

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2310

H.P. 1648

House of Representatives, February 6, 1992

Reported by Representative CHONKO for the Joint Standing Committee on Appropriations and Financial Affairs pursuant to Joint Order H.P. 1508.

Reference to the Committee on Labor suggested and ordered printed.

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

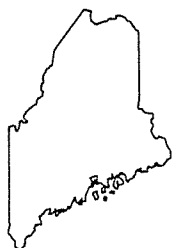
EDWIN H. PERT, Clerk

STATE OF MAINE

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

**An Act to Abolish the Second Injury Fund and the Employment
Rehabilitation Fund.**

(EMERGENCY)



Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there may be savings to Maine employers from these changes to the workers' compensation laws; and

Whereas, State Government continues to experience significant revenue shortfalls; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 39 MRSA §51-B, sub-§10, as amended by PL 1985, c. 372, Pt. A, §10, is further amended to read:

10. Penalty for nonpayment. If a claim to compensation has not been controverted and any payment of compensation payable without an award is not paid within 7 days after it becomes due, the commission shall assess a penalty equal to 10% of the amount due.

The penalties provided in this subsection shall-be are assessed against the insurer or self-insurer, whichever the case may be. The penalties shall-be are paid to the Employment-Rehabilitation Fund-created-by-section-57-B General Fund. No A penalty under this subsection may not be assessed where when it is shown to the commission that the delay in payment or filing resulted from conditions over which the insurer or self-insurer has no control if the insurer or self-insurer proves that it acted in good faith and with reasonable diligence.

Sec. 2. 39 MRSA §57-B, as amended by PL 1991, c. 615, Pt. A, §31, is repealed.

Sec. 3. 39 MRSA §57-C, as amended by PL 1991, c. 615, Pt. A, §32, is repealed.

Sec. 4. 39 MRSA §57-D, as enacted by PL 1991, c. 615, Pt. A, §33, is repealed.

Sec. 5. 39 MRSA §57-E, as enacted by PL 1991, c. 615, Pt. A, §34, is amended to read:

2 **§57-E. Contribution from employers; transfer from Second Injury**
 Fund

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

12 When the chair of the commission determines that the Second
14 Injury Fund established pursuant to former section 57 is no
16 longer required for payments to employers or insurance carriers,
18 the chair shall direct that the Treasurer of State transfer the
20 balance in the account to the Employment Rehabilitation Fund
22 General Fund and the Treasurer of State shall deposit the balance
24 to the Employment Rehabilitation Fund General Fund. Pending the
 determination by the chair that the Second Injury Fund is no
 longer required for those payments, the Treasurer of State
 continues to be the custodian of the fund and may disburse money
 from the fund upon written order of the chair as previously
 authorized under former section 57.

26 When the chair of the commission determines that the
28 Employment Rehabilitation Fund established pursuant to former
30 section 57-B is no longer required for payments to employers or
32 insurance carriers, or for payment of plans ordered pursuant to
34 former section 85, subsection 2-A, the chair shall direct that
36 the Treasurer of State transfer the balance in the account to the
 General Fund. Pending the determination by the chair that the
 Employment Rehabilitation Fund is no longer required for those
 payments, the Treasurer of State continues to be the custodian of
 the fund and may disburse money from the fund upon written order
 of the chair as previously authorized under former section 57-B.

38 **Sec. 6. 39 MRSA §83, sub-§4, ¶A, as amended by PL 1989, c.**
 580, §9, is further amended to read:

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

48 ~~If the parties still do not agree on a plan at the informal~~
50 ~~conference held under this paragraph, either party may~~
 ~~request that the administrator continue the informal~~
 ~~conference to a date certain within 20 days. If the~~

2 ~~employer refuses to agree to the implementation of a plan at~~
3 ~~the conclusion of this informal conference, the employee may~~
4 ~~request that the administrator order the implementation of~~
5 ~~the plan as provided in section 85, subsection 2-A. This~~
6 ~~request must be made within 5 days of the informal~~
7 ~~conference.~~

8 **Sec. 7. 39 MRSA §85, sub-§2-A**, as amended by PL 1991, c. 615,
9 Pt. D, §16, is repealed.

10 **Sec. 8. 39 MRSA §85, sub-§5, ¶B**, as enacted by PL 1985, c.
11 372, Pt. A, §29, is amended to read:

12 B. The order shall must be filed in the office of the
13 commission, and a copy of the order attested by the clerk of
14 the commission mailed immediately to all parties interested
15 and to the attorney of record of each party.

16 **Sec. 9. 39 MRSA §85, sub-§5, ¶¶C and D**, as amended by PL 1989,
17 c. 580, §11, are further amended to read:

18 C. The administrator shall, upon the request of a party
19 made as a motion within 20 days after notice of the order,
20 or may upon the administrator's own motion find the facts
21 specially and state separately the conclusions of law
22 thereon on the order. Those findings and conclusions shall
23 must be filed in the office of the commission and a copy of
24 the findings and conclusions shall must be mailed
25 immediately to all interested parties. ~~This paragraph does~~
26 ~~not apply to an order of plan implementation issued under~~
27 ~~subsection 2-A.~~

28 D. The running of the time for appeal under section 88 is
29 stopped by a timely motion made under this section. The
30 full time for this appeal recommences on the receipt of
31 notice of the filing of those findings, conclusions or
32 revised order. ~~This paragraph does not apply to an order of~~
33 ~~plan implementation issued under subsection 2-A.~~

34 **Sec. 10. 39 MRSA §87, sub-§3**, as amended by PL 1989, c. 580,
35 §14, is further amended to read:

36 **3. Notice of controversy.** An employer who considers the
37 costs of rehabilitation services, ~~other than plan implementation~~
38 ~~costs ordered to be reimbursed under section 85, subsection 4-A,~~
39 to be unreasonable may file a notice of controversy with the
40 administrator for determination thereof of the reasonableness of
41 the costs of rehabilitation services.

2 **Sec. 11. 39 MRSA §88, sub-§1**, as amended by PL 1989, c. 580,
§16, is further amended to read:

4 **1. Procedure.** ~~Except as provided in section 85, subsection~~
2-A, an An appeal may be taken from an order of the administrator
6 by filing a copy of the order, together with any papers in
connection with the order required by rule of the commission,
8 with a single commissioner within 20 days after receipt of notice
of the filing of the order. The failure of an appellant who
10 timely notifies the commission of the desire to appeal to provide
a copy of the order appealed from does not affect the
12 jurisdiction of the commissioner to determine the appeal on its
merits, unless the appellee shows substantial prejudice from that
14 failure.

16 **Sec. 12. 39 MRSA §88, sub-§4**, as amended by PL 1989, c. 580,
§17, is further amended to read:

18 **4. Costs.** Costs of appeal shall be are allowed, including
20 the record and reasonable attorney's fees as provided for in
section 110, ~~except that an employee's costs of representation~~
22 ~~during a request for an order of plan implementation under~~
section 83, ~~subsection 4, paragraph A, are deemed to be costs of~~
24 ~~plan implementation for any employee whose request is granted by~~
the administrator. ~~These costs shall be paid from the Employment~~
26 ~~Rehabilitation Fund and are recoverable upon the order of the~~
administrator under section 85, ~~subsection 4-A.~~ No An attorney
28 who represents an employee who prevails before the commission may
not recover any fee from that client for that representation if
30 the attorney receives compensation for the representation from
any other source as provided in this Act. Any attorney who
32 violates this subsection shall lose the attorney's fee and
is liable in a court suit to pay damages to the client equal to 2
34 times the fee charged that client.

36 **Sec. 13. 39 MRSA §90, sub-§3**, as enacted by PL 1989, c. 580,
§19, is repealed.

38 **Sec. 14. 39 MRSA §104-A, sub-§2-B**, as amended by PL 1989, c.
40 503, Pt. B, §180, is further amended to read:

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

