

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1992

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Legislative Document

No. 2423

H.P. 1735

House of Representatives, March 17, 1992

Reference to the Committee on Banking and Insurance suggested and ordered printed.

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

EDWIN H. PERT, Clerk

Presented by Representative LIPMAN of Augusta. (GOVERNOR'S BILL)

Cosponsored by Senator CARPENTER of York, Representative HASTINGS of Fryeburg and Representative CARLETON of Wells.

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STATE OF MAINE

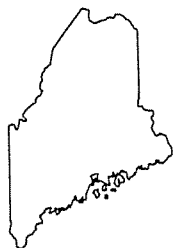
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-TWO

---

**An Act to Reform the Workers' Compensation System.**

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

PART A

Sec. A-1. 24-A MRSA §2362, as enacted by PL 1987, c. 559, Pt. A, §4, is repealed and the following enacted in its place:

**§2362. Workers' compensation rates**

**1. Prior approval.** Workers' compensation rates and classifications must be approved, modified or disapproved by the superintendent subject to this chapter. Rates determined by the superintendent are maximum rates except as provided in subsection 2. Premium rates less than those approved may be used if filed with the superintendent within 5 days after commencing use. If the superintendent has reason to believe that the filing produces rates that are inadequate or unfairly discriminatory, the superintendent may disapprove them under chapter 23 and chapter 25, subchapter I.

**2. Upward deviation permitted.** Rates up to 20% above the rates established by the superintendent may be used by an insurer in the voluntary market on a risk-by-risk basis. An offer of insurance using rates in excess of the rates established by the superintendent may not be used to deny eligibility to the safety pool of the residual market mechanism.

Sec. A-2. 39 MRSA §2, sub-§2, ¶B-1, as amended by PL 1989, c. 511, is further amended to read:

B-1. Notwithstanding paragraphs A and B, the average weekly wage of a seasonal worker shall be is determined by dividing the employee's total wages, earnings or salary for the ~~prior~~ calendar ~~immediately~~ preceding year by 52.

(1) For the purposes of this paragraph, the term "seasonal worker" does not include any employee who is customarily employed, full time or part time, for more than 26 weeks in a calendar year. The employee need not be employed by the same employer during this period to fall within this exclusion.

(2) Notwithstanding subparagraph (1), the term "seasonal worker" includes, but is not limited to, any employee who is employed directly in agriculture or in the harvesting or initial hauling of forest products.

Sec. A-3. 39 MRSA §51, sub-§1, as enacted by PL 1981, c. 200, is amended to read:

**1. Entitlement.** If an employee who has not given notice of his ~~the~~ employee's claim of common law or statutory rights of

2 action, or who has given the notice and has waived the same, as  
3 provided in section 28 ~~28-A~~ receives a personal injury arising  
4 out of and in the course of his employment or is disabled by  
5 occupational disease, ~~he--shall~~ the employee must be paid  
6 compensation and furnished medical and other services by the  
7 employer who has assented to become subject to this Act.  
8 Entitlement for any personal injury or occupational disease must  
be established by objective medical evidence.

10 **Sec. A-4. 39 MRSA §51, sub-§5** is enacted to read:

12 **5. Apportionment between work-related and nonwork-related**  
13 **injuries or conditions.** When, as determined by the independent  
14 medical examiner, one or more work-related injuries or conditions  
15 combine with, aggravate or are aggravated by one or more  
16 nonwork-related injuries or conditions to produce an incapacity,  
17 a change in incapacity or a need for medical treatment, the  
18 liability of the employer is governed by this subsection.  
19 Liability for the incapacity or condition must be apportioned on  
20 the basis of an independent medical examiner's medical  
21 determination of the relative contribution of each injury or  
22 condition on a percentage basis, and the employer is liable only  
23 for that portion of incapacity or treatment caused by the  
24 work-related injury.

26 **Sec. A-5. 39 MRSA §51-B, sub-§8,** as amended by PL 1991, c.  
27 615, Pt. C, §3, is further amended to read:

28 **8. Effect of payment.** If, within the 60-day period  
29 established in subsection 7 and after the payment of compensation  
30 for incapacity without an award, the employer elects to  
31 controvert the claim to compensation for incapacity, the payment  
32 of compensation may not be considered to be an acceptance of the  
33 claim or an admission of liability. Notwithstanding the  
34 provisions of section 99-C, the acceptance of compensation in any  
35 case, except by decision or agreement, by the injured employee or  
36 the employee's dependents is not considered an admission by the  
37 employee or the employee's dependents as to the nature and scope  
38 of the employer's liability or a waiver of the right to question  
39 the amount of compensation or the duration of the same or the  
40 nature of the injury and its consequences.

41  
42 The employer may continue the payment of compensation for  
43 incapacity under subsection 3 following the filing of a notice of  
44 controversy and up to the ~~evening--of--the~~ commissioner's  
45 decision following a formal hearing if the notice of controversy  
46 was filed prior to the expiration of the 60-day period  
47 established in subsection 7. The continuation of payments under  
48 these circumstances is not an acceptance of the claim or an  
49 admission of liability on the part of the employer. When  
50 benefits paid under this paragraph are discontinued or reduced  
51 prior to the commissioner's determination following a formal  
52

2 hearing but beyond the 60-day period established in subsection 7,  
3 the employer must give written notice to the employee at the time  
4 of discontinuing or reducing and the employee is entitled to an  
5 expedited hearing within 14 days after the employee requests a  
6 hearing.

7 **Sec. A-6. 39 MRSA §52-B, sub-§1**, as amended by PL 1991, c.  
8 615, Pt. D, §4, is further amended to read:

9 **1. Maximum charges.** Standards, schedules or scales of  
10 maximum charges for individual services, procedures of courses of  
11 treatment. The maximum charges may not be less than the usual,  
12 customary and reasonable charge paid by private 3rd-party payors  
13 for similar services provided by Maine health care providers. In  
14 establishing these standards, schedules or scales, the commission  
15 shall consult with organizations representing health care  
16 providers and other appropriate groups. The standards must be  
17 adjusted annually to reflect any appropriate changes in levels of  
18 reimbursement. The standards shall must apply to hospital costs  
19 and health care providers and must be in effect no later than  
20 January 1, 1992. Notwithstanding this section or any other  
21 provision of law, the standards, schedules or scales for 1993 are  
22 the same as those in effect on January 1, 1992; and

23 **Sec. A-7. 39 MRSA §53**, as amended by PL 1973, c. 557, §1, is  
24 further amended to read:

25 **§53. Waiting period; when compensation payable**

26 No compensation for incapacity to work shall-be is payable  
27 for the first 3 days of incapacity, except that ~~firemen~~-shall  
28 firefighters receive compensation from the date of incapacity. In  
29 case incapacity continues for more than 14 days, compensation  
30 shall-be is allowed from the date of incapacity.

31 **Sec. A-8. 39 MRSA §54-B**, as amended by PL 1991, c. 615, Pt.  
32 D, §6, is repealed.

33 **Sec. A-9. 39 MRSA §§54-C and 54-D** are enacted to read:

34 **§54-C. Compensation for temporary total incapacity**

35 **1. Temporary total benefits.** While an injured employee's  
36 incapacity for work is total, the employer shall pay that  
37 employee a weekly compensation equal to 60% of that employee's  
38 average gross weekly wages, earnings or salary, but not more than  
39 the maximum benefit under section 53-B or less than \$25 weekly.  
40 The total number of weeks of compensation due the employee under  
41 this section may not exceed 156 weeks from the date of injury.

42 **2. Limitation** Any employee who is able to perform  
43 full-time remunerative work in the ordinary competitive labor

2 market, regardless of the availability of that work in and around  
3 the employees community is not eligible for compensation under  
4 this section, but may be eligible for compensation under section  
5 55-B. Reasonable moving and relocation expenses for employees  
6 who are retrained or rehabilitated under this Act are available  
7 as provided in section 87, subsection 2.

8 3. Applicability. This section applies only to employees  
9 injured on or after the effective date of this section.

10 **§54-D. Compensation for total permanent incapacity**

11  
12 1. Permanent total benefits. While the incapacity for work  
13 resulting from the injury is total, the employer shall pay the  
14 injured employee a weekly compensation equal to 60% of that  
15 employee's average gross weekly wages, earnings or salary but not  
16 more than the maximum benefit under section 53-B nor less than  
17 \$25 weekly.

18  
19 2. Annual adjustment. Beginning on the 3rd anniversary of  
20 the injury, weekly compensation under this section must be  
21 adjusted annually. The adjustment must be equal to the lesser of  
22 the actual percentage increase or decrease in the state average  
23 weekly wages, as computed by the Bureau of Employment Security,  
24 for the previous year or 5%, whichever is less.

25  
26 The annual adjustment must be made on the 3rd and each succeeding  
27 anniversary date of the injury, except that, when the effect of  
28 the maximum under section 53-B is to reduce the amount of  
29 compensation to which the claimant would otherwise be entitled,  
30 the adjustment must be made annually on July 1st.

31  
32 3. Presumption. For the purposes of this Act, in the  
33 following cases, it is conclusively presumed that the injury  
34 resulted in permanent total incapacity and that the employee is  
35 unable to perform full-time remunerative work in the ordinary  
36 competitive labor market in the State:

37 A. The total and irrevocable loss of sight in both eyes;

38 B. The loss of both hands at or above the wrist;

39 C. The loss of both feet at or above the ankle;

40 D. The loss of one hand and one foot;

41 E. An injury to the spine resulting in permanent and  
42 complete paralysis of the arms or legs; or

43 F. An injury to the skull resulting in incurable imbecility  
44 or insanity.

2           4. Limitation. Any employee who is able to perform  
3 full-time remunerative work in the ordinary competitive labor  
4 market in the State, regardless of the availability of that work  
5 in and around that employee's community, is not eligible for  
6 compensation under this section, but may be eligible for  
7 compensation under section 55-B. This limitation does not apply  
8 to cases described under subsection 3. Reasonable moving and  
9 relocation expenses for employees who are retrained or  
10 rehabilitated under this Act are available as provided in section  
11 87, subsection 2.

12           5. Applicability. This section applies only to employees  
13 injured on or after the effective date of this section.

14           **Sec. A-10. 39 MRSA §55-B,** as repealed and replaced by PL  
15 1991, c. 615, Pt. D, §7, is repealed and the following enacted in  
16 its place:

17           §55-B. Compensation for partial incapacity

18           1. Benefit and duration. While the injured employee's  
19 incapacity for work is partial, the employer shall pay the  
20 injured employee a weekly compensation equal to 60% of the  
21 difference, due to the injury, between the employee's average  
22 gross weekly wages, earnings or salary before the injury and the  
23 weekly wages, earnings or salary that the employee is able to  
24 earn after the injury, but not more than the maximum benefit  
25 under section 53-B. An employee is not eligible to receive more  
26 than 260 weeks of compensation under this section or more than  
27 364 weeks under a combination of this section and section 54-C,  
28 except that, this number may be extended to 520 weeks if an  
29 employer agrees or a commissioner finds that the employee is, as  
30 a result of personal injury under this Title, incapacitated due  
31 to a permanent loss of 75% or more of any of the following bodily  
32 functions or senses:

- 33           A. One eye;  
34  
35           B. One hand;  
36  
37           C. One arm;  
38  
39           D. One foot; or  
40  
41           E. One leg.

42           The degree of loss under this section must be determined using  
43 the schedules prescribed by the commission under section 56-B.

44           2. Evaluation standards. This subsection governs the  
45 determination of an injured employee's degree of incapacity under  
46 this section.

2           A. During the first 40 weeks from the date of the injury,  
4           the commission shall consider the availability of work that  
6           the employee is able to perform in and around the employee's  
8           community and the employee's ability to obtain such work  
10           considering the effects of the employee's work-related  
12           injury. If no such work is available in and around the  
          employee's community or if the employee is unable to obtain  
          such work in and around the employee's community due to the  
          effects of a work-related injury, the employee's degree of  
          incapacity under this section is 100%. The employee has the  
          burden of production and proof on the availability of work.

14           B. After the first 40 weeks from the date of injury, the  
16           employer has the burden of production regarding the  
18           employee's capacity to perform work and the burden of  
20           producing a list of suitable and available job positions  
22           within the State. The employee has the burden of production  
24           regarding a good-faith exploration of the positions on the  
          list. The employee bears the ultimate burden of proof to  
          show that the employee was not hired for one of the  
          positions. The employer shall pay all reasonable expenses  
          incurred by the employee in conducting the exploration of  
          the positions on the list provided by the employer.

26           3. Applicability. This section applies only to employees  
28           injured on or after the effective date of this section.

30           Sec. A-11. 39 MRSA §56-B, sub-§1, as amended by PL 1991, c.  
          615, Pt. D, §8, is further amended to read:

32           1. Weekly benefit. In the case of permanent impairment,  
34           the employer shall pay the injured employee a weekly benefit  
36           equal to ~~2/3~~ 60% of the state average weekly wage, as computed by  
          the Bureau of Employment Security, for the number of weeks shown  
          in the following schedule:

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

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

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

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

50           Compensation under this section is reduced by any compensation to  
52           be received by the employee under section 54-B or 55-B received  
          by-the-employee.



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Sec. A-12. 39 MRSA §65-A is enacted to read:

**§65-A. Applicability**

Section 65 governs any actions, dispositions or proceedings under this Act after the effective date of this section.

Sec. A-13. 39 MRSA §71-A, sub-§§4 and 5 are enacted to read:

4. Offsets. If a settlement is approved and the employee suffers another injury for which compensation is payable under this Act, the benefits payable for the subsequent injury must be reduced by an amount not to exceed the amount of the settlement to the extent necessary to avoid duplicative payment of benefits for any period of incapacity. All settlement agreements must expressly allocate amounts payable as compensation for wage loss, medical services, permanent impairment or other benefits agreed to by the parties, subject to a determination by the commissioner that the settlement is fair and reasonable.

5. Disapproval; disqualification of commissioner. A commissioner who disapproves or otherwise fails to approve a proposed lump-sum settlement must be disqualified from presiding at any subsequent formal hearing in that case.

Sec. A-14. 39 MRSA §92-B, sub-§2, as enacted by PL 1991, c. 615, Pt. D, §19, is amended to read:

2. Duties. The independent medical examiners shall render medical findings on the medical condition of the employee and related issues as specified under this section. The physician or other provider appointed as the independent medical examiner in a case may not be the employee's treating health care provider and may not have treated the employee with respect to the injury for which benefits are being paid. Nothing in this subsection precludes the selection of providers authorized to receive reimbursement under section 52 to serve in the capacity of an independent medical examiner. A physician who has examined the employee at the request of an insurance company or employer in accordance with section 65 during the previous 52 weeks is not eligible to serve as an independent medical examiner with respect to the injury for which benefits are being claimed.

Sec. A-15. 39 MRSA §92-B, sub-§3, ¶B, as enacted by PL 1991, c. 615, Pt. D, §19, is amended to read:

B. Determination of degree of impairment under section 55-B and of maximum medical improvement and degree of impairment under section 56-B;

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

2           **10. Applicability.** This section governs any actions,  
4           dispositions or proceedings under this Act after the effective  
          date of this subsection.

6           **Sec. A-17. 39 MRSA §95**, as amended by PL 1991, c. 615, Pt. A,  
8           §44, is further amended to read:

10           **§95. Time for filing petitions**

12           Any employee's claim for compensation under this Act is  
14           barred unless an agreement or a petition as provided in section  
16           94 is filed within 2 years after the date of the injury, or, if  
18           the employee is paid by the employer or the insurer, without the  
20           filing of any petition or agreement, within 2 years of any  
22           payment by such employer or insurer for benefits otherwise  
24           required by this Act. ~~The 2-year period in which an employee may~~  
26           ~~file a claim does not begin to run until the employee's employer,~~  
28           ~~if the employer has actual knowledge of the injury, files a first~~  
30           ~~report of injury as required by section 106 of the Act. With~~  
32           ~~respect to those injuries for which section 106 requires the~~  
34           ~~filing of a first report of injury, the 2-year period in which an~~  
36           ~~employee may file a claim does not begin to run until the~~  
38           ~~employee's employer, if the employer has actual knowledge of the~~  
          ~~injury, files a first report.~~ Any time during which the employee  
is unable by reason of physical or mental incapacity to file the  
petition is not 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 is allowed for  
filing said petition one year after that death. No petition of  
any kind may be filed more than 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 are considered payments under a  
decision pursuant to a petition, unless a timely notice of  
controversy has been filed.

40           **Sec. A-18. 39 MRSA §96-A, sub-§3** is enacted to read:

42           **3. Effect of previous settlement.** A petition or claim for  
44           benefits of any type available under this Act is not allowed on  
46           account of an injury that has been previously resolved by a  
          lump-sum settlement or by any other final settlement process  
          pursuant to the laws of any other jurisdiction.

48           **Sec. A-19. 39 MRSA §100, sub-§4-B, ¶C**, as enacted by PL 1991,  
50           c. 615, Pt. D, §21, is amended to read:

52           C. If either party disagrees with the order of the  
          commissioner under paragraph A, that party may request an

2 expedited hearing on the pending petition pursuant to  
3 section 98. If an employee petitions for review of a  
4 discontinuance or a reduction in benefits made under  
5 subsection 4-A more than 21 days after the discontinuance or  
6 reduction and either party disagrees with the order of the  
7 commissioner under paragraph A, that party may request a  
8 hearing, but is not entitled to a hearing on an expedited  
9 basis pursuant to section 98.

10 Sec. A-20. 39 MRSA §100, sub-§8 is enacted to read:

12 8. Applicability. This section governs any actions,  
13 dispositions or proceedings under this Act after the effective  
14 date of this subsection.

16 Sec. A-21. 39 MRSA §110, sub-§3, ¶E, as enacted by PL 1991, c.  
17 615, Pt. D, §22, is amended to read:

18 E. Six percent of the next \$10,000 ~~\$20,000~~ over \$50,000 of  
19 the settlement; and

22 Sec. A-22. 39 MRSA §111, first ¶, as amended by PL 1985, c.  
23 118, is further amended to read:

24 No employee shall may be discriminated against by any  
25 employer in any way for testifying or asserting any claim under  
26 this Act. Any employee who is so discriminated against may file  
27 a petition alleging a violation of this section. The matter  
28 shall must be referred to a commissioner for a formal hearing  
29 under section 98, but any commissioner who has previously  
30 rendered any decision concerning the claim must be excluded. If  
31 the employee prevails at this hearing, the commissioner may award  
32 the employee reinstatement to his the employee's previous job,  
33 payment of back wages, reestablishment of employee benefits and  
34 reasonable ~~attorneys'~~ attorney's fees.

36  
37  
38 PART B

40 Sec. B-1. 4 MRSA c. 35 is enacted to read:

42 CHAPTER 35

44 WORKERS' COMPENSATION COMMISSION

46 §1641. Commission established

48 The Workers' Compensation Commission is established within  
49 the Judicial Department.

50 §1642. Workers' Compensation Commission

2           1. Membership; term. The Workers' Compensation Commission,  
3 as established in this section, consists of 11 members who must  
4 be persons learned in the law and members of good standing of the  
5 bar of this State. The members must be appointed by the Governor  
6 within 60 days after a vacancy occurs or a new commissioner is  
7 authorized, subject to review by the joint standing committee of  
8 the Legislature having jurisdiction over judiciary matters and to  
9 confirmation by the Legislature. One of the commissioners, to be  
10 designated by the Governor as chair, must be appointed for the  
11 term of 7 years from the date of the chair's appointment and the  
12 other commissioners for a term of 6 years each from the date of  
13 their respective appointments.

14           2. Vacancies; removal. Commissioners hold office for the  
15 terms provided in subsection 1, unless removed, and until their  
16 successors are appointed and qualified, but not beyond 6 months  
17 after the expiration of their terms. They must be sworn and for  
18 inefficiency, willful neglect of duty or for malfeasance in  
19 office may be removed by the Governor, only with the review and  
20 concurrence of the joint standing committee of the Legislature  
21 having jurisdiction over judiciary matters upon hearing in  
22 executive session, or by impeachment. Before removing a  
23 commissioner, the Governor must notify the President of the  
24 Senate and the Speaker of the House of Representatives of the  
25 removal and the reasons for the removal. In case the office of  
26 chair becomes vacant, the senior appointed commissioner acts as  
27 chair until the Governor makes an appointment to fill the vacancy.  
28

29           3. Salary; expenses; retirement. Salaries of commissioners  
30 are as provided in Title 2, section 7, subsection 2. Members of  
31 the commission are entitled to receive their actual, necessary,  
32 cash expenses while away from their offices on official business  
33 of the commission. Commissioners who elect to join the Maine  
34 State Retirement System receive credit for their creditable  
35 service as a member of the Maine State Retirement System prior to  
36 July 1, 1983 and for any service as a commissioner from July 1,  
37 1983 to November 30, 1984 without further contribution.  
38

39           4. Practice. Each commissioner and chair shall devote full  
40 time to the duties of the office and may not hold any other  
41 public office or public employment. A commissioner may not  
42 practice law during the term of office, nor may the commissioner  
43 during that term be the partner or associate of any person in the  
44 practice of law.

45           5. Headquarters; regional offices. The commission shall  
46 have its central office in Augusta, and 4 district offices to be  
47 located in Androscoggin, Aroostook, Cumberland and Penobscot  
48 Counties. The commission may hold sessions at any place within  
49 the State.  
50

2           6. Seal. The commission shall have a seal bearing the  
words "Workers' Compensation Commission of Maine."

4           §1643. Jurisdiction

6           The Workers' Compensation Commission has jurisdiction over  
actions brought pursuant to the Workers' Compensation Act.

8           §1644. Authority of chair; administration

10           1. Rules. The chair of the commission has general  
12 supervision over the administration of the Workers' Compensation  
Act, and responsibility for the efficient and effective  
14 management of the commission and its employees. Subject to any  
applicable requirements of the Maine Administrative Procedure Act  
16 after obtaining the advice of the commissioners, the chair shall  
make rules, prescribe forms and make suitable orders as to  
18 procedure adopted to ensure a speedy, efficient and inexpensive  
disposition of all proceedings.

20           2. Employees. The chair shall appoint an assistant to the  
22 chair, who shall serve at the chair's pleasure. Subject to the  
Civil Service Law, the chair shall appoint a Director of  
24 Administrative Services, full-time or part-time reporters and  
such legal, professional and clerical assistants as may be  
26 necessary.

28           3. Data system; reports. The chair is responsible for  
development and administration of the commission data system.  
30 The chair shall report quarterly to the Governor, the President  
of the Senate and the Speaker of the House of Representatives on  
32 each commissioner's caseload and progress, and the number of  
instances in which each commissioner has exceeded the 30-day rule  
34 contained in Title 39, section 99-B.

36           4. Booklets; information. To ensure that both employers  
and employees are fully informed as to their rights and  
38 responsibilities under the Workers' Compensation Act, the chair  
shall prepare, publish and distribute an illustrated booklet  
40 explaining, in informal and readily understandable language,  
those rights and responsibilities. The chair is responsible for  
42 periodic revision of the booklet.

44           5. Active retired commissioners. Any commissioner having  
retired from the commission is eligible for appointment as an  
46 active retired commissioner. The Governor, subject to review by  
the joint standing committee of the Legislature having  
48 jurisdiction over judiciary matters and to confirmation by the  
Legislature, may, upon being notified of the retirement of a  
50 commissioner, appoint that commissioner to be an active retired  
commissioner for a term of 4 years, unless sooner removed, and  
52 subject to reappointment. An active retired commissioner has the

2 same powers as before retirement, except that the active retired  
3 commissioner shall act only in those cases and at times and  
4 places as directed by the chair, and except that an active  
5 retired commissioner may not be a member of a panel of the  
6 appellate division.

7 An active retired commissioner who performs the services of a  
8 commissioner at the direction and assignment of the chair is  
9 entitled to compensation at a rate established by the chair, as  
10 long as the total per diem compensation and retirement pension  
11 received by an active retired commissioner does not exceed the  
12 annual salary of a regular commissioner. In addition, the active  
13 retired commissioner is entitled to reimbursement for expenses  
14 actually and reasonably incurred in the performance of the active  
15 retired commissioner's duties.

16 **6. Abuse investigation unit.** The chair shall provide  
17 adequate funding for a unit of abuse investigation.

18 A. The chair shall, subject to the Civil Service Law,  
19 appoint at least 2 abuse investigators for the unit of abuse  
20 investigation. Investigators must be qualified to perform  
21 their duties by experience and training.

22 B. The unit of abuse investigation, at the direction of the  
23 chair, shall investigate all complaints or allegations of  
24 fraud, illegal or improper conduct or violation of the  
25 Workers' Compensation Act or rules of the commission related  
26 to workers' compensation insurance, benefits or programs,  
27 including those acts by employers, employees or insurers.  
28 All records, correspondence and reports of investigation in  
29 connection with actual or alleged fraud, illegal or improper  
30 conduct or violation of the Workers' Compensation Act or  
31 rules of the commission and all records, correspondence and  
32 reports of criminal prosecution or civil action are  
33 confidential. The confidential nature of any record,  
34 correspondence or report does not limit or affect the use of  
35 those materials in any prosecution or action.

36 C. Each employer or employee, and each state, county,  
37 municipal or quasi-governmental agency shall cooperate fully  
38 with the unit of abuse investigation and provide any  
39 information requested by it.

40 D. The unit of abuse investigation shall report all its  
41 findings to the chair.

42 E. Whenever the chair determines that a fraud, attempted  
43 fraud or violation of the Workers' Compensation Act or rules  
44 may have occurred, the chair shall report in writing all  
45 information concerning the fraud, attempted fraud or  
46 violation to the Attorney General or a delegate for  
47

2           appropriate action, including a civil action for recovery of  
3           funds and criminal prosecution by the Attorney General.

4           7. Information. The commission shall maintain a toll-free  
5           telephone number to enable employees and employers to obtain  
6           information from the commission.

8           §1645. Investigations; subpoenas; depositions

10          1. Investigators. Any commissioner, when the interests of  
11          any of the parties or when the administration of the Workers'  
12          Compensation Act demand, may appoint a person to make a full  
13          investigation of the circumstances surrounding any industrial  
14          injury or any matter connected with that injury, and report the  
15          circumstances without delay to the office of the commission.

16          2. Subpoenas. Any commissioner may administer oaths and  
17          any commissioner, notary public or clerk of any Superior Court  
18          may issue subpoenas for witnesses and subpoenas duces tecum to  
19          compel the production of books, papers and photographs related to  
20          any questions in dispute before the commission or to any matters  
21          involved in a hearing. Witness fees in all proceedings under the  
22          Workers' Compensation Act must be the same as for witnesses  
23          before the Superior Court. When a witness subpoenaed and obliged  
24          to attend before the commission or any member of the commission  
25          fails to do so without reasonable excuse, the Superior Court or  
26          any Justice of the Superior Court, on application of the Attorney  
27          General made at the written request of a member of the  
28          commission, may compel obedience by attachment proceedings for  
29          contempt as in the case of disobedience of the requirements of a  
30          subpoena issued from that court or a refusal to testify in that  
31          court.

32          3. Proceedings before Workers' Compensation Commission. In  
33          all proceedings before the Workers' Compensation Commission,  
34          discovery is available to any of the parties in the proceedings  
35          as the chair, by rule adopted under section 1644, may prescribe  
36          to ensure that hearings may be held within the time periods  
37          prescribed by the Workers' Compensation Act. A commissioner  
38          shall rule on all objections and may enforce this subsection in  
39          the same manner and to the same extent as a Superior Court  
40          Justice may enforce compliance with the Maine Rules of Civil  
41          Procedure, as amended, with regard to discovery, except that the  
42          commissioner does not have the power of contempt.

43          Signed statements by a medical doctor or osteopathic physician  
44          related to medical questions, by a psychologist related to  
45          psychological questions or by a chiropractor related to  
46          chiropractic questions are admissible in workers' compensation  
47          hearings before the Workers' Compensation Commission, providing  
48          that notice of that testimony to be used is given and service of  
49          that notice is given.

2 a copy of the letter or report is made on the opposing counsel 14  
days before the scheduled hearing.

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

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

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

26 If a person commits any acts forbidden in this subsection, the  
28 commission or commissioner shall immediately certify the facts to  
a Superior Court Justice in the county where the alleged offense  
30 occurred and may serve or cause to be served upon that person an  
order requiring that person to appear before the Superior Court  
32 Justice on a day certain to show cause why that person should not  
be adjudged in contempt by reason of the facts so certified. The  
34 justice then, in a summary manner, shall hear the evidence as to  
the acts complained of and, if the evidence warrants, the justice  
36 shall punish that person in the same manner and to the same  
extent as for a contempt committed before that justice, or commit  
38 that person on the same conditions as if the forbidden act had  
occurred with reference to the process of the Superior Court or  
40 in the presence of the justice.

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

50 §1646. Appellate division created



1           1. Composition. The Appellate Division of the Workers'  
2           Compensation Commission is created and known and cited in this  
3           chapter as the "division." The division consists of at least one  
4           Appellate Judge appointed by the Governor, subject to review by  
5           the joint standing committee of the Legislature having  
6           jurisdiction over judiciary matters and to confirmation by the  
7           Legislature.

8  
9           2. Rules. Subject to the power of the Supreme Judicial  
10           Court to make and amend rules, the division shall establish  
11           uniform rules of procedure calculated to provide a prompt and  
12           inexpensive review of a decision by the commission.

13           §1647. Appeal from commission decision

14  
15           1. Procedure. An appeal must be taken from the commission  
16           decision by filing a copy of the decision, order or agreement  
17           with the division within 20 days after receipt of notice of the  
18           filing of the decision by the commission or commissioner.

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

21  
22           The failure of an appellant, who timely notifies the division of  
23           the appellant's desire to appeal, to provide a copy of the  
24           decision, order or agreement appealed from does not affect the  
25           jurisdiction of the division to determine the appeal on its  
26           merits unless the appellee shows substantial prejudice from that  
27           failure.

28  
29           2. Basis; effective date. An appeal may not be made on  
30           questions of fact found by the commission or any commissioner.

31  
32           3. Action. The division, after due consideration, may  
33           reverse or modify any decree of the commission and shall issue a  
34           written decision. The written decision of the division must be  
35           filed with the commission and mailed to the parties or their  
36           counsel.

37  
38           4. Costs. If the employee prevails, costs of appeal must  
39           be allowed, including the record, and including reasonable  
40           attorney's fees as provided for under Title 39, section 110. An  
41           attorney who represents an employee who prevails in an appeal  
42           before the division may not recover any fee from that client for  
43           that representation. Any attorney who violates this paragraph  
44           loses that fee and is liable in a court suit to pay damages to  
45           the client equal to 2 times the fee charged that client.

46  
47           5. Publication of decisions. The division shall biennially  
48           publish its significant decisions and make them available to the  
49           public at such cost as is required to pay for suitable  
50           publication. Copies of all written decisions must be distributed  
51

2 to the Law and Legislative Reference Library and the county law  
3 libraries.

4 **§1648. Appeal from a decision of the division**

6 1. Procedures. Any party in interest may present a copy of  
7 the decision of the division to the clerk of the Law Court within  
8 20 days after receipt of notice of the filing of the decision by  
9 the division. Within 20 days after the copy is filed with the  
10 Law Court, the party seeking review by the Law Court must file a  
11 petition seeking appellate review with the Law Court, setting  
12 forth a brief statement of the facts, the error or errors of law  
13 that are alleged to exist and legal authority supporting the  
14 position of the appellant.

16 2. Rules. The Law Court shall establish and publish  
17 procedures for the review of petitions for appellate review of  
18 decisions of the division.

20 3. Discretionary appeal; action. Upon the approval of 3 or  
21 more members of a panel consisting of no less than 5 justices of  
22 the Law Court, the petition for appellate review may be granted.  
23 If the petition for appellate review is denied, the decision of  
24 the division is final. The petition must be considered on  
25 written briefs only.

26 If the petition for appellate review is granted, the clerk of the  
27 Law Court shall notify the parties of the briefing schedule  
28 consistent with the Maine Rules of Civil Procedure, and in all  
29 respects the appeal before the Law Court must be treated as an  
30 appeal in an action in which equitable relief has been sought.  
31 The Law Court, after due consideration, may reverse, modify or  
32 affirm any decision of the division.

34 4. Costs. In all cases of appeal to the Law Court in which  
35 the employee prevails, the Law Court may order a reasonable  
36 allowance to be paid to the employee by the employer for expenses  
37 incurred in the proceedings of the appeal, including the record,  
38 but not including expenses incurred in other proceedings in the  
39 case. Reasonable attorney's fees must be allowed as provided for  
40 under Title 39, section 110. An attorney who represents an  
41 employee who prevails in an appeal before the court may not  
42 recover any fee from that client for that representation. Any  
43 attorney who violates this paragraph loses that attorney's fee  
44 and is liable in a court suit to pay damages to the client equal  
45 to 2 times the fee charged that client.

48 **§1649. Report to the Law Court**

50 Decisions of the commission may be reported directly to the  
51 Law Court pursuant to the Maine Rules of Civil Procedure, Rule 72.  
52

2  
3 **§1650. Enforcement of division**

4 Any decision of the commissioners or the division is  
5 enforceable by the Superior Court by any suitable process  
6 including execution against the goods, chattel and real estate  
7 and including proceedings for contempt for willful failure or  
8 neglect to obey the orders or decrees of that court, or in any  
9 other manner that decrees for equitable relief may be enforced.  
10 Any party in interest may present copies, certified by the clerk  
11 of the commission or of the division, of any order or decision of  
12 the commission or of the division, or of any memorandum of  
13 agreement approved by the commission to the clerk of courts for  
14 the county in which the injury occurred; or if the injury  
15 occurred outside the State, to the clerk of courts for the County  
16 of Kennebec. Whereupon any Justice of the Superior Court shall  
17 render a pro forma decision in accordance therewith and cause all  
18 interested parties to be notified. The decision and all  
19 proceedings related to the decision have the same effect as if  
20 rendered in an action in which equitable relief is sought, duly  
21 heard and determined by that court. The decision must be for  
22 enforcement of a commission decision, order or agreement.  
23 Appeals from a commission decision, order or agreement must be in  
24 accordance with section 1647.

25 **Sec. B-2. 26 MRSA §52 is enacted to read:**

26 **§52. Office of Employee Assistants**

27  
28 The Office of Employee Assistants is created within the  
29 bureau and known and cited in this section as the "office." The  
30 purpose of this office is to assist employees in proceedings  
31 before the Workers' Compensation Commission under Title 39. The  
32 director shall provide adequate funding for the office and,  
33 subject to the Civil Service Law, shall appoint the assistants.  
34 Assistants are not attorneys, but must demonstrate a level of  
35 expertise roughly equivalent to that of insurance claims'  
36 analysts. The assistants shall provide advice and assistance to  
37 employees under the Workers' Compensation Act particularly in  
38 preparing for and assisting in informal conferences under Title  
39 39, section 94-B. In addition, if an employer appeals a decision  
40 of the Workers' Compensation Commission or institutes any  
41 proceeding against an employee under the Workers' Compensation  
42 Act, the office, upon request, shall advise an employee how to  
43 best prepare for and proceed with the case.

44  
45 An employee of the office may not represent before the commission  
46 any insurer, self-insurer, group self-insurer, adjusting company  
47 or self-insurance company for a period of 2 years after  
48 terminating employment with the office.

49  
50 The director shall appoint 6 employee assistants and a supervisor  
51 of employee assistants. After January 1, 1993, the director may  
52

2 appoint up to 5 additional assistants if, in the director's  
3 judgment, the additional assistants are necessary to effectuate  
4 the purposes of this subsection.

5 **Sec. B-3. 39 MRSA §91**, as amended by PL 1989, c. 483, Pt. A,  
6 §§57 and 58, is repealed.

7 **Sec. B-4. 39 MRSA §92, sub-§6**, as amended by PL 1987, c. 877,  
8 §1, is repealed.

9 **Sec. B-5. 39 MRSA §92, sub-§7**, as amended by PL 1991, c. 591,  
10 Pt. AA, §2, is repealed.

11 **Sec. B-6. 39 MRSA §92, sub-§8**, as amended by PL 1985, c. 785,  
12 Pt. B, §180, is repealed.

13 **Sec. B-7. Effective date.** This Part takes effect January 1,  
14 1993.

## 20 STATEMENT OF FACT

21 The purpose of this bill is to:

22  
23 1. Encourage the placement of policies in the voluntary  
24 market and to allow an employer to contract with an insurer that  
25 may charge a higher rate, but provide a potential dividend and  
26 better service than that available to the employer through the  
27 residual market mechanism. An offer of voluntary market  
28 insurance at rates in excess of those established by the  
29 superintendent is not an acceptable reason for denial of  
30 eligibility for the safety pool of the residual market mechanism;  
31 and

32  
33 2. Eliminate a possible interpretation of current law that  
34 allows the greater of earnings in the 12 months immediately  
35 preceding injury or earnings in the last full January to December  
36 period prior to injury to be utilized in the calculation of  
37 average weekly wage of seasonal workers.

38 The bill also:

39  
40 1. Requires objective medical evidence of an injury before  
41 an employee is entitled to workers' compensation;

42  
43 2. Limits compensation in combined effects cases in which  
44 compensation is provided only for that portion of an incapacity  
45 or treatment caused by a work-related injury;

46  
47 3. Clarifies the ability of employers to pay workers'  
48 compensation benefits in contested cases without prejudice by  
49 allowing for payments to be continued without prejudice until a  
50

2 commissioner of the Workers' Compensation Commission's decision  
following a hearing. Current law allows payment without  
prejudice only until the convening of the hearing;

4  
6 4. Clarifies that notice requirements in the event of a  
discontinuance prior to a commissioner's determination after a  
hearing relate to reductions in benefits as well as total  
8 discontinuances;

10 5. Replaces a reference to "firemen" with the  
gender-neutral term "firefighters";

12  
14 6. Amends current law by creating a new distinction between  
temporary total and permanent total incapacities. Temporary  
total benefits are payable for a maximum of 3 years, after which  
16 an injured worker who is not permanently and totally  
incapacitated, but who continues to have a compensable  
18 incapacity, is compensated for the partial incapacity under the  
Maine Revised Statutes, Title 39, section 54-C for the duration  
20 specified in that section. Employers must pay 60% of that  
employee's gross weekly wages under Title 39, section 54-C and  
22 section 54-D. Permanently and totally incapacitated workers  
receive ongoing compensation under the new section 54-D, which is  
24 substantively the same as the current total incapacity in section  
54-B;

26  
28 7. Establishes new durational limits with respect to  
partial incapacity benefits. Employers must pay 60% of that  
employee's gross weekly wages. Total benefit duration for  
30 specified severe injuries remain at 520 weeks from the date of  
injury. Other partial incapacity cases are limited to a duration  
32 of 260 weeks or, if the partial incapacity follows a temporary  
total incapacity, to a maximum of 364 weeks from the date of  
34 injury;

36 8. Provides that, if an injured worker who has received a  
lump-sum settlement receives a subsequent injury, the benefits  
38 for the 2nd injury must be reduced to the extent necessary to  
avoid duplicative payment of benefits for a period of  
40 disability. All settlement agreements must expressly allocate  
wage loss, medical services, permanent impairment or other  
42 benefits;

44 9. Provides that a commissioner who disapproves a proposed  
lump-sum settlement of a case must be excluded from subsequent  
46 formal hearings in the case;

48 10. Clarifies the eligibility of a health care provider to  
serve as an independent medical examiner in a case;

50  
52 11. Clarifies the effective date of certain provisions of  
this bill;

2 12. Addresses the issue of when the 2-year period for the  
4 filing of a claim by an employee begins in cases in which a first  
6 report of injury is not required. Under current law, the 2-year  
8 period begins when a first report of injury is filed by the  
10 employer. Public Law 1991, chapter 615 provided that first  
reports are not required in so-called "medical only" cases, but  
the time for filing petitions in those cases was not addressed.  
This bill provides that the 2-year period begins on the later of  
the date of the injury or the date of the payment by the employer  
of any benefits otherwise required under the Act;

12 13. Prevents persons from filing claims for workers'  
14 compensation benefits in this State for injuries for which they  
have received a final settlement in another jurisdiction;

16 14. Provides that, in instances in which an employer  
18 discontinues benefits based on an employee's return to work, the  
employee files a petition for review, and the commissioner issues  
20 a provisional order, and either party wishes to appeal that  
order, a hearing is not required to be held on an expedited  
22 basis. This change eliminates the potential for a situation in  
which an employee could file a petition for review months or  
24 years after a discontinuance based on a return to work and become  
entitled to an expedited hearing;

26 15. Provides for an attorney's fee with respect to that  
28 portion of a settlement of 6%. Current law does not specify  
attorney's fees for lump-sum settlements of between \$90,000 and  
\$100,000;

30 16. Clarifies the provision of law that applies when an  
32 employee files a discrimination claim against an employer against  
whom the employee has testified or asserted a workers'  
34 compensation claim. Currently a hearing is scheduled by the  
commission concerning the discrimination claim, but any  
36 commissioner who has previously rendered any decision in the  
matter is excluded from presiding. This has the effect of  
38 requiring pending cases to be transferred to other  
commissioners. The bill allows the original commissioner to  
40 remain involved in pending cases and contemplates that the  
underlying case and the discrimination issue can be considered  
42 together;

44 17. Moves the Workers' Compensation Commission to the  
46 Judicial Department. Membership of the commission has been  
reduced to 11 members through elimination of a vacant position;

48 18. Provides for appeals to an Appellate Division Judge,  
50 rather than to an appellate panel of workers' compensation  
commissioners; and

52 19. Moves the Office of Employee Assistants into the  
Department of Labor.