

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1991

Legislative Document

No. 1981

H.P. 1397

House of Representatives, July 17, 1991

Reported by the Majority from the Committee on Labor and the Committee on Banking and Insurance pursuant to H.P. 1382 and printed under Joint Rule 2.

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

EDWIN H. PERT, Clerk

STATE OF MAINE

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

An Act to Make Changes in the Workers' Compensation System.

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

PART A

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

1. Long-term and short-term training. Providing, in close cooperation with the private sector, both the long-term education 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;

Sec. A-2. 24-A MRSA §1853, as amended by PL 1989, c. 168, §§26 and 27, is further amended by adding at the end a new paragraph to read:

The superintendent shall adopt rules to establish the standards for performance of the duties of the adjuster. In addition to the causes provided in section 1539, the superintendent may suspend, revoke or refuse a license of an adjuster for failure to perform the duties of the adjuster in accordance with the standards.

Sec. A-3. 24-A MRSA §2362-A is enacted to read:

§2362-A. Disclosure of premium information

All policies issued to employers for workers' compensation insurance must disclose clearly to the employer as separate figures the base rate, the employer's experience modification factor for each year included in the formula pursuant to section 2364, the medical, indemnity and administrative portions of the premium and the portion of the premium attributable to the workplace health and safety consultation services.

When a policy is issued to employers for workers' compensation insurance, it must be accompanied by a statement disclosing the percentages of premium expended during the previous year by the insurer for claims paid, loss control and other administrative costs, medical provider expenses, insurer and employee attorney's fees and private investigation costs.

Sec. A-4. 24-A MRSA §2362-B is enacted to read:

§2362-B. Workplace health and safety consultations

Workplace health and safety consultation services provided by workers' compensation insurance carriers to employers with an

2 experience rating factor of one or more are subject to the
3 following.

4 1. Definitions. As used in this section, unless the
5 context otherwise indicates, the following terms have the
6 following meanings.

8 A. "Workplace health and safety consultations" means a
9 service provided to an employer to advise and assist the
10 employer in the identification, evaluation and control of
11 existing and potential accident and occupational health
12 problems.

14 2. Standards for workplace health and safety
15 consultations. The superintendent shall adopt rules establishing
16 the standards for approval of workplace health and safety
17 consultations provided to employers by insurance carriers,
18 including provision of adequate facilities, qualifications of
19 persons providing the consultations, specialized techniques and
20 professional services to be used and educational services to be
21 offered to employers.

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

30 4. Optional purchase from another provider. An employer
31 may elect to purchase workplace health and safety consultation
32 services from a provider other than the insurer. Upon submission
33 by the employer of a certificate of completion of workplace
34 health and safety consultation services from another approved
35 provider, the insurance carrier must refund to the employer the
36 portion of the premium attributable to the workplace health and
37 safety consultation.

38 5. Notification to employer; request for consultation
39 services. An insurance carrier writing workers' compensation
40 insurance coverage shall notify each employer of the type of
41 workplace health and safety consultation services available and
42 the address or location where these services may be requested.
43 The insurer shall respond within 30 days of receipt of a request
44 for workplace health and safety consultation services.

46 6. Reports to employers. In any workplace health and
47 safety consultation that includes an on-site visit, the insurer
48 shall submit a report to the employer describing the purpose of
49 the visit, a summary of the findings of the on-site visit and
50 the visit, a summary of the findings of the on-site visit and

2 evaluation and the recommendations developed as a result of the
3 evaluation. The insurer shall maintain for a period of 3 years a
4 record of all requests for workplace health and safety
5 consultations and a copy of the insurer's report to the employer.

6 7. Safe workplace responsibility. Workplace health and
7 safety consultations provided by an insurer do not diminish or
8 replace an employer's responsibility to provide a safe
9 workplace. An insurance carrier or its agents or employees do
10 not incur any liability for illness or injuries that result from
11 any consultation or recommendation.

12
13 **Sec. A-5. 24-A MRSA §2363, sub-§§1 and 2, as enacted by PL**
14 **1987, c. 559, Pt. A, §4, are amended to read:**

15
16 **1. Policies.** Every insurance company or insurer issuing
17 workers' compensation insurance policies covering the payment of
18 compensation and benefits provided for in this subchapter shall
19 must use only policy forms approved pursuant to section 2412.

20
21 **2. Determination of rates.** Every insurer issuing workers'
22 compensation insurance policies shall file with the
23 superintendent its classification of risks and maximum premium
24 rates, which may not take effect until the superintendent has
25 approved them. The superintendent shall apply the procedures and
26 standards of this section in investigating, reviewing and
27 determining just and reasonable rates. The superintendent may:

28
29 A. Require the filing of specific rates for workers'
30 compensation insurance, including classification of risks,
31 experience or any other rating information from insurance
32 companies carriers authorized to transact insurance in this
33 State;

34
35 B. Make or cause to be made investigations as he deems the
36 superintendent considers necessary to ~~satisfy--himself~~
37 determine that the rates to be promulgated are just and
38 reasonable; and

39
40 C. At any time, after public hearing, withdraw his the
41 superintendent's approval of a previously approved rate
42 filing.

43
44 **Sec. A-6. 24-A MRSA §2363, sub-§4, ¶A, as repealed and**
45 **replaced by PL 1989, c. 423, §1, is amended to read:**

46
47 A. Maine premium, loss and loss adjustment experience.
48 Maine premium, loss and loss adjustment experience shall
49 must show:
50

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

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

14 (3) The amount of premium collected from the expense
15 constant. This premium shall must be provided in
16 dollars and as a percentage of the standard earned
17 premium and as a percentage of net earned premium. If
18 the percentage of premium collected in this manner is
19 expected to change, the extent of the change shall must
20 be estimated and the details of this estimation
21 provided;

22 (4) The amount of premium collected by the minimum
23 premium. This premium shall must be provided in
24 dollars and as a percentage of standard earned premium
25 and as a percentage of earned premium. If the
26 percentage of premium collected in this manner is
27 expected to change, the extent of the change shall must
28 be estimated and the details of this estimation
29 provided;

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

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

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

40 (a) A list of all deviating companies carriers;

41 (b) The total standard premium written at
42 deviated rates;

- 2 (c) The percentage of the entire statewide
standard premium written at deviated rates;
- 4 (d) The total amount of deviations in dollars;
- 6 (e) The average percentage deviation for
deviating companies; and
- 8 (f) The average percentage deviation for all
10 companies carriers;
- 12 (8) The following information on company carriers'
workers' compensation dividend practices for each of
14 the last 3 years:
- 16 (a) A list of all companies carriers issuing
dividends;
- 18 (b) The total amount of dividends in dollars;
- 20 (c) The average percentage dividend issued by
22 companies carriers issuing dividends; and
- 24 (d) The average percentage dividend issued by all
companies carriers;
- 26 (9) All policy year and accident year incurred loss
28 data used in the filing, provided in the aggregate and
also separated into paid losses, case-incurred and
30 incurred but not reported losses; and
- 32 (10) The related incurred losses for all incurred loss
adjustment expense data contained in the filing;

34 Sec. A-7. 24-A MRSA §2363, sub-§4, ¶N, as enacted by PL 1989,
36 c. 423, §1, is amended to read:

- 38 N. The level of capital and surplus needed. The following
information relating to the level of capital and surplus
40 shall must be provided:
- 42 (1) Aggregate premium to surplus ratios and reserve to
surplus ratios for the latest 5 calendar years for all
44 companies carriers writing workers' compensation
insurance in this State; and
- 46 (2) Estimates of comparable ratios for the years
48 during which the rates will be in effect; and

2 **Sec. A-8. 24-A MRSA §2363, sub-§7, ¶B,** as enacted by PL 1987,
c. 559, Pt. A, §4, is amended to read:

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

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

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

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

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

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

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

30 (7) The relationship of the aggregate amount of
operating expenses reported by all companies carriers
32 to the annual operating expenses reported in the filing
and the annual insurance expense exhibits filed by each
34 company carrier with the superintendent;

36 (8) The impact of operating and management efficiency
efficiency of the companies carriers on expense levels
38 and the effect of variations in expense levels on
rates; and

40 (9) Any premium surcharges or credits ordered by the
42 superintendent pursuant to section 2367.

44 **Sec. A-9. 24-A MRSA §2363, sub-§7-A,** as enacted by PL 1989, c.
467, §2, is amended to read:

46 **7-A. Fee for servicing residual market.** In every rate
48 filing in which a rating bureau requests a rate adjustment, the
superintendent shall take evidence on the issue of whether the
50 fee for servicing the residual market is reasonable. Concurrent

2 with the decision on the rate adjustment, the superintendent
3 shall issue a decision on whether the fee is reasonable, taking
4 into account the rate adjustment approved. If the superintendent
5 determines that the fee is not reasonable, the superintendent
6 shall order an adjustment to the fee, as necessary, to ensure
7 that the fee is reasonable. The superintendent shall adopt rules
8 establishing standards for the performance of adjustment services
9 and requiring that servicing fees for individual insurance
10 carriers be separately reviewed.

11 Sec. A-10. 24-A MRSA §2364, sub-§4, ¶A, as enacted by PL 1987,
12 c. 559, Pt. A, §4, is amended to read:

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

19 (1) The claims and exposure for the most recent year
20 for which data is available must be given 40% weight.

21 (2) The claims and exposure for the 2nd most recent
22 year for which data is available must be given 35%
23 weight.

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

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

30 Sec. A-11. 24-A MRSA §2365-A is enacted to read:

31 **§2365-A. Medical expense deductibles**

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

35 1. Optional deductible of \$250. To employers who are not
36 experience-rated, insurers shall offer a deductible of \$250 per
37 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 other occupations listed in the experience rating schedule.

2 lumbering industries, including employers of drivers, and sawmill
3 industries, insurers shall offer a deductible of \$250 or \$500 per
4 occurrence.

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

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

11 1-A. Rules. The superintendent shall adopt rules for the
12 purpose of encouraging workers' compensation insurers to take
13 workers' compensation policies out of the residual market by
14 establishing credits applicable to any assessments that may be
15 ordered under section 2367 or by any other means. The criteria
16 for applying credits must include consideration for policies
17 taken out of the residual market prior to as well as after the
18 effective date of the rules.

19 **Sec. A-13. 24-A MRSA §2366, sub-§2, ¶B, as enacted by PL 1987,**
20 **c. 559, Pt. A, §4, is amended to read:**

21 **B. An employer is eligible for insurance from the Accident**
22 **Prevention Account if:**

23 (1) The employer has at least 2 lost-time claims over
24 \$10,000 and a loss ratio greater than 1.00 over the
25 last 3 years for which data is available; and

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

33 **Sec. A-14. 24-A MRSA §2366, sub-§3, ¶¶A and B, as enacted by PL**
34 **1987, c. 559, Pt. A, §4, are amended to read:**

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

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

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

4
6 (2) Has a loss ratio which that does not exceed 1.0 or
has had no more than one lost-time claim over \$10,000
over the last 3 years for which data is available; or

8
10 (3) Has been in business for less than 3 years,
provided that the eligibility shall---terminate
12 terminates if his the employer's loss ratio exceeds 1.0
and the employer has at least 2 lost-time claims over
14 \$10,000 each at the end of any year.

16 Sec. A-15. 24-A MRSA §2366, sub-§4, ¶A-1 is enacted to read:

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

22 Sec. A-16. 24-A MRSA §2366, sub-§5, ¶C is enacted to read:

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

36 Sec. A-17. 24-A MRSA §2366, sub-§7-A is enacted to read:

38 7-A. Credits for qualifying safety programs. The
superintendent shall adopt rules to establish dividend plans and
40 premium credits between 5% and 15% of net annual premiums for
policyholders that establish or maintain qualifying safety
42 programs. The rules must identify the classifications by which
policyholders are eligible for the credits and establish criteria
44 for qualifying safety programs and procedures to be followed by
servicing carriers in approving and auditing compliance with the
46 safety programs. The superintendent may employ outside
consultants to assist in the development of rules under this
48 subsection, the costs of which must be paid by the Safety
Education and Training Fund established under Title 26, section
50 61 to the extent that funds are available.

2 Sec. A-18. 26 MRSA §42-A, sub-§2, ¶E-1, as enacted by PL 1987,
c. 782, §3, is amended to read:

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

8 Sec. A-19. 26 MRSA §42-A, sub-§2, ¶E-2 is enacted to read:

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

20 Sec. A-20. 39 MRSA §2, sub-§2, ¶G is enacted to read:

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

28 Sec. A-21. 39 MRSA §5 is enacted to read:

30 §5. Predetermination of independent contractor status

32 1. Predetermination permitted. A worker, an employer or a
34 workers' compensation insurance carrier, or any together, may
36 apply to the Department of Labor for a predetermination of
38 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.

40 A. The predetermination by the Department of Labor creates
42 a rebuttable presumption that the determination is correct
 in any later claim for benefits under this Act.

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

48 2. Premium adjustment. If it is determined that a
50 predetermination does not withstand commission or judicial
 scrutiny when raised in a subsequent workers' compensation claim,

2 then, depending on the final outcome of that subsequent
4 proceeding, either the workers' compensation insurance carrier
6 shall return excess premium collected or the employer shall remit
8 premium subsequently due in order to put the parties in the same
10 position as if the final outcome under the contested claim were
12 predetermined correctly.

14 3. Predetermination submission. A party may submit, on
16 forms approved by the Department of Labor, a request for
18 predetermination regarding the status of a person or job
20 description as an employee or independent contractor. The status
22 requested by a party is deemed to have been approved if the
24 Department of Labor does not deny or take other appropriate
26 action on the submission within 14 days.

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

34 5. Certificate. The Department of Labor shall provide the
36 petitioning party a certified copy of the decision regarding
38 predetermination that is to be used as evidence at a later
40 hearing on benefits.

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

Sec. A-22. 39 MRSA §21-A, sub-§4 is enacted to read:

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

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

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

2 safety options, including on-site consultation, education
and training activities and technical assistance.

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

10 D. The Department of Labor shall notify the Superintendent
12 of Insurance of any employer that fails to complete the
workplace health and safety program as required by this
14 section and the rules. The superintendent shall assess a
surchARGE of 5% on that employer's workers' compensation
16 insurance premium or the imputed premium for self-insurers,
to be paid to the Treasurer of State who shall credit 1/2 of
18 that amount to the Safety Education and Training Fund, as
established by Title 26, section 61, and 1/2 to the
20 Occupational Safety Loan Fund, as established by Title 26,
section 62.

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

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

32 1-A. Pilot projects. Workers' compensation health benefits
pilot projects are authorized under the following provisions.

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

46 B. The comprehensive health insurance may provide for
48 health care by a health maintenance organization or a
preferred provider organization. The premium must be paid
50 entirely by the employer. The program may use deductibles.

2 coinsurance and copayment by the employees not to exceed \$5
3 per visit or \$50 maximum per occurrence.

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

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

12 Sec. A-24. 39 MRSA §23, sub-§2, as amended by PL 1989, c. 435,
13 §2, is further amended to read:

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

36 The superintendent shall prescribe the form of the surety bond
37 which that may be used to satisfy, in whole or in part, the
38 employer's responsibility under this section to post security.
39 The bond shall must be continuous, shall be subject to nonrenewal
40 only upon not less than 60 days' notice to the superintendent and
41 shall cover payment of all present and future liabilities
42 incurred under the Act while the bond is in force and cover
43 payments which that become due while the bond is in force which
44 that are attributable to injuries incurred in prior periods and
45 which ~~are~~ otherwise unsecured by cash or acceptable securities.
46 A bond shall must be held until all payments secured thereby have
47 been made or until it has been replaced by a bond issued by a
48 qualified successor surety which that covers all outstanding
49 liabilities. Payments under the bond shall ~~be~~ are due within 30
50

2 days after notice has been given to the surety by ~~the chair of~~
the commission that the principal has failed to make a payment
4 required under the terms of an award, agreement or governing
law. A surety bond shall may not be used to fund a trust
6 established to satisfy the requirements of this section.

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

2 found by the superintendent to be capable of paying compensation
and benefits required by this Act and:

4 A. Has positive net earnings; or

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

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

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

36 As a further alternative to the methods described in this
38 subsection, an employer shall--be is eligible for approved
self-insurance status pursuant to this Act if the employer
40 submits a written guarantee of the obligations incurred pursuant
to this Act, the guarantee to be issued by a United States or
42 Canadian corporation which that is a member of an affiliated
group of which the employer is a member, and which corporation is
44 solvent and demonstrates an ability to pay the compensation and
benefits, and the guarantee is in a form acceptable to the
46 superintendent. The guarantor shall provide quarterly financial
statements, audited annual financial statements and such other
48 information as the superintendent may require, and the employer
shall provide a bond as otherwise required by this Act in an
50 amount not less than \$1,000,000. Any such guarantor shall--be is

2 deemed to have submitted to the jurisdiction of the Workers'
3 Compensation Commission and the courts of this State for purposes
4 of enforcing any such guarantee. The guarantor, in all respects,
5 shall--be is bound by and subject to the orders, findings,
6 decisions or awards rendered against the employer for payment of
7 compensation and any penalties or forfeitures provided under this
8 Act. The superintendent, following hearing, may revoke the
9 self-insured status of the employer if at any time the assets of
10 the guarantor become impaired, encumbered or are otherwise found
11 to be inadequate to support the guarantee.

12 **Sec. A-25. 39 MRSA §51-B, sub-§7**, as amended by PL 1989, c.
13 502, Pt. D, §22, is further amended to read:

14
15 **7. Notice of controversy.** If the employer, prior to making
16 payments under subsection 3, controverts the claim to
17 compensation, the employer shall file with the commission, within
18 14 days after an event which that gives rise to an obligation to
19 make payments under subsection 3, a notice of controversy in a
20 form prescribed by the commission. If the employer, prior to
21 making payments under subsection 4, controverts the claim to
22 compensation, the employer shall file with the commission, within
23 75 or 90 days, as applicable, after an event which that gives
24 rise to an obligation to make payments under subsection 4, a
25 notice of controversy in a form prescribed by the commission. The
26 notice shall must indicate the name of the claimant, name of the
27 employer, date of the alleged injury or death and the grounds
28 upon which the claim to compensation is controverted. The
29 employer shall promptly furnish the employee with a copy of the
30 notice.

31
32 If, at the end of the 14-day period in subsection 3 or the 90-day
33 or 75-day periods in subsection 4, the employer has not filed the
34 notice required by this subsection, the employer shall begin
35 payments as required under those subsections. In the case of
36 compensation for incapacity under subsection 3, the employer may
37 cease payments or continue payments as provided in subsection 8
38 and file with the commission a notice of controversy, only as
39 provided in this subsection, no later than 44 60 days after an
40 event which that gives rise to an obligation to make payments
41 under subsection 3. Failure to file the required notice of
42 controversy prior to the expiration of the 44-day 60-day period,
43 in the case of compensation under subsection 3, constitutes
44 acceptance by the employer of the compensability of the injury or
45 death. Failure to file the required notice of controversy does
46 not constitute such an acceptance by the employer when it is
47 shown that the failure was due to employee fraud or excusable
48 neglect by the employer, except when payment has been made and a
49 notice of controversy is not filed within 44 60 days of that
50 payment. Failure to file the required notice of controversy

2 prior to the expiration of the 90-day period under subsection 4
3 constitutes acceptance by the employer of the extent of
4 impairment claimed. Failure to file the required notice of
5 controversy prior to the expiration of the 75-day period under
6 subsection 4 for compensation for medical expenses, aids or other
7 services pursuant to section 52 constitutes acceptance by the
8 employer of the reasonableness and propriety of the specific
9 medical services for which compensation is claimed and requires
10 payment for those services, but does not constitute acceptance of
11 the compensability of the injury or death.

12 If, at the end of the 44-day 60-day period the employer has not
13 filed a notice of controversy, or if, pursuant to a proceeding
14 before the commission, the employer is required to make payments,
15 the payments may not be decreased or suspended, except as
16 provided in section 100.

18 **Sec. A-26. 39 MRSA §52-A, sub-§2,** as enacted by PL 1981, c.
19 514, §2, is repealed and the following enacted in its place:

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

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

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

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

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

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

24 F. The provider may not charge the employer or carrier an
26 amount in excess of the fees prescribed in section 52-B for
28 the submission of reports prescribed by this section and for
30 the submission of any additional records. An insurer or
32 self-insurer may withhold payment of fees for the submission
34 of reports of treatment required by this section to any
36 provider who fails to submit the reports on the forms
38 prescribed by the Medical Coordinator and within the time
40 limits provided. The insurer or self-insurer is not
42 required to file a notice of controversy under these
44 circumstances, but must notify the provider that payment is
46 being withheld due to the failure to use prescribed forms or
48 to submit the reports in a timely fashion. In the case of
50 dispute, any interested party may petition the commission to
resolve the dispute.

Sec. A-27. 39 MRSA §52-B, as enacted by PL 1987, c. 559, Pt.
B, §22, is amended by adding at the end a new paragraph to read:

In order to qualify for reimbursement for health care
services provided to employees under this Title, health care
providers providing individual health care services and courses
of treatment may not charge more for the services or courses of
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-28. 39 MRSA §52-C is enacted to read:

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

To qualify for reimbursement for health care services
provided after October 31, 1995, to employees under this Title,
health care providers providing individual health care services

2 and courses of treatment must have successfully completed the
3 occupational health training program established in section 83-A.

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

6 §53-C. Effect of volunteer service

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

16 Sec. A-30. 39 MRSA §57, as amended by PL 1985, c. 372, Pt. A,
17 §22, is repealed.

18 Sec. A-31. 39 MRSA §57-B, sub-§13, as enacted by PL 1985, c.
19 372, Pt. A, §23, is amended to read:

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

28 Sec. A-32. 39 MRSA §57-C, sub-§3, as enacted by PL 1985, c.
29 372, Pt. A, §23, is amended to read:

32 3. **Assessment waived.** If, at the end of a calendar
33 quarter, the amount of deposit in the Employment Rehabilitation
34 Fund, in that portion attributable to this section, is equal to
35 or exceeds the amount derived from the last assessment, the
36 assessment for that quarter shall must be waived and not levied
37 or imposed.

38 A. The Treasurer of State shall notify the State Tax
39 Assessor on the day after the end of the calendar quarter,
40 if the fund equals or exceeds that amount.

41 B. If so notified, the State Tax Assessor shall immediately
42 notify each insurer that the assessment is waived for that
43 quarter.

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

48 §57-D. Permanent total incapacity due partly to prior injury
49

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

22 2. Permanent impairment. As used in this section,
24 "permanent impairment" means any permanent physical or mental
26 condition, whether congenital or due to injury or disease, of
28 such seriousness as to constitute a hindrance or obstacle to
30 obtaining employment or to obtaining reemployment if the employee
32 should become unemployed.

34 3. Employer knowledge. In order to qualify under this
36 section for reimbursement from the Employment Rehabilitation
38 Fund, the employer must establish that the employer had knowledge
40 of the permanent impairment at the time that the employee was
42 hired or at the time the employee was retained in employment
44 after the employer acquired that knowledge.

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

52 5. Legal representation. The Attorney General shall
54 provide legal representation for any claim made under this
56 section. The reasonable expenses of prosecution or defense by
58 the Attorney General of claims against the Employment
60 Rehabilitation Fund, subject to the approval of the Workers'
Compensation Commission, are payable out of the Employment
Rehabilitation Fund. The Attorney General may not defend the
Employment Rehabilitation Fund against any claim brought by the
State. The commission is authorized to hire, using funds from
the Employment Rehabilitation Fund, private counsel to defend any
claim brought against the Employment Rehabilitation Fund by the
State.

2 6. Contributions to Employment Rehabilitation Fund. Until
3 the chair of the commission determines that the Second Injury
4 Fund is no longer required under section 57-E, in every case of
5 the death of any employee when there is no person entitled to
6 compensation, the employer shall pay to the Treasurer of State a
7 sum equal to 100 times the average weekly wage in the State as
8 computed by the Employment Security Commission for benefit of the
9 Second Injury Fund.

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

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

17 Sec. A-34. 39 MRSA §57-E is enacted to read:

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

20 After the chair determines that the Second Injury Fund is no
21 longer required under this section, in every case of the death of
22 an employee when there is no person entitled to compensation, the
23 employer shall pay to the Treasurer of State a sum equal to 100
24 times the average weekly wage in the State as computed by the
25 Employment Security Commission for benefit of the Employment
26 Rehabilitation Fund.

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

34 Sec. A-35. 39 MRSA §65, 2nd ¶, as repealed and replaced by PL
35 1965, c. 408, §8, is amended to read:

36 The commission or any commissioner may at any time after the
37 injury appoint a competent and impartial physician or surgeon to
38 act as medical examiner, the reasonable fees of whom shall ~~be~~ are
39 fixed by the commission. Upon order of the commission or any
40 commissioner, the fee for the examination must be paid by the
41 employer. Such medical examiner, after being furnished with such
42 information in regard to the matter as may be deemed essential
43 for the purpose, shall thereupon and as often as the commission

2 or the said commissioner may direct, examine such injured
employee in order to determine the nature, extent and probable
4 duration of the injury, or the percentage of permanent
impairment. He The medical examiner shall file in the office of
6 the commission a report of every such examination, and a copy
thereof shall must be sent to each of the interested parties, who
8 upon request therefor shall must be given the opportunity at a
hearing, before decree is rendered, to question said impartial
examiner as to any matter included in such report.

10 **Sec. A-36. 39 MRSA §65, 4th ¶,** as repealed and replaced by PL
12 1965, c. 408, §8, is amended to read:

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

24 **Sec. A-37. 39 MRSA §66-A, sub-§3,** as amended by PL 1989, c.
26 388, is further amended to read:

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

40 **Sec. A-38. 39 MRSA §66-A, sub-§4,** as enacted by PL 1987, c.
42 559, Pt. B, §35, is repealed.

44 **Sec. A-39. 39 MRSA §66-B** is enacted to read:

46 **§66-B. Light-duty work pools**

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

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

4 **§72. Interest on awards**

6 Upon each award of the Workers' Compensation Commission,
interest shall must be assessed from the date on which the
8 petition is filed at a rate of 6% 8% per year, provided except
that if the prevailing party at any time requests and obtains a
10 continuance for a period in excess of 30 days interest will be
suspended for the duration of the continuance. From and after the
12 date of the decree, interest shall-be is allowed at the rate of
10% 15% per year. Payment of any interest allowed after the 10th
14 day following the date of the decree is not an element of loss
for the purpose of establishing rates for workers' compensation
16 insurance. This section shall must be enforced by the Workers'
Compensation Commission.

18 Sec. A-41. 39 MRSA §92, sub-§10 is enacted to read:

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

24 Sec. A-42. 39 MRSA §94-A, sub-§1-A is enacted to read:

26 1-A. Notice to employer. The commission shall notify an
28 employer when an informal conference or formal hearing is
scheduled, when a notice of settlement is filed and when any
30 other proceeding regarding a claim of an employee of that
employer is scheduled.

32 Sec. A-43. 39 MRSA §94-B, sub-§3, as amended by PL 1983, c.
34 479, §19, is further amended by adding a new 2nd blocked
paragraph to read:

36 The employer or representative of the employer or insurer who
38 attends the informal conference must be familiar with the
employee's claim and has full authority to make decisions
40 regarding the claim. The commissioner may assess a penalty in
the amount of \$100 against any employer or representative of the
42 employer or insurer who attends the conference without full
authority to make decisions regarding the claim. If a
44 representative of the employer attends the informal conference or
any other proceeding of the commission, the representative shall
46 notify the employer of all actions by the representative on
behalf of the employer and any other actions at the proceeding.

48 Sec. A-44. 39 MRSA §95, as amended by PL 1989, c. 256, §4, is
50 further amended to read:

2 **§95. Time for filing petitions**

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

30 **Sec. A-45. 39 MRSA §103-B, sub-§2-A**, as enacted by PL 1989, c.
412, §§2 and 5, is amended to read:

32 **2-A. Basis.** There shall may be no appeal upon questions of
34 fact found by the commission or by any commissioner, except to
correct manifest error or injustice. Unless continued by law,
this subsection is repealed June 30, 1993.

36 **Sec. A-46. 39 MRSA §103-B, sub-§2-B** is enacted to read:

38 **2-B. Basis; effective date.** There may be no appeal upon
40 questions of fact found by the commission or any commissioner.
This section takes effect June 30, 1993.

42 **Sec. A-47. 39 MRSA §104-A, sub-§2-A**, as enacted by PL 1987, c.
44 559, Pt. B, §45, is amended to read:

46 **2-A. Failure to pay within time limits.** An employer or
48 insurance carrier who fails to pay compensation, as provided in
50 this section, shall must be penalized as provided in this
subsection.

2 A. Except as otherwise provided by section 51-B, subsection
3 9, if an employer or insurance carrier fails to pay
4 compensation as provided in this section, the ~~commission~~
5 Superintendent of Insurance shall assess against the
6 employer or insurance carrier a forfeiture of up to \$100
7 \$200 for each day of noncompliance. If the ~~commission~~
8 Superintendent of Insurance finds that the employer or
9 insurance carrier was prevented from complying with this
10 section because of circumstances beyond their control, no
11 forfeiture may be assessed.

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

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

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

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

34 **Sec. A-48. 39 MRSA §104-B, sub-§3, as enacted by PL 1981, c.**
35 **474, §4, is amended to read:**

36 **3. Subrogation.** Any insurer determined to be liable for
37 benefits under subsection 2 shall must be subrogated to the
38 employee's rights under this Act for all benefits the insurer has
39 paid and for which another insurer may be liable. Any such
40 insurer may, in accordance with rules ~~prescribed~~ adopted by the
41 ~~commission~~ Superintendent of Insurance, file a ~~petition for an~~
42 request for appointment of an arbitrator to determine
43 apportionment of liability among the responsible insurers. The
44 ~~commission has jurisdiction over all claims for apportionment~~
45 ~~under this section. In any proceeding for apportionment, no~~
46 ~~insurer is bound as to any finding of fact or conclusion of the~~
47 ~~law made in a prior proceeding in which it was not a party. The~~
48 law made in a prior proceeding in which it was not a party. The
49 law made in a prior proceeding in which it was not a party. The
50 law made in a prior proceeding in which it was not a party. The

2 arbitrator's decision is limited to a choice between the
3 submissions of the parties and may not be calculated by
4 averaging. Within 30 days of the request, the Superintendent of
5 Insurance shall appoint a neutral arbitrator who shall decide, in
6 accordance with the rules adopted by the Superintendent of
7 Insurance, respective liability among or between insurers.
8 Arbitration pursuant to this subsection will be the exclusive
9 means for resolving apportionment disputes among insurers and the
10 decision of the arbitrator is conclusive and binding among all
11 parties involved. Apportionment decisions made under this
12 subsection may not affect an employee's rights and benefits under
13 this Act.

14 **Sec. A-49. 39 MRSA §106, sub-§1, as repealed and replaced by**
15 **PL 1987, c. 559, Pt. B, §46, is amended to read:**

16
17 **1. Injuries.** Whenever any employee has reported to an
18 employer under the Act any injury arising out of and in the
19 course of his the employee's employment which that has caused the
20 employee to lose a day's work ~~or has required the services of a~~
21 ~~physician~~, or whenever the employer has knowledge of any such
22 injury, the employer shall report the injury to the commission
23 within 7 days after he the employer receives notice or has
24 knowledge of the injury. The employer shall also report the
25 average weekly wages or earnings of the employee, together with
26 any other information required by the commission. The employer
27 shall report whenever the injured employee resumes his the
28 employee's employment and the amount of his the employee's wages
29 or earnings at that time. The employer shall complete a first
30 report of injury form for any injury that has required the
31 services of a health care provider within 7 days after the
32 employer receives notice or has knowledge of the injury. The
33 employer shall provide a copy of the form to the injured employee
34 and retain a copy for the employer's records but is not obligated
35 to submit the form to the commission unless the injury later
36 causes the employee to lose a day's work.

37 **Sec. A-50. 39 MRSA §106, sub-§2, as repealed and replaced by**
38 **PL 1987, c. 559, Pt. B, §46, is repealed and the following**
39 **enacted in its place:**

40
41 **2. Settlements.** Settlements are subject to this subsection
42 as follows.

43
44 **A.** Whenever any settlement is made with an injured employee
45 by the employer or insurance carrier for compensation
46 covering any specific period under an approved agreement or
47 a decree or covering any period of total or partial
48 incapacity that has ended, the employer or carrier shall
49 file with the commission a duplicate copy of the settlement
50

2 receipt or agreement signed by the employee showing the
4 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.

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

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

34 **Sec. A-51. 39 MRSA §106, sub-§3, as repealed and replaced by**
PL 1987, c. 559, Pt. B, §46, is amended to read:

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

48 **Sec. A-52. 39 MRSA §106, sub-§4 is enacted to read:**
50

2 4. Employment status reports. At the previous employer's
4 request, any person receiving compensation under this Act who has
6 not returned to that person's previous employment must submit
8 quarterly employment status reports to that employer. The report
10 is due 90 days after the date of injury, or after the filing of
12 the report under subsection 3, and every 90 days thereafter. The
14 report must be in a form prescribed by the commission and must
16 indicate whether the employee has been employed, changed
18 employment or performed any services for compensation during the
20 previous 90 days, the nature of the employment or services, the
22 name and address of the employer or person for whom the services
24 were performed and any other information that the commission by
26 rule may require. Any employer requesting a quarterly report
under this section must provide the employee with the prescribed
form at least 15 days prior to the date on which it is due.

18 Sec. A-53. 39 MRSA §114 is enacted to read:

20 §114. Compilation of claims information

22 A person or entity may not compile for the purpose of
24 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
to the remedy provision of the Maine Human Rights Act, Title 5,
sections 4613 and 4614.

28 Sec. A-54. 39 MRSA §192, first ¶, as amended by PL 1977, c.
30 696, §415, is further amended to read:

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

46 Sec. A-55. Report. The Director of the Maine Human Rights
48 Commission and the Chair of the Workers' Compensation Commission
shall consult and issue a joint report by October 1, 1992 to the
50 Joint Standing Committee on Banking and Insurance and the Joint
Standing Committee on Labor on unlawful discrimination against

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

6 **Sec. A-56. Public advocate for insurance study.** The Office of
Policy and Legal Analysis shall study the establishment of a
8 public advocate for insurance to represent the public interest in
proceedings with regard to all lines of insurance. A report
10 containing background information and options for legislative
action must be presented to the Joint Standing Committee on
12 Banking and Insurance for the Second Regular Session of the 115th
Legislature no later than November 1, 1991.

14 **Sec. A-57. Allocation.** The following funds are allocated from
16 the Safety Education and Training Fund to carry out the purposes
of this Act.

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

26, section 42-A, subsection
2, paragraph E-2.

PART B

Sec. B-1. Special Commission to Study the Workers' Compensation Commission. There is established the Special Commission to Study the Workers' Compensation Commission.

1. Membership. The commission consists of 13 members. Six members are appointed by the Governor, 3 members are appointed by the President of the Senate and 3 members are appointed by the Speaker of the House of Representatives. Appointments of the Governor, the President of the Senate and the Speaker of the House of Representatives must be made within 30 days of the effective date of this section. At the commission's first meeting, the members shall select the 13th member by majority vote and that member shall serve as the commission chair. The appointing authorities shall notify the Executive Director of the Legislative Council at the time appointments are made.

2. Scope of study. The Governor, the Joint Standing Committee on Labor, the Joint Standing Committee on Banking and Insurance and any other interested parties may each submit a list of proposed areas for investigation by the commission. All proposals submitted under this section must be submitted to the Executive Director of the Legislative Council no later than October 25, 1991. At its first meeting, the commission shall select, by majority vote, from proposals submitted those that it will review. The scope of the commission's study is limited to those selected proposals.

3. Chair; meetings. The Chair of the Legislative Council shall convene the first meeting of the commission no later than November 1, 1991. At the first meeting, the commission shall elect a chair as provided in section 1 and define its scope of study as provided in section 2. The commission shall meet as often as necessary to complete the study, but must meet at least once each month.

4. Report. The commission shall submit an interim report on the status of the study and any preliminary findings to the Governor, the Joint Standing Committee on Labor and the Joint Standing Committee on Banking and Insurance by December 1, 1991. A final report including findings, recommendations and any necessary implementing legislation must be submitted to the Governor, the Joint Standing Committee on Labor and the Joint Standing Committee on Banking and Insurance by March 1, 1992.

2 5. **Staff.** The commission may request staff assistance from
the Legislative Council and from the Department of Professional
and Financial Regulation.

4
6 6. **Compensation.** Legislative members are compensated as
provided in the Maine Revised Statutes, Title 3, section 2.
8 Nonlegislative members are compensated for any reasonable
expenses.

10 **Sec. B-2. Appropriation.** The following funds are appropriated
from the General Fund to carry out the purposes of this Act.

12
14 1991-92

16 **LEGISLATURE**

18 **Special Commission to Study the
Workers' Compensation Commission**

20 Personal Services \$2,860
22 All Other 6,700

24 Provides funds for the Special Commission to
Study the Workers' Compensation Commission
including per diem for legislative members,
26 expenses for all members, printing costs and
other miscellaneous expenses

28 **LEGISLATURE**

30 **TOTAL** \$9,560

32 **Sec. B-3. Special Commission to Study the Regulation of the**
Insurance Industry. There is established the Special Commission
34 to Study the Regulation of the Insurance Industry.

36 1. **Membership.** The commission consists of 13 members. Six
members are appointed by the Governor, 3 members are appointed by
38 the President of the Senate and 3 members are appointed by the
Speaker of the House of Representatives. Appointments of the
40 Governor, the President of the Senate and the Speaker of the
House of Representatives must be made within 30 days of the
42 effective date of this section. At the commission's first
meeting, the members shall select the 13th member by majority
44 vote and that member shall serve as the commission chair. The
appointing authorities shall notify the Executive Director of the
46 Legislative Council at the time appointments are made.

48 2. **Scope of study.** The Governor, the Joint Standing
Committee on Labor, the Joint Standing Committee on Banking and

2 Insurance and any other interested parties may each submit a list
3 of proposed areas for investigation by the commission. All
4 proposals submitted under this section must be submitted to the
5 Executive Director of the Legislative Council no later than
6 October 25, 1991. At its first meeting, the commission shall
7 select, by majority vote, from proposals submitted those that it
8 will review. The scope of the commission's study is limited to
9 those selected proposals.

10 **3. Chair; meetings.** The Chair of the Legislative Council
11 shall convene the first meeting of the commission no later than
12 November 1, 1991. At the first meeting, the commission shall
13 elect a chair as provided in section 1 and define its scope of
14 study as provided in section 2. The commission shall meet as
15 often as necessary to complete the study, but must meet at least
16 once each month.

17 **4. Report.** The commission shall submit an interim report
18 on the status of the study and any preliminary findings to the
19 Governor, the Joint Standing Committee on Labor and the Joint
20 Standing Committee on Banking and Insurance by December 1, 1991.
21 A final report including findings, recommendations and any
22 necessary implementing legislation must be submitted to the
23 Governor, the Joint Standing Committee on Labor and the Joint
24 Standing Committee on Banking and Insurance by March 1, 1992.

25 **5. Staff.** The commission may request staff assistance from
26 the Legislative Council and from the Department of Professional
27 and Financial Regulation.

28 **6. Compensation.** Legislative members are compensated as
29 provided in the Maine Revised Statutes, Title 3, section 2.
30 Nonlegislative members are compensated for any reasonable
31 expenses.

32 **Sec. B-4. Appropriation.** The following funds are appropriated
33 from the General Fund to carry out the purposes of this Act.

34
35
36
37
38 **1991-92**

39
40 **LEGISLATURE**

41
42 **Special Commission to Study the**
43 **Regulation of the Insurance Industry**

44	Personal Services	\$2,860
45	All Other	6,700

46
47
48 Provides funds for the Special Commission to

2 Study the Regulation of the Insurance
Industry including per diem for legislative
4 members, expenses for all members, printing
costs and other miscellaneous expenses

6
8 LEGISLATURE
TOTAL

\$9,560

10 PART C

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

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

24 Sec. C-2. 24-A MRSA §2366, sub-§11 is enacted to read:

26 11. Producer fees. The servicing carrier in the residual
28 market shall pay a fee to the producer designated by the employer
30 on renewed policies upon payment of premium due. The fee must be
32 4% of the first \$5,000 of renewal premium and 2.5% of renewal
premium in excess of \$5,000. The fee must be based on the state
standard premium.

34 Sec. C-3. 39 MRSA §51-B, sub-§8, as amended by PL 1983, c.
682, §6, is further amended to read:

36 8. Effect of payment. If, within the -44-day 60-day period
38 established in subsection 7 and after the payment of compensation
40 for incapacity without an award, the employer elects to
42 controvert the claim to compensation for incapacity, the payment
44 of compensation shall ~~may~~ not be considered to be an acceptance
46 of the claim or an admission of liability. Notwithstanding the
48 provisions of section 99-C, the acceptance of compensation in any
case, except by decision or agreement, by the injured employee or
his ~~the employee's~~ dependents shall ~~is~~ not be considered an
admission by the employee or his ~~the employee's~~ dependents as to
the nature and scope of the employer's liability or a waiver of
the right to question the amount of compensation or the duration
of the same or the nature of the injury and its consequences.

2 The employer may continue the payment of compensation for
4 incapacity under subsection 3 following the filing of a notice of
6 controversy and up to the convening of the formal hearing if the
8 notice of controversy was filed prior to the expiration of the
10 60-day period established in subsection 7. The continuation of
12 payments under these circumstances is not an acceptance of the
14 claim or an admission of liability on the part of the employer.
16 When benefits paid under this paragraph are discontinued prior to
18 a formal hearing but beyond the 60-day period established in
20 subsection 7, the employer must give written notice to the
22 employee at the time of discontinuing and the employee is
24 entitled to an expedited hearing within 14 days after the
26 employee requests a hearing.

18 **Sec. C-4. 39 MRSA §52, first ¶, as amended by PL 1981, c. 93,**
16 **is further amended to read:**

18 An employee sustaining a personal injury arising out of and
20 in the course of his ~~that 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 own selection of~~ select a physician or surgeon
32 authorized to practice as such under the laws of the State.
34 Initially the employee may select the employee's own health care
36 provider. Once an employee selects a health care provider, the
38 employee may not change health care providers more than once
40 without seeking approval from an independent medical examiner or
42 the employer. This provision does not limit an employee's right
44 to be treated by a specialist when a referral is made by the
46 employee's health care provider. Once an employee has begun
48 treatment with the specialist, the employee may not seek
50 treatment from a different specialist in the same specialty
without prior approval from an independent medical examiner or
the employer.

38 **Sec. C-5. 39 MRSA §52, as amended by PL 1989, c. 434, §8, is**
40 **further amended by adding at the end 2 new paragraphs to read:**

42 The Medical Coordinator, in consultation with the
44 appropriate professional organization representing the health
46 care specialty involved, shall propose rules establishing
48 specific protocols pertaining to the extent and duration of
50 treatment for specific injuries and illnesses, and the chair may
adopt these rules.

48 An employee shall purchase generic drugs for the treatment
50 of an injury or disease for which compensation is claimed if the
prescribing physician indicates that generic drugs may be used

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

12 Sec. C-6. 39 MRSA §52-A, sub-§1, as amended by PL 1989, c.
13 668, is repealed and the following enacted in its place:

14 1. Certificate of authorization. Authorization from the
15 employee for release of medical information by health care
16 providers to the employer is not required under the following
17 circumstances:

18 A. The information pertains only to treatment of an injury
19 or disease after the occurrence of an event that gives rise
20 to an obligation to make payments under this Act; and

21 B. The information pertains only to the initial treatment in
22 paragraph A and all treatments within 5 days of the initial
23 treatment.

24 Sec. C-7. 39 MRSA §65, first ¶, as amended by PL 1965, c. 513,
25 §81, is further amended to read:

26 Every employee shall after an injury, at all reasonable
27 times during the continuance of his disability if so requested by
28 his the employer, submit himself to an examination by a physician
29 or surgeon authorized to practice as such under the laws of this
30 State, to be selected and paid by the employer. Once an employer
31 selects a health care provider to examine an employee, the
32 employer may not request that the employee be examined by more
33 than one other health care provider without prior approval from
34 the independent medical examiner or the employee. This provision
35 does not limit an employer's right to request that the employee
36 be examined by a specialist upon referral by the health care
37 provider. Once the employee is examined by the specialist, the
38 employer may not request that the employee be examined by a
39 different specialist in the same specialty without prior approval
40 from the independent medical examiner or the employee. The
41 employee shall have has the right to have a physician or surgeon
42 of his the employee's own selection present at such examination,
43 whose costs shall be are paid by the employer. The employer shall
44 give the employee notice of said right at the time he the
45 employer requests such examination.

2 Sec. C-8. 39 MRSA §100-A, as amended by PL 1989, c. 580,
3 §20, is repealed.

4 Sec. C-9. 39 MRSA §100-B is enacted to read:

6 §100-B. Trial work periods

8 An employee's return to any work, including work other than
10 the employee's preinjury position or work with a different
11 employer, is governed by this section. An employee's return to
12 any work following the signing of an agreement to discontinue
13 benefits is not governed by this section.

14 1. Trial work period. A trial work period is deemed to
15 exist for the first 15 working days following an employee's
16 return to any work, except that the employer and employee may
17 agree to a longer trial work period. During this time and while
18 the employee is receiving payment for the employment:

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

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

22 The employee must provide to the employer a memorandum from the
23 employee's treating health care provider stating that the
24 employee is able to return to work.

25 2. Restoration of benefits. Any reduction in the
26 employee's weekly compensation must cease and compensation must
27 be restored immediately to the amount being paid before the
28 commencement of the trial work period under the following
29 circumstances:

30 A. The employee's employment was involuntarily terminated
31 or suspended without good cause; or

32 B. The employee attempted a trial work period and was
33 unable to adequately perform during the period due to the
34 effects of the employee's prior compensable injury and has
35 submitted to the employer, within 14 days of leaving
36 employment, a memorandum from the same health care provider
37 that furnished the memorandum under subsection 1. The
38 health care provider shall include in the memorandum the
39 provider's opinion that the employee was unable to
40 adequately perform during the period due to the effects of
41 the employee's prior compensable injury and the provider's
42 opinion as to the employee's capacity for other work.

2 If the employee supplies a memorandum from the employee's health
4 care provider after leaving the employment but in a timely
6 fashion under paragraph B, the employer shall restore benefits
8 retroactively to the date the employee left employment. If the
employee does not supply a memorandum from the employee's health
care provider in a timely fashion under paragraph B, the employer
need not automatically restore benefits and the employee must
file a petition for restoration of compensation under section 100.

10 PART D

12 Sec. D-1. 24-A MRSA c. 52 is enacted to read:

14 CHAPTER 52

16 MAINE EMPLOYERS' MUTUAL INSURANCE COMPANY

18 §3701. Purpose

20 The Maine Employers' Mutual Insurance Company may be
22 established for the purpose of providing workers' compensation
24 insurance to employers of this State at the highest level of
service and savings consistent with applicable actuarial
standards and the sound financial integrity of the company.

26 §3702. Definitions

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

32 1. Board. "Board" means the Board of Directors of the
Maine Employers' Mutual Insurance Company.

34 2. Company. "Company" means the Maine Employers' Mutual
36 Insurance Company created in section 3703.

38 §3703. Creation

40 The Maine Employers' Mutual Insurance Company may be
42 established as a domestic mutual insurance company subject to all
44 the requirements and standards of this Title except those from
which it is specifically excepted. Notwithstanding any other law
to the contrary, the company's authority to operate is limited as
follows.

46 1. Workers' compensation. The company shall provide
48 workers' compensation insurance. The company may not write other
lines of insurance.

2 2. Exclusion from guaranty funds. The company and its
3 policyholders are exempt from participation and may not join or
4 contribute financially to, nor be entitled to the protection of,
5 any plan, pool, association or guaranty or insolvency fund
6 authorized or required by this Title.

7 3. Initial board of directors. The Governor shall appoint
8 the initial board of directors of the company upon notification
9 by the superintendent that sufficient funds have been collected
10 in accordance with section 3704. Upon appointment, the board
11 shall establish its charter consistent with this chapter and
12 pursue the company's authorization as a domestic mutual insurance
13 company of this State.

14 The board shall establish appropriate underwriting criteria for
15 the acceptance of risks to ensure the sound financial integrity
16 of the company.

17 §3704. Prerequisites to operations

18 1. Prerequisites to operations. As of July 1, 1994, if the
19 premium volume of the voluntary market is less than 20% of the
20 total statewide premium volume, or if, by December 31, 1995, the
21 premium volume of the voluntary market is less than 25% of the
22 total statewide premium volume, the operations of the company may
23 be initiated as provided in this section.

24 For the purpose of this section, the imputed premium of any
25 policyholder that is granted initial authority to self-insure
26 after the effective date of this section is considered to be
27 voluntary market premium.

28 The determinations required under this section must be made
29 within 8 months after the dates prescribed in the first paragraph.

30 If the superintendent determines that the voluntary market
31 premiums fail to meet those thresholds, the superintendent shall
32 notify the Governor and the Legislature.

33 2. Company becomes operational upon appropriation. The
34 company becomes operational only upon the receipt of funds
35 provided by appropriation of the Legislature of no more than
36 \$20,000,000. The appropriation must be repaid by the company,
37 plus interest at market interest rate calculated from the time
38 that the company accepts the appropriation. The appropriation
39 repayments must be amortized by the Treasurer of State over a
40 10-year period and must be repaid by the company to the General
41 Fund in equal installments at the end of each fiscal year. The
42 repayment must begin once there exists sufficient earned surplus
43 to comply with state law.

2 3. Application for certificate of authority. The Governor
3 shall appoint the initial board of directors, as provided in
4 section 3703, subsection 3, which shall as soon as practicable,
5 apply for a certificate of authority. If the application
6 complies with the standards prescribed in this Title, the
7 superintendent shall issue a certificate of authority.

8
9 **§3705. Nonstate agency**

10 The company is not considered a state agency or
11 instrumentality of the State for any purpose.

12
13 **§3706. Reports and information**

14 1. Annual report. The board shall submit an annual report
15 to the Governor and Legislature indicating the business done by
16 the company during the previous year and containing a statement
17 of the resources and liabilities of the fund and any other
18 information considered appropriate by the board.

19 2. Statistical and actuarial data. The company must
20 compile and maintain statistical and actuarial data related to
21 the determination of proper premium rate levels, the incidence of
22 work-related injuries, costs related to those injuries and any
23 other data that the company considers desirable. The company
24 must provide this data to the Superintendent of Insurance, the
25 Chair of the Workers' Compensation Commission and the Department
26 of Labor annually and upon request.

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

28 3-B. Community. "Community" means the area within a
29 75-mile radius of an employee's residence or the actual distance
30 from an employee's normal work location to the employee's
31 residence at the time of an employee's injury, whichever is
32 greater.

33 Sec. D-3. 39 MRSA §51, sub-§4 is enacted to read:

34 4. Subsequent nonwork injuries. If an employee suffers a
35 nonwork-related injury or disease that is not causally connected
36 to a previous compensable injury, the subsequent nonwork-related
37 injury or disease is not compensable under this Act.

38 Sec. D-4. 39 MRSA §52-B, as enacted by PL 1987, c. 559, Pt.
39 B, §22, is amended to read:

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

41
42
43
44
45
46
47
48
49
50

2 In order to ensure appropriate limitations on the cost of
health care services, the ~~commission~~ Medical Coordinator shall
4 propose to the chair and the chair may adopt or amend rules under
Title 5, chapter 375, that establish:

6 1. Maximum charges. Standards, schedules or scales of
maximum charges for individual services, procedures of courses of
8 treatment. The maximum charges shall may not be less than the
usual, customary and reasonable charge paid by private 3rd-party
10 payors for similar services provided by Maine health care
providers. In establishing these standards, schedules or scales,
12 the commission shall consult with organizations representing
health care providers and other appropriate groups. The
14 standards shall must be adjusted annually to reflect any
appropriate changes in levels of reimbursement. The standards
16 shall ~~not~~ apply to hospital costs and health care providers other
than physicians and must be in effect no latter than January 1,
18 1992; and

20 2. Depositions or hearings. Various fees for preparation
of materials, including reports of treatment required in section
22 52-A, subsection 2, or attendance at depositions or hearings as
may be required under this Act.

24

Sec. D-5. 39 MRSA §52-D is enacted to read:

26

§52-D. Medical utilization review and case management

28

30 1. Purpose. To ensure quality treatment for injured
employees and to provide reasonable and proper health care
32 services, the Medical Coordinator shall develop and implement a
medical utilization review and case management program consistent
with the requirements of this section. The Medical Coordinator
34 shall utilize independent medical examiners from the lists
maintained pursuant to section 92-A to perform the medical
36 utilization review and case management.

38

38 2. Medical utilization review. A commissioner, employee,
employer or insurer may request a medical utilization review of
40 services rendered by a health care provider as follows.

42

42 A. The following issues relating to the treatment or
proposed treatment of an employee may be presented to an
44 independent medical examiner:

46

46 (1) Whether treatment or proposed treatment is
excessive, unreasonable or improper;

48

48 (2) Whether the services rendered are inadequate with
50 respect to either the level or quality of care;

2 (3) Whether fees charged by a provider are in excess
4 of the medical fee schedule under section 52-B;

6 (4) Whether a provider charged more for services
8 provided to an employee under this Act than charged for
 services to a private 3rd-party payor in violation of
 section 52-B; or

10 (5) Whether a proposed surgical procedure is
12 reasonable and necessary to the proper treatment of an
 employee.

14 The issues that may be presented to the independent medical
16 examiner may be expanded through rulemaking by the chair, as
 proposed to the chair by the Medical Coordinator.

18 B. An employee, employer or insurer may initiate the
20 medical utilization review process by submitting to the
22 Medical Coordinator, the other parties and the provider
 whose treatment will be reviewed, a request on forms
 prescribed by the Medical Coordinator.

24 Within 15 days after a request for medical utilization
26 review has been submitted, the Medical Coordinator shall
28 appoint an independent medical examiner to perform the
30 review and notify the parties and the provider whose
32 treatment will be reviewed of the appointment. The
34 independent medical examiner must be from the same health
 care field as the provider whose services are being
 reviewed. The independent medical examiner may not have any
 prior knowledge of the case or have examined the employee at
 an earlier time in connection with the case.

36 C. All parties shall, when notified that an independent
38 medical examiner has been appointed, supply immediately
40 copies of any medical reports or statements relating to the
42 treatment under review to the independent medical examiner.
44 Upon request of the independent medical examiner, the
46 provider shall submit any additional medical records or
 information within 3 working days of the examiner's
 request. The independent medical examiner shall review
 medical information and records regarding the services that
 are the subject of the review. The independent medical
 examiner may interview and examine the employee or order the
 performance of additional medical tests if necessary.

48 D. If determined necessary by the independent medical
50 examiner, the employee shall submit to an examination at any
 reasonable time during the review process. The rights of an

2 employee with respect to examinations and penalties as
3 described in section 65 are applicable to this section.

4 E. The independent medical examiner shall submit the
5 examiner's findings and recommendations to the parties, the
6 provider and the commission within 30 days from the
7 appointment of the examiner. The independent medical
8 examiner may make recommendations appropriate to the issue
9 that is the subject of the review, including but not limited
10 to:

11 (1) That a provider be paid or not be paid for
12 services that were inappropriate, unreasonable or
13 excessive;

14 (2) That a provider be partially paid for services
15 charged in excess of the medical fee schedule;

16 (3) That a provider be partially paid for services
17 provided to an employee under this Act that exceeded
18 the provider's charge for services to a private
19 3rd-party payor in violation of section 52-B;

20 (4) That a provider reimburse an employer or insurer
21 for services that were paid for and are found to be
22 inappropriate, unreasonable or excessive; or

23 (5) That a proposed surgical procedure is not
24 reasonable and necessary to the proper treatment of an
25 employee.

26 F. Any employee, employer, insurer or provider that seeks
27 to implement the recommendations of the independent medical
28 examiner or that seeks resolution of a dispute related to
29 the treatment under review may file a petition with the
30 commission. The commissioner shall adopt the medical
31 findings of the independent medical examiner unless there is
32 substantial evidence in the record that does not support the
33 medical findings. "Substantial evidence" means at least a
34 preponderance of evidence. "Substantial evidence" does not
35 include medical evidence not considered by the independent
36 medical examiner. The commissioner must state in writing
37 the reasons for not accepting the medical findings of the
38 independent medical examiner.

39 G. The party requesting the review shall pay the costs of
40 the review. The Medical Coordinator shall establish a
41 reasonable per diem to be paid to the independent medical
42 examiner and set a maximum charge for other expenses the
43 Medical Coordinator finds necessary for the review process.
44

2 3. Case management program. The Medical Coordinator shall
4 create a case management program for cases involving unusually
6 lengthy or expensive medical services, or cases involving chronic
8 conditions that are unresponsive to standard medical treatment.
 The program must use independent medical examiners acting as case
 managers. The program must include at least the following
 elements:

10 A. The guidelines for the types of cases that may be
 reviewed by a case manager;

12 B. The process by which a party or a commissioner may
14 request that an independent medical examiner may be
 appointed to act as a case manager;

16 C. The treatment issues that may be addressed by the case
18 manager; and

20 D. The method by which the recommendations of the case
22 manager may be enforced.

24 4. Penalties. If the Medical Coordinator finds from a
26 review of the findings of independent medical examiners that a
28 provider has demonstrated a pattern of overcharging for services
30 or of rendering services that are inappropriate, unreasonable or
32 excessive, or has submitted false testimony or a false report in
34 connection with any claim, the Medical Coordinator shall provide
36 the licensing board of the provider with full documentation of
38 this determination. The Medical Coordinator may also order an
 appropriate remedy including, but not limited to, an order
 barring the provider 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. The Medical
 Coordinator may permanently bar a provider from eligibility for
 payment of services under the Act for subsequent instances. The
 provider may appeal any order of the Medical Coordinator to the
 chair.

40 5. Rules. The Medical Coordinator may propose to the chair
42 rules to carry out the purposes of this section and the chair may
44 adopt those rules. In proposing these rules, the Medical
46 Coordinator shall consult with organizations knowledgeable about
 health care utilization and cost containment, including health
 care providers and insurers that have implemented utilization
 review and case management.

48 Sec. D-6. 39 MRS §54-B, sub-§2, as enacted by PL 1987, c. 559,
50 Pt. B, §27, is amended to read:

2 **2. Relocation expenses.** If an employee is hired for a
4 permanent position obtained from the list of positions provided
6 by the employer under subsection 1, paragraph B, and that
8 position requires the employee to move and the employee changes
10 residence to take the position, the employer must pay the
12 employee up to \$1,000 for actual moving expenses.

14 **Sec. D-8. 39 MRSA §56-B, sub-§1,** as enacted by PL 1987, c.
16 559, Pt. B, §33, is amended to read:

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

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

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

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

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

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

48 **Sec. D-9. 39 MRSA §62-C** is enacted to read:

50 **§62-C. Nonduplication of benefits**

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

Sec. D-10. 39 MRSA §82, sub-§3, ¶D, as enacted by PL 1985, c.
372, Pt. A, §29, is amended to read:

 D. The administrator shall assist the chairman ~~chair~~ chair in
developing rules under section 92, subsection 1, regarding

2 rehabilitation, including, but not limited to, rules
governing minimum standards for providers of rehabilitation
4 services, the types of services each category of provider is
qualified to provide and procedures for rehabilitation cases.

6 The minimum standards for approved providers of
7 rehabilitation services must include a combination of
8 medical and employment rehabilitation education and
9 experience and are governed by the following requirements.

10 (1) The standards must separately consider the
11 providers of the following 3 employment rehabilitation
12 services:

13 (a) Evaluations of suitability for employment
14 rehabilitation;

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

17 (c) Implementation of the employment
18 rehabilitation plan.

19 (2) The standards must include minimum levels of
20 success in the completion by the employee of the
21 rehabilitation plan in placement in suitable employment
22 as similar as possible to the employee's regular
23 employment at a wage as close as possible to the
24 employee's wage at the time of injury.

25 (3) The standards must state that providers of
26 evaluations of suitability may not perform employment
27 rehabilitation development or implementation services
28 or be employed by or have an ownership interest in any
29 firm or organization that provides rehabilitation plan
30 development or implementation services.

31 **38 Sec. D-11. 39 MRSA §82, sub-§3, ¶F, as enacted by PL 1985, c.**
32 **372, Pt. A, §29, is amended to read:**

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

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

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

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

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

16 **Sec. D-12. 39 MRSA §83, sub-§1, as enacted by PL 1985, c. 372,**
Pt. A, §29, is amended to read:

18 1. **Reports.** Within 120 days following an injury which that
20 gives rise to a claim under this Act, or within 120 days
following the first day of a subsequent period of incapacity due
22 to that injury, where when an employee has not returned to his
the employee's previous employment, the employer shall submit a
24 report to the administrator to assist in the early identification
of those employees who may need rehabilitation to achieve job
placement.

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

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

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

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

48 E. ~~In either instance, the~~ The employer shall file a
supplemental report under this subsection on or before ~~that~~

2 the date selected in paragraph C or D unless the
3 administrator requires otherwise.

4 **Sec. D-13. 39 MRSA §83, sub-§3, ¶D is enacted to read:**

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

10 **Sec. D-14. 39 MRSA §83-A is enacted to read:**

12 **§83-A. Early evaluation screening**

14 The administrator shall adopt rules establishing criteria
16 for early evaluation screening to identify disabilities
17 appropriate for early screening and early entry into employment
18 rehabilitation. In developing the rules and in reviewing them
19 periodically, the administrator shall convene a temporary panel
20 of medical, vocational and rehabilitation experts.

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

24 1. Occupational health training program. Develop a
26 short-term occupational health training program that concentrates
27 on workplace evaluation and modification to be provided by
28 physicians who are board certified in occupational medicine; and

30 2. Medical management services. Identify those
31 occupational illnesses and injuries that would benefit from
32 provision of medical management services by an approved
33 rehabilitation provider prior to beginning employment
34 rehabilitation under this Title.

36 **Sec. D-15. 39 MRSA §84, sub-§1, as enacted by PL 1985, c. 372,**
37 **Pt. A, §29, is amended to read:**

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

44 **Sec. D-16. 39 MRSA §85, sub-§1, as amended by PL 1989, c. 580,**
45 **§11, is further amended to read:**

47 1. Order of evaluation. When a compensable injury exists
48 and the employee has requested employment rehabilitation upon
49 referral by the treating health care provider or occupational
50 rehabilitation expert, the employer shall pay the reasonable and

2 health center, when the employee meets the screening criteria for
3 early evaluation for employment rehabilitation or when the report
4 required under section 83, subsection 1, indicates that the
5 employee is not likely to return to the employee's previous
6 employment, the administrator shall order an evaluation of the
7 suitability of rehabilitation for the employee. If the parties
8 agree to an evaluation, the order is deemed to have been made by
9 the administrator unless notice to the contrary is received by
10 the parties within 14 days after written notice of the agreement
11 is sent to the administrator.

12 Sec. D-17. 39 MRSA §85, sub-§2-A, ¶F, as enacted by PL 1989, c.
13 580, §11, is repealed.

14 Sec. D-18. 39 MRSA §85, sub-§4-A, ¶B is enacted to read:

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

19 Sec. D-19. 39 MRSA §90, sub-§4 is enacted to read:

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

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

26 §92-A. Independent medical examiners

27 1. Examiner system. The Medical Coordinator shall develop
28 and implement an independent medical examiner system consistent
29 with the requirements of this section. As part of this system,
30 the Medical Coordinator shall create and maintain a list of
31 health care providers experienced and competent in the treatment
32 of work-related injuries to serve as independent medical
33 examiners from each of the health care fields that the Medical
34 Coordinator finds most commonly used by injured employees. The
35 Medical Coordinator shall propose to the chair rules establishing
36 fees for services rendered by independent medical examiners and
37 any rules considered necessary to effectuate the purposes of this
38 section and the chair may adopt those rules.

39 2. Duties. The independent medical examiners shall render
40 medical findings on the medical condition of the employee and
41 related issues as specified under this section. The physician or
42 other provider appointed as the independent medical examiner in a
43 health center, when the employee meets the screening criteria for
44 early evaluation for employment rehabilitation or when the report
45 required under section 83, subsection 1, indicates that the
46 employee is not likely to return to the employee's previous
47 employment, the administrator shall order an evaluation of the
48 suitability of rehabilitation for the employee. If the parties
49 agree to an evaluation, the order is deemed to have been made by
50 the administrator unless notice to the contrary is received by
51 the parties within 14 days after written notice of the agreement
52 is sent to the administrator.

2 case may not be the employee's treating health care provider and
3 may not have treated the employee with respect to the injury for
4 which benefits are being paid. Nothing in this subsection
5 precludes the selection of providers authorized to receive
6 reimbursement under section 52 to serve in the capacity of an
7 independent medical examiner.

8 3. Appointment. The commissioner may select an independent
9 medical examiner from the list of qualified examiners to render
10 medical findings in any dispute relating to the medical condition
11 of a claimant, including disputes that involve the following:

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

14 B. Determination of maximum medical improvement and degree
16 of impairment under section 56-B;

18 C. Determination of the proper cost of medical services or
20 aids under section 52 or 52-B;

22 D. Evaluation of the employee's ability to return to work
23 including physical limitations on ability to commute; and

24 E. Review of medical services under section 52, 52-B, 52-C
25 or 52-D.

26 If the commissioner fails to act within 5 days of receipt of a
28 request for an independent medical examination review or report,
29 the Medical Coordinator may select an independent medical
30 examiner.

32 4. Procedure. The Medical Coordinator shall propose to the
33 chair rules pertaining to the procedures before the independent
34 medical examiner, including the parties' ability to propound
35 questions relating to the medical condition of the employee to be
36 submitted to the independent medical examiner and the chair may
37 adopt those rules. The parties shall submit any medical records
38 or other pertinent information to the independent medical
39 examiner. In addition to the review of records and information
40 submitted by the parties, the independent medical examiner may
41 examine the employee as often as the examiner determines
42 necessary to render medical findings on the questions propounded
43 by the parties.

44 5. Medical findings; fees. The independent medical
46 examiner must submit a written report to the commissioner, the
47 employer and the employee stating the examiner's medical findings
48 on the issues raised by that case and providing a description of
49 findings sufficient to explain the basis of those findings. It
50 is presumed that the employer and employee received the report 3

2 working days after mailing. The fee for the examination and
3 report must be paid by the employer.

4 6. Subsequent medical evidence. All subsequent medical
5 evidence from the treating health care provider must be forwarded
6 to the independent medical examiner no later than 14 days prior
7 to the hearing. The independent medical examiner must be
8 notified of the hearing and shall make a supplemental report if
9 the subsequent medical evidence affects the medical findings of
10 the independent medical examiner. If the independent medical
11 examiner prepares a supplemental report, the report must be
12 submitted to the commissioner and the parties at least 3 days
13 prior to the hearing.

14 7. Weight. The commissioner shall adopt the medical
15 findings of the independent medical examiner unless there is
16 substantial evidence in the record that does not support the
17 medical findings. "Substantial evidence" means at least a
18 preponderance of evidence. "Substantial evidence" does not
19 include medical evidence not considered by the independent
20 medical examiner. The commissioner must state in writing the
21 reasons for not accepting the medical findings of the independent
22 medical examiner.

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

29 9. Annual review. The Medical Coordinator shall create a
30 review process to oversee on an annual basis the quality of
31 performance and the timeliness of the submission of medical
32 findings by the providers approved to serve as independent
33 medical examiners.

34 Sec. D-21. 39 MRSA §98, as repealed and replaced by PL 1983,
35 c. 479, §21, is amended by adding at the end a new paragraph to
36 read:

37 The commission shall provide for an expedited process for
38 the scheduling and hearing of petitions for review of automatic
39 discontinuances or reductions under section 100, subsections 4-A
40 and 4-B upon the request of either party. Insofar as
41 practicable, expedited cases must be set for a single hearing and
42 take precedence over all other pending cases for scheduling
43 purposes.

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

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

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

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

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

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

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

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

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

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

39 (4) ~~Within 30 days after notice to the employee under~~
40 ~~subparagraph (2), the commission shall enter a~~
41 ~~provisional order providing for the suspension,~~

2 ~~reduction or continuation of benefits pending a hearing~~
3 ~~on the petition. The order shall be based upon the~~
4 ~~information submitted by both the employer and the~~
5 ~~employee under this section.~~

6 ~~(5) If benefits are suspended or reduced under this~~
7 ~~paragraph and the commission, after hearing, reverses~~
8 ~~the provisional order, either in whole or in part, the~~
9 ~~commission shall order a lump sum payment of all~~
10 ~~benefits withheld together with interest at the rate of~~
11 ~~6% a year. The employer shall pay this lump sum within~~
12 ~~10 days of the order.~~

14 4-A. Automatic discontinuance or reduction. The employer
15 may discontinue or reduce benefits by sending a certificate by
16 certified mail to the employee and to the commission, together
17 with any information on which the employer relied to support the
18 discontinuance or reduction. The employer may discontinue or
19 reduce benefits under paragraphs A and B no earlier than 21 days
20 from the date that the certificate was mailed to the employee.
21 The certificate must advise the employee of the date when the
22 employee's benefits will be discontinued or reduced, as well as
23 other information as prescribed by the commission, including the
24 employee's appeal rights. The employer may discontinue or reduce
25 benefits pursuant to this section under the following
26 circumstances only:

28 A. If the employee refuses an offer of reinstatement to a
29 position that is suitable to the employee's medical
30 condition, age, education, skills and prior work experience
31 and the employee's physician or an independent medical
32 examiner has determined that the employee is medically able
33 to perform the employment being offered;

34 B. If the employee's physician or the independent medical
35 examiner determines that the employee is able to perform
36 actually available employment and:

38 (1) There is employment suitable to the employee's
39 medical condition, age, education, skills and prior
40 work experience actually available within the
41 community; or

44 (2) After 40 weeks from the date of the injury, within
45 the State, if the employer demonstrates by affidavit
46 that the position is actually available for the
47 employee by required age, education, skills and prior
48 work experience. If the employee demonstrates by
49 affidavit that the employee applied for up to 3 of the
50 identified positions within 10 days of being notified

2 of availability and, through no fault of the employee,
3 was not employed, the employee must be automatically
4 reinstated;

5 C. If the employee returns to work other than during a trial
6 work period under section 100-B, or if the employee
7 continues to work following a trial work period;

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

10 E. If the employer and the employee file an agreement with
11 the commission;

12 F. If the employee has left the State for reasons other
13 than returning to the employee's permanent residence at the
14 time of injury and the employer has given notice to the
15 employee by certified mail as evidenced by a signed return
16 receipt or has completed a diligent search;

17 G. If the employee's whereabouts are unknown and the
18 employer has completed a diligent search for the employee; or

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

23 The work search standards and burdens of proof described in
24 section 55-B, subsections 1 and 2, are applicable to all hearings
25 under paragraph B.

26 The report of the independent medical examiner under paragraph H
27 may be dated no earlier than 30 days before the filing of the
28 employer's certificate under this subsection.

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

35 4-B. Employee's right to hearing. The employee may file a
36 petition for review, contesting the employer's discontinuance or
37 reduction under subsection 4-A. Regardless of whether the
38 employee files a petition prior to the date of the discontinuance
39 or reduction, benefits may be discontinued or reduced as
40 described in the employer's certificate.

41

2 A. The commissioner, within 21 days after the employee
4 files a petition for review, may enter an order providing
6 for the continuation or reinstatement of benefits pending a
 hearing on the petition. The order must be based upon the
 information submitted by both the employer and the employee
 under this section.

8 B. The commissioner shall adopt the medical findings of the
10 independent medical examiner unless there is substantial
12 evidence in the record that the medical findings are in
14 error. "Substantial evidence" means at least a
16 preponderance of evidence. "Substantial evidence" does not
 include medical evidence not considered by the independent
 medical examiner. The commissioner shall state in writing
 the reasons for not accepting the medical findings of the
 independent medical examiner.

18 C. If either party disagrees with the order of the
20 commissioner under paragraph A, that party may request an
22 expedited hearing on the pending petition pursuant to
 section 98.

24 D. If an order is not issued under paragraph A and the
26 commissioner, after hearing, reverses that decision, either
28 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 employer shall pay this amount within 10
 days of the order.

30 E. Except as provided in subsection 4-A, paragraph B, the
32 employer has the burden of proof in any hearing under this
 section.

34 5. Medical examination. Upon the request of the petitioner,
36 ~~the commission shall order~~ employer or the independent medical
38 ~~examiner, the employee to shall~~ submit to examination by an
40 ~~impartial physician or surgeon designated by the commission from~~
42 ~~the geographical area where the employee resides~~ the independent
 medical examiner. The fee for the 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:

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

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

50 6. Recovery of overpayments. Compensation Any compensation
 paid by the employer after the employee has resumed work may be

recovered to an employee from the date the employee is not
2 qualified for compensation to the date the employer automatically
4 discontinued or reduced benefits pursuant to subsection 4-A is
6 recoverable from the employee in a legal action brought by the
employer if the employer discontinued compensation pursuant to
subsection 4-A, paragraphs C to G.

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

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

16 7. Report. The chair of the commission shall provide a
18 report to the joint standing committee of the Legislature having
jurisdiction over labor matters by December 1, 1992, regarding
20 automatic suspension and reduction of benefits under this
section. The report must include:

22 A. The number of cases in which employers automatically
24 suspended or reduced benefits under each paragraph of
subsection 4-A;

26 B. The number of cases in which employees requested a
hearing pursuant to subsection 4-B;

28 C. The number of cases in which a commissioner entered an
30 order under subsection 4-B, paragraph A and the number of
cases in which the order was entered within 21 days;

32 D. The number of cases in which a commissioner upheld an
34 employer's automatic suspension or reduction of benefits
after hearing; and

36 E. Any other information that the chair considers useful.

38 Sec. D-23. 39 MRSA §110, sub-§3 is enacted to read:

40 3. Attorney's fees. Attorney's fees for lump sum
42 settlements are limited as follows. The employer may be assessed
44 an attorney's fee based on a lump sum settlement for services on
behalf of the employee. The fee may not exceed:

46 A. Ten percent of the first \$50,000 of the settlement;

48 B. Nine percent of the first \$10,000 over \$50,000 of the
settlement;

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

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

16 B. The coordinator shall propose rules to the chair and the
18 chair may adopt those rules pursuant to Title 5, chapter
20 375 to carry out the purposes of this subchapter including,
22 but not limited to the following:

24 (1) Rules required to create and maintain a list of
26 health care providers experienced and competent in the
28 treatment of work-related injuries to serve as
30 independent medical examiners from each of the health
32 care fields that the coordinator finds most commonly
34 used by injured employees;

36 (2) Rules required to develop and implement an
38 independent medical examiner system for resolution of
40 disputes by independent medical examiners, including
42 procedures before the independent medical examiner and
44 the parties' ability to propound questions relating to
46 the medical condition of the employee to be submitted
48 to the independent medical examiner;

(3) Rules required to develop and implement a medical
utilization and case management program consistent with
the requirements of section 52-D. In establishing
these rules, the coordinator shall consult with
organizations knowledgeable about health care
utilization and cost containment, including health care
providers and insurers that have implemented
utilization review and case management; and

(4) Rules establishing specific protocols pertaining
to the extent and duration of treatment for specific
injuries and illnesses, and the chair may adopt these
rules.

In adopting rules, the chair shall distinguish among and
respect the different types of health care providers and
health care services.

C. The coordinator shall:

- 2 (1) Monitor medical and occupational health services
 provided to injured workers under this Title;
- 4 (2) Encourage agreement and attempt to conciliate
6 differences on medical and occupational health services
 issues;
- 8 (3) Provide leadership in the development of
10 occupational health centers;
- 12 (4) Review and make recommendations on the fee
 schedule established in section 52-B;
- 14 (5) Oversee medical utilization review pursuant to
16 section 52-D; and
- 18 (6) Together with the chair establish and maintain the
 fee schedule pursuant to section 52-B.

20 D. The coordinator may not provide direct medical
22 services. Medical services under this subchapter must be
 provided by private and public medical professionals and
24 occupational health centers.

26 E. The coordinator shall make efforts to educate and
 disseminate information to all persons interested in medical
28 and occupational health services as those services relate to
 injured workers.

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

44 **Sec. D-25. Implementation of rate reductions.** The Superintendent
46 of Insurance shall, in the workers' compensation proceeding
 authorized pursuant to Private and Special Law 1991, chapter 16
48 and subsequent rate proceedings, order appropriate reductions in
 workers' compensation rates to reflect the impact of this Act.
50 The superintendent shall report to the Legislature whether the
 percentage reductions attested to by the Bureau of

Insurance actuary as a result of this Act is adequately reflected in the reductions in these proceedings.

Sec. D-26. Application; retroactivity; average weekly wages, earnings or salary. That section of this Act that enacts the Maine Revised Statutes, Title 39, section 2, subsection 2, paragraph G applies to employees injured on or after the effective date of this Act and retroactively to employees injured before the effective date of this Act except those employees awarded compensation consistent with the holding in Ashby vs. Rust Engineering, 559 A.2d 774 (Me. 1989).

PART E

Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1991-92	1992-93
WORKERS' COMPENSATION COMMISSION		
Workers' Compensation Commission		
All Other	\$35,000	\$39,450
Provides funds to establish and operate an "800" telephone number and to provide written notification to employees of workers' compensation actions.		
Office of Medical Coordination		
Positions	(2.0)	(2.0)
Personal Services	\$51,677	\$77,483
All Other	12,948	17,198
Capital Expenditures	3,500	
TOTAL	\$68,125	\$94,681
Provides funds to establish the Office of Medical Coordination to include one Medical Coordinator position and one Secretary position with related operating expenses and capital		

2 expenditure funds for
computer equipment.

4	WORKERS' COMPENSATION COMMISSION		
	TOTAL	<u>\$103,125</u>	<u>\$134,131</u>
6			
	PARTE		
8	TOTAL APPROPRIATIONS	<u>\$103,125</u>	<u>\$134,131</u>

10

FISCAL NOTE

12

1991-92

1992-93

14

APPROPRIATIONS/ALLOCATIONS

16

General Fund	\$122,245	\$134,131
Other Funds	\$120,000	\$100,000

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This bill makes various reforms to Maine's workers' compensation system. General Fund appropriations to the Workers' Compensation Commission in the amount of \$103,125 in fiscal year 1991-92 and \$134,131 in fiscal year 1992-93 are required. The appropriations provide for a Medical Coordinator position and a Secretary position and related expenses for the Office of Medical Coordination, and for establishment of an "800" telephone number and written notification of workers' compensation actions to employers.

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The bill provides General Fund appropriations of \$19,120 to the Legislature in fiscal year 1991-92 for the Special Commission to Study the Workers' Compensation Commission and the Special Commission to Study the Regulation of the Insurance Industry.

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The expedited process requirement will increase the backlog of nonexpedited cases being heard by the Workers' Compensation Commission. The amount of additional funding needed to avoid this backlog can not be determined at this time.

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This bill adds several new responsibilities and duties to the Bureau of Insurance within the Department of Professional and Financial Regulation, the cost of which can not be determined at this time. The additional costs will be offset through increases in the bureau's dedicated revenue generated by assessments on insurers.

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Allocations of \$120,000 in fiscal year 1991-92 and \$100,000 in fiscal year 1992-93 from the Safety Education and Training Fund within the Department of Labor provide for various workplace health and safety training programs.

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2 The bill also establishes the Maine Employers' Mutual
Insurance Company. General Fund appropriations of not more than
4 \$20,000,000 would be required in order to activate the company
after July 1, 1994 if certain conditions exist in the voluntary
6 market. The company must repay any appropriations with interest
over a 10-year period.

8 The effect of the changes in the workers' compensation
benefit provisions on the State as an employer can not be
10 determined at this time.

12
14 **STATEMENT OF FACT**

16 This bill makes changes in the workers' compensation system.