

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1972

S.P. 777

In Senate, July 5, 1991

Referred to the Committees on Banking and Insurance and Labor and ordered printed. Sent down forthwith for concurrence.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator COLLINS of Aroostook
Cosponsored by Senator BALDACCI of Penobscot.

STATE OF MAINE

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

An Act to Reform the Maine Workers' Compensation System.

Printed on recycled paper



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

4 PART A

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

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

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

18 §2362-A. Workplace health and safety consultations

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

24 1. Definitions. As used in this section, unless the
26 context otherwise indicates, the following terms have the
following meanings.

28 A. "Workplace health and safety consultations" means a
30 service provided to an employer to advise and assist the
employer in the identification, evaluation and control of
32 existing and potential accident and occupational health
problems.

34 2. Standards for workplace health and safety
36 consultations. The superintendent shall adopt rules establishing
the standards for approval of workplace health and safety
38 consultations provided to employers by insurance carriers,
including provision of adequate facilities, qualifications of
40 persons providing the consultations, specialized techniques and
professional services to be used and educational services to be
42 offered to employers.

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

50

2 4. Optional purchase from another provider. An employer
3 may elect to purchase workplace health and safety consultation
4 services from a provider other than the insurer. Upon submission
5 by the employer of a certificate of completion of workplace
6 health and safety consultation services from another approved
7 provider, the insurance carrier must refund to the employer the
8 portion of the premium attributable to the workplace health and
9 safety consultation.

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

17 6. Reports to employers. In any workplace health and
18 safety consultation that includes an on-site visit, the insurer
19 shall submit a report to the employer describing the purpose of
20 the visit, a summary of the findings of the on-site visit and
21 evaluation and the recommendations developed as a result of the
22 evaluation. The insurer shall maintain for a period of 3 years a
23 record of all requests for workplace health and safety
24 consultations and a copy of the insurer's report to the employer.
25

26 7. Safe workplace responsibility. Workplace health and
27 safety consultations provided by an insurer do not diminish or
28 replace an employer's responsibility to provide a safe
29 workplace. An insurance carrier or its agents or employees do
30 not incur any liability for illness or injuries that result from
31 any consultation or recommendation.
32

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

34 7-B. Limit on attorney's fees. An insurer or rating bureau
35 may not utilize attorney's fees in the development and
36 determination of workers' compensation insurance rates that are
37 in excess of those permitted pursuant to Title 39, section 110.
38

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

41 A. The uniform experience rating plan shall must be the
42 exclusive means for providing prospective premium
43 adjustments based upon the past claim experience of an
44 individual insured. The experience rating plan must provide
45 that the claims experience for the 3 most recent years for
46 which data is available be considered on the following basis.
47
48
49
50

- 2 (1) The claims and exposure for the most recent year
3 for which data is available must be given 40% 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 25%
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. A-5. 24-A MRSA §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. A-6. 24-A MRSA §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 and to all employers in the logging and
41 lumbering industries, including employers of drivers, and sawmill
42 industries, insurers must offer a deductible of \$250 or \$500 per
43 occurrence.

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

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

4 1-A. Rules. The superintendent may adopt rules for the
6 purpose of encouraging workers' compensation insurers to take
8 workers' compensation policies out of the residual market by
10 establishing credits applicable to any assessments that may be
12 ordered under section 2367 or by any other means. The criteria
for applying credits must include consideration for policies
taken out of the residual market, prior to as well as after, the
effective date of the rules.

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

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

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

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

30 **Sec. A-9. 24-A MRSA §2366, sub-§3, ¶¶A and B**, as enacted by PL
32 1987, c. 559, Pt. A, §4, are amended to read:

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

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

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

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

50

2 (3) Has been in business for less than 3 years,
provided that the eligibility shall---terminate
4 terminates if his the employer's loss ratio exceeds 1.0
and the employer has at least 2 lost-time claims over
6 \$10,000 each at the end of any year.

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

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

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

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

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

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

44 Sec. A-13. 26 MRSA §42-A, sub-§2, ¶E-1, as enacted by PL 1987,
46 c. 782, §3, is amended to read:

48 E-1. The development and administration of programs to
educate employers and employees regarding the

Whistleblowers' Protection Act, chapter 7, subchapter V-B;
and

Sec. A-14. 26 MRSA §42-A, sub-§2, ¶E-2 is enacted to read:

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

Sec. A-15. 39 MRSA §2, sub-§2, ¶G is enacted to read:

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

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

§5. Predetermination of independent contractor status

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

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

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

2. Premium adjustment. If it is determined that a predetermination does not withstand commission or judicial scrutiny when raised in a subsequent workers' compensation claim, then, depending on the final outcome of that subsequent proceeding, either the workers' compensation insurance carrier shall return excess premium collected or the employer shall remit

2 the premium subsequently due in order to put the parties in the
3 same position as if the final outcome under the contested claim
4 were predetermined correctly.

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

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

12 B. The chair of the commission is authorized to delegate
13 the authority to make a predetermination to someone other
14 than a commissioner, such as the commission's legal counsel,
15 as long as that person or persons act as the primary
16 decision maker.

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

20 5. Certificate. The commission shall provide the
21 petitioning party a certified copy of the decision regarding
22 predetermination that will be used as evidence at a later hearing
23 on benefits of the commission's decision regarding
24 predetermination.

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

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

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

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

38 B. The Superintendent of Insurance shall communicate to the
39 Department of Labor the names of employers that receive in
40 any policy year an experience rating of 2 or more. The
41 Department of Labor shall notify each employer on that list
42

2 that the employer is required to undertake a workplace
4 health and safety program, shall provide a statistical
6 evaluation of the employer's workplace health and safety
experience and shall enclose a set of workplace health and
safety options, including on-site consultation, education
and training activities and technical assistance.

8 C. The employer shall submit a workplace health and safety
10 plan to the Department of Labor for review and comment,
12 complete the elements of the plan and notify the Department
14 of Labor of its completion. The plan may include attendance
at a Maine technical college or the Department of Labor
workplace health and safety training programs.

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

26 E. The Commissioner of Labor shall report to the joint
28 standing committees of the Legislature having jurisdiction
30 over banking and insurance and labor matters by October 1,
1993 on the rules adopted, performance by employers and any
surcharges imposed by the Superintendent of Insurance.

32
34 **Sec. A-18. 39 MRS A §23, sub-§1-A is enacted to read:**

36 1-A. Pilot projects. Workers' compensation health benefits
pilot projects are authorized under the following provisions.

38 A. The Superintendent of Insurance shall adopt rules to
40 enable employers and employees to enter into agreements to
42 provide the employees with workers' compensation medical
payments benefits through comprehensive health insurance
that covers workplace injury and illness. The
44 superintendent shall review all pilot project proposals and
may approve a proposal only if it confers medical benefits
46 upon injured employees substantially similar to benefits
available under this Title. The superintendent shall revoke
48 approval if the pilot project fails to deliver the intended
benefits to the injured employees.

2 B. The comprehensive health insurance may provide for
3 health care by a health maintenance organization or a
4 preferred provider organization. The premium must be paid
5 entirely by the employer. The program may use deductibles,
6 coinsurance and copayment by the employees not to exceed \$5
7 per visit or \$50 maximum per occurrence.

8 C. The superintendent shall report annually to the joint
9 standing committees of the Legislature having jurisdiction
10 over banking and insurance and labor matters by November 1st
11 on the status of any pilot projects approved by the
12 superintendent.

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

15 **Sec. A-19. 39 MRSA §23, sub-§2, as amended by PL 1989, c. 435,**
16 **§2, is further amended to read:**

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

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

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

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

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

8 A. Has positive net earnings; or

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

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

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

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

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

16 **Sec. A-20. 39 MRSA §51, sub-§1**, as enacted by PL 1981, c. 200,
17 is amended to read:

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

30
31 **Sec. A-21. 39 MRSA §51-B, sub-§7**, as amended by PL 1989, c.
32 502, Pt. D, §22, is further amended to read:

33
34 **7. Notice of controversy.** If the employer, prior to making
35 payments under subsection 3, controverts the claim to
36 compensation, the employer shall file with the commission, within
37 14 days after an event ~~which~~ that gives rise to an obligation to
38 make payments under subsection 3, a notice of controversy in a
39 form prescribed by the commission. If the employer, prior to
40 making payments under subsection 4, controverts the claim to
41 compensation, the employer shall file with the commission, within
42 75 or 90 days, as applicable, after an event ~~which~~ that gives
43 rise to an obligation to make payments under subsection 4, a
44 notice of controversy in a form prescribed by the commission. The
45 notice ~~shall~~ must indicate the name of the claimant, name of the
46 employer, date of the alleged injury or death and the grounds
47 upon which the claim to compensation is controverted. The
48 employer shall promptly furnish the employee with a copy of the
49 notice.

50

2 If, at the end of the 14-day period in subsection 3 or the 90-day
or 75-day periods period in subsection 4, the employer has not
4 filed the notice required by this subsection, the employer shall
begin payments as required under those subsections. In the case
6 of compensation for incapacity under subsection 3, the employer
may cease payments or continue payments as provided in subsection
8 8 and file with the commission a notice of controversy, only as
provided in this subsection, no later than ~~44~~ 75 days after an
10 event which that gives rise to an obligation to make payments
under subsection 3. Failure to file the required notice of
12 controversy prior to the expiration of the ~~44-day~~ 75-day period,
in the case of compensation under subsection 3, constitutes
14 acceptance by the employer of the compensability of the injury or
death. Failure to file the required notice of controversy does
16 not constitute such an acceptance by the employer when it is
shown that the failure was due to employee fraud or excusable
18 neglect by the employer, except when payment has been made and a
notice of controversy is not filed within ~~44~~ 75 days of that
20 payment. Failure to file the required notice of controversy
prior to the expiration of the 90-day period under subsection 4
22 constitutes acceptance by the employer of the extent of
impairment claimed. Failure to file the required notice of
24 controversy prior to the expiration of the 75-day period under
subsection 4 for compensation for medical expenses, aids or other
26 services pursuant to section 52 constitutes acceptance by the
employer of the reasonableness and propriety of the specific
28 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.

30 If, at the end of the ~~44-day~~ 75-day period the employer has not
32 filed a notice of controversy, or if, pursuant to a proceeding
before the commission, the employer is required to make payments,
34 the payments may not be decreased or suspended, except as
provided in section 100.

36 **Sec. A-22. 39 MRSA §51-B, sub-§8,** as amended by PL 1983, c.
38 682, §6, is further amended to read:

40 **8. Effect of payment.** If, within the ~~44-day~~ 75-day period
established in subsection 7 and after the payment of compensation
42 for incapacity without an award, the employer elects to
controvert the claim to compensation for incapacity, the payment
44 of compensation shall may not be considered to be an acceptance
of the claim or an admission of liability. Notwithstanding the
46 provisions of section 99-C, the acceptance of compensation in any
case, except by decision or agreement, by the injured employee or
48 his the employee's dependents shall is not be considered an
admission by the employee or his the employee's dependents as to
50 the nature and scope of the employer's liability or a waiver of

2 the right to question the amount of compensation or the duration
of the same or the nature of the injury and its consequences.

4 The employer may continue the payment of compensation for
6 incapacity under subsection 3 following the filing of a notice of
8 controversy and up to the convening of the formal hearing, if the
10 notice of controversy was filed prior to the expiration of the
12 75-day period established in subsection 7. The continuation of
14 payments under these circumstances is not an acceptance of the
16 claim or an admission of liability on the part of the employer.

12 **Sec. A-23. 39 MRSA §52, as amended by PL 1989, c. 434, §8, is**
14 further amended to read:

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

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

36 An employee's entitlement to health care services for an
38 injury arising out of and in the course of employment is limited
40 to 16 visits with any one provider from the time of the initial
visit, unless otherwise authorized by an independent medical
examiner or the employer.

42 A medical service provider may provide compensable medical
44 service to an injured employee for a period of no more than 60
46 days from the date of injury without the authorization of an
48 independent medical examiner or the employer; thereafter, medical
50 services provided to an injured worker without the written
authorization of an independent medical examiner or the employer
are not compensable. This limitation does not eliminate the
employer's right to controvert the underlying injury or medical
care.

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

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

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

48 An employer is not liable under this Act for charges for
49 health care services to an injured employee in excess of those
50

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

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

25 Damage and destruction to artificial limbs, eyes, teeth,
26 eyeglasses, hearing aids, orthopedic devices and other physical
27 aids in the course of and arising out of the employment shall ~~be~~
28 are considered an injury for the purposes of this Act. ~~In case~~
29 If such physical aids in use by the employee at the time of the
30 injury are themselves injured or destroyed, the commission in its
31 discretion may require that they be repaired or replaced by the
32 employer.

33
34 Whenever there is any disagreement as to the proper costs of
35 the services or aids, or the periods during which they shall ~~be~~
36 are furnished, or as to the apportionment thereof among the
37 parties, any interested person may file a petition with the
38 commission for the determination thereof by an independent
39 medical examiner.

40
41 Upon request of an employee, the employer or carrier may
42 establish a program to pay for treatment by prayer or spiritual
43 means by an accredited practitioner.

44
45 The Superintendent of Insurance shall prescribe medical and
46 health care expense forms for the purpose of collecting
47 information as required by Title 24-A, section 2371. An insurer
48 or self-insurer may withhold payment of medical and health care
49 fees to any provider who fails to complete and submit the
50

2 prescribed form. In the event the provider fails to properly
3 complete and submit the prescribed form or to follow any fee
4 schedule approved by the commission, the insurer or self-insurer
5 is not required to file a notice of controversy but may simply
6 notify the provider of the failure. In the case of a dispute, any
7 interested party may petition the commission to resolve the
8 dispute.

9
10 No claimant may incur liability for the cost of any provided
11 medical or health care services resulting from a provider's
12 failure to comply with this section.

13
14 **Sec. A-24. 39 MRSA §52-A, sub-§1, as amended by PL 1989, c.**
15 **668, is repealed.**

16 **Sec. A-25. 39 MRSA §52-A, sub-§2, as enacted by PL 1981, c.**
17 **514, §2, is repealed and the following enacted in its place:**

18
19 **2. Duties of health care providers. Duties of health care**
20 **providers are as follows.**

21
22 **A. Within 5 business days from the completion of a medical**
23 **examination or within 5 business days from the date notice**
24 **of injury is given to the employer, whichever is later, the**
25 **employee's health care provider shall forward to the**
26 **employer and the employee a diagnostic medical report, on**
27 **forms prescribed by the Commissioner of Labor, for the**
28 **injury for which compensation is being claimed. The report**
29 **must include the employee's work capacity, likely duration**
30 **of incapacity, return to work suitability and treatment**
31 **required. The commission may assess penalties up to \$500**
32 **per violation upon health care providers who fail to comply**
33 **with the 5-day requirement of this subsection.**

34
35 **B. If ongoing medical treatment is being provided, every 30**
36 **days the employee's health care provider shall forward to**
37 **the employer and the employee a diagnostic medical report,**
38 **on forms prescribed by the Commissioner of Labor. An**
39 **employer may request, at any time, medical information**
40 **concerning an employee's condition pertaining to the**
41 **condition for which compensation is sought. The health care**
42 **provider shall respond within 10 business days from receipt**
43 **of the request.**

44
45 **C. Any health care provider shall submit to the employer**
46 **and the employee a final report of treatment within 5**
47 **working days of the termination of treatment, except that**
48 **only an initial report must be submitted if the provider**
49 **treated the employee on a single occasion.**
50

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

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

28 F. Authorization from the employee is not required prior to
30 release of medical information from health care providers
32 for treatment of an injury or disease after the occurrence
34 of an event that gives rise to an obligation to make
36 payments under the Act.

38 **Sec. A-26. 39 MRSA §52-B,** as enacted by PL 1987, c. 559, Pt.
40 B, §22, is amended by adding at the end a new paragraph to read:

42 In order to qualify for reimbursement for health care
44 services provided to employees under this Title, health care
46 providers providing individual health care services and courses
48 of treatment may not charge more for the services or courses of
50 treatment for employees than is charged to private 3rd-party
 payers for similar services or courses of treatment. An employer
 is not responsible for charges that are determined to be
 excessive or treatment determined to be inappropriate by an
 independent medical examiner pursuant to section 92-A.

Sec. A-27. 39 MRSA §52-C is enacted to read:

§52-C. Medical health care review

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

2. Peer review. Peer review is as follows.

2 A. Each case involving the provision of medical or surgical
4 services to an injured employee for more than 2 months from
6 the date of injury or medical costs that exceed \$10,000 must
8 be referred to an independent medical examiner for
10 monitoring of health care provider services and hospital
12 utilization. This monitoring must include determinations
14 concerning the appropriateness of the service, whether the
16 treatment is necessary and effective, the proper cost of
18 services, the quality of the treatment and the right of
20 providers to receive payment under the Act for services
22 rendered. The examiner shall also monitor services provided
24 by health care professionals who have been the subject of
26 complaints and cases selected on a random basis for purposes
28 of evaluating the appropriateness of charges and
30 performance. The examiner shall report the results of this
32 monitoring to the employee, the employer, the commission and
34 the Department of Labor not less frequently than monthly.

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

40 3. Case management. The Commissioner of Labor, with the
42 advice of the independent medical examiners, shall adopt rules
44 establishing a case management program for cases involving
46 provision of medical services for more than 2 months from the
48 date of injury or medical costs that exceed \$10,000 or at the
50 request of the employee or employer. The rules must require
prior approval by the employer or an independent medical examiner
of any surgical procedure and any hospitalization and further
require the employer's or an independent medical examiner's prior
approval of proposed treatment, with appropriate exceptions for
emergencies. The hospital or health care provider is responsible
for obtaining any required approval. Neither the employer nor
the employee is responsible for payment of the cost of any
medical services for which a required approval has not been
obtained.

4. Other penalties. Any health care provider who has
submitted false testimony or a false report in connection with
any claim for payment made under this Act, or who has repeatedly
either overcharged for services or failed to comply with the
preapproval requirements of subsection 3, must be barred by order
of the Department of Labor from receiving any payment under this
Act for services rendered for a period not to exceed one year in
the first instance and 3 years in the 2nd instance, and the
Department of Labor may permanently bar the provider from
eligibility for payment of services under this Act thereafter.

Sec. A-28. 39 MRSA §53-C is enacted to read:

2 **§53-C. Effect of volunteer services**

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

18 **Sec. A-29. 39 MRSA §55-B**, as amended by PL 1989, c. 575, is
20 further amended to read:

22 **§55-B. Compensation for partial incapacity**

24 While the incapacity for work resulting from the injury is
26 partial, the employer shall pay the injured employee a weekly
28 compensation equal to 2/3 the difference, due to the injury,
30 between his the employee's average gross weekly wages, earning
32 earnings or salary before the injury and the weekly wages,
34 earnings or salary ~~which he~~ that the employee is able to earn
36 after the injury, but not more than the maximum benefit under
38 section 53-B. Payments under this section shall may not continue
40 for longer than ~~400~~ 430 weeks after ~~maximum-medical-improvement~~
42 the date of injury.

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

48 For purposes of determining an injured employee's degree of
50 incapacity under this section, the commission shall consider the
availability of work that the employee is able to perform in and
around the employee's community for the 52-week period following
the date of injury and within this State thereafter, and the
employee's ability to obtain such work considering the effects of
the employee's work-related injury. ~~If no such work is available~~
~~in and around the employee's community or if the employee is~~
~~unable to obtain such work in and around the employee's community~~
~~due to the effects of a work-related injury, the employee's~~
~~degree of incapacity under this section is 100%.~~ For the purpose
of this section, the employee's community is the greater of a
100-mile radius from the employee's residence at the time of
injury or the actual distance from the employee's normal work
location to the employee's residence at the time of injury.

52 **Sec. A-30. 39 MRSA §56-B, sub-§1**, as enacted by PL 1987, c.
54 559, Pt. B, §33, is amended to read:

56 **1. Weekly benefit.** In the case of permanent impairment,
58 th employer shall pay the injured employee a weekly benefit

2 equal to 2/3 of the state average weekly wage, as computed by the
Bureau of Employment Security, for the number of weeks shown in
the following schedule:

4
6 A. One week for each percent of permanent impairment to the
body as a whole from 0 to 14%;

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

10
12 C. Four and 1/2 weeks for each percent of permanent
impairment to the body as a whole from 51% to 85%; and

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

16
18 Compensation under this section is ~~in-addition-to~~ reduced by any
compensation under section 54-B or 55-B received by the employee.

20 Sec. A-31. 39 MRSA §57, as amended by PL 1985, c. 372, Pt. A,
§22, is repealed.

22
24 Sec. A-32. 39 MRSA §57-B, sub-§13, as enacted by PL 1985, c.
372, Pt. A, §23, is amended to read:

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

32
34 Sec. A-33. 39 MRSA §57-D is enacted to read:

36 §57-D. Permanent total incapacity due partly to prior injury

38 1. Payment for second injuries. If an employee who has a
permanent impairment from any cause or origin that is, or is
40 likely to be, a hindrance or obstacle to employment, sustains a
personal injury arising out of and in the course of employment
42 that, in combination with the earlier preexisting impairment
results in total permanent incapacity, the employer or the
44 employer's insurance carrier is liable for all compensation
provided by this section. The employer or insurance carrier must
46 be reimbursed from the Employment Rehabilitation Fund for
compensation payments not attributable to the second injury.

48 2. Permanent impairment. As used in this section,
50 "permanent impairment" means any permanent physical or mental
condition, whether congenital or due to injury or disease, of

2 such seriousness as to constitute a hindrance or obstacle to
3 obtaining employment or to obtaining reemployment if the employee
4 should become unemployed.

5 3. Employer knowledge. In order to qualify under this
6 section for reimbursement from the Employment Rehabilitation
7 Fund, the employer must establish that the employer had knowledge
8 of the permanent impairment at the time that the employee was
9 hired or at the time the employee was retained in employment
10 after the employer acquired that knowledge.

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

22 5. Legal representation. The Attorney General shall
23 provide legal representation for any claim made under this
24 section. The reasonable expenses of prosecution or defense by
25 the Attorney General of claims against the Employment
26 Rehabilitation Fund, subject to the approval of the commission,
27 are payable out of the Employment Rehabilitation Fund. The
28 Attorney General may not defend the Employment Rehabilitation
29 Fund against any claim brought by the State. The commission is
30 authorized to hire, using funds from the Employment
31 Rehabilitation Fund, private counsel to defend any claim brought
32 against the Employment Rehabilitation Fund by the State.

33 6. Transitional eligibility. Employers and insurance
34 carriers that were eligible for or were receiving reimbursement
35 under the Second Injury Fund are eligible for reimbursement under
36 this section.

37 7. Applicability. This section does not apply to cases in
38 which reimbursement is available from the Employment
39 Rehabilitation Fund under section 57-B.

40
41 **Sec. A-34. 39 MRSA §57-E is enacted to read:**

42 **§57-E. Contribution from employers; transfer from Second Injury**
43 **Fund**

2 In every case of the death of an employee when there is no
3 person entitled to compensation, the employer shall pay to the
4 Treasurer of State a sum equal to 100 times the average weekly
5 wage in the State as computed by the Employment Security
6 Commission for benefit of the Second Injury Fund.

7 When the chair of the commission determines that the Second
8 Injury Fund established pursuant to former section 57 is no
9 longer required for payments to employers or insurance carriers,
10 the chair shall direct that the Treasurer of State transfer the
11 balance in the account to the Employment Rehabilitation Fund and
12 the Treasurer of State shall deposit the balance to the
13 Employment Rehabilitation Fund and all contributions of employers
14 under this section must be paid into the Employment
15 Rehabilitation Fund.

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

17 §62-C. Nonduplication of benefits

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

26 Sec. A-36. 39 MRSA §66-A, sub-§3, as amended by PL 1989, c.
27 388, is further amended to read:

28 **3. Time period; discrimination prohibited.** The employer's
29 obligation to reinstate the employee continues until one year, or
30 2 years if the employer has over 250 200 employees, after the
31 ~~employee has reached the stage of maximum medical improvement in~~
32 ~~the judgment of the commission~~ date of the injury. An employer
33 who reinstates an employee under this section may not
34 subsequently discriminate against that employee in any employment
35 decision, including decisions related to tenure, promotion,
36 transfer or reemployment following a layoff, because of the
37 employee's assertion of a claim or right under this Act. Nothing
38 in this subsection may be construed to limit any protection
39 offered to an employee by section 111.

40 Sec. A-37. 39 MRSA §66-A, sub-§4, as enacted by PL 1987, c.
41 559, Pt. B, §35, is repealed.

42 Sec. A-38. 39 MRSA §66-B is enacted to read:

2 **§66-B. Light-duty work pools**

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

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

10 **§71-A. Settlements**

12 **1. Parties may settle.** Subject to the limitations of this section, an employer and employee may by agreement discharge any liability for compensation, in whole or in part, by the employer's payment of an amount or amounts to be approved by the commission. Except for settlements of less than \$5,000, settlements of claims of employees who have returned to work for at least 6 months, and claims under section 58-A, all settlements approved by the commission must be structured and may not be provided as a lump sum.

22 **2. Review.** Before approving any settlement, the commission shall review the following factors with the employee:

24 A. The employee's rights under this Title and the effect a settlement would have upon those rights, including, if applicable, the effect of the release of an employer's liability for future medical expenses;

30 B. The purpose for which the settlement is requested;

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

40 D. Any other information, including the age of the employee and of the employee's dependents, that would bear upon whether the settlement is in the best interest of the claimant.

44 **3. Approval.** The commission may not approve any settlement unless it finds the settlement to be in the employee's best interest in light of the factors involved under subsection 2.

48 **4. Offsets.** If a settlement is approved and the employee suffers another injury for which compensation is payable under

2 this Act, the benefits payable for the subsequent injury must be
4 reduced in an amount not to exceed the amount of the settlement
6 to the extent necessary to avoid duplicative payment of benefits
8 for any period of disability.

6 Sec. A-40. 39 MRSA §72, as amended by PL 1981, c. 291, §1, is
8 further amended to read:

10 **§72. Interest on awards**

12 Upon each award of the Workers' Compensation Commission,
14 interest shall ~~must~~ be assessed from the date on which the
16 petition is filed at a rate of 6% ~~8%~~ per year, ~~provided except~~
18 that if the prevailing party at any time requests and obtains a
20 continuance for a period in excess of 30 days interest will be
suspended for the duration of the continuance. From and after the
date of the decree, interest shall ~~be~~ is allowed at the rate of
10% ~~15%~~ per year. This section shall ~~must~~ be enforced by the
Workers' Compensation Commission.

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

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

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

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

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

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

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

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

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

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

36 **Sec. A-43. 39 MRSA §83, sub-§§2 and 3, as amended by PL 1989,**
38 **c. 580, §9, are further amended to read:**

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

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

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

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

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

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

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

8 (3) The employee's former employer certifies that the
10 employer is unlikely to return the employee to the
employee's former employment position without
12 rehabilitation services or the rehabilitation provider
evaluator has made reasonable efforts to obtain this
14 certification without response from the employer;

16 (4) The employee is unlikely to return to suitable
employment without the provision of rehabilitation
18 services; and

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

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

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

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

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

42 (1) The employee's work history, including the
employee's prior earnings history;

44 (2) The employee's interests;

46 (3) The employee's aptitude;

48 (4) The employee's education;

50

- 2 (5) The employee's skills;
 - 4 (6) The employee's work life expectancy;
 - 6 (7) The locality of employment; and
 - 8 (8) The likelihood of reemployment.
- 10 C. A plan shall must include a job placement strategy and a specific program of proposed actions designed and likely to achieve job placement for the employee.
- 12 (1) The plan development shall must consider and the plan may include a provision for trial work periods not to exceed 3 months with the employer or subsequent employer.
 - 14 (2) The administrator may approve trial work periods as part of a plan.
 - 16 (3) The plan development shall must consider and the plan may include a provision for participation in appropriate job training programs conducted by the Department of Labor, including, without limitation, the Job Training Partnership Act and the Strategic Training for Accelerated Reemployment Program as provided in Title 26, chapter 25, and the Health Occupations Training Project as provided in Title 26, chapter 31.

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

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

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

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

50 **Sec. A-45. 39 MRSA §85, sub-§4-A, ¶B** is enacted to read:

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

8 **Sec. A-46. 39 MRSA §90, sub-§4 is enacted to read:**

10 4. Repeal. Upon receipt of the report required under
 subsection 3, the effectiveness of this subchapter must be
12 reviewed by the joint standing committee of the Legislature
 having jurisdiction over banking and insurance matters. Unless
14 continued by law, this subchapter is repealed September 1, 1993.

16 **Sec. A-47. 39 MRSA §92, sub-§10 is enacted to read:**

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

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

24 §92-A. Independent medical examiners

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

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

2 Nothing in this subsection precludes the selection of providers
3 authorized to receive reimbursement under section 52 to serve in
4 the capacity of an independent medical examiner.

5 2. Referral. The commission shall refer determinations
6 pursuant to section 104-C and any dispute relating to the
7 medical condition of a claimant to an independent medical
8 examiner, including disputes that involve the following:

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

10 B. Determination of maximum medical improvement and degree
11 of impairment under section 56-B;

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

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

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

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

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

30 5. Notice of report. It is presumed that the employer and
31 employee received the report 3 working days after mailing.

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

39 7. Appeal procedure. Upon receipt of a request for review
40 of the examiner's findings, the case must be assigned to a

2 3-person panel for a review of the record. The panel must
3 consist of physicians or other appropriate providers who meet the
4 qualifications in subsection 1 and who have no independent
5 knowledge of the first review. The panel shall review the report
6 of the first examiner and the available medical records and if
7 necessary shall examine the employee. Upon completion of this
8 review, the panel shall submit a report to the commission that
9 must contain conclusions as to whether the challenged findings or
10 conclusions are clearly erroneous and, if so, in what respects.
11 This report must contain findings or conclusions on any issue as
12 to which the panel found the first examiner's report to be
13 clearly erroneous. The findings of the panel are binding on the
14 commission. If the panel does not find one or more material
15 findings or conclusions of the first examiner to be clearly
16 erroneous, the cost of the appeal must be paid by the party
17 requesting the review; if one or more of the material findings or
18 conclusions is found to be clearly erroneous, these costs must be
19 paid by the employer.

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

26
27 **Sec. A-49. 39 MRSA §94-A, sub-§1-A is enacted to read:**

28
29 1-A. Notice to employer. The commission shall notify an
30 employer when an informal conference or formal hearing is
31 scheduled, when a notice of settlement is filed and when any
32 other proceeding regarding a claim of an employee of that
33 employer is scheduled.

34
35 **Sec. A-50. 39 MRSA §94-B, sub-§3, as amended by PL 1983, c.**
36 **479, §19, is further amended by adding a new 2nd blocked**
37 **paragraph to read:**

38
39 The employer or representative of the employer or insurer who
40 attends the informal conference must be familiar with the
41 employee's claim and has full authority to make decisions
42 regarding the claim. The commissioner may assess a penalty in
43 the amount of \$100 against any employer or representative of the
44 employer or insurer who attends the conference without full
45 authority to make decisions regarding the claim.

46
47 **Sec. A-51. 39 MRSA §95, as amended by PL 1989, c. 256, §4, is**
48 **further amended to read:**

49 **§95. Time for filing petitions**
50

2 Any employee's claim for compensation under this Act shall
3 be ~~is~~ barred unless an agreement or a petition as provided in
4 section 94 shall-be ~~is~~ filed within 2 years after the date of the
5 injury, or, if the employee is paid by the employer or the
6 insurer, without the filing of any petition or agreement, within
7 2 years of any payment by such employer or insurer for benefits
8 otherwise required by this Act. The 2-year period in which an
9 employee may file a claim does not begin to run until the
10 employee's employer, if the employer has actual knowledge of the
11 injury, files a first report of injury as required by section 106
12 of the Act. Any time during which the employee is unable by
13 reason of physical or mental incapacity to file the petition
14 shall ~~is~~ not be included in the period provided in this section.
15 If the employee fails to file the petition within that period
16 because of mistake of fact as to the cause and nature of the
17 injury, the employee may file the petition within a reasonable
18 time. In case of the death of the employee, there shall-be ~~is~~
19 allowed for filing said petition one year after that death. No
20 petition of any kind may be filed more than ~~10~~ 6 years following
21 the date of the latest payment made under this Act. For the
22 purposes of this section, payments of benefits made by an
23 employer or insurer pursuant to section 51-B or 52 shall-be ~~are~~
24 considered payments under a decision pursuant to a petition,
25 unless a timely notice of controversy has been filed.

26

27 **Sec. A-52. 39 MRSA §100**, as amended by PL 1987, c. 559, Pt.
28 B, §§41 and 42, is further amended to read:

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

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

36
37 **A.** Increase, decrease, restoration or discontinuance of
38 compensation.

39

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

42
43 **A.** On the first petition for review brought by a party to
44 an action, the commissioner shall determine the appropriate
45 relief, if any, under this section by determining the
46 employee's present degree of incapacity.

47

48 **B.** Once a party has sought and obtained a determination
49 under this section, it is the burden of that party in all
50

2 proceedings on his subsequent petitions under this section
to prove that the employee's earning incapacity attributable
4 to the work-related injury has changed since that
determination.

6 C. When an order has been issued pursuant to subsection 4-A
8 denying the employee's petition for reinstatement of
benefits, the commissioner may not reinstate benefits after
10 a hearing if any of the conditions in subsection 4-A are met.

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

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

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

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

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

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

34 (2) ~~The employee's whereabouts are unknown; or~~

36 (3) ~~The employee has resumed work;~~

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

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

48 (1) ~~If the employee refuses an offer of reinstatement~~
50 ~~or fails to return to available suitable work, his~~

2 benefits shall be reduced in an amount equal to the
difference between the employee's weekly benefit and
4 the benefits he would have been entitled to receive if
he had accepted reinstatement or returned to available
suitable work.

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

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

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

30 (5) If benefits are suspended or reduced under this
paragraph and the commission, after hearing, reverses
32 the provisional order, either in whole or in part, the
commission shall order a lump sum payment of all
34 benefits withheld together with interest at the rate of
6% a year. The employer shall pay this lump sum within
36 10 days of the order.

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

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

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

9 C. If the employee returns to work;

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

12 E. If the employer and the employee file an agreement with
13 the commission;

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

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

18 H. If the employee's treating physician or the independent
19 medical examiner determines that the employee is able to
20 return to work without any medical restrictions due to the
21 injury.

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

28 In the event benefits are discontinued because of a determination
29 by the independent medical examiner that the employee is
30 medically able to work, the commission shall refer any medical
31 issues underlying that determination to the review panel for
32 review under section 92-A. The panel shall report its findings
33 to the commission within 10 days.

34 4-B. Employee's right to a hearing. In the event that
35 compensation is discontinued by the employer pursuant to
36 subsection 4-A, the employee has a right to file a petition for
37 review and to submit to the commission any additional information
38 relating to continued entitlement to benefits.

39 A. The commission, within 2 weeks after the employee files
40 a petition for review, shall enter an order providing for
41 the suspension, reduction or continuation of benefits
42 pending a hearing on the petition. The order must be based
43 upon the information submitted by both the employer and the
44 employee.

2 employee under this section. The commission may not issue
4 an order reinstating benefits unless there is clear and
 convincing evidence that the employee will prevail at the
 hearing.

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

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

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

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

28 6. Recovery of overpayments. Compensation Any compensation
30 paid by the employer after the employee has resumed work may be
 recovered to an employee from the date the employee is not
32 qualified for compensation to the date the employer unilaterally
 discontinued benefits pursuant to subsection 4-A is recoverable
34 from the employee in a legal action brought by the employer if
 the employer discontinued compensation pursuant to subsection
36 4-A, paragraphs C to G.

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

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

46 Sec. A-53. 39 MRSA §104-A, sub-§2-A, as enacted by PL 1987, c.
48 559, Pt. B, §45, is amended to read:

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

6 A. Except as otherwise provided by section 51-B, subsection
7 9, if an employer or insurance carrier fails to pay
8 compensation as provided in this section, the ~~commission~~
9 Superintendent of Insurance shall assess against the
10 employer or insurance carrier a forfeiture of up to \$100
11 \$200 for each day of noncompliance. If the ~~commission~~
12 Superintendent of Insurance finds that the employer or
13 insurance carrier was prevented from complying with this
14 section because of circumstances beyond their control, no
15 forfeiture may be assessed.

16 (1) ~~One-half of the forfeiture shall be paid to the~~
17 ~~employee to whom compensation is due and 1/2 shall be~~
18 ~~paid~~ The forfeiture for each day of noncompliance must
19 be divided as follows: Of each day's forfeiture amount,
20 the first \$50 must be paid to the employee to whom
21 compensation is due and the remainder must be paid to
22 the commission and be credited to the General Fund.

23 (2) If a forfeiture is assessed against any employer
24 or insurance carrier under this subsection on petition
25 by an employee, the employer or insurance carrier shall
26 pay reasonable costs and attorney fees, as determined
27 by the ~~commission~~ Superintendent of Insurance, to the
28 employee.

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

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

36 **Sec. A-54. 39 MRSA §104-B, sub-§3,** as enacted by PL 1981, c.
37 474, §4, is amended to read:

38 **3. Subrogation.** Any insurer determined to be liable for
39 benefits under subsection 2 shall must be subrogated to the
40 employee's rights under this Act for all benefits the insurer has
41 paid and for which another insurer may be liable. Any such
42 insurer may, in accordance with rules ~~prescribed~~ adopted by the
43 ~~commission~~ Superintendent of Insurance, file a ~~petition for an~~
44 request for appointment of an arbitrator to determine

2 apportionment of liability among the responsible insurers. The
3 ~~commission has jurisdiction over all claims for apportionment~~
4 ~~under this section. In any proceeding for apportionment, no~~
5 ~~insurer is bound as to any finding of fact or conclusion of the~~
6 ~~law made in a prior proceeding in which it was not a party. The~~
7 arbitrator's decision is limited to a choice between the
8 submissions of the parties and may not be calculated by
9 averaging. Within 30 days of the request, the Superintendent of
10 Insurance shall appoint a neutral arbitrator who shall decide, in
11 accordance with the rules adopted by the Superintendent of
12 Insurance, respective liability among or between insurers.
13 Arbitration pursuant to this subsection will be the exclusive
14 means for resolving apportionment disputes among insurers and the
15 decision of the arbitrator is conclusive and binding among all
16 parties involved.

17 Sec. A-55. 39 MRS §104-C is enacted to read:

18 **§104-C. Apportionment between work-related and nonwork-related**
19 **injuries or conditions**

20
21 When, as determined by the treating physician or an
22 independent medical examiner, one or more work-related injuries
23 or conditions combine with, aggravate or are aggravated by one or
24 more nonwork-related injuries or conditions to produce an
25 incapacity or need for medical treatment, the liability of the
26 employer is governed by this section. The employer is liable
27 only if the independent medical examiner determines that the
28 work-related injury is and continues to be the predominant
29 medical cause of the claimant's physical condition or need for
30 medical treatment. If the work-related injury is the predominant
31 medical cause of the condition, liability for the incapacity or
32 treatment must be apportioned on the basis of the independent
33 medical examiner's medical determination of the relative
34 contribution of each injury or condition on a percentage basis,
35 and the employer is liable only for that portion of the
36 incapacity or treatment caused by the work-related injury.

37
38 Sec. A-56. 39 MRS §106, sub-§1, as repealed and replaced by
39 PL 1987, c. 559, Pt. B, §46, is amended to read:

40
41
42 1. **Injuries.** Whenever any employee has reported to an
43 employer under the Act any injury arising out of and in the
44 course of his the employee's employment which that has caused the
45 employee to lose a day's work ~~or has required the services of a~~
46 ~~physician~~, or whenever the employer has knowledge of any such
47 injury, the employer shall report the injury to the commission
48 within 7 days after he the employer receives notice or has
49 knowledge of the injury. The employer shall also report the
50 average weekly wages or earnings of the employee, together with

2 any other information required by the commission. The employer
shall report whenever the injured employee resumes his the
4 employee's employment and the amount of his the employee's wages
or earnings at that time. The employer shall keep a record of
6 all injuries that require medical treatment.

8 **Sec. A-57. 39 MRSA §106, sub-§2,** as repealed and replaced by
PL 1987, c. 559, Pt. B, §46, is repealed and the following
enacted in its place:

10 **2. Settlements.** Settlements are subject to this subsection
12 as follows.

14 A. Whenever any settlement is made with an injured employee
16 by the employer or insurance carrier for compensation
18 covering any specific period under an approved agreement or
20 a decree or covering any period of total or partial
22 incapacity that has ended, the employer or carrier shall
24 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.

26 B. At least 14 days prior to submitting any residual market
28 settlement agreement that is in excess of \$10,000 to the
30 commission for approval, the insurance carrier shall give
32 notice of the settlement to the employer. If the employer
34 objects to the settlement agreement, the employer shall give
36 notice of the grounds for objection to the carrier within 7
38 days of receipt of the agreement. If an employer gives
40 notice of objection under this paragraph, within 60 days of
42 the commission approving a settlement the employer may
44 appeal inclusion of all or part of the settlement payment in
46 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.

48 **Sec. A-58. 39 MRSA §106, sub-§4** is enacted to read:

50 **4. Employment status reports.** Any person receiving
compensation under this Act who has not returned to that person's

2 previous employment must submit, at the previous employer's
3 request, quarterly employment status reports to the commission
4 and employer. The report is due 90 days after the date of
5 injury, or after the filing of the report under subsection 3, and
6 every 90 thereafter. The report must be in a form prescribed by
7 the Department of Labor and must indicate whether the employee
8 has been employed, changed employment or performed any services
9 for compensation during the previous 90 days, the nature of the
10 employment or services, the name and address of the employer or
11 person for whom the services were performed and any other
12 information that the department by rule may require. Any
13 employer requesting a quarterly report under this section must
14 provide the employee with the prescribed form at least 15 days
15 prior to the date on which it is due.

16 **Sec. A-59. 39 MRSA §106-A**, as amended by PL 1983 c. 682, §8,
17 is further amended to read:

18 **§106-A. Notice by the commission**

19
20 Within 15 days of receipt of an employer's notice of injury,
21 as required by section 106, unless it has received a petition for
22 award of compensation relating to the injured employee, the
23 commission shall take reasonable steps to notify the employee
24 that, unless the employer disputes the claim, the employer is
25 required to pay compensation within the time limits established
26 in section 51-B, subsections 3 and 4; that a petition for award
27 may be filed; section 110 of the Act provides for the payment of
28 attorney's fees under certain circumstances; and rights under the
29 Act may not be protected unless a petition of award or memorandum
30 of payment is on file with the commission within 2 years of the
31 injury. The commission shall also notify the employee of the
32 employee's responsibility to submit the reports required under
33 section 106.

34
35
36 **Sec. A-60. 39 MRSA §110**, as amended by PL 1985, c. 431, §2,
37 is further amended to read:

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

39
40
41 **1. Injuries prior to June 30, 1985.** When the commission or
42 commissioner finds that an employee has instituted proceedings
43 under this chapter on reasonable grounds and in good faith or
44 that the employer through or under his the employer's insurance
45 carrier has instituted proceedings under this chapter, the
46 commission or commissioner may assess the employer costs of
47 witness fees and a reasonable attorney's fee, when in the
48 commission's or commissioner's judgment the witnesses and the
49 services of the attorney were necessary to the proper and
50 expeditious disposition of the case. The employer may not be

2 assessed costs of an attorney's fee attributable to services
4 rendered prior to one week after the informal conference under
6 section 94-B or, if the informal conference is waived, services
8 rendered prior to the date of that waiver, unless a party adverse
10 to the employee was so represented at that stage.

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

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

20 This subsection does not apply to injured employees governed by
22 subsection 2.

24 **2. Injuries on or after June 30, 1985.** If an employee
26 prevails in any proceeding involving a controversy under this
28 Act, the commission or commissioner may assess the employer costs
of a reasonable attorney's fee and witness fees whenever the
witness was necessary for the proper and expeditious disposition
of the case.

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

36 No attorney representing an employee who prevails in a proceeding
38 involving a controversy under this Act may receive any fee from
40 that client for an appearance before the commission, including
42 preparation for that appearance, except as provided in section
44 83, subsection 7 and section 94-B, subsection 3. Any attorney
who violates this paragraph ~~shall lose his~~ provision loses that
fee and be is liable in a court suit to pay damages to his that
attorney's client equal to 2 times the fee charged for that
client.

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

50 A. For the purposes of this subsection, "prevail" means to
obtain or retain more compensation or benefits under the Act

2 than were offered to the employee by the employer in writing
before the proceeding was instituted. If no such offer was
4 made, "prevail" means to obtain or retain compensation or
benefits under the Act.

6 B. Any employee, employer or insurance carrier involved in
any proceeding involving a controversy under this Act shall
8 report to the commission, on forms provided by the
commission, any amounts that he that employee, employer or
10 insurance carrier has paid for legal assistance in that
proceeding, including any amount paid for an employee's
12 legal fees under this subsection.

14 3. Attorney's fees; reimbursement levels. To ensure
appropriate limitation on the cost of attorney's fees, neither
16 party may be allowed charges for legal fees per injury, including
appeals, that exceed \$4,500 or actual billable hours, whichever
18 is less.

20 Sec. A-61. 39 MRSA §114 is enacted to read:

22 §114. Compilation of claims information

24 A person or entity may not compile for the purpose of
distribution and sale listings of employee names and information
26 regarding their claims with the commission. Any person or entity
found by the commission to have violated this section is subject
28 to the remedy provision of the Maine Human Rights Act, Title 5,
sections 4613 and 4614.

30 Sec. A-62. 39 MRSA §192, first ¶, as amended by PL 1977, c.
32 696, §415, is further amended to read:

34 On request of a party or on its own motion the commission
may in occupational disease cases appoint one or more competent
36 and impartial physicians, ~~their reasonable fees and expenses to~~
~~be fixed and paid by the commission.~~ Upon order of the
38 commission, the fees and expenses of the physician or physicians
must be paid by the employer. These appointees shall examine the
40 employee and inspect the industrial conditions under which he the
employee has worked in order to determine the nature, extent and
42 probable duration of his the occupational disease, the likelihood
of its origin in the industry and the date of incapacity. Section
44 65 of the Workers' Compensation Act ~~shall apply~~ applies to the
filing and subsequent proceedings on their report, and to
46 examinations and treatments by the employer.

48 Sec. A-63. PL 1989, c. 412, §§4 and 5 are amended to read:

2 **Sec. 4. Repeal.** The Maine Revised Statutes, Title 39, section
307,--1991 October 31, 1993.

4
6 **Sec. 5. Effective date.** Section 2 of this Act shall--take takes
effect on ~~June-30,--1991~~ October 31, 1993.

8 **Sec. A-64. Report.** The Director of the Maine Human Rights
Commission and the Chair of the Workers' Compensation Commission
10 shall consult and issue a joint report by October 1, 1992 to the
Joint Standing Committee on Banking and Insurance and the Joint
12 Standing Committee on Labor on unlawful discrimination against
injured employees, the need for coordination between the Maine
14 Human Rights Commission and the Workers' Compensation Commission
and any legislation and agency rules needed to protect injured
16 employees from unlawful discrimination.

18 **Sec. A-65. Public Advocate for insurance study.** The Office of
Policy and Legal Analysis shall study the establishment of a
20 public advocate for the insurance to represent the public
interest in proceedings with regard to all lines of insurance. A
22 report containing background information and options for
legislative action must be presented to the Joint Standing
24 Committee on Banking and Insurance for the Second Regular Session
of the 115th Legislature no later than November 1, 1991.

26 **Sec. A-66. Insurance commission study.** The Office of Policy
and Legal Analysis shall study the establishment of a 3-member
28 insurance commission to set insurance rates and regulate the
industry with regard to all lines of insurance. A report
30 containing background information and options for legislative
action must be presented to the Joint Standing Committee on
32 Banking and Insurance for the Second Regular Session of the 115th
Legislature no later than November 1, 1991.

36 **Sec. A-67. Allocation.** The following funds are allocated from
the Safety Education and Training Fund to carry out the purposes
38 of this Act.

	1991-92	1992-93
42 WORKERS' COMPENSATION		
44 Safety Education and Training		
46 Fund		
All Other	\$120,000	\$100,000
48		
50 Provides funds of \$20,000 for fiscal year 1991-92 for		

2 workplace health and safety
3 training programs in the
4 Maine Technical College
5 System. Provides funds of
6 \$50,000 for fiscal year
7 1991-92 and \$50,000 for
8 fiscal year 1992-93 for the
9 Center for Occupational
10 Health and Safety at the
11 Central Maine Technical
12 College. Provides funds of
13 \$50,000 for fiscal year
14 1991-92 and \$50,000 for
15 fiscal year 1992-93 to fund
16 contracts to support the
17 development of long-term
18 strategies to improve
19 occupational health and
20 safety professional education
21 and resources pursuant to the
22 Maine Revised Statutes, Title
23 26, section 42-A, subsection
24 2, paragraph E-2.

26 **Sec. A-68. Application; retroactivity; average weekly wages, earnings
27 or salary.** That section of this Act that enacts the Maine Revised
28 Statutes, Title 39, section 2, subsection 2, paragraph G applies
29 to employees injured on or after the effective date of this Act
30 and retroactively to employees injured before the effective date
31 of this Act. If this retroactivity provision is held invalid,
32 that section applies only to employees injured on or after the
33 effective date of this Act.

34 **Sec. A-69. Retroactivity; compensation for partial incapacity.** The
35 430-week benefit maximum established in that section of this Act
36 that amends the Maine Revised Statutes, Title 39, section 55-B
37 applies retroactively to employees injured on or after November
38 20, 1987. If this retroactivity provision is held invalid, that
39 maximum applies only to employees injured on or after the
40 effective date of this Act.

42 **Sec. A-70. Application.** The following sections of this Part
43 apply only to injuries occurring on or after the effective date
44 of this Act: sections A-10, A-20 to A-24, A-30, A-35, A-36,
45 A-48, A-51, A-52, A-56 and A-57 of this Part. Section A-29 of
46 this Part as it amends the Maine Revised Statutes, Title 39,
47 section 55-B, 3rd paragraph applies only to injuries occurring on
48 or after the effective date of this Act. Section A-60 of this
49 Part as it affects Title 39, section 110, subsections 2 and 3,
50 applies only to injuries occurring on or after the effective date
of this

2 Act. Section A-55 of this Part applies only to injuries
3 occurring on or after the effective date of this Act. If the
4 application of that section to a nonwork-related condition
5 combining with or aggravating a work-related injury that occurred
6 prior to that date is held invalid, section A-55 of this Part
7 applies only when the work-related injury at issue occurred
8 after the effective of this Act.

9
10 **Sec. A-71. Effective date.** Sections A-4 to A-9, A-11, A-12 and
11 A-40 in this Part take effect January 1, 1992.

12
13 **PART B**
14

15 **Sec. B-1. 4 MRSA §1151, sub-§2-A,** as amended by PL 1985, c.
16 748, §2, is further amended to read:

17
18 **2-A. Appellate jurisdiction.** The Administrative Court
19 shall--have has exclusive jurisdiction to review disciplinary
20 decisions of occupational licensing boards and commissions taken
21 pursuant to Title 10, section 8003. The Administrative Court has
22 exclusive jurisdiction to consider appeals of decisions of the
23 Workers' Compensation Commission made pursuant to Title 39. The
24 Maine Administrative Procedure Act, Title 5, chapter 375,
25 subchapter VII, shall--govern governs this procedure as far as
26 applicable, substituting "Administrative Court" for "Superior
27 Court."

28
29 **Sec. B-2. 26 MRSA §1401, sub-§6** is enacted to read:

30
31 **6. Workers' compensation.** In addition to any other powers
32 granted to the commissioner pursuant to this Title, the
33 commissioner may adopt rules necessary to fulfill the
34 commissioner's obligations under Title 39 with respect to
35 workers' compensation.

36
37 **Sec. B-3. 39 MRSA §52-B,** as enacted by PL 1987, c. 559, Pt.
38 B, §22, is amended to read:

39 **§52-B. Medical fees; reimbursement levels**
40

41
42 In order to ensure appropriate limitations on the cost of
43 health care services, the ~~commissioner~~ Commissioner of Labor shall
44 adopt or amend rules under Title 5, chapter 375, that establish:

45
46 **1. Maximum charges.** Standards, schedules or scales of
47 maximum charges for individual services, procedures of courses of
48 treatment. The maximum charges shall may not be less than the
49 usual, customary and reasonable charge paid by private 3rd-party
50

2 payors for similar services provided by Maine health care
3 providers. In establishing these standards, schedules or scales,
4 the ~~commission~~ Commissioner of Labor shall consult with
5 organizations representing health care providers and other
6 appropriate groups. The standards shall must be adjusted
7 annually to reflect any appropriate changes in levels of
8 reimbursement. The standards shall do not apply to hospital
costs; and

10 **2. Depositions or hearings.** Various fees for preparation
11 of materials or attendance at depositions or hearings as may be
12 required under this Act.

14 **Sec. B-4. 39 MRSA §57-B, sub-§12,** as enacted by PL 1985, c.
15 372, Pt. A, §23, is amended to read:

16 **12. Rulemaking.** The ~~chairman~~ Commissioner of Labor may
17 adopt rules, subject to section 92, subsection 1, to carry out
18 the purposes of this section.

20 **Sec. B-5. 39 MRSA §81, 2nd ¶,** as enacted by PL 1985, c. 372,
21 Pt. A, §29, is amended to read:

24 The ~~chairman~~ Commissioner of Labor may adopt rules, subject
25 to section 92, subsection 1, to carry out the purposes of this
26 subchapter.

28 **Sec. B-6. 39 MRSA §82, sub-§3, ¶D,** as enacted by PL 1985 c.
29 372, Pt. A, §29, is amended to read:

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

38 **Sec. B-7. 39 MRSA §84-A, first ¶,** as enacted by PL 1987, c.
39 779, §5, is amended to read:

42 Employers who provide rehabilitation services to injured
43 workers under this Act must report to the commission on their
44 rehabilitation efforts. The ~~commission~~ Commissioner of Labor
45 shall adopt rules under the Maine Administrative Procedure Act,
46 Title 5, chapter 375, to implement this section. The information
47 shall must include, but is not be limited to:

48 **Sec. B-8. 39 MRSA §85, sub-§2-A, ¶A,** as enacted by PL 1989, c.
49 580, §11, is amended to read:

2 A. Upon receiving an employee's request for an order of
4 plan implementation under section 83, subsection 4,
6 paragraph A, the administrator shall determine whether the
8 plan is likely to return the injured employee to suitable
employment at a reasonable cost of implementation.

10 (1) The ~~chair~~ Commissioner of Labor shall adopt rules
12 subject to section 92, subsection 1, providing
standards for determinations made under this paragraph.

14 (2) In making a determination under this paragraph,
16 the administrator shall consider the comments,
arguments and evidence offered by both parties at the
informal conference.

18 (3) The administrator may request that a
20 rehabilitation provider provide the administrator with
additional information necessary to make a
22 determination under this paragraph. The rehabilitation
24 provider's costs for these services are deemed to be
plan implementation costs under paragraph C and are
recoverable upon the order of the administrator under
26 subsection 4-A.

28 **Sec. B-9. 39 MRSA §92, sub-§1, as enacted by PL 1983, c. 479,
§16, is repealed and the following enacted in its place:**

30 1. Rules. Subject to rules adopted by the Commissioner of
32 Labor, the chair of the commission has general supervision over
34 the administration of this Act and responsibility for the
36 efficient and effective management of the commission and its
employees. Subject to the Maine Administrative Procedure Act,
and considering the need to ensure a speedy, efficient and
inexpensive disposition of proceedings, the Commissioner of Labor
may make rules, prescribe forms and make suitable orders as to
38 procedure to allow the chair to perform the chair's functions.

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

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

46 The commissioner who hears a case pursuant to section 99
shall render his a decision no later than 30 days after each
48 party has completed presenting its case. Whenever the
commissioner exceeds the limit contained in this section,
50 compensation to him--shall that commissioner must be forfeited
effective the day after the 30th day and for each day until the

2 decision has been issued; provided that this provision shall does
not apply in any case for which the commissioner has shown just
4 cause, as determined by rules of the ~~commissioner~~ Commissioner of
Labor made pursuant to section 92, subsection 1, for delay beyond
6 30 days.

8 **Sec. B-11. 39 MRSA §103-A**, as enacted by PL 1981, c. 514, §6,
is repealed.

10 **Sec. B-12. 39 MRSA §103-B**, as amended by PL 1989, c. 412,
12 §§1, 2, 4 and 5, is further amended to read:

14 **§103-B. Appeal from commission decision**

16 1. **Procedure.** An appeal shall may be taken from the
commission decision by filing a copy of the decision, order or
18 agreement, with the ~~division~~ Administrative Court within 20 days
after receipt of notice of the filing of the decision by the
20 commission or commissioner.

22 ~~Any party in interest may present copies of any order, decision~~
~~or agreement to the clerk of the division.~~

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

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

34 **2-A. Basis.** There shall may be no appeal upon questions of
fact found by the commission or by any commissioner.

36 3. **Action.** The ~~division~~ Administrative Court, after due
38 consideration, may reverse ~~or~~, modify or remand any decree of the
commission and shall issue a written decision. The written
40 decision of the ~~division shall~~ Administrative Court must be filed
with the commission and mailed to the parties or their counsel.

42 4. **Costs.** If the employee prevails, costs of appeal shall
44 must be allowed, including the record, and including reasonable
attorneys' fees as provided for under section 110. No attorney
46 who represents an employee who prevails in an appeal before the
~~division~~ Administrative Court may recover any fee from that
48 client for that representation. Any attorney who violates this
paragraph shall lose his provision loses that fee and is liable

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

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

6. Rules of procedure. Except as otherwise provided in this section, all forms of complaints, pleadings and motions and the practice and procedure in the Administrative Court are subject to Title 4, chapter 25 and rules that may be adopted pursuant to Title 4, chapter 25.

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

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

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

2. **Rules.** The Law Court shall establish and publish procedures for the review of petitions for appellate review of decisions of the division Administrative Court.

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

If the petition for appellate review is granted, then the clerk of the Law Court shall notify the parties of the briefing schedule consistent with the Maine Rules of Civil Procedure, and in all respects the appeal before the Law Court shall must be treated as an appeal in an action in which equitable relief has been sought. The Law Court may, after due consideration, reverse,

2 modify or affirm any decision of the ~~division~~ Administrative
3 Court.

4 4. **Costs.** In all cases of appeal to the Law Court in which
5 the employee prevails, it may order a reasonable allowance to be
6 paid to the employee by the employer for expenses incurred in the
7 proceedings of the appeal, including the record, but not
8 including expenses incurred in other proceedings in the case.
9 Reasonable attorneys' fees shall must be allowed as provided for
10 under section 110. No attorney who represents an employee who
11 prevails in an appeal before the court may recover any fee from
12 that client for that representation. Any attorney who violates
13 this ~~paragraph shall lose his~~ provision loses that fee and is
14 liable in a court suit to pay damages to the client equal to 2
15 times the fee charged that client.

16 **Sec. B-14. 39 MRSA §103-E**, as amended by PL 1981, c. 698,
17 §198, is repealed.

18 **Sec. B-15. 39 MRSA §104-A, sub-§1**, as amended by PL 1983, c.
19 479, §27, is further amended to read:

20 1. **Order or decision.** With regard to injuries occurring
21 prior to January 1, 1984, within 10 days after the receipt of
22 notice of an approved agreement for payment of compensation, or
23 with regard to injuries occurring after December 31, 1983, within
24 the time limits specified in section 51-B, or within 10 days
25 after any order or decision of the commission awarding
26 compensation. Payment shall may not be suspended thereafter in
27 the event of appeal to the ~~Appellate-Division~~ Administrative
28 Court as provided in section 103-B or, if the ~~division~~
29 Administrative Court finds that the employee is entitled to
30 compensation, in the event of appeal to the Law Court from a
31 decision of the ~~division--as--provided--in--section--103-C~~
32 Administrative Court, except that the commission shall retain
33 jurisdiction, pending the decision on appeal to the
34 Administrative Court, to enter orders or decisions as provided in
35 section 100. If the commission, after a review of incapacity
36 under section 100, issues an order or decision denying
37 compensation to an employee, compensation shall must be suspended
38 from the date of the commission's order or decision,
39 notwithstanding any appeal of that order or decision to the
40 ~~division~~ Administrative Court as provided in section 103-B, or
41 any report or appeal to the Law Court ~~as provided in sections~~
42 ~~103-C and 103-D~~. The employer or insurer may recover from an
43 employee payments made pending appeal to the ~~Appellate-Division~~
44 Administrative Court or pending report or appeal to the Law Court
45 if and to the extent that the ~~Appellate-Division~~ Administrative
46 Court or the Law Court has decided that the employee was not
47 entitled to the compensation paid. The commission shall ~~have~~ has
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50

2 full jurisdiction to determine the amount of overpayment, if any,
and the amount and schedule of repayment, if any. The commission,
4 in determining whether or not repayment should be made and the
extent and schedule of repayment, shall consider the financial
6 situation of the employee and his the employee's family and shall
may not order repayment which that would work hardship or
injustice.

8
10 **Sec. B-16. Effective date.** Sections B-1 and B-11 to B-15 of
this Part take effect on January 1, 1992.

12
14 **STATEMENT OF FACT**

16 1. The 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
18 commission and on a public advocate for all insurance matters.

20 2. The bill requires notice to employers when a workers'
compensation proceeding, conference or hearing is held and when a
22 notice of settlement is filed.

24 3. The bill requires the Workers' Compensation Commission
to open a toll-free telephone line to provide information to the
26 public.

28 4. The bill generally limits lump sum settlements to
claimants who have returned to work for 6 months or more or
30 otherwise sets a limit of \$5,000 or less. The bill still permits
structured settlements.

32 5. The bill eliminates the requirement of reports to the
34 Department of Labor on "medical-only" claims and provides for
notice to an employer in the residual market of any proposed
36 settlement by the insurer of \$10,000 or more. If the employer
objects to part or all of the settlement, the Superintendent of
38 Insurance may limit the impact of the settlement or the
employer's experience rating factor. This bill also requires the
40 court to notify the employee of the obligation to notify the
court and the previous employer when returning to work.

42 6. The bill places limitations on an attorney's fees.

44 7. The bill excludes all fringe benefits from the
46 calculation of average weekly wages, reversing the conclusion of
the Law Court to the contrary in Ashby v. Rust Engineering, 559
48 A.2d 774 (Me. 1989), and related commission decisions.

50 8. The bill limits the number of physicians an employee may
select without the approval of the independent medical examiner

2 or the employer. The provision does not prevent referral to a
3 specialist. Durational limits are placed on medical services
4 provided to claimants. Repeated diagnostic testing is not
5 covered without prior authorization from the independent medical
6 examiner and generic drugs are to be used unless otherwise
7 recommended by the employee's physician.

8 9. The bill requires employees to purchase generic drugs if
9 the prescribing physician indicates that they may be used and if
10 generic drugs are available at the time and place of purchase.

11 10. The bill establishes the use of an independent medical
12 examiner (IME) to resolve any medical dispute. The IME must be
13 one hospital in or south of Augusta and one north of Augusta,
14 selected by competitive bidding. The bill describes the scope of
15 responsibility, provides for an appeal procedure to a 3-member
16 panel and provides immunity to the IME when acting within the
17 scope of its duties.

18 11. The bill shortens the time limit for filing any
19 petitions under the Workers' Compensation Act from 10 to 6 years
20 following the date of the latest payment under the Act.

21 12. The bill provides that injured employees, subject to
22 some limitations, may serve as volunteers to public or nonprofit
23 organizations without prejudice to compensation.

24 13. The bill establishes a limit on duration of permanent
25 partial claims of 430 weeks from the date of injury and requires
26 the commission to consider the availability of work on a
27 statewide basis with respect to benefits paid for periods more
28 than 52 weeks following the date of injury.

29 14. The bill provides for total and partial incapacity
30 benefits to be offset against permanent impairment benefits.

31 15. The bill permits automatic discontinuance of benefits
32 by the employer if the employee refuses an offer of reinstatement
33 to suitable work; returns to work; refuses to submit to a medical
34 examination; the employer and employee reach agreement; the
35 employee has left the State or the employee's whereabouts is
36 unknown; or the employee is able to return to work. If
37 compensation is discontinued by the employer, the employee has
38 the right to file for review by the Workers' Compensation
39 Commission. Within 2 weeks the commission must enter a
40 provisional order suspending, reducing or continuing benefits
41 pending a hearing. If a provisional order upholding suspension
42 is subsequently reversed, the employee is entitled to back
43 payments plus interest.
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2 16. The bill increases the penalty for late payment of
4 compensation benefits and shifts the enforcement authority with
6 respect to timely payments to the Superintendent of Insurance.

8 17. The bill establishes an arbitration procedure for the
10 apportionment between insurers.

12 18. The bill repeals the requirement for a medical
14 certificate of authorization signed by the employee and requires
16 that, if compensation is sought for a lost-time claim, the health
18 care provider must automatically forward a written report to the
20 employee and employer within 5 business days and every 30 days
22 thereafter if treatment is ongoing. Authorization from the
24 employee is not needed for additional information pertaining to
26 the work-related condition.

19. The bill prohibits health care providers from charging
employees receiving treatment under the Workers' Compensation Act
more than they charge 3rd-party payors.

20. The bill addresses employer obligations and insurance
carrier performance. The employer or employer's representative
attending an informal conference at the commission is required to
have knowledge about the case and to have full authority to
settle the case. Insurance adjusters may lose their licenses for
failure to perform their duties in a professional manner.

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

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

23. The bill amends the early-pay system by changing the
period in which an employer may contest a claim from 44 days
after an event creating an obligation to make payments to 75
days. It also clarifies that employers may make payments without
prejudice after a notice of controversy is filed.

24. The bill clarifies which injuries are compensable under
the Act.

25. The bill modifies funding requirements for
self-insurers.

26. The bill places responsibility for rulemaking under the
Act with the Commissioner of Labor.

2 27. The bill transfers appellate jurisdiction over workers'
compensation matters to the Administrative Court from the
4 Appellate Division, effective January 1, 1992.