
8 available, an experience modification factor and a loss
ratio that indicate a serious problem of workplace
safety; or

10 (2) A demonstrated record of repeated serious
12 violations of workplace health and safety rules and
14 regulations adopted under the Title 26, chapter 6 or 29
United States Code, Chapter 15, whichever is applicable.

16 B. The maximum premium, including any applicable surcharge
18 under this section, may not exceed 150% of the standard
premium.

20 Sec. 97. 39 MRSA §192, first ¶, as amended by PL 1977, c. 696,
22 §415, is further amended to read:

24 On request of a party or on its own motion the commission
may in occupational disease cases appoint one or more competent
26 and impartial physicians,--their-reasonable-fees-and-expenses-to
be--fixed--and--paid--by--the--commission. Upon order of the
28 commission, the fees and expenses of the physician or physicians
must be paid by the employer. These appointees shall examine the
30 employee and inspect the industrial conditions under which he the
32 employee has worked in order to determine the nature, extent and
probable duration of his the occupational disease, the likelihood
34 of its origin in the industry and the date of incapacity. Section
65 of the Workers' Compensation Act shall--apply applies to the
filing and subsequent proceedings on their report, and to
examinations and treatments by the employer.

36 Sec. 98. PL 1989, c. 412, §§4 and 5 are amended to read:

38 Sec. 4. Repeal. The Maine Revised Statutes, Title 39, section
40 103-B, subsection 2, as amended in this Act, is repealed on June
30,--1991 October 31, 1993.

42 Sec. 5. Effective date. Section 2 of this Act shall--take takes
44 effect on June--30,--1991 October 31, 1993.

46 Sec. 99. Report. The Director of the Maine Human Rights
48 Commission and the Chair of the Workers' Compensation Commission
shall consult and issue a joint report by October 1, 1992 to the
50 Joint Standing Committee on Banking and Insurance and the Joint
Standing Committee on Labor on unlawful discrimination against

2 injured employees, the need for coordination between the Maine
Human Rights Commission and the Workers' Compensation Commission
4 and any legislation and agency rules needed to protect injured
employees from unlawful discrimination.

6 **Sec. 100. Report; workers' compensation cards.** The chair shall
report to the Joint Standing Committee on Banking and Insurance
8 and the Joint Standing Committee on Labor by April 1, 1992, on
the adoption of the rules on work-site workers' compensation
10 coverage cards.

12 **Sec. 101. Public Advocate for insurance study.** The Office of
Policy and Legal Analysis shall study the establishment of a
14 public advocate for the insurance to represent the public
interest in proceedings with regard to all lines of insurance. A
16 report containing background information and options for
legislative action must be presented to the Joint Standing
18 Committee on Banking and Insurance for the Second Regular Session
of the 115th Legislature no later than November 1, 1991.

20 **Sec. 102. Insurance commission study.** The Office of Policy and
22 Legal Analysis shall study the establishment of a 3-member
insurance commission to set insurance rates and regulate the
24 industry with regard to all lines of insurance. A report
containing background information and options for legislative
26 action must be presented to the Joint Standing Committee on
Banking and Insurance for the Second Regular Session of the 115th
28 Legislature no later than November 1, 1991.

30 **Sec. 103. Study of state workers' compensation method.** The
Superintendent of Insurance shall conduct a study of the method
32 of workers' compensation utilized by the State for employees of
the State and shall report to the Joint Standing Committee on
34 Banking and Insurance, the Joint Standing Committee on State and
Local Government and the Joint Standing Committee on Labor by
36 January 1, 1992.

38 **Sec. 104. Losses resulting from poor servicing.** The workers'
compensation insurance residual market mechanism, under the Maine
40 Revised Statutes, Title 24-A, section 2366, shall assess insurers
1.5% per year for losses resulting from poor servicing in policy
42 years 1988 and 1989, as determined by the Superintendent of
Insurance in the decision in Docket No. INS-89-2. The insurers
44 shall pay their assessments to the workers' compensation
insurance residual market mechanism by June 1, 1992.

46 **Sec. 105. Transitional provisions.** The State Compensation
48 Account established under the Maine Revised Statutes, Title 39,
section 257, must be administered and maintained by the Finance

2 Authority of Maine until such time as the Board of the Maine
Employers' Mutual Insurance Fund votes to direct that the account
4 be transferred from the Finance Authority of Maine. Until such
action by the Board of the Maine Employers' Mutual Insurance
6 Fund, the Finance Authority of Maine shall maintain the account,
investing the funds as permitted by law and making payments or
8 distributions from the account as directed by the Board of the
Maine Employers' Mutual Insurance Fund. Reasonable
10 administrative fees of the authority must be paid from the
account upon approval of the Board of the Maine Employers' Mutual
Insurance Fund.

12
14 **Sec. 106. Allocation.** The following funds are allocated from
the Safety Education and Training Fund to carry out the purposes
of this Act.

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18

	1991-92	1992-93
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20 **WORKERS' COMPENSATION**

22 **Safety Education and Training
Fund**

24	All Other	\$120,000	\$100,000
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26 Provides funds of \$20,000 for
28 fiscal year 1991-92 for
workplace health and safety
30 training programs in the
Maine Technical College
32 System. Provides funds of
\$50,000 for fiscal year
34 1991-92 and \$50,000 for
fiscal year 1992-93 for the
36 Center for Occupational
Health and Safety at the
38 Central Maine Technical
College. Provides funds of
40 \$50,000 for fiscal year
1991-92 and \$50,000 for
42 fiscal year 1992-93 to fund
contracts to support the
44 development of long-term
strategies to improve
46 occupational health and
safety professional education
48 and resources pursuant to the
Maine Revised Statutes, Title
50 26, section 42-A, subsection
2, paragraph E-2.

2 **Sec. 107. Application.** That section of this Act that enacts
4 the Maine Revised Statutes, Title 39, section 100-B applies only
6 to returns to work occurring on or after the effective date of
8 this Act. Those sections of this Act that
10 enact Title 39, section 2, subsection 2, paragraph G and section
51, subsection 4 apply only to injuries occurring on or after the
effective date of this Act. That section of this Act that amends
Title 39, section 72 applies only to proceedings initiated on or
after the effective date of this Act.

12 **Sec. 108. Retroactivity.** Those sections of this Act that amend
14 the Maine Revised Statutes, Title 39, sections 54-B and 55-B are
16 retroactive to November 20, 1987 and apply to any injury
18 occurring on or after that date, except for any claim for which a
settlement has been approved under the Title 39, section 71-A.
That section of this Act that amends Public Law 1989, chapter 412
is retroactive to June 30, 1991.

20

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STATEMENT OF FACT

24

This bill represents the majority report of the Joint
Standing Committee on Banking and Insurance and the Joint
Standing Committee on Labor on workers' compensation reform. It
makes changes in the responsibilities and operation of the
Workers' Compensation Commission and in the workers' compensation
laws.

30

1. This bill contains the enabling legislation for the
Maine Employers' Mutual Insurance Fund and places within the fund
all of the assets and liabilities of the workers' compensation
residual market mechanism for policies written between January 1,
1988, and July 1, 1992. The residual market in workers'
compensation insurance terminates. After July 1, 1992, policies
may be written in the voluntary market by private insurance
carriers or through the Maine Employers' Mutual Insurance Fund.
The fund is a mutual fund, owned by the employers who purchase
insurance through it. It has a board of directors, appointed and
elected, who hire a manager to administer the fund. A
constitutional amendment protects the fund money from use by the
State.

44

2. This bill directs the Office of Policy and Legal
Analysis to study and report to the Joint Standing Committee on
Banking and Insurance on options for legislation on an insurance
commission and on a public advocate for all insurance matters.
It directs the Superintendent of Insurance to study the method of
workers' compensation insurance self-insurance utilized by the

50

2 State for employees of the State and to report to the Joint
3 Standing Committee on Banking and Insurance, the Joint Standing
4 Committee on Labor and the Joint Standing Committee on State and
Local Government.

6 3. This bill requires notice to employers when a
7 proceeding, conference or hearing is held and when a notice of
8 settlement is filed.

10 4. This bill requires the commission to open a toll-free
11 telephone line to provide information to the public.

12 5. This bill allows an employer to make compensation
13 payments without prejudice at any level after filing a notice of
14 controversy and up to the convening of the informal conference
15 without accepting the claim or admitting liability. If the
16 employer chooses to continue payments beyond the 44-day period,
17 the employer is not allowed to vary the level of payments or
18 cease payments until the informal conference is convened.

20 6. The bill expands the ability of the parties to agree to
21 the provisional payment of compensation from the time of the
22 informal conference to the commissioner's final order. The
23 commissioner conducting the informal conference is required to
24 ascertain whether an agreement for provisional compensation
25 payments may be reached between the parties. The agreement is
26 allowed at any level of payment, but is required to begin no
27 later than 14 days after the informal conference and to continue
28 to the final order.

30 7. The commission is directed to create a new expedited
31 procedure for certain claims. If the parties can not reach an
32 agreement for provisional compensation, the matter is required to
33 be set for a single hearing whenever possible. Upon the request
34 of a party, the commissioner is empowered to order provisional
35 payments after the expedited hearing if the commissioner finds
36 that there is a substantial likelihood that the employee will
37 prevail.

40 8. With regard to lump sum settlements, the criteria to be
41 utilized by the commissioner reviewing a proposed settlement are
42 strengthened by the bill to include consideration of the
43 desirability of a structured settlement over a lump sum. The
44 commissioner may not approve a settlement involving a single
45 payment unless that method of payment is justified by the
46 particular circumstances of the case.

48 9. The bill creates a new process for discontinuing
49 benefits under certain circumstances which now require the
50 employer to file a petition for review. The employer is allowed

2 to discontinue or reduce benefits by filing a certificate and
3 other documentation with the commission if the employee has
4 returned to work with earnings sufficient to eliminate or
5 decrease compensation, if the employee has left the State, if the
6 employee's whereabouts are unknown or if the employee refuses to
7 submit to a medical examination. The employee is allowed to file
8 a petition for restoration of benefits.

10 10. An automatic trial work period is created by the bill.
11 The period is deemed to exist for the first 45 working days
12 following an injured employee's return to work. During this
13 period, the employee's compensation is allowed to be discontinued
14 or reduced, but is required to be immediately restored if the
15 employee is unable to perform the work due to the injury or if
16 the employee is involuntarily terminated or suspended.

18 11. The bill creates a new system for apportionment of
19 liability between insurance carriers in certain cases. If the
20 commissioner deciding apportionment finds that 2 or more carriers
21 are responsible for a period of incapacity, the commissioner is
22 required to apportion the liability pro rata based on the number
23 of insurers.

24 12. The bill allows an employee, employer or carrier to
25 apply to the chair of the commission for a predetermination of
26 whether an employee or job classification is in fact an
27 independent contractor. A rebuttable presumption is created that
28 the predetermination is correct, but the predetermination may be
29 overturned in a later claim for benefits and the insurance
30 premiums adjusted.

32 13. The bill extends the provision allowing appeals to be
33 taken to the commission's appellate panel on questions of fact to
34 correct manifest error or injustice to October 31, 1993.

36 14. The bill contains several provisions affecting loggers
37 and certain construction workers. First, all persons engaged in
38 the logging industry other than the sale of firewood or engaged
39 in nonresidential construction or the construction of new
40 residences are excluded from the definition of independent
41 contractor. Second, any person employing those excluded by this
42 provision must request proof that these individuals have workers'
43 compensation insurance. The commission is required to adopt
44 rules requiring the posting or presence of coverage cards at the
45 work site. Finally, the Superintendent of Insurance is required
46 to adopt rules establishing an equipment allowance for loggers in
47 determining their wages for premium calculation purposes.

48 15. The bill excludes all fringe benefits from the
49 calculation of average weekly wages, reversing the conclusion of
50

2 the Law Court to the contrary in Ashby v. Rust Engineering, 559
A.2d 774 (Me. 1989), and related commission decisions.

4 16. The bill repeals the statewide work capacity limitation
6 on an employee's eligibility for benefits under the total
8 incapacity provision of the Workers' Compensation Act. This
10 limitation is replaced with one of a reasonable commuting
12 distance from the employee's residence, not to exceed 100 miles
14 one way. The commission is required to consider a variety of
factors, including the net wages of the prospective employment,
in determining what is a reasonable commuting distance. This
provision is made retroactive to November 20, 1987 for all claims
except those previously settled.

16 17. The maximum medical improvement standard is removed
18 from several provisions of the Act. The bill limits a partially
20 incapacitated employee's eligibility for benefits to 520 weeks of
22 compensation payments. This change provides certainty to
employers and employees regarding the duration of an employee's
benefits. This provision is made retroactive to November 20,
1987 for all claims except those previously settled.

24 18. The bill increases the amount of interest that may be
assessed before and after an award for compensation is entered.

26 19. In this bill, enforcement of payments that have been
28 ordered and are overdue is moved from the commission to the
30 Superintendent of Insurance and the maximum penalty is increased
from \$100 to \$200 per day. The amount of the penalty that goes
to the employee remains \$50 per day.

32 20. The bill eliminates the compensability of certain
34 subsequent injuries. If an employee suffers a nonwork-related
injury that is not causally connected to a previous work injury,
the subsequent nonwork injury is not compensable.

36 21. The bill requires the commission to create a medical
38 utilization review system. A commissioner, employee, employer or
40 insurer may request a review of medical services rendered to an
injured employee on a variety of cost containment issues, such as
42 whether the services were excessive or improper or whether
charges for the services were in excess of the medical fee
44 schedule. The review is to be conducted by a panel of up to 3
health care providers appointed by the chair. The costs of the
review must be paid by the requesting party.

46 22. The bill requires employees to purchase generic drugs
48 if the prescribing physician indicates that they may be used and
generic drugs are available at the time and place of purchase.
50

23. The issue of delay in the transmittal of medical records is addressed in several provisions of the bill. First, the commission is directed to include a medical authorization on the first report of injury. Second, health care providers are required to submit an initial report of treatment to an injured employee on forms to be prescribed by the commission within 5 working days. Time limits for the submission of other medical records are also provided. Finally, the commission is required to set fees for the provision of medical reports. The employer is not required to pay the fees for medical reports if the reports are not provided in a timely fashion or not on the prescribed forms.

24. The bill clarifies that the commission may order that an employer pay for an independent medical examination requested by the commission.

25. This bill establishes within the commission an Office of Medical Coordination to monitor health services provided to workers, to provide leadership in the development of occupational health centers, to conciliate differences on health care issues, to review the medical fee schedule and to oversee medical utilization review.

26. In this bill, insurers are required to offer medical expense deductibles under which employers would pay the smaller medical expenses of the injured worker. Larger employers would be required to have a \$500 deductible.

27. In this bill, the Superintendent of Insurance is required to adopt rules to allow employers and employees to agree to use comprehensive medical insurance to pay workers' compensation medical benefits. The pilot project could involve deductibles, coinsurance and copayments not to exceed \$5 per visit or \$50 maximum per occurrence.

28. This bill requires that health care providers not charge more for care for an employee than is charged to private 3rd-party payors.

29. In this bill, after October 31, 1995, health care providers have to complete an occupational health training program.

30. Workers' compensation self-insurance is addressed in 2 provisions in the bill. Irrevocable standby letters of credit are approved as a method of securing the self-insured employer's obligations under workers' compensation. Group self-insurers are allowed to provide security for their workers' compensation obligations through funding at the 90% confidence level.

2 31. This bill contains several provisions related to
workplace health and safety. Workers' compensation insurers are
4 required to offer workplace health and safety consultations that
meet the standards set by the Superintendent of Insurance and
6 that employers may purchase from the insurer or elsewhere.
Employers with an experience modification rating of 2 or more are
8 required to complete a workplace health and safety plan, which
could include attendance at a program of the Department of Labor
10 or a Maine technical college. Allocations are made from the
Center for Occupational Health and Safety at Central Maine
12 Technical College of \$50,000 per year to the Safety Education and
Training Fund for occupational health and safety professional
14 education and to the Technical College System for workplace
health and safety training programs.

16
 32. Workers' compensation employment rehabilitation is the
18 subject of several provisions in this bill. Rehabilitation is
available to an injured worker earlier under an early entry
20 screening program and by changing the date for the report from
the employer from 120 days to 90 days. Employers who did not
22 have in-house rehabilitation programs prior to 1986 will now be
allowed to use that program before the workers' compensation
24 rehabilitation program. Rehabilitation is available to an
employee even if litigation is pending, with reimbursement to the
26 employer if a finding is later made that the employee was not
eligible. When a settlement of a claim is made and the employee
28 is in rehabilitation, the employer is not freed from
responsibility that the employer may have to pay for the program
30 and the employee retains the right to finish the program.
Employment rehabilitation is limited to 2 years or \$5000 absent
32 special circumstances. Administrative expenses for
rehabilitation providers are limited to 30% of their costs.
34 Rehabilitation providers must have medical and rehabilitation
qualifications tailored to their roles in the rehabilitation
36 process. The Second Injury Fund is repealed and its money and
functions and the funding mechanism for it are placed in the
38 Employment Rehabilitation Fund.

40 33. Reemployment and discrimination against injured
employees are topics of several provisions of this bill. The
42 bill requires a report from the chair of the Workers'
Compensation Commission and the Maine Human Rights Commission on
44 discrimination against injured employees and the need for
coordination between the offices and any legislation.
46 Information about an employee with a workers' compensation claim
is confidential and is released only with the name and
48 identification of the employee deleted. No person may compile
for distribution or sale a list of employees and their claims,
50 commonly called a "blacklist." The employer's obligation to

2 reinstate an injured employee is increased from 2 to 3 years for
employers of over 20 employees. Employers are allowed to form
4 light-duty work pools to encourage the return to work of injured
employees. Employees may volunteer for public or nonprofit
6 service compatible with any medical restrictions. The commission
is required to send notice to the employee of the employee's
obligations when returning to work.

8
34. Employer obligations and insurance carrier performance
10 are addressed in this bill. The employer or employer's
representative attending an informal conference at the commission
12 is required to have knowledge about the case and to have full
authority to settle the case. Insurers and employers are allowed
14 to hire private investigators to collect information on injured
employees only if they have obtained a court order. If no order
16 is obtained, the evidence is inadmissible in commission
proceedings. Insurance adjusters may lose their licenses for
18 failure to perform their duties in a professional manner.

20 35. Rate calculation and regulation are addressed in this
bill. Insurers are required to give itemized bills to
22 employers. Settlements of over \$10,000 require notice to the
employer, an opportunity to object and an appeal so that the
24 settlement is not used in future premium calculations for the
employer. The Superintendent of Insurance is required to adopt
26 rules to insulate the employer's premium from the effect of a 2nd
injury that is an aggravation of a prior lost-time injury. Entry
28 to the Accident Prevention Account of the residual market is
changed to require 2 lost-time claims over \$10,000.

30
36. The Superintendent of Insurance is given rule-making
32 authority to adopt rules to encourage the writing of insurance in
the voluntary market, to set the servicing fee individually and,
34 considering accident loss ratios, to establish dividend plans in
the Safety Pool and to establish credits and dividends for
36 employer safety programs.