

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
THIRD SPECIAL SESSION

HOUSE AMENDMENT "C" to HOUSE AMENDMENT "C" to H.P. 1783,
L.D. 2464, Bill, "An Act to Reform the Workers' Compensation Act
and Workers' Compensation Insurance Laws"

Amend the amendment by striking out all of pages 1 to 6 and
page 7, lines 1 to 34 and inserting in their place the following:

'Amend the bill in Part A by inserting after section 4 the
following:

'Sec. A-5. 5 MRSA §12004-B, sub-§§8 and 9 are enacted to read:

<u>8. Workers'</u>	<u>Fees</u>	<u>39-A MRSA</u>
<u>Compensation Appeal</u>	<u>Authorized</u>	<u>§219</u>
<u>Board</u>		

<u>9. Workers'</u>	<u>Salary</u>	<u>39-A MRSA</u>
<u>Compensation Appellate</u>	<u>Authorized</u>	<u>§222'</u>
<u>Commission</u>		

Further amend the bill in Part A by inserting after section
6 the following:

'Sec. A-7. 5 MRSA §12004-I, sub-§91 is enacted to read:

<u>91.</u>	<u>Workers'</u>	<u>Expenses</u>	<u>39-A MRSA</u>
<u>Workers'</u>	<u>Compensation</u>	<u>Only</u>	<u>§206</u>
<u>Compensation</u>	<u>Qualifications</u>		
	<u>Advisory</u>		
	<u>Committee</u>		

2 Sec. A-8. 36 MRSA §2527 is enacted to read:

4 §2527. Insurers subject to workers' compensation; credits
 against tax; refunds

6 1. Credit authorized. An insurer that is subject to the
8 Workers' Compensation Act of 1992 may credit against the tax
 otherwise imposed by this chapter an amount equal to the amount
10 paid during that tax year by the insurer under Title 39-A,
 section 313 as certified by the Director of the Bureau of
 Workers' Compensation.

12 2. Manner claimed. The credit under this section must be
14 claimed in the manner prescribed by the State Tax Assessor.

16 3. Amount. A taxpayer claiming a credit under this section
18 shall claim a portion of the credit allowed by this section equal
 to the payments made during a calendar quarter pursuant to Title
20 39-A, section 313 against the quarterly payments otherwise
 required by this Part. The Treasurer of State shall refund a
22 credit in excess of a quarterly payment to the taxpayer on a
 quarterly basis within 60 days after receipt of a properly
24 completed quarterly filing as required by this Act. A subsequent
 increase or decrease in the amount claimed for payments made by
26 the insurer or self-insurer must be reflected in the amount of
 the credit taken for the calendar quarter in which the amount of
 the adjustment is finalized.

28 4. Refund. Except as otherwise provided in this section,
30 the Treasurer of State shall refund, without interest, a credit
 under this section that is in excess of the insurer's tax
32 liability or fee amount for the calendar year to the insurer
 within 60 days after receipt of a properly completed annual tax
34 return as required by this Part.

36 Sec. A-9. 36 MRSA §5219-I is enacted to read:

38 §5219-I. Weekly workers' compensation supplements; payments as
 tax credit

40 1. Credit authorized. For amounts paid after the effective
42 date of this section, pursuant to Title 39-A, section 313, a
 taxpayer that is an employer or carrier subject to the Workers'
44 Compensation Act of 1992 may claim a credit against the tax
 imposed by this Part for the taxable year an amount equal to the
46 amount paid during that tax year by the taxpayer pursuant to
 Title 39-A, section 313 as certified by the Executive Director of
48 the Workers' Compensation Board pursuant to Title 39-A, section
 330.

50

2 2. Amount. A taxpayer claiming a credit under this section
3 shall claim a portion of the credit allowed by this section equal
4 to the payments made during a calendar quarter pursuant to Title
5 39-A, section 313 against the estimated tax payments made under
6 this Part. Any credit in excess of an estimated payment must be
7 refunded to the taxpayer on a quarterly basis within 60 calendar
8 days after receipt of a properly completed estimated tax return.
9 Any subsequent increase or decrease in the amount claimed for
10 payments made by the insurer or self-insurer must be reflected in
11 the amount of the credit taken for the calendar quarter in which
12 the amount of the adjustment is finalized.

13 3. Additional credit. The credit under this section is in
14 addition to any other credits the taxpayer is eligible for under
15 this Part.

16 4. Refund. Any amount of the credit under this section
17 that is in excess of the tax liability of the taxpayer for the
18 tax year must be refunded, without interest, by the Bureau of
19 Workers' Compensation to the taxpayer within 60 calendar days of
20 receipt of a properly completed annual return required by this
21 Title.

22
23 Further amend the bill in Part A by striking out all of
24 section 8 and inserting in its place the following:

25 'Sec. A-8. 39-A MRSA is enacted to read:

26
27 TITLE 39-A

28 WORKERS' COMPENSATION ACT

29 CHAPTER 1

30 COVERAGE AND LIABILITY

31 §101. Short title

32
33 This Title may be known and cited as the "Workers'
34 Compensation Act of 1992."

35 §102. Persons subject to Act

36
37 Every employer, public and private, and every employee,
38 unless otherwise specifically provided in this Act, are subject
39 to and bound by the provisions of this Act.

40
41 §103. Employers covered; private employers; agricultural
42 employers; medical and hospital coverage

43
44 This Act applies to:

2 1. Private employers; at least 3 employees. All private
3 employers, other than agricultural employers, who regularly
4 employ 3 or more employees at one time;

6 2. Private employers; fewer than 3 employees. All private
7 employers, other than agricultural employers, who regularly
8 employ fewer than 3 employees if at least one of them has been
9 regularly employed by that same employer for 35 or more hours per
10 week for 13 weeks or longer during the preceding 52 weeks;

12 3. Public employers. All public employers, irrespective of
13 the number of persons employed;

14 4. Agricultural employers; at least 3 employees; 13 weeks.
15 All agricultural employers of 3 or more regular employees paid
16 hourly wages or salaries, and not paid on a piecework basis, who
17 are employed 35 or more hours per week by that same employer for
18 13 or more consecutive weeks during the preceding 52 weeks.
19 Coverage applies only to such regularly employed employees. The
20 average weekly wage for such an employee is deemed to be the
21 weeks worked in agricultural employment divided into the total
22 wages that the employee has earned from all agricultural
23 occupations during the 12 calendar months immediately preceding
24 the injury, and no other definition pertaining to average weekly
25 wage is applicable; and

28 5. Agricultural employers; 5 weeks. All agricultural
29 employers of one or more employees who are employed 35 or more
30 hours per week by that same employer for 5 or more consecutive
31 weeks. Any such employer shall provide for such employees, in
32 accordance with rules established by the Workers' Compensation
33 Board, medical and hospital coverage as set forth in section 305
34 for all personal injuries arising out of and in the course of
35 employment suffered by such employees not otherwise covered by
36 this Act. The provision of such medical and hospital coverage
37 does not affect any rights of recovery that an employee would
38 otherwise have against an agricultural employer and such right of
39 recovery is subject to any defense the agricultural employer
40 might otherwise have. Section 109 does not apply to cases, other
41 than medical and hospital coverages provided herein, arising
42 under this subsection nor does it apply to actions brought
43 against an agricultural employer who is not voluntarily or
44 otherwise subject to this Act. No person may be considered an
45 employee of an agricultural employer if the person is a spouse,
46 child or other member of the employer's family, as defined in
47 section 314, subsection 1, paragraph B, residing in the home or
48 on the premises of the agricultural employer.

50 All other agricultural employers not included in subsection
51 4 or 5 are exempt from the provisions of this Act.

2 §104. Domestic servants

4 1. Family member. No household domestic servant may be
6 considered an employee if the person is a spouse, child or other
8 member of the employer's family residing in the home and no
householder may be deemed a statutory principal within the
meaning of section 113 for the purposes of this section.

10 2. Duration. No private employer is liable under this Act
12 to any person who is employed by that private employer as a
14 household domestic servant for less than 35 hours per week for 13
16 weeks or longer during the preceding 52 weeks, notwithstanding
the provisions of section 602 or any other provision of this Act,
unless that person assumes liability under section 106.

18 3. Definition. "Household domestic servant" or "domestic"
20 as used in this Act means a person who engages in work or
activity relating to the operation of a household and its
surroundings whether or not that person resides in the household.

22 §105. Licensed real estate salesperson or associate real estate
24 broker as employee

26 A person who is licensed under the real estate brokerage
28 licensing laws, Title 32, chapter 114, is not considered an
employee for purposes of this Act if both of the following
conditions have been met:

30 1. Percentage of remuneration. Not less than 75% of the
32 remuneration of that person is directly related to the volume of
sales of real estate and not to the number of hours worked; and

34 2. Written agreement. The person has a written agreement
36 with the agency who employs that person which states that the
person is not considered an employee for tax purposes.

38 §106. Private employers; voluntary assumption of coverage

40 Any private employer not otherwise included by section 104
42 or 105 may assume the liability for compensation and benefits
44 imposed by this Act upon employers. The purchase and acceptance
46 by an employer of a valid compensation insurance policy, except
48 in the case of domestics and agricultural employees, constitutes
an assumption by the employer of such liability without any
further act on the employer's part, which assumption of liability
takes effect from the effective date of the policy and continues
only as long as the policy remains in force, in which case the
employer is subject to no liability other than workers'
compensation as provided for in this Act. Agricultural and
domestic employees may be voluntarily included by specific

endorsement to a workers' compensation policy in those cases where such coverage is not required.

§107. Consistent discharges to evade Act; presumption; penalty

Any employer otherwise subject to the provisions of this Act who consistently discharges employees within the minimum time specified in this chapter and replaces such discharged employees without a work stoppage is presumed to have discharged them to evade the provisions of this Act and is guilty of a Class E crime.

§108. Exclusive remedy; exception; "employee" and "employer" defined

1. Exclusivity; exception. The right to the recovery of benefits as provided in this Act is the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort exists only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer is deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort is a question of law for the court. This subsection does not enlarge or reduce rights under law.

2. Expanded definitions. As used in this section and section 807, "employee" includes the person injured, that person's personal representatives and any other person to whom a claim accrues by reason of the injury to, or death of, the employee, and "employer" includes the employer's insurer, a service agent to a self-insured employer, and the Maine Employers' Mutual Insurance Company insofar as they furnish, or fail to furnish, safety inspections or safety advisory services incident to providing workers' compensation insurance or incident to a self-insured employer's liability servicing contract.

§109. Employee; action for personal injury or death; defenses abolished

In an action to recover damages for personal injury sustained by an employee in the course of that employee's employment or for death resulting from personal injuries so sustained, it is not a defense:

1. Employee's negligence. That the employee was negligent, unless it appears that the negligence was willful;

2. Other's negligence. That the injury was caused by the negligence of a fellow employee; or

2 3. Assumption of risks. That the employee had assumed the
3 risks inherent in, incidental to, or arising out of, the
4 employment or arising from the failure of the employer to provide
5 and maintain safe premises and suitable appliances.

6
7 §110. Employers subject to Act

8 1. Employers. The following constitutes employers subject
9 to this Act:

10 A. The State; each county, municipality and school
11 district; and each incorporated public board or public
12 commission in this State authorized by law to hold property
13 and to sue or be sued generally; and

14 B. Every person, firm and private corporation, including
15 any public service corporation, who has any person in
16 service under any contract of hire, express or implied, oral
17 or written, unless those employees excluded according to the
18 provisions of section 112, subsection 4 comprise all of the
19 employees of the person, firm or corporation.

20
21 §111. Agricultural employer; definition

22 1. Agricultural employer. "Agricultural employer" means
23 one who hires a person performing services:

24 A. On a farm, in connection with cultivating the soil or in
25 connection with raising or harvesting any agricultural or
26 horticultural commodity, including the caring for and
27 raising, shearing, feeding, training and management of
28 livestock, bees, poultry and furbearing animals and wildlife;

29 B. In the employ of the owner or tenant or other operator
30 of a farm, in connection with the operation, management,
31 conservation, improvement or maintenance of the farm and its
32 tools and equipment or in salvaging timber or clearing land
33 of brush and other debris left by a hurricane, if the major
34 part of any such service is performed on a farm;

35 C. In connection with the production or harvesting of maple
36 syrup or maple sugar or any commodity defined as an
37 agricultural commodity or in connection with the raising or
38 harvesting of mushrooms or in connection with the hatching
39 of poultry or in connection with the operation or
40 maintenance of ditches, canals, reservoirs or waterways used
41 exclusively for supplying and storing water for farming
42 purposes; or

2 D. In handling, planting, drying, packing, packaging,
4 processing, freezing, grading, storing or delivering to
6 storage, to market or to a carrier for transportation to
8 market, any agricultural or horticultural commodity but only
10 if the service is performed as an incident to ordinary
12 farming operations or in the case of fruits and vegetables
14 as an incident to the preparation of such fruits or
16 vegetables for market. The provisions of this paragraph do
18 not apply with respect to service performed in connection
20 with commercial canning or commercial freezing or in
22 connection with any agricultural or horticultural commodity
24 after its delivery to a terminal market for distribution for
26 consumption.

2 2. Farm. As used in this section, "farm" includes stock,
4 dairy, poultry, fruit, furbearing animals and truck farms,
6 plantations, ranches, nurseries, ranges, greenhouses or other
8 similar structures used primarily for the raising of agricultural
10 or horticultural commodities and orchards.

22 §112. "Employee" defined; exclusion from coverage of partner or
24 spouse, child or parent in employer's family; election
26 by employee to be excluded; notice of election; duration
28 of elected exclusion; section 109 inapplicable to certain
30 actions

28 1. "Employee" defined. As used in this Act, "employee"
30 means:

30 A. A person in the service of the State, a county, a
32 municipality or a school district, under any appointment, or
34 contract of hire, express or implied, oral or written. A
36 person employed by a contractor who has contracted with a
38 county, a municipality, a school district or the State,
40 through its representatives, is not considered an employee
42 of the State, the county, the municipality or the school
44 district that made the contract, when the contractor is
46 subject to this Act. Nationals of foreign countries
48 employed pursuant to section 102(a)(1) of the Mutual
50 Educational and Cultural Exchange Act of 1961, 22 United
States Code, Section 2452, are not considered employees
under this Act. Police officers, firefighters or employees
of the police or fire departments, or their dependents, in
municipalities of this State providing like benefits may
wave the provisions of this Act and accept like benefits
that are provided by the municipalities but are not entitled
to like benefits from both the municipalities and this Act;
however, this waiver does not prohibit any such employees or
their dependents from being reimbursed under section 305 for
the medical expenses or portion of medical expenses that are
not otherwise provided for by the municipality. This Act

2 may not be construed as limiting, changing or repealing any
3 of the provisions of a charter of a municipality of this
4 State relating to benefits, compensation, pensions, or
5 retirement independent of this Act provided for employees.
6 Members of a volunteer fire department of a municipality are
7 considered employees of the municipality and entitled to all
8 the benefits of this Act when personally injured in the
9 performance of duties as members of the volunteer fire
10 department. Members of a volunteer fire department of a
11 municipality are considered to be receiving the state
12 average weekly wage at the time of injury, as last
13 determined under section 316, from the municipality for the
14 purpose of calculating the weekly rate of compensation
15 provided under this Act. The benefits of this Act are
16 available to a safety patrol officer who is engaged in
17 traffic regulation and management for and by authority of a
18 county or a municipality whether the officer is paid or
19 unpaid, in the same manner as benefits are available to
20 volunteer firefighters, upon the adoption by the legislative
21 body of the county or the municipality of a resolution to
22 that effect. A safety patrol officer or safety patrol force
23 when used in this Act is considered to include all persons
24 who volunteer and are registered with a school and assigned
25 to patrol a public thoroughfare used by students of a
26 school. A volunteer civil defense worker who is a member of
27 the civil defense forces as provided by law and is
28 registered on the permanent roster of the civil defense
29 organization of the State or a political subdivision of the
30 State is considered to be an employee of the State or the
31 political subdivision on whose permanent roster the employee
32 is enrolled when engaged in the performance of duty and is
33 considered to be receiving the state average weekly wage at
34 the time of injury, as last determined under section 316,
35 from the State or political subdivision for purposes of
36 calculating the weekly rate of compensation provided under
37 this Act. A volunteer ambulance driver or attendant is
38 considered to be an employee of the county or municipality
39 and entitled to the benefits of this Act when personally
40 injured in the performance of duties as a volunteer
41 ambulance driver or attendant and is considered to be
42 receiving the state average weekly wage at the time of
43 injury, as last determined under section 316, from the
44 county or the municipality for purposes of calculating the
45 weekly rate of compensation provided under this Act. A
46 political subdivision of this State is not required to
47 provide compensation insurance for a peace officer of the
48 political subdivision with respect to the protection and
49 compensation that may be otherwise provided by law;

50 B. Every person in the service of another, under any
contract of hire, express or implied, including aliens; a

2 person regularly employed on a full-time basis by that
3 person's spouse having specified hours of employment at a
4 specified rate of pay; working members of partnerships
5 receiving wages from the partnership irrespective of
6 profits; a person insured for whom and to the extent
7 premiums are paid based on wages, earnings or profits; and
8 minors, who are considered the same as and have the same
9 power to contract as adult employees. Any minor under 18
10 years of age whose employment at the time of injury is shown
11 to be illegal, in the absence of fraudulent use of permits
12 or certificates of age in which case only single
13 compensation must be paid, is entitled to receive
14 compensation double that provided in this Act;

15 C. Every person engaged in a federally funded training
16 program or work experience program that mandates the
17 provision of appropriate workers' compensation for
18 participants and which is sponsored by the State, a county,
19 a municipality or a school district or unit, or an
20 incorporated public board or public commission in the State
21 authorized by law to hold property and to sue or be sued
22 generally, or any consortium thereof, is considered, for the
23 purposes of this Act, to be an employee of the sponsor and
24 entitled to the benefits of this Act. The sponsor is
25 responsible for the provision of workers' compensation and
26 shall secure the payment of compensation by a method
27 permitted under section 602. If a sponsor contracts with a
28 public or private organization to operate a program, the
29 sponsor may require the organization to secure the payment
30 of compensation by a method permitted under section 602; or

31 D. Every person performing service in the course of a
32 trade, business, profession or occupation of an employer at
33 the time of the injury, provided the person in relation to
34 this service does not maintain a separate business, does not
35 profess to and render service to the public and is not an
36 employer subject to this Act.

37 2. Family exclusion. A policy or contract of workers'
38 compensation insurance, by endorsement, may exclude coverage as
39 to any one or more named partners or the spouse, child or parent
40 in the employer's family. A person excluded pursuant to this
41 subsection is not subject to this Act and is not considered an
42 employee for the purposes of section 103.

43 3. Officer or stockholder exclusion. An employee who is
44 subject to this Act, including an employee covered pursuant to
45 section 106, who is an employee of a corporation that has not
46 more than 10 stockholders and who is also an officer and
47 stockholder who owns at least 10% of the stock of that
48 corporation, with the consent of the corporation as approved by
49 the board of directors, is not subject to this Act.

2 its board of directors, may elect to be individually excluded
4 from this Act by giving a notice of the election in writing to
6 the carrier with the consent of the corporation endorsed on the
8 notice. The exclusion remains in effect until revoked by the
employee by giving a notice in writing to the carrier. While the
exclusion is in effect, section 109 does not apply to any action
brought by the employee against the corporation.

10 4. All employees exclusion. If the persons to be excluded
12 from coverage under this Act pursuant to subsection 2 or 3
14 comprise all of the employees of the employer, those persons may
16 elect to be excluded from being considered employees under this
18 Act by submitting written notice of that election to the Workers'
Compensation Board upon a form prescribed by the Workers'
Compensation Board. The exclusion remains in effect until
revoked by giving written notice to the Workers' Compensation
Board.

20 §113. Employer contracting with person not subject to Act;
22 liability; applicability of section to principal and
contractor; willful circumvention of provisions; employer
as contractor; reimbursement agreement

24 1. Subcontract not subject to Act; liability. If any
26 employer subject to the provisions of this Act, in this section
28 referred to as the "principal," contracts with any other person,
30 in this section referred to as the "contractor," who is not
32 subject to this Act or who has not complied with the provisions
34 of section 602, and who does not become subject to this Act or
36 does not comply with the provisions of section 602 prior to the
38 date of the injury or death for which claim is made for the
40 execution by or under the contractor of the whole or any part of
42 any work undertaken by the principal, the principal is liable to
44 pay to any person employed in the execution of the work any
46 compensation under this Act that the principal would have been
liable to pay if that person had been immediately employed by the
principal. If compensation is claimed from or proceedings are
taken against the principal, then, in the application of this
Act, reference to the principal must be substituted for reference
to the employer, except that the amount of compensation must be
calculated with reference to the earnings of the person under the
employer by whom the person is immediately employed. A
contractor is deemed to include subcontractors in all cases where
the principal gives permission that the work or any part thereof
be performed under subcontract.

48 2. Indemnification or recovery. If the principal is liable
50 to pay compensation under this section, the principal is entitled
to be indemnified by the contractor or subcontractor. The
employee is not entitled to recover at common law against the
contractor for any damages arising from such injury if the

2 employee takes compensation from such a principal. The
3 principal, in case the principal pays compensation to the
4 employee of such contractor, may recover the amount so paid in an
5 action against such a contractor.

6 3. Application. This section applies to a principal and
7 contractor only if the contractor engages persons to work other
8 than persons who would not be considered employees under section
9 112, subsection 1, paragraph D.

10 4. Willful circumvention. Principals willfully acting to
11 circumvent the provisions of this section or section 602 by using
12 coercion, intimidation, deceit or other means to encourage
13 persons who would otherwise be considered employees within the
14 meaning of this Act to pose as contractors for the purpose of
15 evading this section or the requirements of section 602 are
16 liable subject to the provisions of section 607. Nothing in this
17 section may be construed to prohibit an employee from becoming a
18 contractor subject to the provisions of section 110. A principal
19 may demand that the contractor enter into a written agreement
20 with the principal agreeing to reimburse the principal for any
21 loss incurred under this section due to a claim filed pursuant to
22 this Act for compensation and other benefits.

24
25
26 **CHAPTER 2**

27
28 **ADMINISTRATION**

29
30 **§201. Workers' Compensation Board**

31 1. Board established. Pursuant to Title 5, section 12004-G,
32 subsection 35, the Workers' Compensation Board, referred to in
33 this section as the "board," is established as an independent
34 board composed of 8 members. The members of the board must be
35 appointed by the Governor within 30 days after a new board member
36 is authorized or a vacancy occurs, subject to review by the joint
37 standing committee of the Legislature having jurisdiction over
38 state and local government matters and confirmation by the
39 Legislature. Notwithstanding Title 3, section 151, the
40 designated committee must complete its review of the appointments
41 of the Governor within 45 days of the Governor's written notice
42 of appointment and the vote of the Legislature must be taken no
43 later than 15 days after the vote of the designated committee.

44
45 Four members of the board must be representatives of management
46 and 4 members must be representatives of labor. All management
47 representatives must be appointed from a list provided by the
48 Maine Chamber of Commerce and Industry or other bona fide
49 organization or association of employers. All labor
50 representatives must be appointed from a list provided by the

2 representatives must be from a list provided by the Executive
3 Board of the Maine AFL-CIO or other bona fide labor organization
4 or association of employees representing at least 10% of the
5 Maine work force. Any list submitted to the Governor must have
6 at least 4 times the number of names as there are vacancies for
7 the group represented by the vacancies.

8 A member of the board is not liable in a civil action for any act
9 performed in good faith in the execution of duties as a board
10 member.

11 No member of the board may be a lobbyist required to be
12 registered with the Secretary of State if the primary purpose of
13 the person's employment is to influence the passage of
14 legislation.

15 Members of the board hold office for staggered terms of 4 years,
16 except for the initial members of the board. The terms of one
17 member representing management and one member representing labor
18 expire February 1st of each year. A member may not serve for
19 more than 2 full terms.

20 The Governor shall initially designate one member representing
21 management and one member representing labor for terms expiring
22 February 1, 1994; one member representing management and one
23 member representing labor for terms expiring February 1, 1995;
24 one member representing management and one member representing
25 labor for terms expiring February 1, 1996; and one member
26 representing management and one member representing labor for
27 terms expiring February 1, 1997.

28 2. Removal. Board members hold office for the terms
29 provided, unless removed, and until their successors are
30 appointed and qualified. They must be sworn and may be removed
31 by the Governor for inefficiency, willful neglect of duty or
32 malfeasance in office, but only with the review and concurrence
33 of the joint standing committee of the Legislature having
34 jurisdiction over judiciary matters upon hearing in executive
35 session or by impeachment. Before removing a board member, the
36 Governor shall notify the President of the Senate and the Speaker
37 of the House of Representatives of the removal and the reasons
38 for the removal.

39 3. Vacancies. If a vacancy occurs during a term of a
40 member, the Governor shall appoint a replacement to fill the
41 unexpired part of the term. The replacement must be from the
42 group represented by the member being replaced. In case the
43 office of chair becomes vacant, the board member who has served
44 for the longest period of time shall act as chair until the
45 Governor makes an appointment to fill the vacancy.

2 4. Chair. The board shall annually elect one of its members
to serve as chair for a one-year term expiring February 1st each
4 year. The term as chair of the first member elected to that
position expires February 1, 1994. The chair must alternate
6 between management and labor members. The chair may vote on all
matters before the board.

8 5. Voting requirements. The board may take action only by
majority vote of its membership. Decisions regarding the
10 employment of an executive director and the appointment and
retention of hearing officers require the affirmative votes of at
12 least 2 board members representing management and at least 2
board members representing labor.

14 6. Salary; expenses. A board member is entitled to a per
16 diem of \$100 per day. Members of the board receive their actual,
necessary, cash expenses while on official business of the board.

18 7. Leave of absence. An employer may not terminate the
20 employment of an employee who is appointed as a member of the
board because of the exercise by the employee of duties required
22 as a board member. The member is entitled to a leave of absence
from employment for the period of time required to perform the
24 duties of a board member. During the leave of absence, the
26 member may not be subjected to loss of time, vacation time, or
benefits of employment, excluding salary.

28 8. Headquarters; regional offices. The board must have its
central office in the Augusta area and such district offices as
30 it may choose to establish. The board may hold sessions at any
place within the State.

32 9. Seal. The board must have a seal bearing the words
34 "Workers' Compensation Board of Maine."

36 **§202. Authority of Workers' Compensation Board; administration**

38 1. General responsibility. The Workers' Compensation Board
has general supervision over the administration of this Act and
40 responsibility for the efficient and effective management of the
Workers' Compensation Board and its employees.

42 2. Rules. Subject to any applicable requirements of the
44 Maine Administrative Procedure Act, the Workers' Compensation
Board shall adopt rules, prescribe forms and make suitable orders
46 of procedure to ensure the speedy, efficient, just and
inexpensive disposition of all proceedings and to accomplish the
48 purposes of this Act.

50 3. Employment of executive director. The Workers'
Compensation Board shall employ the Executive Director of the

2 Workers' Compensation Board who shall conduct the day-to-day
3 operations of the Workers' Compensation Board in accordance with
4 policies established by the Workers' Compensation Board and
5 otherwise implement the Workers' Compensation Board policy.
6 Except as otherwise provided, the Executive Director of the
7 Workers' Compensation Board shall, at the direction of the
8 Workers' Compensation Board, hire personnel as necessary to
9 administer this Act, subject to the Civil Service Law. The
10 Executive Director of the Workers' Compensation Board is an
11 unclassified employee serving at the pleasure of the Workers'
12 Compensation Board.

13
14 4. Employment of general counsel. The Workers'
15 Compensation Board shall employ a general counsel, who is the
16 legal adviser to the Workers' Compensation Board and who shall
17 perform such other duties as may be assigned by the Workers'
18 Compensation Board, and assistants as necessary. The general
19 counsel is an unclassified employee serving at the pleasure of
20 the Workers' Compensation Board.

21
22 5. Employment of and contracts with workers' compensation
23 magistrates and mediators. The Workers' Compensation Board shall
24 obtain the services of persons qualified by background and
25 training to serve as workers' compensation magistrates, who are
26 authorized to take action and enter orders consistent with this
27 Act in all cases assigned to them by the Workers' Compensation
28 Board, and mediators. In the exercise of its discretion, the
29 Workers' Compensation Board may obtain the services of workers'
30 compensation magistrates and mediators by either of the 2
31 following methods:

32 A. The Workers' Compensation Board may contract for the
33 services of workers' compensation magistrates and mediators,
34 in which case they must be paid reasonable per diem fees for
35 their services plus reimbursement of their actual, necessary
36 and reasonable expenses incurred in the performance of their
37 duties, consistent with policies established by the Workers'
38 Compensation Board; or

39
40 B. The Workers' Compensation Board may employ workers'
41 compensation magistrates and mediators to serve at the
42 pleasure of the Workers' Compensation Board and who are not
43 subject to the Civil Service Law. They are entitled to
44 receive reimbursement of their actual, necessary and
45 reasonable expenses incurred in the performance of their
46 duties, consistent with policies established by the Workers'
47 Compensation Board.

48
49
50 6. Hiring of personnel. The Workers' Compensation Board
shall appoint the directors of the divisions of the Workers'
Compensation Board who serve at the pleasure of the Workers'

2 Compensation Board and who are not subject to the Civil Service
3 Law.

4 7. Powers and duties of Workers' Compensation Board. The
5 Workers' Compensation Board has all powers as are necessary to
6 carry out its functions under the law. The Workers' Compensation
7 Board may delegate any powers and duties as necessary.

8 8. Conflict of interest. Each member of the Workers'
9 Compensation Board and each employee, contractor, agent or other
10 representative of the Workers' Compensation Board are "executive
11 employees" for purposes of Title 5, section 18 and are subject to
12 the limitations of that section. In addition, Title 17, section
13 3104 is applicable, in accordance with its provisions, to all
14 such representatives of the Workers' Compensation Board.

15 9. Accepting gifts, grants or donations. The Workers'
16 Compensation Board may accept gifts, grants or donations for the
17 use of the Workers' Compensation Board as provided by rules
18 adopted by the Workers' Compensation Board.

19 10. Case administration. The Workers' Compensation Board
20 shall assume an active and forceful role in the administration of
21 this Act to ensure that the system operates efficiently and with
22 maximum benefit to both employers and employees. It shall
23 continually monitor individual cases to ensure that benefits are
24 provided in accordance with this Act.

25 11. Recommending legislative change. The Workers'
26 Compensation Board shall consider and recommend to the
27 Legislature changes in this Act. Recommended changes must be
28 forwarded to the Legislature on or before December 1st of each
29 even-numbered year.

30 12. Advisory committees. The Workers' Compensation Board
31 may appoint advisory committees as it determines necessary to
32 assist the Workers' Compensation Board in matters that arise
33 under this Act. Advisory committee members are not entitled to
34 compensation but may be reimbursed for travel and reasonable
35 expenses as determined by the Workers' Compensation Board.

36 13. Budget. The Workers' Compensation Board shall
37 administer its budget, with the assistance of the Executive
38 Director of the Workers' Compensation Board.

39 §203. Workers' Compensation Board actions

40 In addition to other actions required of or permitted the
41 Workers' Compensation Board under this Act, the Workers'
42 Compensation Board shall perform the actions required by this
43 section to ensure just and efficient administration of claims.

2 1. Monitor payments. The Workers' Compensation Board shall
monitor cases to ensure that:

4 A. Payments are initiated within the time limits
6 established in this Title; and

8 B. Payments to the employee provide the full amount of
10 compensation to which the employee is entitled and are
 properly indicated on the memorandum of payment.

12 2. Troubleshooter program. The Workers' Compensation Board
shall establish a troubleshooter program to provide information
14 and assistance to participants in the workers' compensation
16 system. The troubleshooter may meet or otherwise communicate
 with employees, employers, insurance carriers and health care
 providers in order to prevent or informally resolve disputes.

18 3. Construction. In interpreting this Act, the Workers'
20 Compensation Board shall construe it so as to ensure the
22 efficient delivery of compensation to injured employees at a
24 reasonable cost to employers. All workers' compensation cases
26 must be decided on their merits and the rule of liberal
 construction does not apply. Accordingly, this Act is not to be
 given a construction in favor of the employee, nor are the rights
 and interests of the employer to be favored over those of the
 employee.

28 4. Information. The Workers' Compensation Board shall
30 require the employee, employer or insurer to provide it with any
32 information it reasonably determines necessary to monitor cases,
 including, but not limited to, preinjury and postinjury wage
 statements.

34 5. Abuse investigation unit. The Workers' Compensation
36 Board shall provide adequate funding for an abuse investigation
 unit.

38 A. The Workers' Compensation Board shall, subject to the
40 Civil Service Law, appoint at least 2 abuse investigators
42 who must be qualified by experience and training to perform
 their duties.

44 B. The unit shall, at the direction of the Workers'
46 Compensation Board, investigate all complaints or
48 allegations of fraud, illegal or improper conduct or
 violation of this Act or rules of the Workers' Compensation
 Board relating to workers' compensation insurance, benefits
50 or programs, including those acts by employers, employees or
 insurers. All records, correspondence and reports of
 investigation in connection with actual or alleged fraud,

2 illegal or improper conduct or violation of this Act or
3 rules of the Workers' Compensation Board and all records,
4 correspondence and reports of criminal prosecution or civil
5 action are confidential. The confidential nature of any
6 such record, correspondence or report does not limit or
7 affect the use of those materials in any prosecution or
8 action.

9
10 C. Each employer or employee and each state, county,
11 municipal or quasi-governmental agency shall cooperate fully
12 with the unit and provide any information requested by it.

13
14 D. The unit shall report all its findings to the Workers'
15 Compensation Board.

16 E. Whenever the Workers' Compensation Board determines that
17 a fraud, attempted fraud or violation of this Act or rules
18 of the Workers' Compensation Board may have occurred, the
19 Workers' Compensation Board shall report in writing all
20 information concerning it to the Attorney General or the
21 Attorney General's delegate for appropriate action,
22 including a civil action for recovery of funds and criminal
23 prosecution by the Attorney General.

24
25 6. Mediation. The Workers' Compensation Board shall
26 establish a mediation program to provide mediation services to
27 parties to workers' compensation cases.

28
29 7. Investigation. The Workers' Compensation Board may,
30 when the interests of any of the parties or when the
31 administration of this Act demands, appoint a person to make a
32 full investigation of the circumstances surrounding any
33 industrial injury or any matter connected to an industrial
34 injury, or conduct an audit pursuant to section 359 and report
35 the same without delay to the Workers' Compensation Board.

36
37 8. Impairment guidelines. In order to reduce litigation
38 and establish more certainty and uniformity in the rating of
39 permanent impairment, the Workers' Compensation Board shall
40 establish by rule a schedule for determining the existence and
41 degree of permanent impairment based upon medically or
42 scientifically demonstrable findings. The schedule must be based
43 on generally accepted medical standards for determining
44 impairment and may incorporate all or part of any one or more
45 generally accepted schedules used for that purpose, such as the
46 American Medical Association's "Guides to the Evaluation of
47 Permanent Impairment." Pending the adoption of a permanent
48 schedule, "Guides to the Evaluation of Permanent Impairment," 2nd
49 edition, copyright 1984, by the American Medical Association, is
50 the temporary schedule and must be used for the purposes of this
51 subsection.

2 **§204. Position of workers' compensation commissioner abolished;**
4 **powers and duties of workers' compensation magistrates;**
6 **hearings**

6 The position of workers' compensation commissioner under
8 this Act is abolished as of one year after the effective date of
10 this section.

10 Only workers' compensation magistrates may hear cases for
12 which an application for a hearing under section 817 has been
14 filed after the effective date of this Act. Workers'
16 compensation magistrates have the powers and shall perform the
18 duties prescribed in this Act.

16 Any case for which an application for a hearing under former
18 Title 39 has been filed before the effective date of this section
20 and that has not been heard by a commissioner by one year after
22 the effective date of this section must be heard by a workers'
24 compensation magistrate according to the law and procedures
26 applicable to cases heard by commissioners.

22 **§205. Introductory and continuing legal education courses in**
24 **workers' compensation**

26 The Chair of the Workers' Compensation Board of Magistrates
28 shall consult with law schools, the state bar of this State and
30 other legal associations for the purpose of establishing
32 introductory and continuing legal education courses in workers'
34 compensation. Workers' compensation magistrates, as a condition
36 of continued employment, may be required to attend these
38 courses. Applicants for the position of workers' compensation
40 magistrate may also be required to attend these courses.

34 **§206. Qualifications advisory committee; appointment;**
36 **qualifications terms of members; quorum; compensation;**
38 **staff and offices; powers and duties of committee**

40 1. Qualifications advisory committee. The Governor shall
42 appoint a 6-member Workers' Compensation Qualifications Advisory
44 Committee as established in Title 5, section 12004-I, subsection
46 91 and referred to in this section as the "committee." The
48 committee consists of persons who have experience in the area of
50 workers' compensation. Employer interests and employee interests
must be equally represented on the committee.

46 2. Terms. Members are appointed for terms of 4 years
48 except that, of the members first appointed, 2 must be appointed
50 for terms of 2 years, 2 must be appointed for terms of 3 years
and 2 must be appointed for terms of 4 years. Of the 2 members
appointed for the 2-year, 3-year and 4-year terms, one member

2 representing employer interests and one member representing
3 employee interests must be appointed. A member may not serve
4 beyond the expiration of the members' term. The initial members
5 must be appointed not later than 90 days after the effective date
6 of this subsection.

7 3. Quorum. A quorum consists of 4 members. All business
8 of the committee must be conducted by not less than a quorum.

10 4. Compensation. Members of the committee serve without
11 compensation, but are entitled to reimbursement for actual
12 expenses in accordance with Title 5, chapter 379.

14 5. Staff and offices. Staff and offices for the committee
15 must be provided by the Workers' Compensation Board.

16 6. Powers and duties. The committee has the powers and
17 shall perform the duties provided for under sections 207, 209 and
18 222.

20 §207. Development of written examination; administration of
21 written examination to applicants for position of
22 workers' compensation magistrate; personal interviews of
23 successful applicants; forwarding names of most qualified
24 applicants; hiring of recommended applicants

25 1. Written examination. The Workers' Compensation
26 Qualifications Advisory Committee shall develop a written
27 examination. The examination must be administered to applicants
28 for the position of workers' compensation magistrate in order to
29 determine the applicants' ability and knowledge with regard to
30 workers' compensation in the following areas:

31 A. Knowledge of this Act;

32 B. Skills with regard to fact-finding;

33 C. The Maine Rules of Evidence; and

34 D. A basic understanding of human anatomy and physiology.

35 2. Personal interviews. An applicant for the position of
36 workers' compensation magistrate, including those persons who
37 were employed as workers' compensation commissioners under this
38 Act on or before the date that is one year after the effective
39 date of this section, who successfully completes the examination
40 provided for under subsection 1 must be interviewed by the
41 Workers' Compensation Qualifications Advisory Committee for the
42 position of workers' compensation magistrate. An applicant who
43 does not successfully complete the examination may not be
44 considered for the position of workers' compensation magistrate.

2 3. Ranking applicants. The Workers' Compensation
3 Qualifications Advisory Committee, after completing personal
4 interviews of the successful applicants, shall rank the
5 applicants as to their qualifications for the position of
6 workers' compensation magistrate. The personal interviews must
7 be used to determine each applicant's suitability for the
8 position, especially with regard to the applicant's objectivity.

10 4. Submission of names; appointment. If 2 or more
11 positions are available, the Workers' Compensation Qualifications
12 Advisory Committee shall forward to the Workers' Compensation
13 Board the names of the most qualified applicants, as determined
14 by the advisory committee, equal to at least 1 1/2 times but not
15 more than 3 times the number of positions available. If only one
16 position is available, the qualifications advisory committee
17 shall submit the names of the 2 most qualified applicants to the
18 Workers' Compensation Board. The Workers' Compensation Board
19 shall hire recommended applicants pursuant to section 202,
20 subsection 5.

22 §208. Workers' compensation commissioners; appointment;
23 qualifications

24 Except for workers' compensation commissioners who
25 immediately prior to the effective date of this Act were acting
26 as such workers' compensation commissioners are appointed by the
27 director, shall devote their entire time to the duties of their
28 office, may not engage in other business or professional activity
29 and must be attorneys at law licensed to practice in the courts
30 of this State. Any workers' compensation commissioner serving on
31 the effective date of this Act shall continue to serve until the
32 position is abolished pursuant to section 204.

34 §209. Evaluating performance of workers' compensation
35 magistrate; frequency; criteria; report; response

36 1. Evaluation. The Workers' Compensation Qualifications
37 Advisory Committee shall evaluate the performance of each
38 workers' compensation magistrate at least once every 2 years.
39 The evaluation must be based upon at least the following criteria:

40 A. The rate of affirmance by the appeal board and the
41 appellate commission of the workers' compensation
42 magistrate's opinions and orders;

43 B. Productivity, including reasonable time deadlines for
44 disposing of cases;

45 C. Manner in conducting hearings;
46

2 D. Knowledge of rules of evidence as demonstrated by
transcripts of the hearings conducted by the workers'
4 compensation magistrate;

6 E. Knowledge of the law; and

8 F. Evidence of any demonstrable bias against particular
defendants, claimants or attorneys.

10 Written surveys or comments of all interested parties.
12 Information obtained under this subsection is exempt from
disclosure under the freedom of access laws, Title 1, chapter 13,
14 subchapter I.

16 2. Written report. Upon completing an evaluation under
this section, the Workers' Compensation Qualifications Advisory
18 Committee shall submit a written report including any supporting
documentation to the Workers' Compensation Board regarding that
20 evaluation, which may include recommendations with regard to one
or more of the following:

22 A. Promotion;

24 B. Suspension;

26 C. Removal; or

28 D. Additional training or education.

30 3. Workers' Compensation Board response. The Workers'
32 Compensation Board shall respond in writing to the Workers'
Compensation Qualifications Advisory Committee regarding the
34 action taken in response to the report of the committee.

36 §210. Workers' Compensation Board of Magistrates; establishment;
appointment, qualifications and terms of members;
38 designation of chair; vacancy; reappointment; removal;
powers and duties of chair; duties of members; term of
40 chair; compensation of members; employment of staff;
board as independent body; powers and duties of board;
42 rules; assignment and reassignment of magistrates; office
space

44 1. Board established within the Workers' Compensation
46 Board. The Workers' Compensation Board of Magistrates, referred
to in this section as the "board," is established as an
48 autonomous entity under the Workers' Compensation Board. The
Workers' Compensation Board of Magistrates consists of 30 members
50 appointed by the Governor, subject to review by the appropriate
joint standing committee of the Legislature and confirmation by
the Senate. The Governor shall appoint the initial members of

2 the board not later than the effective date of this section and
3 shall designate one of the appointees as the member that will be
4 chair. A person may not be appointed to the board who has not
5 been recommended by the Workers' Compensation Qualifications
6 Advisory Committee. All members of the board must be members in
7 good standing of the state bar.

8 2. Terms; vacancies; removal. The members of the board are
9 appointed for terms of 4 years except that, of the members first
10 appointed, 10 shall serve for 2 years, 10 shall serve for 3 years
11 and 10 shall serve for 4 years. A member who has served for 12
12 years may not be reappointed to a new term. A vacancy caused by
13 the expiration of a term must be filled in the same manner as the
14 original appointment. A member may not serve beyond the
15 expiration of the member's term unless the Workers' Compensation
16 Qualifications Advisory Committee fails to submit a
17 recommendation to the Governor before the expiration of the
18 term. A member may be reappointed. A member appointed to fill a
19 vacancy created other than by expiration of a term must be
20 appointed for the balance of the unexpired term. A member of the
21 board may be removed by the Governor for good cause, which must
22 be explained in writing to the workers' compensation magistrate.
23 Good cause for removal includes, but is not limited to, lack of
24 productivity or other neglect of duties.

25 3. Chair; member responsibilities. The Governor may
26 designate a member of the board as the chair upon a vacancy
27 occurring in that position. The chair of the board has general
28 supervisory control and is in charge of the employees of the
29 board and the assignment and scheduling of the work of the
30 board. The chair may also establish productivity standards that
31 are to be adhered to by employees of the board, the board and
32 individual magistrates. Each member of the board shall devote
33 full time to the functions of the board. Each member of the
34 board shall personally perform the duties of the office during
35 the hours generally worked by officers and employees of the
36 executive departments of the State.

37 4. Chair serves at Governor's pleasure. The chair of the
38 board serves as chair at the pleasure of the Governor.

39 5. Compensation. Each member of the board is entitled to
40 receive an annual salary and necessary traveling expenses
41 incurred in the performance of official duties subject to the
42 standardized travel regulations of the State.

43 6. Staff. The board may employ the staff it considers
44 necessary to be able to perform its duties under this Act, which
45 may include legal assistants for the purpose of legal research
46 and otherwise assisting the board and individual members of the
47 board.

2 7. Independent entity, rules. The board is an independent
3 body with the powers and duties as provided for under this Act.
4 The board may adopt rules on administrative hearing procedures
5 for purposes under this Act.

6 8. Assignment of magistrates. The chair of the board may
7 assign and reassign workers' compensation magistrates to hear
8 cases at locations in this State.

9 9. Office space. The Workers' Compensation Board shall
10 provide suitable office space for the board and the employees of
11 the board.

12 **§211. Workers' Compensation Board; offices; location**

13 The Department of Administrative and Financial Services
14 shall provide suitable space for the Workers' Compensation Board
15 in places in the State as, in the discretion of the director, are
16 necessary. The principal office of the Workers' Compensation
17 Board must be in Augusta.

18 **§212. Blank forms; printing; cost**

19 The Workers' Compensation Board shall print and furnish free
20 of charge to any employer or employee such blank forms as the
21 Workers' Compensation Board determines requisite to facilitate or
22 promote the efficient administration of this Act.

23 **§213. Application for mediation or hearing; forwarding copy to**
24 **employer and carrier; carrier to file written response;**
25 **return of incomplete application or written response;**
26 **medical records; proof of compliance; contents of**
27 **application or written response; notice of intention to**
28 **call witnesses; willful noncompliance**

29 1. Copy to employers; additional information required.
30 After the effective date of this section, the Workers'
31 Compensation Board, upon receiving a completed application for
32 mediation or hearing from a claimant, shall forward a copy of the
33 application to the employer and carrier. Within 30 days of
34 receiving a completed application for mediation or hearing from
35 the Workers' Compensation Board, the carrier shall file a written
36 response to the application with the Workers' Compensation Board
37 upon a form provided by the Workers' Compensation Board. Any
38 application for mediation or hearing or any written response that
39 is determined by the Workers' Compensation Board to be incomplete
40 must be returned with an explanation of the additional
41 information needed.

2 2. Medical records. At the time of filing an application
4 for hearing or mediation, the claimant shall also provide the
6 carrier with any medical records relevant to the claim that are
8 in the claimant's possession. At the time of filing the written
10 response, the carrier shall also provide the claimant with any
12 medical records of the carrier or employer concerning the
14 employee that are relevant to the claim and in existence at the
16 time of filing. The parties shall submit proof of compliance
18 with this subsection with the Workers' Compensation Board.

20 3. Applications. The application for mediation or hearing
22 must be as prescribed by the Workers' Compensation Board and
24 contain factual information regarding the nature of the injury,
26 the date of injury, the names and addresses of any witnesses,
28 except employees currently employed by the employer, the names
30 and addresses of any doctors, hospitals, or other health care
32 providers who treated the employee with regard to the personal
34 injury, the name and address of the employer, the dates on which
36 the employee was unable to work because of the personal injury,
38 whether the employee had any other employment at the time of, or
40 subsequent to, the date of the personal injury and the names and
42 addresses of the employers, and any other information required by
44 the Workers' Compensation Board.

46 4. Written response. The written response of the carrier
48 must be as prescribed by the Workers' Compensation Board and
50 specify any legal grounds supporting its position, any factual
 matters that are disputed, whether there was a medical
 examination of the claimant and who performed it, and any other
 information required by the Workers' Compensation Board.

5. Notice of witnesses. The claimant shall notify the
 carrier of the intention to call witnesses who are currently
 employed by the employer.

6. Willful noncompliance. The willful failure of a party
 to comply with this section prohibits that party from proceeding
 under this Act.

§214. Mediation of claim; circumstances; scheduling mediation
conference; duties of Workers' Compensation Board prior to
mediation conference; recommendations by mediator;
application for hearing; pretrial conference; willful
noncompliance

1. Specific circumstances. A claim, except a claim
 concerning a petition to stop or reduce the payment of
 compensation or involving a carrier terminating the payment of
 benefits that had been voluntarily paid, must be mediated by the
 parties pursuant to this section under any of the following
 circumstances:

2 A. The claim concerns a definite period of time and the
3 employee has returned to work;

4 B. The claim is for medical benefits only;

6 C. The claimant is not represented by an attorney; or

8 D. The Workers' Compensation Board determines that the
10 claim may be settled by mediation.

12 2. Other claims. All other claims must be mediated
13 pursuant to this section by the parties unless a party refuses in
14 writing to mediate that claim.

16 3. Conference scheduling. The Workers' Compensation Board,
17 upon proper notice to all parties, shall schedule a mediation
18 conference for a claim that is to be mediated.

20 4. Premediation procedure. Immediately before the
21 mediation conference is held, the Workers' Compensation Board
22 shall review the carrier's response with the employee. The
23 Workers' Compensation Board shall also provide to the employee a
24 clear and concise explanation of the employee's rights and
25 responsibilities under this Act including a reasonable estimate
26 of the maximum amount of benefits to which the employee would be
27 entitled if the claim is approved and the amounts that could be
28 deducted for attorney's fees and costs.

30 5. Recommendations by mediator. If a mediation conference
31 has been held and the claim has not been resolved, the mediator
32 shall recommend one of the following:

34 A. If the amount of the claim is for \$2,000 or less, that
35 the claim be heard in small claims division of the Workers'
36 Compensation Board; or

38 B. If the amount of the claim is for more than \$2,000, that
39 the claim be heard at a hearing held pursuant to section 817.

40 6. Application for hearing. If a mediation conference
41 regarding a claim has been held and a party files an application
42 for a hearing under section 817, a pretrial conference may not be
43 held unless specifically requested in writing by a party within
44 60 days of the completion of the mediation conference.

46 7. Willful noncompliance. The willful failure of a party
47 to comply with this section prohibits that party from proceeding
48 under this Act.

50 §215. Statistics; compiling; annual report

2 The Executive Director of the Workers' Compensation Board
4 shall cause such statistics incident to the functions of the
6 Workers' Compensation Board to be compiled as may be in the
8 director's discretion advisable. On or before April 1st of each
 year the Executive Director of the Workers' Compensation Board
 shall make and file a report covering the year prior to the
 preceding January 1.

10 **§216. Confidential records; exceptions**

12 1. Confidential records. Except as otherwise provided in
14 this section, the following records are confidential and exempt
16 from disclosure under the freedom of access laws, Title 1,
 chapter 13, subchapter I:

18 A. Records submitted by an employer to the Workers'
20 Compensation Board in support of its application for
 self-insured status;

22 B. Information concerning the injury of and benefits paid
24 to an individual worker. This includes, but is not limited
26 to, all forms, records and reports filed with or maintained
 by the Workers' Compensation Board or the Maine Employers'
 Mutual Insurance Company concerning the injury of or
 benefits paid to a worker; and

28 C. Financial information submitted to the Maine Employers'
30 Mutual Insurance Company by an applicant for insurance or a
32 policyholder pursuant to Title 24-A, chapter 52 and reports,
34 except audit reports, created by that company from this
 information, and reimbursement or settlement procedures,
 tables, manuals or schedules maintained by that company.

36 2. Exceptions. The Workers' Compensation Board or the
38 Maine Employers' Mutual Insurance Company may release, disclose
 or publish information described in subsection 1 under the
 following circumstances.

40 A. In the case of subsection 1, paragraph A or B, the
42 Workers' Compensation Board or the Maine Employers' Mutual
44 Insurance Company may disclose or publish aggregate
46 information for statistical or research purposes as long as
48 it is disclosed or published in such a way that the
 confidentiality of information concerning individual workers
 and the financial records of individual self-insured
 employers is protected. The Workers' Compensation Board or
 the Maine Employers' Mutual Insurance Company may also
 release individual records to a recognized academic or
 scholarly institution for research purposes if it is
 provided with sufficient assurance that the outside

2 individual or agency will preserve the confidentiality of
3 information concerning individual workers and the financial
4 records of individual self-insured employers.

6 B. In the case of subsection 1, paragraph B, the Workers'
7 Compensation Board or the Maine Employers' Mutual Insurance
8 Company may release information to another governmental
9 agency if the governmental agency provides the Workers'
10 Compensation Board or the Maine Employers' Mutual Insurance
11 Company with sufficient assurance that it will preserve the
12 confidentiality of the information. The other agency may
13 use this information to determine the eligibility of an
14 individual for benefits provided or regulated by that
15 agency. The Workers' Compensation Board, the Maine
16 Employers' Mutual Insurance Company or another agency may
17 disclose the information if it determines that the
18 individual is receiving benefits to which the individual is
19 not entitled as the result of receiving more than one
20 benefit at the same time.

22 C. Except as otherwise provided, information disclosed in
23 accordance with paragraph A or B continues to be exempt from
24 disclosure under the freedom of access laws, Title 1,
25 chapter 13, subchapter I.

26 D. In the case of subsection 1, paragraph B, the Workers'
27 Compensation Board or the Maine Employers' Mutual Insurance
28 Company may release individual records to a nonprofit health
29 care corporation, for the sole purpose of determining
30 financial liability for the payment of benefits provided by
31 the corporation. Any information provided to the nonprofit
32 health care corporation, is confidential. In a dispute over
33 who assumes liability for the payment of benefits for a
34 particular claim, the nonprofit health care corporation
35 shall initiate payment of benefits pending resolution of the
36 dispute.

38 3. Contested cases. The confidentiality provided for in
39 subsection 1 does not apply to records maintained by the Workers'
40 Compensation Board that are part of or directly related to a
41 contested case. For the purposes of this subsection, a matter is
42 considered a contested case when it is the subject of a request
43 for a formal hearing before the Executive Director of the
44 Workers' Compensation Board or an application filed in accordance
45 with section 817.

46 4. Access by record subject. Any employee is entitled to
47 inspect and obtain a copy of any record maintained by the
48 Workers' Compensation Board or the Maine Employers' Mutual
49 Insurance Company concerning that employee. Any employer is
50 entitled to inspect and obtain a copy of any record maintained by

2 the Workers' Compensation Board or the Maine Employers' Mutual
Insurance Company concerning itself.

4 5. Self-insured, insolvent or bankrupt. The
confidentiality provided for in subsection 1, paragraph A does
not apply to the records of a self-insured employer that becomes
unable to pay benefits under this Act due to insolvency or
declaration of bankruptcy.

10 6. Subpoena power. This section does not limit the power
of a court of law to subpoena records relevant to a matter
pending before it.

14 §217. Obsolete records; destruction

16 At the discretion of the Executive Director of the Workers'
Compensation Board, the Workers' Compensation Board may destroy
any record, file or paper pertaining to workers' compensation 20
years after the date of injury to which the record, file or paper
refers.

22 §218. Conducting business at public meeting; notice of meeting;
availability of writings to public

24 1. Public meeting; notice. The business that the board of
trustees under chapter 5 may perform must be conducted at a
public meeting of the board of trustees held in compliance with
applicable law. Public notice of the time, date and place of the
meeting must be given in the manner required by law.

30 2. Availability of writings. A writing prepared, owned,
used, in the possession of, or retained by the Workers'
Compensation Board, the Workers' Compensation Board of
Magistrates or the board of trustees under chapter 5 in the
performance of an official function must be made available to the
public in compliance with the freedom of access laws, Title 1,
subchapter 13, subchapter I.

38 §219. Workers' Compensation Appeal Board; creation; appointment
and qualifications of permanent members; restriction;
vacancy; designation of chair; list of qualified adjunct
members; requirements; adjunct members as employer
representative or employee representative; employment of
chief administrative officer; powers and duties of chair;
rules; assignment of pending cases to panel; review;
disqualification of adjunct member; decisions; fee;
remand of cases; review and decision by appellate
commission

40 1. Board established. The Workers' Compensation Appeal
Board is created, referred to in this Act as the "appeal board,"

2 to resolve any matters pending on the effective date of this
3 section before the former Workers' Compensation Appellate
4 Division. The appeal board consists of 5 permanent members,
5 representing the general public, appointed by the Governor
6 subject to review by the appropriate joint standing committee of
7 the Legislature and confirmation by the Senate, and qualified
8 adjunct members as determined pursuant to subsections 2 and 3. A
9 permanent member of the appeal board shall devote the member's
10 entire time to and personally perform the duties of the office
11 and may not engage in other business or professional activity. A
12 vacancy must be filled for an unexpired term in the same manner
13 as the original appointment.

14 2. Chair list. The chair of the appeal board is designated
15 by the Governor and shall establish and maintain a list of
16 qualified adjunct members.

17 3. Member requirements. The chair shall select additional
18 persons to the list of qualified adjunct members who meet one or
19 more of the following requirements. A qualified member must be:
20

21 A. An attorney licensed to practice in this State;

22 B. A former or retired workers' compensation magistrate, or
23 commissioner; or

24 C. A former or retired workers' compensation administrative
25 law judge.

26 4. Employer or employee representatives. Upon application
27 for qualification as an adjunct member of the appeal board, an
28 individual must indicate a designation as an employer
29 representative or an employee representative. Any questions
30 concerning the qualifications of adjunct members or whether the
31 designation taken by an adjunct member is appropriate must be
32 resolved by the Workers' Compensation Board.

33 5. Chief administrative officer; power of chair. The chair
34 of the appeal board shall employ a chief administrative officer
35 for the appeal board. The chair has general supervisory control
36 of and is in charge of the assignment and reassignment of the
37 work of the appeal board and the appeal board's employees,
38 including the scheduling of the docket; establishing office hours
39 and procedures; setting productivity standards; and encouraging
40 the use of arbitration, if appropriate. The appeal board may
41 adopt rules on administrative appellate procedure.

42 6. Preliminary review. In addition to other duties of
43 the chair prescribed in this section, the chair shall
44 preliminarily review matters before the appeal board to determine
45 whether the appeal board should hear the matter.

2 if those matters may be disposed of by arbitration or in some
expeditious manner by the appeal board.

4 7. Assignment of pending cases. Cases pending before the
appeal board must be assigned to a panel of 2 adjunct members of
6 the appeal board for disposition. Except as otherwise provided
in this section, all assignments must be on a random basis. At
8 least one member of each panel must be an attorney. Each panel
must be composed of one member designated as an employee
10 representative and one member designated as an employer
representative. The chair may refuse to assign cases to an
12 adjunct member if the chair determines that the member has too
many undecided cases already assigned.

14 8. Conflict of interest. In assigning cases to panels, the
16 chair shall pass over an adjunct member if there is any
indication of a potential conflict of interest. Upon being
18 assigned a case, each member of a panel shall immediately review
the case to determine if there is any potential conflict of
20 interest and if one is discovered, the member shall notify the
chair immediately. The chair shall disqualify an adjunct member
22 if the member can not impartially hear a case, including a case
in which the member:

24 A. Is interested as a party;

26 B. Is personally biased or prejudiced for or against a
28 party or attorney;

30 C. Has been consulted or employed as an attorney in the
32 matter in controversy; or

34 D. Was a partner of a party, attorney for a party or a
member of a law firm representing a party within the
36 preceding 2 years.

38 If a conflict of interest is discovered or a member is
disqualified, the chair shall immediately reassign the case.
40 Cases must be assigned to a 2-member panel of adjunct members in
pairs of 2 cases with one member of the panel having primary
42 responsibility for each case. The adjunct members may consult
with each other with respect to cases assigned to them.

44 9. Final decision. The decision reached by the assigned
members of a panel is the final decision of the appeal board. If
46 the members of a panel can not reach a decision, the chair of the
appeal board shall assign one of the general public permanent
48 members of the appeal board as the 3rd panel member to review the
matter. The 3rd panel member shall choose between the 2 decisions
50 of the assigned panel members. The decision of the 3rd panel
member is the decision of the appeal board. If one panel member

2 has decided the case for which the member has primary
3 responsibility, the 2nd panel member has 30 additional days to
4 decide the assigned case. If the case is not decided within the
5 30 additional days, the chair of the appeal board shall assign
6 one of the permanent members as the 2nd panel member to review
7 and decide the case. If the new panel can not reach a decision on
8 the case within 30 additional days, the chair of the appeal board
9 shall assign one of the other permanent members of the appeal
10 board as a 3rd panel member in the same manner as otherwise
11 provided in this subsection.

12 10. Adjunct member fees. When the appeal board has issued
13 a final decision in both cases of a pair of cases assigned to a
14 panel of adjunct members, each member of the panel is entitled to
15 receive a fee of \$1,000. The chair of the appeal board may
16 increase the fee paid to panel members for an individual pair of
17 cases if, after written application by the panel members, the
18 chair finds that one or both of the cases in the pair were
19 unusual and required an exceptional amount of time and effort by
20 the panel members.

21 11. Repeal. This section and sections 220, 221, 819 and
22 824 are repealed as of 5 years after the effective date of this
23 Act or when the Governor advises the Secretary of State in
24 writing that there are no more cases to be decided by the appeal
25 board, whichever occurs first.

26 12. Remand to appellate commission. If any cases are to be
27 remanded to the appeal board by a court after 5 years after the
28 effective date of this Act, those cases must be remanded to and
29 decided by the Workers' Compensation Appellate Commission
30 established under section 222.

31 13. Pending cases; decisions by appellate commission. If
32 any cases remain to be decided by the appeal board on the date
33 that this section is repealed as provided for in subsection 11,
34 those cases must be reviewed and decided by the Workers'
35 Compensation Appellate Commission.

36 14. Applicable law. Any review of cases by the Workers'
37 Compensation Appellate Commission pursuant to subsection 12 or 13
38 must be according to the law applicable to reviews conducted by
39 the appeal board.

40 §220. Workers' Compensation Appeal Board as independent body;
41 powers and duties

42 1. Independent body. The Workers' Compensation Appeal
43 Board is an independent body with power and authority to hear and
44 decide all appeals from the orders of the workers' compensation
45 board.

2 commissioners and director, except as otherwise provided in this
3 Act.

4 2. Powers and duties. The Workers' Compensation Appeal
5 Board has the independent right to organize and manage the appeal
6 board's work; authority over the selection, assignment,
7 classification and tenure of the appeal board's employees; and
8 supervision over the appeal board's office space.

10 §221. Workers' Compensation Appeal Board; salary and expenses;
11 offices; office hours; personal case conferences

12
13 1. Salary and expenses. Each member of the Workers'
14 Compensation Appeal Board is entitled to receive an annual salary
15 as appropriated by the Legislature and necessary traveling
16 expenses incurred in the performance of official duties subject
17 to the standardized travel regulations of the State.

18
19 2. Office space. The Department of Administrative and
20 Financial Services shall provide suitable offices for the
21 Workers' Compensation Appeal Board as, in the discretion of the
22 chair, is necessary. A full-time member of the appeal board shall
23 personally perform the duties of the office during the hours
24 generally worked by officers and employees of the executive
25 departments of the State.

26
27 3. Case conferences. In an attempt to expedite the review
28 of matters pending before the Workers' Compensation Appeal Board,
29 personal case conferences should be utilized by the appeal board
30 to facilitate discussion of the facts and an exchange of views.

31 §222. Workers' Compensation Appellate Commission; establishment
32 as autonomous entity; appointment; qualifications and
33 terms of members; vacancy; reappointment; removal for
34 good cause; designation of chair; powers and duties of
35 chair; duties of members; term of chair; salary and
36 expenses of members; employment of staff; power and
37 authority of commission; rules on administrative
38 appellate procedures; assignment and reassignment of
39 matters; decisions; review and decision by entire
40 commission; written opinions; publication of opinions;
41 office space

42
43 1. Establishment; appointment; qualifications. The
44 Workers' Compensation Appellate Commission, referred to in this
45 section as the "commission," is established as an autonomous
46 entity. The commission consists of 7 members appointed by the
47 Governor subject to review by the appropriate joint standing
48 committee of the Legislature and confirmation by the Senate. The
49 Governor shall designate one of the appointees as chair. A
50 person may not be appointed to the commission who has not been

2 recommended by the Workers' Compensation Qualifications Advisory
3 Committee under section 206. The Workers' Compensation
4 Qualifications Advisory Committee shall recommend a number of
5 candidates equal to at least 1 1/2 times but not more than 3
6 times the number of positions available. All members of the
7 commission must be members in good standing of the state bar.

8 **2. Terms; vacancy; reappointment; removal for good cause.**

9 The members of the commission are appointed for terms of 4 years
10 except that, of the members first appointed, 2 shall serve for 2
11 years, 2 shall serve for 3 years and 3 shall serve for 4 years. A
12 member who has served for 12 years may not be reappointed to a
13 new term. A vacancy caused by the expiration of a term must be
14 filled in the same manner as the original appointment. A member
15 may not serve beyond the expiration of the member's term unless
16 the Workers' Compensation Qualifications Advisory Committee fails
17 to submit a recommendation to the Governor before the expiration
18 of the term. A member may be reappointed. A member appointed to
19 fill a vacancy created other than by expiration of a term must be
20 appointed for the balance of the unexpired term. A member of the
21 commission may be removed by the Governor for good cause, which
22 must be explained in writing. Good cause for removal includes,
23 but is not limited to, lack of productivity or other neglect of
24 duties.

25 **3. Chair; duties of members.**

26 The Governor may designate a
27 member of the commission as the chair upon a vacancy occurring in
28 that position. The chair of the commission has general
29 supervisory control and is in charge of the employees of the
30 commission and the assignment and scheduling of the work of the
31 commission. The chair may also establish productivity standards
32 that are to be adhered to by employees of the commission, the
33 commission, individual members of the commission and panels of
34 the commission. Each member of the commission shall devote full
35 time to the functions of the commission. Each member shall
36 personally perform the duties of the office during the hours
37 generally worked by officers and employees of the executive
38 departments of the State.

39 **4. Chair term.**

40 The chair of the commission shall serve as
41 chair at the pleasure of the Governor.

42 **5. Compensation.**

43 Each member of the commission is
44 entitled to an annual salary that may be not less than the salary
45 paid to workers' compensation magistrates or workers'
46 compensation commissioners of the most senior classification and
47 to necessary traveling expenses incurred in the performance of
48 official duties subject to the standardized travel regulations of
49 the State.

50

2 Security; priorities in finding employment;
3 notice of employee refusing offer of employment;
4 termination of benefits; "reasonable employment"
5 defined; payment of benefits to persons incarcerated
6 in penal institution or confined in mental
7 institution; discrimination prohibited; personal
8 injuries and work-related diseases to which section
9 applicable

10 1. Compensation for personal injury or death; determination
11 at time of dated injury. An employee who receives a personal
12 injury arising out of and in the course of employment by an
13 employer who is subject to this Act at the time of the injury
14 must be paid compensation as provided in this Act. In the case of
15 death resulting from the personal injury to the employee,
16 compensation must be paid to the employee's dependents as
17 provided in this Act. Time of injury or date of injury as used in
18 this Act in the case of a disease or in the case of an injury not
19 attributable to a single event is the last day of work in the
20 employment in which the employee was last subjected to the
21 conditions that resulted in the employee's disability or death.

22 2. Compensation for mental disabilities or conditions of
23 aging process. Mental disabilities and conditions of the aging
24 process, including but not limited to heart and cardiovascular
25 conditions, are compensable if contributed to or aggravated or
26 accelerated by the employment in a significant manner. Mental
27 disabilities are compensable when arising out of actual events of
28 employment, not unfounded perceptions thereof.

29 3. Presumption in course of employment. An employee going
30 to or from the employee's work, while on the premises where the
31 employee's work is to be performed and within a reasonable time
32 before and after the employee's working hours, is presumed to be
33 in the course of that employee's employment. Notwithstanding this
34 presumption, an injury incurred in the pursuit of an activity the
35 major purpose of which is social or recreational is not covered
36 under this Act. Any cause of action brought for such an injury is
37 not subject to section 108.

38 4. "Disability" defined. As used in this chapter,
39 "disability" means a limitation of an employee's wage earning
40 capacity in work suitable to the employee's qualifications and
41 training resulting from a personal injury or work-related
42 disease. The establishment of disability does not create a
43 presumption of wage loss.

44 5. Determination of entitlement. If disability is
45 established pursuant to subsection 4, entitlement to weekly wage
46 loss benefits is determined pursuant to this subsection as
47 follows.

2 A. If an employee receives a bona fide offer of reasonable
4 employment from the previous employer, another employer or
6 through the Bureau of Employment Security and the employee
8 refuses that employment without good and reasonable cause,
the employee is considered to have voluntarily removed the
employee from the work force and is no longer entitled to
any wage loss benefits under this Act during the period of
refusal.

10
12 B. If an employee is employed and the average weekly wage
14 of the employee is less than that which the employee
16 received before the date of injury, the employee is entitled
18 to receive weekly benefits under this Act equal to 80% of
20 the difference between the injured employee's after-tax
weekly wage before the date of injury and the after-tax
weekly wage that the injured employee is able to earn after
the date of injury, but not more than the maximum weekly
rate of compensation, as determined under section 316.

22 C. If an employee is employed and the average weekly wage
24 of the employee is equal to or more than the average weekly
26 wage the employee received before the date of injury, the
employee is not entitled to any wage loss benefits under
this Act for the duration of that employment.

28 D. If the employee, after having been employed pursuant to
30 this subsection for 100 weeks or more, loses the employee's
32 job through no fault of the employee, the employee is
entitled to receive compensation under this Act pursuant to
the following.

34 (1) If, after exhaustion of unemployment benefit
36 eligibility of an employee, a workers' compensation
38 magistrate or workers' compensation commissioner, as
40 applicable, determines for any employee covered under
42 this paragraph that the employments since the time of
44 injury have not established a new wage earning
capacity, the employee is entitled to receive
compensation based on the employee's wage at the
original date of injury. There is a presumption of wage
earning capacity established for employments totaling
250 weeks or more.

46 (2) The employee must still be disabled as determined
48 pursuant to subsection 4. If the employee is still
50 disabled, the employee is entitled to wage loss
benefits based on the difference between the normal and
customary wages paid to those persons performing the
same or similar employment, as determined at the time

2 of termination of the employment of the employee, and
3 the wages paid at the time of the injury.

4 (3) If the employee becomes reemployed and the
5 employee is still disabled, the employee is entitled to
6 receive wage loss benefits as provided in paragraph B.

8 E. If the employee, after having been employed pursuant to
9 this subsection for less than 100 weeks, loses the
10 employee's job for whatever reason, the employee is entitled
11 to receive compensation based on the employee's wage at the
12 original date of injury.

14 6. Notice to Bureau of Employment Security. A carrier
15 shall notify the Bureau of Employment Security of the name of any
16 injured employee who is unemployed and to whom the carrier is
17 paying benefits under this Act.

18 7. Bureau priority. The Bureau of Employment Security
19 shall give priority to finding employment for those persons whose
20 names are supplied to the Bureau of Employment Security under
21 subsection 6.

24 8. Notice of refusal of employment; termination of
25 benefits. The Bureau of Employment Security shall notify the
26 Workers' Compensation Board in writing of the name of any
27 employee who refuses any bona fide offer of reasonable
28 employment. Upon notification to the Workers' Compensation Board,
29 the Workers' Compensation Board shall notify the carrier who
30 shall terminate the benefits of the employee pursuant to
31 subsection 5, paragraph A.

32 9. "Reasonable employment" defined. "Reasonable
33 employment," as used in this section, means work that is within
34 the employee's capacity to perform that poses no clear and
35 proximate threat to that employee's health and safety and that is
36 within a reasonable distance from that employee's residence. The
37 employee's capacity to perform may not be limited to jobs in work
38 suitable to the employee's qualifications and training.

40 10. Persons in penal or mental institutions. Weekly
41 benefits are not payable during the period of confinement to a
42 person who is incarcerated in a penal institution for violation
43 of the criminal laws of this State or who is confined in a mental
44 institution pending trial for a violation of the criminal laws of
45 this State, if the violation or reason for the confinement
46 occurred while at work and is directly related to the claim.

48 11. Discrimination prohibited. A person may not discharge
49 an employee or in any manner discriminate against an employee
50 because the employee filed a complaint or instituted or caused to

2 be instituted a proceeding under this Act or because of the
3 exercise by the employee on behalf of the employee or others of a
4 right afforded by this Act.

5 12. Application. This section applies to personal injuries
6 and work-related diseases occurring on or after the effective
7 date of this Act.

8 **§302. Willful misconduct of employee**

9 If an employee is injured by reason of the employee's
10 intentional and willful misconduct, the employee may not receive
11 compensation under the provisions of this Act.

12 **§303. Compensation payments; computations**

13 No compensation may be paid under this Act for any injury
14 that does not incapacitate the employee from earning full wages
15 for a period of at least one week, but if incapacity extends
16 beyond the period of one week, compensation begins on the 8th day
17 after the injury. If incapacity continues for 2 weeks or longer
18 or if death results from the injury, compensation must be
19 computed from the date of the injury.

20 **§304. "After-tax average weekly wage" defined; tables**

21 1. Definition. As used in this Act, "after-tax average
22 weekly wage" means average weekly wage as defined in section 323,
23 reduced by the prorated weekly amount that would have been paid
24 under the federal Insurance Contributions Act, 26 United States
25 Code, Sections 3101 to 3126, state income tax and federal income
26 tax, calculated on an annual basis using as the number of
27 exemptions the disabled employee's dependents plus the employee
28 and without excess itemized deductions. Each January 1st, the
29 applicable federal and state laws in effect on the preceding July
30 1st must be used in determining the after-tax weekly wage.

31 2. Tables. Each December 1st, the Executive Director of
32 the Workers' Compensation Board shall publish tables of the
33 average weekly wage and 80% of after-tax average weekly wage that
34 take effect on the following January 1st. These tables are
35 conclusive for the purpose of converting an average weekly wage
36 into 80% of after-tax average weekly wage.

37 **§305. Furnishing medical care for injury arising**
38 **out of and in course of employment; attendant**
39 **or nursing care; selection of physician by**
40 **employee; objection; order; other services**
41 **and appliances; proration of attorney's fees;**
42 **fees and other charges subject to rules;**
43 **advisory committee; excessive fees or**

unjustified treatment, hospitalization
or visits; review of records and medical
bills; "utilization review" defined ; effect
of accepting payment; submitting false or misleading
information as Class D crime; penalty; improper
overutilization or inappropriate health care
or health services; appeal; criteria or
standards; certification; unusual health care
or service

1. Furnishing medical care; selection of physician. The
employer shall furnish or cause to be furnished to an employee
who receives a personal injury arising out of and in the course
of employment reasonable medical, surgical and hospital services,
medicines or other attendance or treatment recognized by the laws
of this State as legal, when they are needed. Attendant or
nursing care may not be ordered in excess of 56 hours per week if
such care is to be provided by the employee's spouse, brother,
sister, child, parent or any combination of these persons. After
10 days from the inception of medical care as herein provided,
the employee may treat with a physician of the employee's own
choice by giving to the employer the name of the physician and
the employee's intention to treat with the physician. The
employer or the employer's carrier may file a petition objecting
to the named physician selected by the employee and setting forth
reasons for the objection. If the employer or carrier can show
cause why the employee should not continue treatment with the
named physician of the employee's choice, after notice to all
parties and a prompt hearing by a workers' compensation
commissioner or workers' compensation magistrate, as applicable,
the workers' compensation commissioner or workers' compensation
magistrate, as applicable, may order that the employee
discontinue treatment with the named physician or pay for the
treatment received from the physician from the date the order is
mailed. The employer shall also supply to the injured employee
dental service, crutches, artificial limbs, eyes, teeth,
eyeglasses, hearing apparatus and other appliances necessary to
cure, as far as is reasonably possible, and relieve from the
effects of the injury. If the employer fails, neglects or refuses
so to do, the employee must be reimbursed for the reasonable
expense paid by the employee or payment may be made in behalf of
the employee to persons to whom the unpaid expenses may be owing
by order of the workers' compensation commissioner or workers'
compensation magistrate, as applicable. The workers' compensation
commissioner or workers' compensation magistrate, as applicable,
may prorate attorney's fees at the contingent fee rate paid by
the employee.

2. Rules; fees and charges. All fees and other charges for
any treatment or attendance, service, devices, apparatus or
medicine under subsection 1 are subject to rules adopted by the

2 Department of Administrative and Financial Services pursuant to
3 the Maine Administrative Procedure Act. The rules adopted must
4 establish schedules of maximum charges for such treatment or
5 attendance, service, devices, apparatus or medicine and the
6 schedule must be annually revised. A health facility or health
7 care provider must be paid either its usual and customary charge
8 for any of the above or the maximum charge established under the
9 rules, whichever is less.

10 3. Advisory committee. The Commissioner of Administrative
11 and Financial Services shall provide for an advisory committee to
12 aid and assist in establishing the schedules of maximum charges
13 under subsection 2 for any charges or fees that are payable under
14 this section. The advisory committee is appointed by and serves
15 at the pleasure of the Workers' Compensation Board.

16 4. Excessive fees or unjustified treatment. If a carrier
17 determines that a health facility or health care provider has
18 made any excessive charges or required unjustified treatment,
19 hospitalization or office visits, the health facility or health
20 care provider may not receive payment under this chapter from the
21 carrier for the excessive fees or unjustified treatment,
22 hospitalization or office visits and is liable to return to the
23 carrier any such fees or charges already collected. The
24 Department of Administrative and Financial Services may review
25 the records and medical bills of any health facility or health
26 care provider determined by a carrier to be not in compliance
27 with the schedule of charges or to be requiring unjustified
28 treatment, hospitalization or office visits.

29 5. "Utilization review" defined. As used in this section,
30 "utilization review" means the initial evaluation by a carrier of
31 the appropriateness, in terms of both the level and the quality,
32 of health care and health services provided an injured employee,
33 based on medically accepted standards. This review must be
34 accomplished by a carrier pursuant to a system established by the
35 Department of Administrative and Financial Services that
36 identifies the utilization of health care and health services
37 above the usual range of utilization for such services, based on
38 medically accepted standards, and that provides for acquiring
39 necessary records, medical bills and other information concerning
40 any health care or health services.

41 6. Effect of acceptance of payment; submission of false or
42 misleading information. By accepting payment under this chapter,
43 a health facility or health care provider is considered to have
44 consented to submitting necessary records and other information
45 concerning any health care or health services provided for
46 utilization review pursuant to this section. Any such health
47 facility or health care provider is considered to have agreed to
48 comply with any decision of the Department of Administrative and
49 Financial Services.

2 Financial Services pursuant to subsection 7. Any health facility
3 or health care provider that submits false or misleading records
4 or other information to a carrier or the Department of
5 Administrative and Financial Services is guilty of a Class D
6 crime, which, notwithstanding Title 17-A, is punishable by a fine
7 of not more than \$1,000, or by imprisonment for not more than one
8 year, or both.

9
10 7. Appeal. If it is determined by a carrier that a health
11 facility or health care provider improperly overutilized or
12 otherwise rendered or ordered inappropriate health care or health
13 services or that the cost of the care or services was
14 inappropriate, the health facility or health care provider may
15 appeal to the Department of Administrative and Financial Services
16 regarding that determination pursuant to procedures provided for
17 under the system of utilization review.

18 8. Utilization criteria and standards. The criteria or
19 standards established for the utilization review must be
20 established by rules adopted by the Department of Administrative
21 and Financial Services. A carrier that complies with the criteria
22 or standards as determined by the Department of Administrative
23 and Financial Services must be certified by the department.

24
25 9. Unusual health care or service. If a health facility or
26 health care provider provides health care or a health service
27 that is not usually associated with, is longer in duration in
28 time than, is more frequent than or extends over a greater number
29 of days than that health care or service usually does with the
30 diagnosis or condition for which the patient is being treated,
31 the health facility or health care provider may be required by
32 the carrier to explain in writing the necessity or indication for
33 the reasons why.

34 §306. Medical or vocational rehabilitation services

35
36
37 1. Employee entitled to services. An employee who has
38 suffered an injury covered by this Act is entitled to prompt
39 medical rehabilitation services. When, as a result of the injury,
40 the employee is unable to perform work for which the employee has
41 previous training or experience, the employee is entitled to
42 vocational rehabilitation services, including retraining and job
43 placement, as may be reasonably necessary to restore the employee
44 to useful employment. If such services are not voluntarily
45 offered and accepted, the Executive Director of the Workers'
46 Compensation Board, upon the Executive Director of the Workers'
47 Compensation Board's own motion or upon application of the
48 employee, carrier or employer, after affording the parties an
49 opportunity to be heard, may refer the employee to a facility,
50 approved by the Workers' Compensation Board, for evaluation of
51 the need for, and kind of, service, treatment or training

2 necessary and appropriate to render the employee fit for a
3 remunerative occupation. Upon receipt of such a report, the
4 Executive Director of the Workers' Compensation Board may order
5 that the training, services or treatment recommended in the
6 report be provided at the expense of the employer. The Executive
7 Director of the Workers' Compensation Board may order that any
8 employee participating in vocational rehabilitation must receive
9 additional payments for transportation or any extra and necessary
10 expenses during the period and arising out of the program of
11 vocational rehabilitation. Vocational rehabilitation training,
12 treatment or service may not extend for a period of more than 52
13 weeks; except the period may be extended for an additional 52
14 weeks or portion thereof by special order of the Executive
15 Director of the Workers' Compensation Board, after review. If
16 there is an unjustifiable refusal to accept rehabilitation
17 pursuant to a decision of the Executive Director of the Workers'
18 Compensation Board, the Executive Director of the Workers'
19 Compensation Board shall order a loss or reduction of
20 compensation in an amount determined by the Executive Director of
21 the Workers' Compensation Board for each week of the period of
22 refusal, except for specific compensation payable under section
23 321, subsection 1 or 2.

24 2. Dispute; hearing. If a dispute arises between the
25 parties concerning application of any of the provisions of
26 subsection 1, any of the parties may apply for a hearing before a
27 workers' compensation commissioner or workers' compensation
28 magistrate, as applicable.

30 **§307. Compensation for death resulting from personal injury**

32 If death results from the personal injury of an employee,
33 the employer shall pay, or cause to be paid, subject to section
34 326, in one of the methods provided in this section, to the
35 dependents of the employee who were wholly dependent upon the
36 employee's earnings for support at the time of the injury, a
37 weekly payment equal to 80% of the employee's after-tax average
38 weekly wage, subject to the maximum and minimum rates of
39 compensation under this Act, for a period of 500 weeks from the
40 date of death. If at the expiration of the 500-week period any
41 such wholly or partially dependent person is less than 21 years
42 of age, a workers' compensation commissioner or workers'
43 compensation magistrate, as applicable, may order the employer
44 to continue to pay the weekly compensation or some portion
45 thereof until such wholly or partially dependent person reaches
46 the age of 21. If the employee leaves dependents only partially
47 dependent upon the employee's earnings for support at the time
48 of injury, the weekly compensation to be paid must be equal to
49 the same proportion of the weekly payments for the benefit of
50 persons wholly dependent as 80% of the amount contributed by the

employee to such partial dependents bears to the annual earnings
of the deceased at the time of injury.

**§308. Persons conclusively presumed to be wholly dependent for
support upon deceased employee**

The following persons are conclusively presumed to be wholly
dependent for support upon a deceased employee:

1. Spouse. A surviving spouse upon a deceased spouse with
whom the surviving spouse lives at the time of decedent's death,
or from whom, at the time of deceased death, a workers'
compensation commissioner or workers' compensation magistrate,
as applicable, finds the surviving spouse was living apart for
justifiable cause or because the decedent had deserted the
surviving spouse; or

2. Child. A child under the age of 16 years, or over 16
years of age if physically or mentally incapacitated from
earning, upon the parent with whom the child is living at the
time of the death of the parent. In the event of the death of an
employee who has at the time of the death a living child by a
former spouse or a child who has been deserted by such deceased
employee under the age of 16 years, or over if physically or
mentally incapacitated from earning, the child is conclusively
presumed to be wholly dependent for support upon the deceased
employee, even though not living with the deceased employee at
the time of death and in all cases the death benefit must be
divided between or among the surviving spouse and all the
children of the deceased employee, and all other persons, if
any, who are wholly dependent upon the deceased employee, in
equal shares, the surviving spouse taking the same share as a
child.

In all cases mentioned in this section, the total sum due a
surviving spouse and that spouse's own children must be paid
directly to the surviving spouse for that spouse's own use and
for the use and benefit of the spouse's own children. If during
the time compensation payments continue, a workers' compensation
commissioner or workers' compensation magistrate, as applicable,
finds that the surviving spouse is not properly caring for the
children, the workers' compensation commissioner or workers'
compensation magistrate, as applicable, shall order the shares
of the children to be thereafter paid to their guardian or legal
representative for their use and benefit, instead of to their
parent. In all cases, the sums due to the children by the former
spouse of the deceased employee must be paid to their guardians
or legal representatives for the use and benefit of such
children. In all other cases, questions of dependency, in whole
or in part, must be determined in accordance with the fact, as
the fact may be at the time of the injury. When a deceased

2 employee leaves a person wholly dependent upon the employer for
3 support, such a person is entitled to the whole death benefit
4 and persons partially dependent, if any, may not receive any
5 part of the death benefit while the person wholly dependent is
6 living. All persons wholly dependent upon a deceased employee,
7 whether by conclusive presumption or as a matter of fact, are
8 entitled to share equally in the death benefit in accordance
9 with the provisions of this section. If there is no one wholly
10 dependent or if the death of all persons wholly dependent occurs
11 before all compensation is paid and there is but one person
12 partially dependent, that person is entitled to compensation
13 according to the extent of the dependency and if there is more
14 than one person partially dependent, the death benefit must be
15 divided among them according to the relative extent of their
16 dependency. A person may not be considered a dependent unless
17 that person is a member of the family of the deceased employee,
18 or unless the person bears to the deceased employee the relation
19 of widower or widow, lineal descendant, ancestor, or brother or
20 sister.

21 **§309. Cessation of payments upon remarriage of dependent**
22 **spouse or upon dependent person reaching certain age;**
23 **reinstatement of dependency; persons to whom section**
24 **applicable**

25 **1. Remarriage; attainment of certain age; reinstatement of**
26 **dependency.** Upon the remarriage of a dependent spouse receiving
27 compensation, payments cease upon the payment to the remarried
28 spouse of the balance of the compensation to which the remarried
29 spouse would otherwise have been entitled but in no event to
30 exceed the sum of \$500 and further compensation, if any, is
31 payable to the person either wholly or partially dependent on
32 the deceased for support at the deceased's death as provided in
33 section 308. A workers' compensation commissioner or workers'
34 compensation magistrate, as applicable, shall determine the
35 amount of compensation or portion of compensation that is
36 payable weekly to such a wholly or partially dependent person
37 for the remaining weeks of compensation. When, at the expiration
38 of the 500-week period, any such wholly or partially dependent
39 person is less than 18 years of age, a workers' compensation
40 commissioner or workers' compensation magistrate, as applicable,
41 may order the employer to continue to pay the weekly
42 compensation or some portion of weekly compensation until such a
43 wholly or partially dependent person reaches the age of 18. The
44 payment of compensation to any dependent child ceases when the
45 child reaches the age of 18 years, if at the age of 18 years the
46 child is neither physically nor mentally incapacitated from
47 earning, or when the child reaches the age of 16 years and
48 thereafter is self-supporting for 6 months. If the child ceases
49 to be self-supporting thereafter, the dependency is reinstated.
50 Remaining compensation, if any, is payable to the person either

2 wholly or partially dependent on the deceased employee for
3 support at the time of the employee's death, as provided in the
4 case of the remarriage of a dependent spouse.

5 2. Application. This section applies to all persons who
6 are entitled to receive compensation or are receiving
7 compensation under this Act on the effective date of this
8 subsection and who have not attained the age of 18 years on the
9 effective date of this subsection.

10 §310. Dependents; qualifications; party in interest

11 Questions as to who constitutes dependents and the extent of
12 their dependency must be determined as of the date of the injury
13 to the employee and their right to any death benefit becomes
14 fixed as of such time, irrespective of any subsequent change in
15 conditions, except as otherwise specifically provided in
16 sections 307, 308 and 309. The death benefit is directly
17 recoverable by and payable to the dependents entitled to the
18 benefit or to their legal guardians or trustees. In case of the
19 death of a dependent, that dependent's proportion of the
20 compensation is payable to the surviving dependents pro rata.
21 Upon the death of all dependents, compensation ceases. No person
22 may be excluded as a dependent who is a nonresident alien. No
23 dependent of an injured employee may be deemed, during the life
24 of the employee, a party in interest to any proceeding by the
25 injured employee for the enforcement of collection of any claim
26 for compensation, nor as respects the compromise thereof by such
27 employee.

28 §311. Death resulting from injury; expense of last sickness
29 and burial; payment by employer; limitation;
30 application; order

31 If death results from the injury, the employer shall pay, or
32 cause to be paid, the reasonable expense of the employee's last
33 sickness and the employee's burial. The cost of burial may not
34 exceed \$1,500. Any person who performs a such service or incurs
35 such a liability is authorized to file an application with the
36 Workers' Compensation Board. A workers' compensation
37 commissioner or workers' compensation magistrate, as applicable,
38 may order the employer to pay such sums.

39 §312. Total incapacity for work; amount and duration
40 of compensation; limitation on conclusive
41 presumption of total and permanent disability;
42 determining question of permanent and total
43 disability

44 1. Amount; duration. While the incapacity for work
45 resulting from a personal injury is total, the employer shall

2 pay, or cause to be paid as provided in this section, to the
4 injured employee a weekly compensation of 80% of the employee's
6 after-tax average weekly wage but not more than the maximum
8 weekly rate of compensation, as determined under section 316.
10 Compensation must be paid for the duration of the disability.
12 The conclusive presumption of total and permanent disability
14 does not extend beyond 800 weeks from the date of injury and
16 thereafter the question of permanent and total disability must
18 be determined in accordance with the fact, as the fact may be at
20 that time.

12 2. Prior entitlement. A totally and permanently disabled
14 employee whose date of injury preceded July 1, 1968 is entitled
16 to the compensation under this Act that was payable to the
18 employee immediately before the effective date of this
20 subsection or compensation equal to 50% of the state average
22 weekly wage as last determined under section 316, whichever is
24 greater.

20 3. Maximum benefits. If an employee who is eligible for
22 weekly benefits under this Act would have received greater
24 weekly benefits under the prior benefit standard of 2/3 of
26 average weekly wages, then the employee is entitled to such
28 greater weekly benefits but not at a rate exceeding the maximum
30 rate in the employee's dependency classification under such law.
32 This subsection does not authorize payment to an employee
34 according to any schedule of minimum benefits, except those
36 provided in section 317.

30 §313. Supplement to weekly compensation

32 1. Entitlement. Beginning January 1, 1982, an employee
34 receiving or entitled to receive benefits equal to the maximum
36 payable to that employee under section 312 or the dependent of a
38 deceased employee receiving or entitled to receive benefits
40 under section 361 whose benefits are based on a date of personal
42 injury between September 1, 1965 and December 31, 1979 is
44 entitled to a supplement to weekly compensation. The supplement
46 is computed using the total annual percentage change in the
48 state average weekly wage, rounded to the nearest 1/10 of 1%, as
50 determined under section 316. The supplement is computed as a
percentage of the weekly compensation rate that the employee or
the dependent of a deceased employee is receiving or is entitled
to receive on January 1, 1982 had the employee been receiving
benefits at that time, rounded to the nearest dollar. The
supplement may not exceed 5% compounded for each calendar year
in the adjustment period. The percentage change for purposes of
the adjustment is computed from the base year through December
31, 1981. A supplement may not be paid retroactively for any
period of disability before January 1, 1982.

2 2. Base year. For personal injuries occurring from
September 1, 1965 through December 31, 1968, the base year is
4 1968. For personal injuries occurring between January 1, 1969
and December 31, 1979, the base year is the year in which the
personal injury occurred.

6
8 3. Percentages payable. Pursuant to subsection 1, the
Executive Director of the Workers' Compensation Board shall
10 announce on December 1, 1981 the supplement percentages payable
on January 1, 1982.

12 4. Compensable under this Act; rates. All personal
injuries found compensable under this Act after the effective
14 date of this section with a personal injury date before January
1, 1980 must be paid at a rate determined pursuant to this
16 section.

18 5. Reduction; Second Injury Fund. An employee who is
eligible to receive differential benefits from the Second Injury
20 Fund must be paid the supplement pursuant to this section as
reduced by the amount of the differential payments being made to
22 the employee by the Second Injury Fund at the time of the
payment of the supplement pursuant to this section.

24
26 6. Maximum supplement. The supplement paid pursuant to
this section, when added to the original benefit, may not exceed
28 the maximum weekly rate of compensation, provided in section
316, in effect on the date of the adjustment.

30 7. Redeemed liability; no supplement. An employee is not
entitled to supplements under this section for a personal injury
32 for which the liability has been redeemed.

34 8. Payments. The supplements under this section must be
paid by an insurer or self-insurer on a weekly basis. The
36 insurer, self-insurer, the Second Injury Fund and the
Self-insurers' Security Fund are entitled to quarterly
38 reimbursement for these payments from the Compensation
Supplement Fund in section 330, except that an insurer or
40 self-insurer subject to either Title 36, section 2527 or 5219-I
shall take a credit under either of those sections.

42
44 9. Effect of benefits for partial incapacity. This section
does not apply to an employee receiving benefits under section
46 321, subsection 1.

48 10. Compensation Supplement Fund; payments. An insurer,
self-insurer, the Second Injury Fund or the Self-insurers'
50 Security Fund shall make the supplemental payments required by
this section for each quarter of the State's fiscal year that
the Treasurer of State certifies that there are sufficient funds

2 available to meet the obligations of the Compensation Supplement
3 Fund created in section 330 for that quarter. The Treasurer of
4 State shall certify whether there are sufficient funds in the
5 Compensation Supplement Fund created in section 330 to meet the
6 obligations of the Compensation Supplement Fund for each quarter
7 of the fiscal year of the State on or before the first day of
8 each quarter.

9 11. Reimbursement. An insurer, self-insurer, the Second
10 Injury Fund or the Self-insurers' Security Fund shall make the
11 supplemental payments required by this section and must be
12 reimbursed for those payments.

13 §314. Determination of dependency

14 1. Determination. For the purposes of sections 312 to 321,
15 dependency is determined as follows.

16 A. The following are conclusively presumed to be dependent
17 for support on an injured employee:

18 (1) The spouse of an injured employee living with the
19 employee as spouse at the time of the injury; or

20 (2) A child under the age of 16 years, or an older
21 child if physically or mentally incapacitated from
22 earning, living with a parent at the time of the injury
23 of that parent.

24 B. In all other cases, questions of dependency must be
25 determined in accordance with the fact, as the fact may be
26 at the time of the injury, except as provided in subsection
27 3. No person may be considered a dependent unless the person
28 is a member of the family of the injured employee or unless
29 the person bears to the injured employee the relation of
30 husband or wife, lineal descendent, ancestor or brother or
31 sister. Except as to those conclusively presumed to be
32 dependents, no person may be deemed a dependent who receives
33 less than 1/2 of that person's support from an injured
34 employee.

35 2. Reductions in weekly payments. Weekly payments to an
36 injured employee must be reduced by the additional amount
37 provided for any dependent child, spouse or other dependent when
38 the child either reaches the age of 18 years or, after becoming
39 16, ceases for a period of 6 months to receive more than 1/2 of
40 the child's support from the injured employee if at that time
41 the child is neither physically nor mentally incapacitated from
42 earning; when the spouse is divorced by final decree from the
43 injured spouse; or when the child, spouse or other dependent
44 dies.

2 3. Increases in payments. An increase in payments must be
4 made for the increased numbers of conclusive dependents as
 defined in this Act who were not dependent at the time of the
 injury of an employee.

6 **§315. Coordination of benefits**

8 1. Application; adjustments. This section applies when
10 either weekly or lump-sum payments are made to an employee as a
12 result of liability pursuant to section 312, 321 or 810 with
14 respect to the same time period for which old-age insurance
16 benefit payments under the federal Social Security Act, 42
18 United States Code, Sections 301 to 1397f; payments under a
20 self-insurance plan a wage continuation plan or a disability
22 insurance policy provided by the employer; or pension or
 retirement payments pursuant to a plan or program established or
 maintained by the employer are also received or being received
 by the employee. Except as otherwise provided in this section,
 the employer's obligation to pay or to cause to be paid weekly
 benefits other than specific loss benefits under section 321,
 subsections 2 and 3 must be reduced by these amounts:

24 A. Fifty percent of the amount of the old-age insurance
26 benefits received or being received under the federal Social
 Security Act;

28 B. The after-tax amount of the payments received or being
30 received under a self-insurance plan, a wage continuation
32 plan or a disability insurance policy, provided by the same
34 employer from whom benefits under section 312, 321 or 810
36 are received, if the employee did not contribute directly to
38 the plan or to the payment of premiums regarding the
40 disability insurance policy. If a self-insurance plan, wage
42 continuation plan or disability insurance policy is entitled
 to repayment in the event of a workers' compensation benefit
 recovery, the carrier shall satisfy the repayment from funds
 the carrier received through the coordination of benefits
 provided for under this section. Notwithstanding the
 provisions of this subsection, attorney's fees must be paid
 pursuant to section 805 to the attorney who secured the
 workers' compensation recovery;

44 C. The proportional amount, based on the ratio of the
46 employer's contributions to the total insurance premiums for
48 the policy period involved, of the after-tax amount of the
50 payments received or being received by the employee pursuant
 to a disability insurance policy provided by the same
 employer from whom benefits under section 312, 321 or 810
 are received, if the employee contributed directly to the

2 payment of premiums regarding the disability insurance
3 policy;

4 D. The after-tax amount of the pension or retirement
5 payments received or being received pursuant to a plan or
6 program established or maintained by the same employer from
7 whom benefits under section 312, 321 or 810 are received, if
8 the employee did not contribute directly to the pension or
9 retirement plan or program. Subsequent increases in a
10 pension or retirement program do not affect the coordination
11 of these benefits;

12 E. The proportional amount, based on the ratio of the
13 employer's contributions to the total contributions to the
14 plan or program, of the after-tax amount of the pension or
15 retirement payments received or being received by the
16 employee pursuant to a plan or program established or
17 maintained by the same employer from whom benefits under
18 section 312, 321 or 810 are received, if the employee
19 contributed directly to the pension or retirement plan or
20 program. Subsequent increases in a pension or retirement
21 program do not affect the coordination of these benefits; and

22 F. For those employers who do not provide a pension plan,
23 the proportional amount, based on the ratio of the
24 employer's contributions to the total contributions made to
25 a qualified profit-sharing plan under the Internal Revenue
26 Code, Section 401(a) or any successor to that section
27 covering a profit-sharing plan, that provides for the
28 payment of benefits only upon retirement, disability, death
29 or other separation of employment, to the extent that
30 benefits are vested under the plan.

31 2. Payments. To satisfy any remaining obligations under
32 section 312, 321 or 810, the employer shall pay or cause to be
33 paid to the employee the balance due in either weekly or
34 lump-sum payments after the application of subsection 1.

35 3. Notice; application for benefits. In the application of
36 subsection 1, any credit or reduction occurs pursuant to this
37 section.

38 A. The Workers' Compensation Board shall adopt rules to
39 provide for the notification by an employer or carrier to an
40 employee of possible eligibility for social security
41 benefits and of the requirements for establishing proof of
42 application for those benefits. Notification must be
43 promptly mailed to the employee after the date on which by
44 reason of age the employee may be entitled to social
45 security benefits. A copy of the notification of possible
46 security benefits. A copy of the notification of possible
47 security benefits. A copy of the notification of possible
48 security benefits. A copy of the notification of possible
49 security benefits. A copy of the notification of possible
50 security benefits. A copy of the notification of possible

2 eligibility must be filed with the Workers' Compensation
3 Board by the employer or carrier.

4 B. Within 30 days after receipt of the notification of
5 possible employee eligibility, the employee shall:

6 (1) Make application for social security benefits;

7 (2) Provide the employer or carrier with proof of that
8 application; and

9 (3) Provide the employer or carrier with an authority
10 for release of information for use by the employer or
11 carrier to obtain necessary benefit entitlement and
12 amount information from the federal Social Security
13 Administration. The authority for release of
14 information is effective for one year.

15
16
17
18 4. Discontinuance upon failure of employee to act. Failure
19 of the employee to provide the proof of application or the
20 authority for release of information as prescribed in subsection
21 3 allows the employer or carrier with the approval of the
22 Workers' Compensation Board to discontinue the compensation
23 benefits payable to the employee under section 312, 321 or 810
24 until the proof of application and the authority for release of
25 information is provided. Compensation benefits withheld must be
26 reimbursed to the employee upon the providing of the required
27 proof of application, or the authority for release of
28 information, or both.

29
30
31 5. New authority for release. If the employer or carrier
32 is required to submit a new authority for release of information
33 to the federal Social Security Administration in order to
34 receive information necessary to comply with this section, the
35 employee shall provide the new authority for release of
36 information within 30 days of a request by the employer or
37 carrier. Failure to provide the new authority for release of
38 information allows the employer or carrier with the approval of
39 the Workers' Compensation Board to discontinue benefits until
40 the authority for release of information is provided as
41 prescribed in this subsection. Compensation benefits withheld
42 must be reimbursed to the employee upon the providing of the new
43 authority for release of information.

44
45 6. Authority for release of information after first
46 payment. Within 30 days after either the date of first payment
47 of compensation benefits under section 312, 321 or 810 or 30
48 days after the date of application for any benefit under
49 subsection 1, paragraph B, C, D or E, whichever is later, the
50 employee shall provide the employer or carrier with a properly
executed authority for release of information that must be

2 utilized by the employer or carrier to obtain necessary benefit
3 entitlement and amount information from the appropriate source.
4 The authority for release of information is effective for one
5 year. Failure of the employee to provide a properly executed
6 authority for release of information allows the employer or
7 carrier with the approval of the Workers' Compensation Board to
8 discontinue the compensation benefits payable under section 312,
9 321 or 810 to the employee until the authority for release of
10 information is provided. Compensation benefits withheld must be
11 reimbursed to the employee upon providing the required authority
12 for release of information. If the employer or carrier is
13 required to submit a new authority for release of information to
14 the appropriate source in order to receive information necessary
15 to comply with this section, the employee shall provide a
16 properly executed new authority for release of information
17 within 30 days after a request by the employer or carrier.
18 Failure of the employee to provide a properly executed new
19 authority for release of information allows the employer or
20 carrier with the approval of the Workers' Compensation Board to
21 discontinue benefits under section 312, 321 or 810 until the
22 authority for release of information is provided as prescribed
23 in this subsection. Compensation benefits withheld must be
24 reimbursed to the employee upon the providing of the new
25 authority for release of information.

26 7. Effect of cost-of-living adjustment. A credit or
27 reduction under this section may not occur because of an
28 increase granted by the federal Social Security Administration
29 as a cost-of-living adjustment.

30
31 8. Determination and receipt of payments required before
32 adjustment. Except as provided in subsections 4, 5 and 6, a
33 credit or reduction of benefits otherwise payable for any week
34 may not be taken under this section until there has been a
35 determination of the benefit amount otherwise payable to the
36 employee under section 312, 321 or 810 and the employee has
37 begun receiving the benefit payments.

38
39 9. Overpayment; reimbursement. Except as otherwise
40 provided in this section, any benefit payments under the federal
41 Social Security Act or under any fund, policy or program as
42 specified in subsection 1 that the employee has received or is
43 receiving after March 31, 1982 and during a period in which the
44 employee also was receiving unreduced compensation benefits
45 under section 312, 321 or 810 is considered to have created an
46 overpayment of compensation benefits for that period. The
47 employer or carrier shall calculate the amount of the
48 overpayment and send a notice of overpayment and a request for
49 reimbursement to the employee. Failure by the employee to
50 reimburse the employer or carrier within 30 days after the
51 mailing date of the notice of request for reimbursement allows

2 the employer or carrier with the approval of the Workers'
3 Compensation Board to discontinue 50% of future weekly
4 compensation payments under section 312, 321 or 810. The
5 compensation payments withheld must be credited against the
6 amount of the overpayment. Payment of the appropriate
7 compensation benefit must resume when the total amount of the
8 overpayment has been withheld.

10 10. Report of credit or reduction. The employer or carrier
11 taking a credit or making a reduction as provided in this
12 section shall immediately report to the Workers' Compensation
13 Board the amount of any credit or reduction and, as requested by
14 the Workers' Compensation Board, furnish to the Workers'
15 Compensation Board satisfactory proof of the basis for a credit
16 or reduction.

18 11. Social security disability insurance benefits.
19 Disability insurance benefit payments under the federal Social
20 Security Act are considered to be payments from funds provided
21 by the employer and to be primary payments on the employer's
22 obligation under section 312, 321 or 810 as old-age benefit
23 payments under the federal Social Security Act are considered
24 pursuant to this section. The coordination of social security
25 disability insurance benefits commences on the date of the award
26 certificate of the social security disability insurance
27 benefits. Any accrued social security disability insurance
28 benefits may not be coordinated. However, social security
29 disability insurance benefits are only so considered if the
30 federal Social Security Act, Section 224, 42 United States Code,
31 Section 424a is revised so that a reduction of social security
32 disability insurance benefits is not made because of the receipt
33 of workers' compensation benefits by the employee.

34 12. No requirement for application for early or reduced
35 benefits. Nothing in this section may be considered to compel
36 an employee to apply for early federal social security old-age
37 insurance benefits or to apply for early or reduced pension or
38 retirement benefits.

40 13. "After-tax amount" defined. As used in this section,
41 "after-tax amount" means the gross amount of any benefit under
42 subsection 1, paragraph B, C, D or E reduced by the prorated
43 weekly amount, if any, that would have been paid under the
44 federal Insurance Contributions Act, 26 United States Code,
45 Sections 3101 to 3126, state income tax and federal income tax,
46 calculated on an annual basis using as the number of exemptions
47 the disabled employee's dependents plus the employee, and
48 without excess itemized deductions. In determining the after-tax
49 amount, the tables provided for in section 304, subsection 2
50 must be used. The gross amount of any benefit under subsection
51 1, paragraph B, C, D or E is presumed to be the same as the

2 average weekly wage for purposes of the table. The applicable
3 80% of after-tax amount as provided in the table multiplied by
4 1.25, which is conclusive for determining the after-tax amount
5 of benefits under subsection 1, paragraph B, C, D or E.

6 14. Effect of employer-provided disability plan. This
7 section does not apply to any payments received or to be
8 received under a disability pension plan provided by the same
9 employer and in existence on the effective date of this section.
10 Any disability pension plan entered into or renewed after the
11 effective date of this section may provide that the payments
12 under that disability pension plan provided by the employer may
13 not be coordinated pursuant to this section.

14 15. Waiver of reduction; certain employees. With respect
15 to volunteer firefighters, volunteer safety patrol officers,
16 volunteer civil defense workers and volunteer ambulance drivers
17 and attendants who are considered employees for purposes of this
18 Act pursuant to section 112, subsection 1, paragraph A, the
19 reduction of weekly benefits provided for disability insurance
20 payments under subsection 1, paragraphs B and C and subsection
21 11 may be waived by the employer. An employer that is not a
22 self-insurer may make the waiver provided for under this
23 subsection only at the time a workers' compensation insurance
24 policy is entered into or renewed.

25 16. Not applicable for certain losses. This section does
26 not apply to payments made to an employee as a result of
27 liability pursuant to section 321, subsections 2 and 3 for the
28 specific loss period set forth therein. It is the intent of the
29 Legislature that, because benefits under section 321,
30 subsections 2 and 3 are benefits that recognize human factors
31 substantially in addition to the wage loss concept, coordination
32 of benefits should not apply to such benefits.

33 17. Application to injuries occurring only on or after date
34 certain. This section applies only to payments resulting from
35 liability pursuant to section 312, 321 or 810 for personal
36 injuries occurring on or after the effective date of this
37 section. Any payments made to an employee resulting from
38 liability pursuant to former Title 39 for a personal injury
39 occurring before the effective date of this section must be
40 coordinated under the provision of former Title 39.

41 18. Severability. If any portion of this section is
42 subsequently found to be unconstitutional or in violation of
43 applicable law, it does not affect the validity of the remainder
44 of this section.

45 §316. Maximum benefit levels

2 Effective January 1, 1993, the maximum weekly benefit
3 payable under section 212, 213 or 215 is \$441 or 90% of the
4 state average weekly wage, whichever is higher. Beginning on
5 July 1, 1994, the maximum benefit level must be the higher of
6 \$441 or 90% of the state average weekly wage as adjusted
7 annually, utilizing the state average weekly wage as determined
8 by the Bureau of Employment Security.

9 §317. Increase in benefits after 2 years of continuous
10 disability; petition for hearing; evidence; order
11 for adjustment of compensation; payment;
12 reimbursement from Second Injury Fund; minimum
13 weekly benefit for death; minimum weekly benefit
14 for one or more losses; no minimum weekly benefit
15 for total disability; exception

16 1. Two years of continuous disability; increase in
17 benefits. An injured employee who, at the time of the personal
18 injury, is entitled to a rate of compensation less than 50% of
19 the then applicable state average weekly wage as determined for
20 the year in which the injury occurred pursuant to section 316
21 may be entitled to an increase in benefits after 2 years of
22 continuous disability. After 2 years of continuous disability,
23 the employee may petition for a hearing at which the employee
24 may present evidence that, by virtue of the employee's age,
25 education, training, experience or other documented evidence
26 that would fairly reflect the employee's earning capacity, the
27 employee's earnings would have been expected to increase. Upon
28 presentation of this evidence, a workers' compensation
29 commissioner or workers' compensation magistrate may order an
30 adjustment of the compensation rate up to 50% of the state
31 average weekly wage for the year in which the employee's injury
32 occurred. The adjustment of compensation, if ordered, is
33 effective as of the date of the employee's petition for the
34 hearing. The adjustments provided in this subsection must be
35 paid by the carrier on a weekly basis. However, the carrier and
36 the self-insurers' security fund are entitled to reimbursement
37 for these payments from the Second Injury Fund created in
38 section 501. There may be only one adjustment made for an
39 employee under this subsection.

40 2. Minimum benefit for death resulting from personal
41 injury. The minimum weekly benefit for death under section 307
42 is 50% of the state average weekly wage as determined under
43 section 316.

44 3. Minimum benefit for certain losses. The minimum weekly
45 benefit for one or more losses stated in section 321,
46 subsections 2 and 3 is 25% of the state average weekly wage as
47 determined under section 316.

2 4. No minimum benefit for total disability. There is no
minimum weekly benefit for total disability under section 312.

4 5. Not applicable to partial incapacity. This section does
not apply to an employee entitled to benefits under section 321,
6 subsection 1.

8 §318. Employee 65 or older; reduction of weekly payments;
exception

10 1. Reduction. When an employee who is receiving weekly
12 payments or is entitled to weekly payments reaches or has
reached or passed the age of 65, the weekly payments for each
14 year following that employee's 65th birthday must be reduced by
16 5% of the weekly payment paid or payable at age 65, but not to
less than 50% of the weekly benefit paid or payable at age 65,
18 so that on the employee's 75th birthday the weekly payments have
been reduced by 50%, after which there may not be a further
20 reduction for the duration of the employee's life. Weekly
payments may not be reduced below the minimum weekly benefit as
22 provided in this Act.

24 2. Exception. Subsection 1 does not apply to a person 65
years of age or over otherwise eligible and receiving weekly
26 payments who is not eligible for benefits under the federal
Social Security Act, 42 United States Code, Sections 301 to
28 1397f or to a person whose payments under this Act are
coordinated under section 315.

30 §319. Reduction of benefits

32 Net weekly benefits payable under section 312 or 321 or lump
34 sum benefits under section 810 must be reduced by 100% of the
amount of benefits paid or payable to the injured employee under
36 the Employment Security Law, Title 26, chapter 13 for identical
periods of time and chargeable to the same employer.

38 §320. Professional athlete; weekly benefits; condition;
benefits under other provisions

40 1. Weekly benefits; condition. A person who suffers an
42 injury arising out of and in the course of employment as a
professional athlete is entitled to weekly benefits only when
44 the person's average weekly wages in all employments at the time
of application for benefits, and thereafter, as computed in
46 accordance with section 323, are less than 200% of the state
average weekly wage.

48 2. Benefits under other provisions. This section may not
50 be construed to prohibit an otherwise eligible person from
receiving benefits under section 305, 306 or 321.

2 §321. Partial incapacity for work; amount and duration of
4 compensation; effect of imprisonment or commission
6 of crime; scheduled disabilities; meaning of total
8 and permanent disability; limitations; payment for
10 loss of 2nd member

12 1. Partial incapacity. While the incapacity for work
14 resulting from a personal injury is partial, the employer shall
16 pay, or cause to be paid, to the injured employee weekly
18 compensation equal to 80% of the difference between the injured
20 employee's after-tax average weekly wage before the personal
22 injury and the after-tax average weekly wage that the injured
24 employee is able to earn after the personal injury, but not more
26 than the maximum weekly rate of compensation, as determined
28 under section 316. Compensation must be paid for the duration of
30 the disability. However, an employer is not liable for
32 compensation under section 312; section 323, subsection 1; or
34 this subsection for such periods of time that the employee is
36 unable to obtain or perform work because of imprisonment or
38 commission of a crime.

40 2. Schedule disabilities. In cases included in the
42 following schedule, the disability in each case is considered to
44 continue for the period specified, and the compensation paid for
46 the personal injury must be 80% of the after-tax average weekly
48 wage subject to the maximum and minimum rates of compensation
50 under this Act for the loss of the following:

30 A. Thumb, 65 weeks;

32 B. First finger, 38 weeks;

34 C. Second finger, 33 weeks;

36 D. Third finger, 22 weeks;

38 E. Fourth finger, 16 weeks.

40 The loss of the first phalange of the thumb, or of any
42 finger, is considered to be equal to the loss of 1/2 of that
44 thumb or finger and compensation must be 1/2 of the amount
46 above specified.

48 The loss of more than one phalange is considered as the loss
50 of the entire finger or thumb. The amount received for more
than one finger may not exceed the amount provided in this
schedule for the loss of a hand;

50 F. Great toe, 33 weeks;

2 G. A toe other than the great toe, 11 weeks.

4 The loss of the first phalange of any toe is considered to
6 be equal to the loss of 1/2 of that toe and compensation
8 must be 1/2 of the amount specified.

10 The loss of more than one phalange is considered as the loss
12 of the entire toe;

14 H. Hand, 215 weeks;

16 I. Arm, 269 weeks;

18 An amputation between the elbow and wrist that is 6 or more
20 inches below the elbow is considered a hand and an
22 amputation above that point is considered an arm;

24 J. Foot, 162 weeks;

26 K. Leg, 215 weeks.

28 An amputation between the knee and foot 7 or more inches
30 below the tibial table or plateau is considered a foot and
32 an amputation above that point is considered a leg; and

34 L. Eye, 162 weeks.

36 Eighty percent loss of vision of one eye constitutes the
38 total loss of that eye.

40 3. "Total and permanent disability" defined. "Total and
42 permanent disability," compensation for which is provided in
44 section 312, means:

46 A. Total and permanent loss of sight of both eyes;

48 B. Loss of both legs or both feet at or above the ankle;

50 C. Loss of both arms or both hands at or above the wrist;

D. Loss of any 2 of the members or faculties in paragraph
 A, B or C;

E. Permanent and complete paralysis of both legs or both
 arms or of one leg and one arm;

F. Incurable insanity or imbecility; or

G. Permanent and total loss of industrial use of both legs
 or both hands or both arms or one leg and one arm; for the
 purpose of this paragraph, such permanency must be

2 determined not less than 30 days before the expiration of
3 500 weeks from the date of injury.

4 4. Payment for loss of 2nd member. The amounts specified
5 in this subsection are subject to the same limitations as to
6 maximum and minimum as stated otherwise in this section. In case
7 of the loss of one member while compensation is being paid for
8 the loss of another member, compensation must be paid for the
9 loss of the 2nd member for the period provided in this section.
10 Payments for the loss of a 2nd member begin at the conclusion of
11 the payments for the first member.

12 **§322. Biannual study required; report and recommendations**

13
14
15 A biannual study must be conducted by the Executive Director
16 of the Workers' Compensation Board of the adequacy of weekly
17 benefits paid under this Act. The study must evaluate the
18 effects of inflation on benefits and other factors that the
19 Executive Director of the Workers' Compensation Board considers
20 relevant. The Executive Director of the Workers' Compensation
21 Board shall report the results of the study and make appropriate
22 recommendations to the Legislature by March 1st of each
23 odd-numbered year.

24 **§323. Weekly loss in wages; average weekly wage**

25
26
27 1. Weekly loss in wages. The weekly loss in wages referred
28 to in this Act consists of the percentage of the average weekly
29 earnings of the injured employee computed according to this
30 section as fairly represents the proportionate extent of the
31 impairment of the employee's earning capacity in the employments
32 covered by this Act in which the employee was working at the
33 time of the personal injury. The weekly loss in wages is fixed
34 as of the time of the personal injury and determined considering
35 the nature and extent of the personal injury. The compensation
36 payable, when added to the employee's wage earning capacity
37 after the personal injury in the same or other employments, may
38 not exceed the employee's average weekly earnings at the time of
39 the injury.

40
41 2. "Average weekly wage" defined; computation. As used in
42 this Act, "average weekly wage" means the weekly wage earned by
43 the employee at the time of the employee's injury in all
44 employment, inclusive of overtime, premium pay and cost of
45 living adjustment, and exclusive of any fringe or other benefits
46 that continue during the disability. Any fringe or other benefit
47 that does not continue during the disability is included for
48 purposes of determining an employee's average weekly wage to the
49 extent that the inclusion of the fringe or other benefit does
50 not result in a weekly benefit amount that is greater than 2/3
51 of the state average weekly wage at the time of injury. The

2 average weekly wage is determined by computing the total wages
3 paid in the highest paid 39 weeks of the 52 weeks immediately
4 preceding the date of injury and dividing by 39.

5 3. Fewer than 39 weeks of employment. If the employee
6 worked fewer than 39 weeks in the employment in which the
7 employee was injured, the average weekly wage is based upon the
8 total wages earned by the employee divided by the total number
9 of weeks actually worked. For purposes of this subsection, only
10 those weeks in which work is performed are considered in
11 computing the total wages earned and the number of weeks
12 actually worked.

13 4. Less than one week of employment. If an employee
14 sustains a compensable injury before completing the employee's
15 first workweek, the average weekly wage is calculated by
16 determining the number of hours of work per week contracted for
17 by that employee multiplied by the employee's hourly rate, or
18 the weekly salary contracted for by the employee.

19 5. Hourly rate not determined. If the hourly earning of
20 the employee can not be ascertained or if the pay has not been
21 designated for the work required, the wage, for the purpose of
22 calculating compensation, is the usual wage for similar services
23 if the services are rendered by paid employees.

24 6. Special circumstances. If there are special
25 circumstances under which the average weekly wage can not justly
26 be determined by applying subsections 2 to 5, an average weekly
27 wage may be computed by dividing the aggregate earnings during
28 the year before the injury by the number of days when work was
29 performed and multiplying that daily wage by the number of
30 working days customary in the employment, but not less than 5.

31 7. Round to nearest dollar. The average weekly wage as
32 determined under this section is rounded to the nearest dollar.

33 §324. Employee engaged in more than one employment at time of
34 personal injury or personal injury resulting in death;
35 liability; apportionment of weekly benefits; exception

36 1. Liability. If an employee was engaged in more than one
37 employment at the time of a personal injury or a personal injury
38 resulting in death, the employer in whose employment the injury
39 or injury resulting in death occurred is liable for all the
40 injured employee's medical, rehabilitation and burial benefits.
41 Weekly benefits must be apportioned as follows.

42 A. If the employment that caused the personal injury or
43 death provided more than 80% of the injured employee's
44 average weekly wages at the time of the personal injury or
45 death, the employer in whose employment the injury or
46 death occurred is liable for all the injured employee's
47 medical, rehabilitation and burial benefits. Weekly benefits
48 must be apportioned as follows.

2 death, the insurer or self-insurer is liable for all of the
weekly benefits.

4 B. If the employment that caused the personal injury or
death provided 80% or less of the employee's average weekly
6 wage at the time of the personal injury or death, the
insurer or self-insurer is liable for that portion of the
8 employee's weekly benefits as bears the same ratio to the
employee's total weekly benefits as the average weekly wage
10 from the employment that caused the personal injury or death
bears to the employee's total weekly wages. The Second
12 Injury Fund is separately but dependently liable for the
remainder of the weekly benefits. The insurer or
14 self-insurer has the obligation to pay the employee or the
employee's dependents at the full rate of compensation. The
16 Second Injury Fund shall reimburse the insurer or
self-insurer quarterly for the Second Injury Fund's portion
18 of the benefits due the employee or the employee's
dependents.

20 2. Apportionment. For purposes of apportionment under this
22 section, only wages that were reported to the Internal Revenue
Service must be considered and the reports of wages to the
24 Internal Revenue Service are conclusive for the purpose of
apportionment under this section.

26 3. Exception. This section does not apply to volunteer
28 public employees entitled to benefits under section 112,
subsection 1, paragraph A.

30 §325. Employee receiving nondisability pension or retirement
32 benefits, including old-age benefits; presumption;
other standards of disability superseded; certain
34 medical benefits not barred

36 1. Pension or retirement benefits; presumption. An
38 employee who terminates active employment and is receiving
nondisability pension or retirement benefits under either a
40 private or governmental pension or retirement program, including
old-age benefits under the federal Social Security Act, 42
42 United States Code, Sections 301 to 1397f, that were paid by or
on behalf of an employer from whom weekly benefits under this
44 Act are sought is presumed not to have a loss of earnings or
earning capacity as the result of a compensable injury or
46 disease under either this chapter or chapter 4. This presumption
may be rebutted only by a preponderance of the evidence that the
48 employee is unable, because of a work-related disability, to
perform work suitable to the employee's qualifications,
50 including training or experience. This standard of disability
supersedes other applicable standards used to determine
disability under either this chapter or chapter 4.

2 2. Certain medical benefits not barred. This section may
4 not be construed as a bar to an employee receiving medical
6 benefits under section 305 upon the establishment of a causal
 relationship between the employee's work and the need for
 medical treatment.

8 §326. Death of injured employee; death benefits in lieu of
10 further disability indemnity

12 1. Effect of death. The death of the injured employee
14 prior to the expiration of the period within which the employee
16 would receive weekly payments is deemed to end the disability
18 and all liability for the remainder of payments the employee
 would have received if the employee had lived is terminated, but
 the employer is thereupon liable for the death benefits
 described in this section in lieu of any further disability
 indemnity.

20 2. Injury as proximate cause of death; result. If the
22 injury received by the employee was the proximate cause of the
24 employee's death, and the deceased employee leaves dependents,
26 wholly or partially dependent on the employee for support, the
28 death benefit must be a sum sufficient, when added to the
30 indemnity that at the time of death has been paid or becomes
32 payable under the provisions of this Act to the deceased
34 employee, to make the total compensation for the injury and
36 death, exclusive of medical, surgical, hospital and
 rehabilitation services, medicines, and expenses furnished as
 provided in sections 305 and 306, equal to the full amount that
 the dependents would have been entitled to receive under the
 provisions of section 307 in case the injury had resulted in
 immediate death. Such benefits are payable in the same manner as
 they would be payable under the provisions of section 307 had
 the injury resulted in immediate death.

38 3. Death; pending decision or appeal. If an application
40 for benefits has been filed but has not been decided by a
42 workers' compensation commissioner or a workers' compensation
44 magistrate or on appeal and the claimant dies from a cause
46 unrelated to the employee's injury, the proceedings do not abate
 but may be continued in the name of the employee's personal
 representative. In such case, the benefits payable up to the
 time of death must be paid to the same beneficiaries and in the
 same amounts as would have been payable if the employee had
 suffered a compensable injury resulting in death.

48 §327. Claim for compensation; time limit; extension of time
50 period; payment for nursing or attendant care;
 compliance

1. Time limit; notice; extension. A proceeding for compensation for an injury under this Act may not be maintained unless a claim for compensation for the injury, which may be either oral or in writing, has been made to the employer or a written claim has been made to the Workers' Compensation Board, on forms prescribed by the Workers' Compensation Board, within 2 years after the occurrence of the injury. In case of the death of the employee, the claim must be made within 2 years after death. The employee shall provide a notice of injury to the employer within 90 days after the happening of the injury, or within 90 days after the employee knew, or should have known, of the injury. Failure to give notice to the employer must be excused unless the employer can prove that the employer was prejudiced by the failure to provide the notice. In the event of physical or mental incapacity of the employee, the notice and claim must be made within 2 years from the time the injured employee is not physically or mentally incapacitated from making the claim. A claim is not valid or effectual for any purpose under this chapter unless made within 2 years after the later of the date of injury, the date disability manifests itself or the last day of employment with the employer against whom claim is being made. If an employee claims benefits for a work injury and is thereafter compensated for the disability by workers' compensation or benefits other than workers' compensation or is provided favored work by the employer because of the disability, the period of time within which a claim must be made for benefits under this Act must be extended by the time during which the benefits are paid or the favored work is provided.

2. No compensation for time period before 2 years preceding claim. Except as provided in subsection 3, if any compensation is sought under this Act, payment may not be made for any period of time earlier than 2 years immediately preceding the date on which the employee filed an application for a hearing with the Workers' Compensation Board.

3. Payment for nursing or attendant care. Payment for nursing or attendant care may not be made for any period which is more than one year before the date an application for a hearing is filed with the Workers' Compensation Board.

4. Compliance. The receipt by an employee of any other occupational or nonoccupational benefit does not suspend the duty of the employee to comply with this section, except under the circumstances described in subsection 1.

§328. Notice of injury; unintentional errors; actual knowledge

A notice of injury or a claim for compensation made under the provisions of this Act may not be held invalid or insufficient by reason of any inaccuracy in stating the time,

2 place or cause of the injury, unless it is shown that it was the
3 intention to mislead and the employer or the carrier was in fact
4 mised. Want of written notice is not a bar to proceedings under
5 this Act if it is shown that the employer had notice or
6 knowledge of the injury.

7 **§329. Physical examination of employee; payment; report; copy;**
8 **evidence; failure of party to provide medical report**

10 After the employee has given notice of injury and from time
11 to time thereafter during the continuance of the disability, if
12 so requested by the employer or the carrier, the employee shall
13 submit to an examination by a physician or surgeon authorized to
14 practice medicine under the laws of the State, furnished and
15 paid for by the employer or the carrier. If an examination
16 relative to the injury is made, the employee or the employee's
17 attorney must be furnished, within 15 days of a request, a
18 complete and correct copy of the report of every such physical
19 examination relative to the injury performed by the physician
20 making the examination on behalf of the employer or the carrier.
21 The employee has the right to have a physician provided and paid
22 for by the employee present at the examination. If the employee
23 refuses to submit to the examination or in any way obstructs the
24 examination, the employee's right to compensation is suspended
25 and the employee's compensation during the period of suspension
26 may be forfeited. Any physician who makes or is present at any
27 such examination may be required to testify under oath as to the
28 results of the examination. If the employee has had other
29 physical examinations relative to the injury but not at the
30 request of the employer or the carrier, the employee shall
31 furnish to the employer or the carrier a complete and correct
32 copy of the report of each such physical examination, if so
33 requested, within 15 days of the request. If a party fails to
34 provide a medical report regarding an examination or medical
35 treatment, that party is precluded from taking the medical
36 testimony of that physician only. The opposing party may,
37 however, elect to take the deposition of that physician.

38 **§330. Compensation Supplement Fund; creation; administration;**
39 **appropriation; rules; payments; personnel;**
40 **recommendations; carrying forward unexpended funds;**
41 **reduction of appropriation; report; reimbursement of**
42 **insurers, self-insurers, Second Injury Fund and**
43 **Self-insurer's Security Fund; certification; application**

44
45 1. Fund created. The Compensation Supplement Fund is
46 created as a separate fund in the State Treasury. The fund is
47 administered by the Treasurer of State pursuant to this section.
48 The Legislature shall appropriate to the fund from the General
49 Fund the amounts necessary to meet the obligations of the fund
50

2 under section 313 and the administrative costs incurred by the
Workers' Compensation Board under this section.

4 2. Rules. The Workers' Compensation Board shall adopt
rules pursuant to the Maine Administrative Procedure Act that
6 prescribe the conditions under which the money in the
Compensation Supplement Fund may be expended pursuant to section
8 313 and this section.

10 3. Payments from fund. The Treasurer of State shall cause
to be paid from the Compensation Supplement Fund those amounts,
12 and at those times, as are prescribed by the Workers'
Compensation Board pursuant to subsection 2.

14 4. Personnel. The Executive Director of the Workers'
16 Compensation Board may employ the personnel the executive
director considers necessary for the proper administration of
18 the Compensation Supplement Fund.

20 5. Annual recommendations. The Executive Director of the
Workers' Compensation Board shall annually recommend to the
22 Governor and the joint standing committee of the Legislature
having jurisdiction over appropriations and financial affairs
24 the amount of money the Executive Director of the Workers'
Compensation Board considers necessary to implement and enforce
26 this section and section 313 during the ensuing fiscal year. The
Compensation Supplement Fund may carry forward into a subsequent
28 fiscal year any unexpended funds and reduce the necessary
appropriation by the amount of the unobligated balance in the
30 fund.

32 6. Report. Not later than April 1st of each year the
Executive Director of the Workers' Compensation Board shall
34 submit a report to the Governor and the Legislature summarizing
the transactions of the Compensation Supplement Fund during the
36 preceding calendar year. The report must identify each insurer
and self-insurer that receives a reimbursement payment from the
38 Compensation Supplement Fund and the amount of reimbursement.
When all liabilities of the Compensation Supplement Fund for
40 reimbursements required pursuant to section 313 are paid, the
Executive Director of the Workers' Compensation Board shall
42 recommend to the Governor and the Legislature that the
Compensation Supplement Fund be abolished. The Executive
44 Director of the Workers' Compensation Board shall certify to the
Treasurer of State and the Superintendent of Insurance the
46 identity of each insurer and self-insurer that claims a credit
as provided for under section 313, subsection 8 and the amount
48 of each supplemental payment under section 313 paid by that
insurer or self-insurer to which the credit applies.
50

2 7. Reimbursement from fund. Pursuant to section 313,
3 insurers and self-insurers not subject to either Title 36,
4 section 2527 or 5219-I, the Second Injury Fund and the
5 Self-insurers' Security Fund are entitled to reimbursement from
6 the Compensation Supplement Fund. An application for
7 reimbursement must be on the forms and contain information
8 required by the Workers' Compensation Board. Application for a
9 claim for reimbursement from the Compensation Supplement Fund
10 must be filed with the Workers' Compensation Board within 3
11 months after the date on which the right to reimbursement first
12 accrues. After an insurer, a self-insurer, the Second Injury
13 Fund or the Self-insurers' Security Fund has established a right
14 to reimbursement, payment from the Compensation Supplement Fund
15 must be made without interest on a proper showing every
16 quarter. A reimbursement is not allowed for a period that is
17 more than one year before the date of the filing of the
18 application for reimbursement pursuant to this section. A
19 reimbursement is not allowed for payments made under section 313
20 for which an insurer or self-insurer takes a credit as provided
21 for in section 313, subsection 8.

22 CHAPTER 4

23 OCCUPATIONAL DISEASES AND DISABLEMENTS

24
25
26 §401. Definitions; determination of entitlement to weekly wage
27 lost benefits; notice to Bureau of Employment Security;
28 priorities in finding employment; notice of employee
29 refusing offer of employment; termination of benefits;
30 "reasonable employment" defined; personal injuries or
31 work-related diseases to which section applicable

32
33
34 1. "Disability" defined; no presumption of wage loss. As
35 used in this chapter, "disability" means a limitation of an
36 employee's wage earning capacity in work suitable to the
37 employee's qualifications and training resulting from a personal
38 injury or work-related disease. The establishment of disability
39 does not create a presumption of wage loss.

40
41
42 2. "Disablement" and "personal injury" defined. As used in
43 this Act:

44 A. "Disablement" means the event of becoming disabled; and

45 B. "Personal injury" includes a disease or disability that
46 is due to causes and conditions that are characteristic of
47 and peculiar to the business of the employer and that arises
48 out of and in the course of the employment. An ordinary
49 disease of life to which the public is generally exposed
50 outside the employment is not compensable. Mental

2 disabilities and conditions of the aging process, including
3 but not limited to heart and cardiovascular conditions, are
4 compensable if contributed to or aggravated or accelerated
5 by the employment in a significant manner. Mental
6 disabilities are compensable when arising out of actual
7 events of employment, not unfounded perceptions thereof. A
8 hernia to be compensable must be clearly recent in origin
9 and result from a strain arising out of and in the course of
10 the employment and be promptly reported to the employer.

11 3. Determination of entitlement. If disability is
12 established pursuant to subsection 1, entitlement to weekly wage
13 loss benefits is determined pursuant to this subsection and as
14 follows.

15 A. If an employee receives a bona fide offer of reasonable
16 employment from the previous employer, another employer or
17 through the Bureau of Employment Security and the employee
18 refuses that employment without good and reasonable cause,
19 the employee is considered to have voluntarily removed the
20 employee from the work force and is no longer entitled to
21 any wage loss benefits under this Act during the period of
22 such refusal.

23 B. If an employee is employed and the average weekly wage
24 of the employee is less than that which the employee
25 received before the date of injury, the employee is entitled
26 to receive weekly benefits under this Act equal to 80% of
27 the difference between the injured employee's after-tax
28 weekly wage before the date of injury and the after-tax
29 weekly wage that the injured employee is able to earn after
30 the date of injury, but not more than the maximum weekly
31 rate of compensation, as determined under section 316.

32 C. If an employee is employed and the average weekly wage
33 of the employee is equal to or more than the average weekly
34 wage the employee received before the date of injury, the
35 employee is not entitled to any wage loss benefits under
36 this Act for the duration of such employment.

37 D. If an employee, after having been employed pursuant to
38 this subsection for 100 weeks or more, loses the employee's
39 job through no fault of the employee, the employee is
40 entitled to receive compensation under this Act pursuant to
41 the following.

42 (1) If after exhaustion of unemployment benefit
43 eligibility of an employee, a workers' compensation
44 magistrate or workers' compensation commissioner, as
45 applicable, determines for any employee covered under
46 this paragraph, that the employments since the time of

2 injury have not established a new wage earning
3 capacity, the employee is entitled to receive
4 compensation based upon the employee's wage at the
5 original date of injury. There is a presumption of wage
6 earning capacity established for employments totalling
7 250 weeks or more.

8 (2) The employee must still be disabled as determined
9 pursuant to subsection 1. If the employee is still
10 disabled, the employee is entitled to the wage loss
11 benefits based on the difference between the normal and
12 customary wages paid to those persons performing the
13 same or similar employment as determined at the time of
14 termination of employment of the employee and the wages
15 paid at the time of the injury.

16 (3) If the employee becomes reemployed and the
17 employee is still disabled, the employee is entitled to
18 receive wage loss benefits as provided in paragraph B.

19 E. If the employee, after having been employed pursuant to
20 this subsection for less than 100 weeks, loses the
21 employee's job through no fault of the employee, the
22 employee is entitled to receive compensation based on the
23 employee's wage at the original date of injury.

24 4. Notice to Bureau of Employment Security. A carrier
25 shall notify the Bureau of Employment Security of the name of
26 any injured employee who is unemployed and to which the carrier
27 is paying benefits under this Act.

28 5. Bureau priority. The Bureau of Employment Security
29 shall give priority to finding employment for those persons
30 whose names are supplied to the Bureau of Employment Security
31 under subsection 4.

32 6. Notice of refusal of employment; termination of
33 benefits. The Bureau of Employment Security shall notify the
34 Workers' Compensation Board in writing of the name of any
35 employee who refuses any bona fide offer of reasonable
36 employment. Upon notification to the Workers' Compensation
37 Board, the Workers' Compensation Board shall notify the carrier
38 who shall terminate the benefits of the employee pursuant to
39 subsection 3, paragraph A.

40 7. "Reasonable employment" defined. As used in this
41 section, "reasonable employment" means work that is within the
42 employee's capacity to perform that poses no clear and proximate
43 threat to that employee's health and safety and that is within a
44 reasonable distance from that employee's residence. The
45 employee is entitled to receive compensation based on the
46 employee's wage at the original date of injury.

2 employee's capacity to perform may not be limited to work
3 suitable to the employee's qualifications and training.

4 8. Application. This section applies to personal injuries
5 or work-related diseases occurring on or after the effective
6 date of this section.

8 §402. Fire or police department members, county sheriff and
9 deputies, state police, conservation officers and motor
10 carrier inspectors; "personal injury" as including
11 respiratory and heart diseases or resulting illnesses;
12 arising out of and in the course of employment;
13 application for pension benefits as condition precedent;
14 final determination; copies

16 1. Personal injury construed to include respiratory and
17 heart disease for certain employees. In the case of a member of
18 a full-paid fire or police department of a municipality employed
19 and compensated on a full-time basis, a county sheriff and the
20 deputies of the county sheriff, members of the State Police and
21 conservation officers, "personal injury" must be construed to
22 include respiratory and heart diseases or illnesses resulting
23 therefrom that develop or manifest themselves during a period
24 while the employee is in the active service of the governmental
25 entity and result from the performance of duties for that entity.

26 2. Arising out of and in the course of employment;
27 presumption. Any such respiratory and heart diseases or
28 illnesses resulting therefrom as described in subsection 1 are
29 deemed to arise out of and in the course of employment in the
30 absence of evidence to the contrary.

31 3. Application for pension benefits required. As a
32 condition precedent to filing an application for benefits, the
33 claimant, if the claimant is one of those enumerated in
34 subsection 1, must first make application for and do all things
35 necessary to qualify for any pension benefits to which the
36 claimant, or the claimant's decedent, may be entitled. If a
37 final determination is made that pension benefits may not be
38 awarded, then the presumption of "personal injury" as provided
39 in this section applies. The employer or the employee may
40 request 2 copies of the determination denying pension benefits,
41 one copy of which may be filed with the Workers' Compensation
42 Board.

43 §403. Disablement treated as personal injury

44 The disablement of an employee resulting from a disease or
45 disability described by section 402 must be treated as the
46 happening of a personal injury within the meaning of this Act
47 and the procedure and practice provided in this Act apply to all
48 employees.

proceedings under this chapter, except where specifically otherwise provided.

§404. Death or disablement compensation

If an employee is disabled or dies and the employee's disability or death is caused by a disease and the disease is due to the nature of the employment in which the employee was engaged and was contracted in that employment, the employee or the employee's dependents are entitled to compensation and other benefits for the death or disablement, as provided in this Act.

§405. Date of disablement

For the purposes of this chapter, the date of disablement is the date the workers' compensation commissioner or the workers' compensation magistrate, as applicable, may determine upon hearing of the claim.

§406. Employer's liability; conditions exempting and limiting

No compensation is payable for an occupational disease if the employee at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, or thereafter, willfully and falsely represents in writing that the employee has not previously suffered from the disease that is the cause of the disability or death. When an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or when disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any way contributed to by an occupational disease, the compensation payable must be a proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bearing to all the causes of such disability or death, the reduction in compensation to be effected by reducing the number of weekly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

§407. Employer from whom total compensation recoverable; effect of dispute or controversy

The total compensation due is recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If any dispute or controversy arises as to the payment of compensation or as to liability for the compensation, the employee shall make claim upon the last employer only and apply for a hearing against the last employer only.

2 §408. Claim for occupational disease and death resulting from
3 occupational disease; requirements; commencement; time
4 limit

6 1. Requirements. The requirements of claim for
7 occupational disease and death resulting from an occupational
8 disease and the requirements as to the bringing of proceedings
9 for compensation for disability or death resulting from the
10 occupational disease are the same as required in chapter 3,
11 except that the claim of occupational disease or death resulting
12 from an occupational disease must commence from the date the
13 employee or a deceased employee's dependents had knowledge, or a
14 reasonable belief, or through ordinary diligence could have
15 discovered, that the occupational disease or death was work
16 related.

18 2. Time limit. A claim is not valid or effectual for any
19 purpose under this chapter unless made within 2 years after the
20 date the employee or dependents of a deceased employee had
21 knowledge, or a reasonable belief, or through ordinary diligence
22 could have discovered, that the occupational disease or death
23 was work related.

24
25
26 CHAPTER 5

27
28 FUNDS

29
30 §501. Self-insurers' Security Fund and Second Injury Fund

31 1. Self-insurers' Security Fund and Second Injury Fund.
32 The Self-insurers' Security Fund and the Second Injury Fund are
33 created.

34
35
36 §502. "Insolvent private self-insured employer" defined

37 For the purposes of this Act, an "insolvent private
38 self-insured employer" means an employer who files for relief
39 under the bankruptcy laws, an employer against whom bankruptcy
40 proceedings are filed or an employer for whom a receiver is
41 appointed in a court of this State.

42
43
44 §503. Board of trustees; appointment; term; expenses

45 The funds established in section 501 are managed by a board
46 of 3 trustees, one of whom is the Executive Director of the
47 Workers' Compensation Board, the remaining 2 of whom must be
48 appointed by the Governor subject to review by the appropriate
49 joint standing committee of the Legislature and confirmation by
50 the Senate and so selected by the Governor that one trustee

2 represents the insurance industry and the remaining trustee
3 represents those employers who are authorized to act as
4 self-insurers. The Executive Director of the Workers'
5 Compensation Board is a permanent trustee but the other 2
6 trustees are appointed for terms of 4 years and serve until
7 their successors are appointed and qualified. The trustees are
8 not entitled to compensation for their services, but must be
9 reimbursed for their actual and necessary expenses during the
10 performance of their duties.

11 **§504. Powers and duties of trustees; funds administrator; office**
12 **space; personnel; expenses; legal advice and**
13 **representation**

14
15 **1. Powers and duties.** The trustees have general authority
16 to carry out the purposes of this chapter, shall make such rules
17 as they determine, shall maintain records and institute systems
18 and procedures or take any other administrative action as they
19 determine necessary to carry out the purposes of this chapter.

20
21 **2. Administrative officer.** The trustees may appoint an
22 administrative officer to be referred to as the "Funds
23 Administrator" who shall perform duties as designated or
24 delegated by the trustees.

25 **3. Office space; personnel; expenses; legal advice and**
26 **representation.** The Workers' Compensation Board shall provide
27 the trustees of the funds with suitable office space and clerical
28 assistance. All other expenses authorized by the trustees for
29 the proper administration of the funds established in section
30 501, including, but not limited to, the salary and expenses of
31 the Funds Administrator and the investigation, determination and
32 defense of claims against the funds must be borne ratably by and
33 paid from the assets of the funds. The trustees may secure legal
34 advice and be represented by the Attorney General or any
35 assistant designated by the Attorney General in any matter
36 involving the affairs of the funds. The Self-insurers' Security
37 Fund must be represented by an assistant attorney general who is
38 not representing the Second Injury Fund. The cost of these
39 services and expenses in connection with those services must be
40 borne ratably by and paid from the funds. All expenses so
41 incurred and charged to the funds must be accounted for on a
42 fiscal-year basis.

43
44 **§505. Second Injury Fund; payments reimbursable**

45
46 **1. Conclusive presumption of total and permanent**
47 **disability.** If an employee has a permanent disability in the
48 form of the loss of a hand, arm, foot, leg or eye and
49 subsequently has an injury arising out of and in the course of
50 the employee's employment that results in another permanent

2 disability in the form of the loss of a hand, arm, foot, leg or
4 eye, at the conclusion of payments made for the 2nd permanent
6 disability the employee is conclusively presumed to be totally
8 and permanently disabled and is entitled to compensation for
10 total and permanent disability after subtracting the number of
12 weeks of compensation received by the employee for both such
14 losses. The payment of compensation under this section must be
16 made by the Second Injury Fund and begins at the conclusion of
18 the payments for the 2nd permanent disability.

20 2. Differential benefits; prior law. Any permanently and
22 totally disabled person as defined in this Act, whose total and
24 permanent disability arose out of and in the course of that
26 person's employment, and who, on and after June 25, 1955, is
28 entitled to receive payments of workers' compensation in amounts
30 per week of less than is provided in the workers' compensation
32 schedule of benefits for permanent and total disability and for a
34 lesser number of weeks than the duration of the permanent and
36 total disability, after the effective date of any amendatory act
38 by which that disability is defined as permanent and total
40 disability or by which the weekly benefits for permanent and
42 total disability are increased, is entitled to receive weekly
44 from the carrier on behalf of the Second Injury Fund differential
46 benefits equal to the difference between what the person is
48 entitled to receive from the employer under the provisions of
50 former Title 39, and the amounts provided for the permanent and
total disability by this or any other amendatory act, with
appropriate application of the provisions of sections 312 to
319. Such payments continue after the period for which the
person is otherwise entitled to compensation under this Act for
the duration of the permanent and total disability. Any payments
so made by a carrier pursuant to this section must be reimbursed
to the carrier by the Second Injury Fund as provided in this
chapter.

36 3. Benefits from Second Injury Fund; prior law. Any person
38 who prior to July 1, 1968 has been receiving or is entitled to
40 receive benefits from the Second Injury Fund pursuant to any
42 prior provisions of the workers' compensation law continues to
44 receive or be entitled to receive benefits from the fund that
46 must be paid directly to the person from the fund unless such
48 payments are paid in accordance with an agreement made pursuant
50 to section 507.

46 4. Direct payments when carrier unable to pay. If any
48 carrier is unable to make the payments on behalf of the fund as
50 provided for herein, the trustees of the Second Injury Fund may
make the payments directly to the permanently and totally
disabled employee.

2 5. Liability not imposed by obligation to pay on behalf of
3 fund. The obligation imposed by this section on a carrier to
4 make payments on behalf of the Second Injury Fund does not impose
5 an independent liability on the carrier nor obligate the carrier
6 to make payments on behalf of the fund if the carrier does not
7 have a separate obligation to make payments of compensation
8 simultaneously to the permanently and totally disabled employee.

10 §506. Payments from Self-insurers' Security Fund

12 1. Payments upon insolvency of employer. The trustees may
13 authorize payments from the Self-insurers' Security Fund upon
14 request to the Funds Administrator by a disabled employee or a
15 dependent of the disabled employee as defined in section 308 who
16 is receiving or is entitled to receive workers' compensation
17 benefits from a private self-insured employer who becomes
18 insolvent after the effective date of this section and is unable
19 to continue the payments.

20 2. Request or petition for hearing. If an employee becomes
21 disabled or dies because of a compensable injury or disease while
22 in the employ of a private self-insured employer who has become
23 insolvent and who is unable to make compensation payments, the
24 employee or a dependent of the employee as defined in section 308
25 may seek payment from the Self-insurers' Security Fund either by
26 request through the Funds Administrator or by filing a petition
27 for hearing with the Workers' Compensation Board.

30 3. No payments prior to request or petition. Payments may
31 not be made from the Self-insurers' Security Fund to an employee
32 or a dependent of the employee as defined in section 308 for any
33 period of disability that is before the date of the request to
34 the administrator or the date of the petition for hearing before
35 the Workers' Compensation Board.

36 4. Effect of apportionment. If there is an apportionment
37 as provided in section 407, the trustees may reimburse subsequent
38 employers.

40 §507. Payments from funds; notice of claim for reimbursement;
41 agreements

44 1. Determination by trustees. All payments from the funds
45 established in section 501 must be determined by the trustees and
46 made upon an order signed by a trustee. If a dispute arises
47 between the trustees and a carrier as to any determination by the
48 trustees or the obligation of any carrier to make payments on
49 behalf of the Second Injury Fund, the dispute is deemed to be a
50 controversy concerning compensation and must be determined in
accordance with this Act.

2 2. Notice of claim. In all cases in which the carrier is
4 entitled to be reimbursed, notice of claim for reimbursement must
6 be filed with the trustees within one year from the date on which
8 the right to reimbursement first accrues. After the carrier has
10 established a right to reimbursement, payment must be made
12 promptly on a proper showing periodically every 6 months.

14 3. Agreements. The trustees may enter into agreements with
16 carriers whereby the payment of benefits to persons permanently
18 and totally disabled from the Second Injury Fund that had been
20 made directly from the fund may be made by carriers who are
22 paying workers' compensation benefits to such persons and the
24 carriers be reimbursed from the fund for such payments
26 periodically at 6-month intervals.

28 §508. Assessments; notice; payment; assessments as elements of
30 loss in establishing rates; continuation of liability;
32 certification of receipts; delinquencies; disposition of
34 money; investments; disposition of earnings; reports and
36 accounting

38 1. Annual assessment; Second Injury Fund. As soon as
40 practicable after January 1st each year, the Executive Director
42 of the Workers' Compensation Board shall assess upon and collect
44 from each carrier a sum equal to that proportion of 175% of the
46 total disbursements made from the Second Injury Fund during the
48 preceding calendar year, less the amount of net assets in excess
50 of \$200,000 in that fund as of December 31 of the preceding
calendar year. The assessment must bear the same relationship
that the total compensation benefits, exclusive of payments made
pursuant to sections 305, 306 and 311, paid by each carrier in
the State bear to the total compensation benefits paid by all
carriers in the State.

52 2. Annual assessment; Self-insurers' Security Fund. The
54 Executive Director of the Workers' Compensation Board shall
56 assess upon and collect from each private self-insured employer
58 an amount based on the total compensation the self-insured
60 employer paid in the preceding year exclusive of payments made
62 pursuant to sections 305, 306 and 311. The Executive Director of
64 the Workers' Compensation Board, upon the advice of the trustee
66 representing the self-insurers, may make additional assessments
68 as the trustee considers necessary to keep the Self-insurers'
70 Security Fund solvent. The assessment may not exceed 3% in any
calendar year exclusive of payments made pursuant to sections
305, 306 and 311.

72 3. Notice of assessments. Notice of the assessments must
74 be sent by the Executive Director of the Workers' Compensation
76 Board by first class mail to each carrier. Payment of

2 assessments must be made so as to be received by the Workers'
Compensation Board on or before a date specified uniformly in the
4 notice, but not less than 90 days after the date of mailing.

6 4. Assessments constitute elements of loss for rates. All
assessments constitute elements of loss for the purpose of
8 establishing rates for workers' compensation insurance.

10 5. Continuation of liability. An employer who has ceased
to be a self-insurer or an insurance company that has ceased to
12 write workers' compensation insurance in this State continues to
be liable for the Second Injury Fund; or the Self-insurers'
14 Security Fund assessment on account of any compensation benefits,
16 exclusive of payments made pursuant to sections 305, 306 and 311,
paid by the employer or insurance company during the previous
calendar year.

18 6. Certification of receipts; delinquency; disposition of
money; investments; accounting. The Executive Director of the
20 Workers' Compensation Board shall certify to the trustees the
collection and receipt of all money from assessments, noting any
22 delinquencies. The trustees shall immediately notify delinquent
carriers, including private self-insured employers, of their
24 delinquency in writing by certified mail, return receipt
requested. The trustees shall take action as in their judgment
26 is proper to effect collection of any delinquent assessment. All
money received from assessments pursuant to this section must be
28 turned over to the Treasurer of State who is the custodian of the
Self-insurers' Security Fund and the Second Injury Fund. The
30 Treasurer of State may make those investments as in the Treasurer
of State's judgment are in the best interest of the funds. The
32 earnings from the investment of the money from the funds must be
credited to the funds. The Treasurer of State, at the end of
34 each fiscal year, shall determine what amount represents a pro
rata earnings share due to each fund, credit the pro rata earning
36 share to each fund and notify the trustee of the amount credited
and the balance of the respective fund as of September 30. The
38 trustees shall make separate annual reports and accountings for
each fund, which reports must be included in the annual report of
40 the Workers' Compensation Board.

42 §509. Insufficiency of funds; borrowing; repayment; restriction;
44 special assessment

46 1. Insufficiency of funds; borrowing. If, before the end
of any calendar year, the annual assessments, after having been
48 substantially collected, have not provided funds sufficient to
the Second Injury Fund to meet the known obligations of that fund
as it matures before the next available assessment date, the
50 trustees, if the trustees find it to be reasonably required, may

borrow on behalf of one fund from the other fund a sum or sums as
may be required.

2. Repayment. Any sum or sums borrowed on behalf of one
fund from the other fund must be included in the next assessment
of the borrowing fund and repaid after the assessment has been
substantially collected and the fund from which the sum or sums
were borrowed during the period before repayment must record the
sum or sums as an asset.

3. Restriction. The trustees may not borrow in the manner
described in this section if it would impair the ability of
either fund to meet its known obligations as the obligations
mature before the next available assessment date.

4. Special assessment. If the trustees find that it is
reasonably required that they borrow on behalf of one fund from
the other, but that the borrowing will impair the ability of the
fund to meet the fund's known obligations as the obligations
mature before the next assessment date, then and in that event
only, the trustees may order the Executive Director of the
Workers' Compensation Board to levy a special assessment on each
carrier in a sum sufficient to permit the fund making the
assessment to meet the fund's known obligations as the
obligations mature before the next available assessment date.
The assessment must be levied on each carrier in the same
proportion as used in the preceding annual assessment. Payment
of the special assessment must be paid by each carrier within 45
days after the date of the mailing of the notice of special
assessment.

§510. Self-insurers' Security Fund; subrogation

The Self-insurers' Security Fund, after paying an injured
employee, has all the rights of the injured employee as a
creditor of the insolvent employer to the extent of benefits it
paid. The trustees of the fund have the right and obligation to
obtain reimbursement to the fund from an insolvent employer for
any funds paid out as benefits to the employees of the insolvent
employer, including expenses pertinent to payments or recovery
thereof.

§511. Application for self-insurance; agreement as to insolvency

The application for self-insurance by a private employer
must contain an agreement that in case of insolvency the employer
shall make the employer's records available to an agent of the
Self-insurers' Security Fund to help defend the fund as well as
disclosing the employer's inability to pay the injured employee.

§512. Delinquency in assessment bars reimbursement

2 B. By insuring against liability with the Maine Employers'
Mutual Insurance Company pursuant to Title 24-A, chapter 52.

4 After 5 years after the effective date of this section, an
6 employer may also secure payment of compensation under this Act
8 by insuring against liability with an insurer authorized to
transact the business of workers' compensation insurance within
this State.

10 2. Agreements to pool liabilities; public employer;
12 employers' liability insurance. Under procedures and conditions
14 specifically determined by the Workers' Compensation Board, 2 or
16 more employers in the same industry with combined assets of
18 \$1,000,000 or more, or 2 or more public employers of the same
20 type of unit, may be permitted by the Workers' Compensation Board
22 to enter into agreements to pool their liabilities under this Act
24 for the purpose of qualifying as self-insurers. For purposes of
26 this subsection, a municipality, municipalities or one or more of
28 the agencies, instrumentalities or other legal entities of a
30 municipality or municipalities or the authorities of one or more
32 municipalities created pursuant to law are considered public
34 employers of the same type of unit. An employer member of the
36 approved group must be classified as a self-insurer. For
38 purposes of this subsection, universities and colleges, community
40 colleges, and school districts or units are considered public
42 employers of the same type of unit. The Workers' Compensation
44 Board may grant authorization to become a member of an approved
46 group upon a reasonable showing by an employer of the employer's
48 solvency and financial stability to meet the employer's
50 obligations as a member of the group. If the Workers'
Compensation Board determines it to be necessary, the Workers'
Compensation Board may require the furnishing of a bond,
reinsurance or other security in a reasonable form and amount.
An employer, except a public employer, permitted to become a
member of a self-insurers' group under this Act shall execute a
written agreement in which the employer agrees to jointly and
severally assume and discharge, by payment, any lawful award
entered by the Workers' Compensation Board against a member of
the group. If an award is appealed by either party, then the
award must first be upheld before a member of the group may be
liable. In the case of a public employer that is permitted to
become a member of a self-insurers' group, any lawful award
entered by the Workers' Compensation Board against a public
employer that is a member of the group, if the award is upheld on
appeal, is a liability of the group jointly but not severally
and, if the group is unable to pay the award, the group or the
Workers' Compensation Board shall individually assess those
public employers that were members on the date of injury to the
extent necessary to pay the award. An assessment is a
contractual obligation of the public employer. As used in this
subsection, "public employer" means a municipality, a school

2 district or unit, the University of Maine System, the Maine
3 Technical College System, a community college or an agency,
4 entity or instrumentality thereof or an authority comprised of
5 any combination of the foregoing. This subsection does not alter
6 the obligation of either a group or an employer from complying
7 with section 830. For purposes of this subsection, an authorized
8 group self-insurer, in conjunction with providing security for
9 the payment of compensation and benefits provided for in this
10 Act, may provide coverage customarily known as employers'
11 liability insurance for members of the group.

12 3. Employers in same industry. For the purpose of
13 determining whether employers are in the same industry under
14 subsection 2, the following applies.

16 A. The forest industry is considered as those businesses
17 engaged in the growing, harvesting, processing or sale of
18 forest products, except at the retail level, unless more
19 than 80% of the income from the retailer comes from the
20 growing, harvesting, processing or wholesale sale of forest
21 products, and any supplier or service company that receives
22 more than 80% of its income from these businesses.

24 B. "Forest products" includes Christmas trees, firewood,
25 maple syrup and all other products derived from wood or wood
26 fiber that are manufactured with woodworking equipment,
27 including saws, planers, drills, chippers, lumber dry kilns,
28 sanders, glue presses, nailers, notchers, shapers, lathes,
29 molders and other similar finishing processes.

30 4. Nonpublic, nonprofit health care facilities. The
31 Workers' Compensation Board may permit a nonpublic, nonprofit
32 health care facility employer to become a member of a
33 self-insurers' group with public employers pursuant to subsection
34 2 if the principal service rendered by the nonpublic, nonprofit
35 health care facility employer is the same type of service
36 rendered by the public employers. If a nonpublic, nonprofit
37 health care facility employer is permitted to become a member of
38 the same self-insurers' group with public employers, any lawful
39 award entered by the Workers' Compensation Board against that
40 nonpublic, nonprofit health care facility employer, if the award
41 is upheld on appeal, is a liability of the group and, if the
42 group is unable to pay the award, the group or the Workers'
43 Compensation Board shall individually assess those nonpublic,
44 nonprofit health care facility employers who were members on the
45 date of injury to the extent necessary to pay the award. The
46 Workers' Compensation Board may waive the requirement of the
47 written agreement required of a nonpublic, nonprofit health care
48 facility employer under subsection 2 as to any member of a group
49 involving a combination of public and nonpublic, nonprofit health
50 care facility employers. Except as otherwise provided in this

2 subsection, subsection 2 applies to all self-insurers' groups and
3 their individual employer members.

4 5. Review of decisions. The Workers' Compensation Board,
5 from time to time, may review and alter a decision approving the
6 election of an employer to adopt any one of the methods permitted
7 by subsection 1, 2 or 4 if, in the Workers' Compensation Board's
8 judgment, that action is necessary or desirable for any reason.

10 6. Application to service self-insurance program. Under
11 procedures and conditions specifically determined by the Workers'
12 Compensation Board, an individual, partnership or corporation
13 desiring to engage in the business of servicing an approved
14 workers' compensation self-insurance program for an individual or
15 group of employers must make application to the Workers'
16 Compensation Board before entering into a contract with the
17 individual or group of employers and satisfy the Workers'
18 Compensation Board that the individual, partnership or
19 corporation has adequate facilities and competent personnel to
20 service a self-insurance program in a manner that will fulfill
21 the employer's obligations under this Act.

22 §603. Report by employer not self-insurer; failure to file
23

24
25 Upon written request of the Workers' Compensation Board,
26 every employer who is not exempted by the Workers' Compensation
27 Board from insuring the employer's compensation risk shall report
28 to the Workers' Compensation Board in writing the number of that
29 employer's employees, the nature of their work, the name of the
30 insurer with whom the employer has insured the employer's
31 liability under this Act and the number and date of expiration of
32 the policy. Failure to furnish the report within 10 days from
33 the making of a request by registered mail constitutes
34 presumptive evidence that the delinquent employer is violating
35 the provisions of section 602.

36 §604. Insurance contracts deemed subject to Act; single policy;
37 separate policy for certain employees; required provisions;
38 form
39

40
41 1. Insurance contracts subject to Act. Every contract for
42 the insurance of the compensation provided in this Act for or
43 against liability therefore is deemed to be made subject to the
44 provisions of this Act and provisions inconsistent with this Act
45 are void.

46
47 2. Single policy; separate policy for certain employees;
48 required provisions. The Maine Employers' Mutual Insurance
49 Company and every insurer issuing an insurance policy to cover
50 any employer not permitted to be a self-insurer under section 602
shall insure, cover and protect in one and the same insurance

2 policy all the businesses, employees, enterprises and activities
3 of the employer. Under procedures and conditions specifically
4 determined by the Workers' Compensation Board, a separate
5 insurance policy may be issued to cover employers performing work
6 at a specified construction site if the Workers' Compensation
7 Board finds that the liability under this Act of each employer to
8 all employees would at all times be fully secured and the cost of
9 construction at the site will exceed \$100,000,000 and the
10 contemplated completion period for the construction will be 10
11 years or less. Except as modified by the Workers' Compensation
12 Board as provided for herein, each policy of insurance covering
13 workers' compensation in this State must contain the following
14 provisions:

15 "Notwithstanding any language elsewhere contained in
16 this contract or policy of insurance, the Maine
17 Employers' Mutual Insurance Company or the insurer
18 issuing this policy hereby contracts and agrees with
19 the insured employer:

20 A. Compensation. That it will pay to the persons
21 that may become entitled thereto all workers'
22 compensation for which the insured employer may
23 become liable under the provisions of the Maine
24 Workers' Compensation Act of 1992 for all
25 compensable injuries or compensable occupational
26 diseases happening to the employer's employees
27 during the life of this contract or policy;

28 B. Medical services. That it will furnish or
29 cause to be furnished to all employees of the
30 employer all reasonable medical, surgical and
31 hospital services and medicines when they are
32 needed that the employer may be obligated to
33 furnish or cause to be furnished to the employer's
34 employees under the provisions of the Maine
35 Workers' Compensation Act of 1992 and that it will
36 pay to the persons entitled thereto for all such
37 services and medicines when they are needed for
38 all compensable injuries or compensable
39 occupational diseases happening to the employer's
40 employees during the life of this contract or
41 policy;

42 C. Rehabilitation services. That it will furnish
43 or cause to be furnished such rehabilitation
44 services for which the insured employer may become
45 liable to furnish or cause to be furnished under
46 the provisions of the Maine Workers' Compensation
47 Act of 1992 for all compensable injuries or
48 compensable occupational diseases happening to the
49 insured employer during the life of this contract or
50 policy;

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2 employer's employees during the life of this
3 contract or policy;

4 D. Funeral expenses. That it will pay or cause
5 to be paid the reasonable expense of the last
6 sicknesses and the burials of all employees whose
7 deaths are caused by compensable injuries or
8 compensable occupational diseases happening during
9 the life of this contract or policy and arising
10 out of and in the course of their employment with
11 the employer, that the employer may be obligated
12 to pay under the provisions of the Maine Workers'
13 Compensation Act of 1992;

14 E. Scope of contract. That this insurance
15 contract or policy must for all purposes be held
16 and deemed to cover all the businesses in which
17 the employer is engaged at the time of the
18 issuance of this contract or policy and all other
19 businesses, if any, in which the employer may
20 engage during the life thereof, and all employees
21 the employer may employ in any of the employer's
22 businesses during the period covered by this
23 contract or policy;

24 F. Obligations assumed. That it hereby assumes
25 all obligations imposed upon the employer by the
26 employer's acceptance of the Maine Workers'
27 Compensation Act of 1992, as far as the payment of
28 compensation, death benefits, medical surgical,
29 hospital care or medicine and rehabilitation
30 services is concerned;

31 G. Termination notice. That it will file with
32 the Workers' Compensation Board, at least 20 days
33 before any termination or cancellation of this
34 contract or policy takes effect, a notice giving
35 the date on which it is proposed to terminate or
36 cancel this contract or policy and that any
37 termination of this policy is not effective as far
38 as the employees of the insured employer are
39 concerned until 20 days after notice of proposed
40 termination or cancellation is received by the
41 Workers' Compensation Board; and

42 H. Conflicting provisions. That all the
43 provisions of this contract that are not in
44 harmony with this provision, if any, are to be
45 construed as modified hereby and all conditions
46 and limitations in the policy conflicting
47 herewith, if any, are hereby made null and void."
48

2 3. Requirements of form. The provisions must be printed
4 upon or conspicuously attached to every insurance contract or
6 policy issued by the Maine Employers' Mutual Insurance Company or
8 insurer in type size not smaller than 10 point and constitute a
10 separate paragraph of the contract or policy. Any provision of
12 the contract or policy inconsistent with the undertakings and
14 agreements of the Maine Employers' Mutual Insurance Company or
16 insurer contained in such provisions is void.

18 §605. Insurance policy's notice of issuance; contents; refusal
20 to accept coverage

22 The Maine Employers' Mutual Insurance Company and every
24 insurer mentioned in section 602 issuing an insurance policy
26 covering workers' compensation in this State shall file with the
28 Workers' Compensation Board, within 10 days after the effective
30 date of that policy, a notice of the issuance of the policy and
32 its effective date. If the policy covers persons who would
34 otherwise be exempted from the provisions of this Act by section
36 103, the notice must contain a specific statement to that
38 effect. A notice may not be required of the Maine Employers'
40 Mutual Insurance Company or any insurer when the policy issued is
42 a renewal of the preceding policy. The Maine Employers' Mutual
44 Insurance Company or insurer, if it refuses to accept any
46 coverage under this Act, shall refuse in writing.

48 §606. Claim payments; filing reports

50 1. Failure to act; revocation of license. If any insurer
licensed to transact the business of workers' compensation
insurance within this State repeatedly or unreasonably fails to
pay promptly claims for compensation for which it becomes liable
or if it repeatedly fails to make reports to the Workers'
Compensation Board as provided in this Act, the Workers'
Compensation Board may recommend to the Superintendent of
Insurance that the license of the insurer be revoked, setting
forth in detail the reasons for that recommendation. The
Superintendent of Insurance shall thereupon furnish a copy of the
report to the insurer and shall set a date for a hearing, at
which both the insurer and the Workers' Compensation Board must
be afforded an opportunity to present evidence. If, after the
hearing, the Superintendent of Insurance is satisfied that the
insurer has failed to live up to all of its obligations under
this Act, the Superintendent of Insurance shall promptly revoke
its license or dismiss the complaint.

2. Failure to act; revocation of privilege to carry risk.
If any employer who is subject to this Act as an approved
self-insurer repeatedly or unreasonably fails to pay promptly
claims for compensation for which it becomes liable or if it

2 repeatedly fails to make reports to the Workers' Compensation
3 Board as provided in this Act, the Workers' Compensation Board
4 may revoke the privilege granted to the employer to carry its own
5 risk and require it to insure its liability. Such an action may
6 not be taken by the Workers' Compensation Board against any
7 employer until the employer is notified in writing of the charges
8 made against it by the Workers' Compensation Board and given an
9 opportunity to be heard before the Workers' Compensation Board in
10 answer to the charges.

11 **§607. Noncompliance as crime; penalty; separate offenses;**
12 **collection of fines; damages for certain violations;**
13 **recovery from uninsured employer; disposition of fines;**
14 **Workers' Compensation Board as party**

15 **1. Noncompliance; Class D crime.** An employer who fails to
16 comply with the provisions of section 602 is guilty of a Class D
17 crime and, notwithstanding Title 17-A, may be fined \$1,000, or
18 imprisoned for not less than 30 days nor more than 6 months, or
19 both. Each day's failure is a separate offense. Upon complaint
20 of the Workers' Compensation Board, the fines specified in this
21 section may be collected by the State in a civil action.

22
23 **2. Damages in civil action by employee.** The employee of an
24 employer who violates the provisions of section 113 or 602 is
25 entitled to recover damages from the employer in a civil action
26 because of an injury that arose out of and in the course of
27 employment, notwithstanding the provisions of section 108.

28
29 **3. Recovery in civil action by Workers' Compensation**
30 **Board.** The Workers' Compensation Board has the right and
31 obligation to recover on behalf of the Workplace Health and
32 Safety Fund from an uninsured employer in a civil action. If the
33 employer is a corporation, the officers and directors of the
34 corporation are individually and jointly and severally liable for
35 any portion of the obligation and expenses that is not satisfied
36 by the corporation.

37
38 **4. Disposition of fines.** Any fines collected pursuant to
39 this section must be paid to the uninsured employers' security
40 account within the Workplace Health and Safety Fund.

41
42 **5. Workers' Compensation Board as party.** For the purposes
43 of this section, the Workers' Compensation Board is considered a
44 party as described in section 831.

45
46 **6. Application.** Subsections 3, 4 and 5 apply to injuries
47 that occur on or after the effective date of this subsection.

48
49 **§608. Order to show cause; injunction**

2 If it appears by a complaint filed by the Executive Director
3 of the Workers' Compensation Board in the Superior Court for the
4 county in which the employer is located or in the court for
5 Kennebec County that the employer's liability is uninsured, there
6 must forthwith be served on the employer an order to show cause
7 why the employer should not be restrained from employing any
8 person in the employer's business pending the proceedings or
9 until the employer satisfies the court that the employer has
10 complied with the provisions of section 113 or 602. The order to
11 show cause must be returnable before the court at a time to be
12 fixed in the order not less than 24 hours nor more than 3 days
13 after its issuance. If the employer proves that the employer is
14 not subject to the provisions of this Act or furnishes a surety
15 company bond in an amount to protect all of the liability of the
16 employer under this Act, then an injunction may not issue. Every
17 final decree against an employer under this section perpetually
18 enjoins that employer from employing any person in the employer's
19 business at any time when the employer is not complying with
20 section 113 or 602.

21 **§609. Exemption of employer; corporations**

22
23 If compensation is awarded under the provisions of this Act
24 against any employer who at the time of the injury has not
25 complied with the provisions of section 602, the employer is
26 entitled to any judgment entered upon the award or to any of the
27 exemptions of property from seizure and sale on execution allowed
28 by law. If the employer is a corporation, the officers and
29 directors of the corporation are individually and jointly and
30 severally liable for any portion of any such judgment that is
31 returned unsatisfied after execution against the corporation.

32 **§610. Existing contracts unaffected; rights and liabilities**

33
34 Nothing in this Act affects any existing contract for
35 employers' liability insurance or affects the organization of any
36 mutual or other insurance company or any arrangement now existing
37 between employers and employees providing for the payment of
38 sick, accident or death benefits to the employees or their
39 families, dependents or representatives, in addition to the
40 compensation provided for by this Act. Liability for
41 compensation under this Act may not be reduced or affected by any
42 insurance, contribution or other benefit whatsoever due to or
43 received by the person entitled to such compensation and the
44 person so entitled, irrespective of any insurance or other
45 contract, has the right to recover the same directly from the
46 employer and in addition thereto the right to enforce in the
47 person's own name in the manner provided in this Act the
48 liability of any insurance company, or the Maine Employers'
49 Mutual Insurance Company, which may have insured, in whole or in
50 part, the liability for such compensation. Payment in whole or

2 in part of such compensation by either the employer, the
3 insurance company carrying such risk or the Maine Employers'
4 Mutual Insurance Company is a bar, to the extent of payment, to
5 recovery against the other of the amount so paid.

6 **§611. Relief from liability**

8 Any employer against whom liability may exist for
9 compensation under this Act, with the approval of the Workers'
10 Compensation Board, may be relieved from that liability by:

12 1. Deposit. Depositing the present value of the total
13 unpaid compensation for which the liability exists, assuming
14 interest at 3% per annum, with a trust company of this State
15 designated by the employee, or by the employee's dependents in
16 case of death, and such liability exists in their favor or, in
17 default of such designation, after 10 days' notice in writing
18 from the employer, with a trust company of this State designated
19 by the Workers' Compensation Board; or

20 2. Annuity. Purchasing an annuity, within the limitations
21 provided by law, in any insurance company that grants annuities
22 and is licensed in this State and is designated by the employee,
23 the employee's dependents or the Workers' Compensation Board, as
24 provided in subsection 1.

25 **§612. Public employers; operating expense; tax levy**

26 An incorporated public board or commission may treat the
27 cost of benefits payable pursuant to the provisions of this Act
28 or the cost of insuring its liability for these benefits as part
29 of its necessary operating expense and such sums must be
30 separately budgeted in any requisition authorized by law to be
31 made on any other public corporation, body or officer. If the
32 incorporated public board or commission is authorized by law to
33 require the levying of taxes through any other public corporation
34 or officer for its use, the expense, separately itemized, may be
35 made a part of the tax levy.

36 **CHAPTER 7**

37 **MUTUAL FUNDS**

38 **§701. Maine Employers' Mutual Insurance Company**

39 Pursuant to section 602, employers securing payment of
40 compensation under this Act by insuring against liability with
41 the Maine Employers' Mutual Insurance Company are subject to
42 Title 24-A, chapter 52.

43 **CHAPTER 8**

2

PROCEDURE

4

§801. Payment of compensation; time; manner; record; reports;
daily charges as elements of loss; failure to notify
carrier of disability or death; interest; discontinuance or
reduction

6

8

1. Time; manner; record. Compensation must be paid promptly and directly to the person entitled to the compensation and is due and payable on the 14th day after the employer has notice or knowledge of the disability or death, on which date all compensation then accrued must be paid. Thereafter, compensation must be paid in weekly installments. Every carrier shall keep a record of all payments made under this Act and of the time and manner of making the payments and shall furnish reports, based on these records, to the Workers' Compensation Board as the Workers' Compensation Board may reasonably require.

20

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2. Daily charges. If weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, in cases where there is not an ongoing dispute, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection.

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3. Medical or travel charges. If medical bills or travel allowances are not paid within 30 days after the carrier has received notice of nonpayment by certified mail, in cases where there is no ongoing dispute, \$50 or the amount of the bill due, whichever is less, must be added and paid to the worker for each day over 30 days in which the medical bills or travel allowances are not paid. Not more than \$1,500 in total may be added pursuant to this subsection.

38

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4. Daily charges not elements of loss. For purposes of ratemaking, daily charges paid under subsection 2 do not constitute elements of loss.

42

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46

5. Failure to give notice to carrier. An employer who has notice or knowledge of the disability or death and fails to give notice to the carrier must pay the penalty provided for in subsection 2 for the period during which the employer failed to notify the carrier.

48

50

6. Interest. When weekly compensation is paid pursuant to an award of a workers' compensation commissioner or workers' compensation magistrate, as applicable, an arbitrator, the Workers' Compensation Board, the appellate commission or a court,

2 interest on the compensation must be paid at the rate of 10% per
3 annum from the date each payment was due, until paid.

4 7. Discontinuance or reduction of payments. The employer,
5 insurer or self-insurer may discontinue or reduce benefits
6 according to this subsection.

8 A. If the employee has returned to work with or has
9 received an increase in pay from an employer that is paying
10 compensation under this Act, that employer or that
11 employer's insurer or self-insurer may discontinue or reduce
12 payments to the employee.

14 B. In all circumstances other than the return to work or
15 increase in pay of the employee under paragraph A, if the
16 employer, insurer or self-insurer determines that the
17 employee is not eligible for compensation under this Act,
18 the employer, insurer or self-insurer may discontinue or
19 reduce benefits only in accordance with this paragraph.

20 (1) If no order or award of compensation or
21 compensation scheme has been entered, the employer,
22 insurer or self-insurer may discontinue or reduce
23 benefits by sending a certificate by certified mail to
24 the employee and to the Workers' Compensation Board,
25 together with any information on which the employer,
26 insurer or self-insurer relied to support the
27 discontinuance or reduction. The employer may
28 discontinue or reduce benefits no earlier than 21 days
29 from the date that the certificate was mailed to the
30 employee. The certificate must advise the employee of
31 the date when the employee's benefits will be
32 discontinued or reduced, as well as other information
33 as prescribed by the Workers' Compensation Board,
34 including the employee's appeal rights.

36 (2) If an order or award of compensation or
37 compensation scheme has been entered, the employer,
38 insurer or self-insurer shall petition the Workers'
39 Compensation Board for an order to reduce or
40 discontinue benefits and may not reduce or discontinue
41 benefits until the matter has been finally resolved
42 through the dispute resolution procedures of this Act,
43 any appeal proceedings have been completed and an order
44 of reduction or discontinuance has been entered by the
45 Workers' Compensation Board.

48 C. The employee may file a petition for review, contesting
49 the employer's discontinuance or reduction of compensation
50 under this subsection. Regardless of whether the employee
51 files a petition prior to the date of the discontinuance or

2 reduction, benefits may be discontinued or reduced as
described in paragraph A or B.

4 D. The Workers' Compensation Board, within 21 days after
the employee files a petition for review, may enter an order
6 providing for the continuation or reinstatement of benefits
pending a hearing on the petition. The order must be based
8 upon the information submitted by both the employer, insurer
or self-insurer and the employee under this subsection.

10 E. If either party disagrees with the order of the Workers'
12 Compensation Board under paragraph D, that party may request
an expedited hearing on the pending petition.

14 F. If benefits have been discontinued or reduced pursuant
16 to paragraph A or B, and the Workers' Compensation Board,
after hearing, determines that benefits have been wrongfully
18 withheld, the Workers' Compensation Board shall order
payment of all benefits withheld together with interest at
20 the rate of 6% a year. The employer shall pay this amount
within 10 days of the order.

22 **§802. Record of injuries; contents; reports to Workers'**
24 **Compensation Board**

26 Every employer who is subject to this Act shall keep a
28 record of all injuries causing death or disability of any
employee arising out of and in the course of the employment. That
30 record must give the name, address, age, wages of the deceased or
disabled employee, the time and cause of the accident, the nature
32 and extent of the injury and disability and such other
information as the Workers' Compensation Board may reasonably
34 require. Reports based on such record must be furnished to the
Workers' Compensation Board at such times and in such manner as
36 the Workers' Compensation Board may reasonably require.

38 **§803. Compensation; effect of savings, insurance or other**
benefits

40 Any savings or insurance of the injured employee, or any
42 contribution made by the injured employee to any benefit fund or
protective association independent of this Act, may not be taken
44 into consideration in determining the compensation to be paid
under this Act, nor may benefits derived from any other source
46 than those paid or caused to be paid by the employer as provided
in this Act, be considered in fixing the compensation under this
48 Act, except as provided in sections 112, 315, 319, 805 and 816.

50 **§804. Compensation; waiver of right, validity**

No agreement by an employee to waive the employee's rights to compensation under this Act is valid, except that employees or their dependents as defined in section 112, after injury only, may elect as provided in section 112.

§805. Assignment, attachment or garnishment; liability as first lien on property of employer; enforcement of assignment to group disability or hospitalization insurance company, health maintenance organization or medical care and hospital service corporation; attorney's fees; self-insurer as "insurance company"; adjustment; rights of assignment of labor management health and welfare fund

1. Assignment, attachment or garnishment; first lien. A payment under this Act is not assignable or subject to attachment or garnishment nor may it be held liable in any way for a debt. In the case of the insolvency of an employer, liability for compensation under this Act constitutes a first lien upon all the property of the employer liable for the compensation, paramount to all other claims or liens, except for wages and taxes, which lien must be enforced by order of the court.

2. Assignments to certain persons; attorney's fees. This section does not apply to or affect the validity of an assignment made to an insurance company, a health maintenance organization licensed under the laws of this State, a medical care and hospital service corporation organized or consolidated under the laws of this State or any successor organization making an advance or payment to an employee under a group disability or group hospitalization insurance policy that provides that benefits are not payable under the policy for a period of disability or hospitalization resulting from accidental bodily injury or sickness arising out of or in the course of employment. When such a group disability or hospitalization insurance company, health maintenance organization or medical care and hospital service corporation or any successor organization enforces an assignment given to it as provided in this section, it shall pay, pursuant to rules adopted by the Workers' Compensation Board, a portion of the attorney's fees of the attorney who secured the workers' compensation recovery.

3. Self-insurer as insurance company. As used in this section, "insurance company" includes a self-insurer. If an insurance company insures both workers' compensation and group disability or group hospitalization, it is permitted the adjustment provided in this section.

4. Certain rights of assignment. A labor management health and welfare fund is entitled to the same rights of assignment as an insurance company is entitled to under this section.

2 **§806. Mental incompetents or minors**

4 If an injured employee is mentally incompetent or is a minor
6 at the time when any right or privilege accrues to the employee
 under this Act, the employee's guardian or next friend may claim
 and exercise in the employee's behalf the right or privilege.

8 **§807. Third-party liability**

10 **1. Acceptance of benefits not an election; time limits;**
12 **parties.** When the injury for which compensation is payable under
14 this Act was caused under circumstances creating a legal
16 liability in some person other than a natural person in the same
18 employ or the employer to pay damages in respect thereof, the
20 acceptance of compensation benefits or the taking of proceedings
22 to enforce compensation payments does not act as an election of
24 remedies but the injured employee or the employee's dependents or
26 personal representative may also proceed to enforce the liability
28 of the 3rd party for damages in accordance with the provisions of
30 this section. If the injured employee or the employee's
32 dependents or personal representative does not commence the
34 action within one year after the occurrence of the personal
 injury, then the employer or carrier, within the period of time
 for the commencement of actions prescribed by law, may enforce
 the liability of such other person in the name of that person.
 Not less than 30 days before the commencement of action by any
 party under this section, the parties shall notify, by certified
 mail at their last known address, the Workers' Compensation
 Board, the injured employee, or in the event of the employee's
 death, the employee's known dependents or personal representative
 or the employee's known next of kin, the employee's employer and
 the carrier. Any party in interest has a right to join in the
 action.

36 **2. Settlement; release.** Prior to the entry of judgment,
38 either the employer or carrier or the employee or the employee's
 personal representative may settle their claims as their interest
 appears and may execute releases therefor.

40 **3. Settlement not a bar to employer or carrier.** Settlement
42 and release by the employee is not a bar to action by the
44 employer or carrier to proceed against the 3rd party for any
 interest or claim it might have.

46 **4. Settlement not an election.** If the injured employee or
48 the employee's dependents or personal representative settle the
50 claim for injury or death or commence proceedings thereon against
 the 3rd party before the payment of workers' compensation, such
 recovery or commencement of proceedings does not act as an
 election of remedies and any money so recovered must be applied
 as herein provided.

2 5. Recovery as in tort; priority. In an action to enforce
3 the liability of a 3rd party, the plaintiff may recover any
4 amount that the employee or the employee's dependents or personal
5 representative would be entitled to recover in an action in tort.
6 Any recovery against the 3rd party for damages resulting from
7 personal injuries or death only, after deducting expenses of
8 recovery, must first reimburse the employer or carrier for any
9 amounts paid or payable under this Act to date of recovery and
10 the balance must forthwith be paid to the employee or the
11 employee's dependents or personal representative and treated as
12 an advance payment by the employer on account of any future
13 payments of compensation benefits.

14 6. Expenses; attorney's fees. Expenses of recovery are the
15 reasonable expenditures, including attorney's fees, incurred in
16 effecting recovery. Attorney's fees, unless otherwise agreed
17 upon, must be divided among the attorneys for the plaintiff as
18 directed by the court. Expenses of recovery must be apportioned
19 by the court between the parties as their interests appear at the
20 time of the recovery.

21 7. Benefits include certain expenses. Compensation
22 benefits referred to in this section must in each instance
23 include but are not limited to all expenses incurred under
24 sections 305 and 311.

25 8. Safety issues. The furnishing of, or failure to
26 furnish, safety inspections or safety advisory services incident
27 to providing workers' compensation insurance, or pursuant to a
28 contract providing for safety inspections or safety advisory
29 services between the employer and a self-insurance service
30 organization or a union does not subject the insurer,
31 self-insured service organization or the Maine Employers' Mutual
32 Insurance Company, or their agents or employees, or the union,
33 its members or the members of its safety committee, to 3rd-party
34 liability for damages for injury, death or loss resulting
35 therefrom.

36 **§808. Compensation; acceptance, effect**

37 Neither the payment of compensation or the accepting of the
38 same by the employee or the employee's dependents may be
39 considered as a determination of the rights of the parties under
40 this Act.

41 **§809. Application for further compensation; overpayment,**
42 **recoupment**

43 1. Application for further compensation. If payment of
44 compensation is made, other than medical expenses, and an

2 application for further compensation is later filed with the
4 Workers' Compensation Board, no compensation may be ordered for
any period that is more than one year prior to the date of filing
of such application.

6 2. Overpayments; recoupment. When an employer or carrier
8 takes action to recover overpayment of benefits, no recoupment of
money may be allowed for a period that is more than one year
prior to the date of taking such action.

10 §810. Redemption of liability from personal injury; payment of
12 lump sum; proposed redemption agreement as lump-sum
14 application; liability of employer; hearing; notice to
16 employer; waiver; use of fees; applicability to proposed
redemption agreements

18 1. Redemption of liability. After 6 months' time has
20 elapsed from the date of a personal injury, any liability
22 resulting from the personal injury may be redeemed by the payment
24 of a lump sum by agreement of the parties, subject to the
26 approval of a workers' compensation commissioner or a workers'
28 compensation magistrate, as applicable. If special circumstances
30 are found that in the judgment of the workers' compensation
32 commissioner or workers' compensation magistrate, as applicable,
34 require the payment of a lump sum, the workers' compensation
36 commissioner or workers' compensation magistrate, as applicable,
38 may direct at any time in any case that the deferred payments due
40 under this Act be commuted on the present worth at 10% per annum
to one or more lump-sum payments and that the lump-sum payments
must be made by the employer or carrier. When a proposed
redemption agreement is filed, it may be treated as a lump-sum
application, within the discretion of a workers' compensation
commissioner or workers' compensation magistrate, as applicable.
The filing of a proposed redemption agreement or lump-sum
application may not be considered an admission of liability and
if the workers' compensation commissioner or workers'
compensation magistrate, as applicable, treats a proposed
redemption agreement as a lump-sum application under this
section, the employer is entitled to a hearing on the question of
liability.

42 2. Notice of hearing. The carrier shall notify the
44 employer in writing of the proposed redemption agreement not less
than 10 business days before a hearing on the proposed redemption
agreement is held. The notice must include all of the following:

46 A. The amount and conditions of the proposed redemption
48 agreement;

50 B. The procedure available for requesting a private
informal managerial level conference;

2 C. The name and business phone number of a representative
3 of the carrier familiar with the case; and

4
5 D. The time and place of the hearing on the proposed
6 redemption agreement and the right of the employer to object
7 to it.

8
9 3. Waiver. The workers' compensation commissioner or
10 workers' compensation magistrate, as applicable, may waive the
11 requirements of subsection 2 if the carrier provides evidence
12 that a good faith effort has been made to provide the required
13 notice or if the employer has consented in writing to the
14 proposed redemption.

15 4. Fees. For all proposed redemption agreements, each
16 party to the agreement is liable for a fee of \$100 to be used to
17 defray costs incurred by the Workers' Compensation Board, the
18 Workers' Compensation Board of Magistrates, the Workers'
19 Compensation Appeal Board and the Workers' Compensation Appellate
20 Commission administering this Act; except that, in the case of
21 multiple defendants, the fee for the party defendant is \$100 to
22 be paid by the carrier covering the most recent date of injury.
23 The Workers' Compensation Board shall develop a system to provide
24 for the collection of the fee provided for by this subsection.

25 5. Use of fees. The fees collected pursuant to subsection
26 4 must be placed in the Workers' Compensation Administrative
27 Revolving Fund under section 811 and may only be used to
28 supplement and not replace appropriations for financing the
29 Workers' Compensation Board, the Workers' Compensation Board of
30 Magistrates, the Workers' Compensation Appeal Board and the
31 Workers' Compensation Appellate Commission. Money in the Workers'
32 Compensation Administrative Revolving Fund may only be used to
33 pay for costs in regard to the following specific purposes of the
34 Workers' Compensation Board, the Workers' Compensation Board of
35 Magistrates, the Workers' Compensation Appeal Board and the
36 Workers' Compensation Appellate Commission as applicable:

37 A. Education and training;

38 B. Case management; and

39 C. Hearings and claims for review.

40
41 6. Application. Subsections 2 to 5 only apply to proposed
42 redemption agreements filed after the effective date of this
43 section.

44
45 §811. Workers' Compensation Administrative Revolving Fund;
46 creation; administration and use of fund; carryover

2 1. Creation; administration and use. The Workers'
3 Compensation Administrative Revolving Fund is created in the
4 Office of the Treasurer of State. The fund is administered by
5 the Department of Labor and may be used only as prescribed in
6 section 810.

7 2. Carryover. Any money, including interest earned by the
8 fund, remaining in the fund at the end of a fiscal year must be
9 carried over in the fund to the next and succeeding fiscal years
10 and may not be credited to or revert to the General Fund.

11 §812. Approval of redemption agreement; findings; factors
12 considered in making determination; employer as party

13 1. Approval; findings. A redemption agreement may only be
14 approved by a workers' compensation commissioner or workers'
15 compensation magistrate, as applicable, if the workers'
16 compensation commissioner or workers' compensation magistrate, as
17 applicable, finds all of the following:

18 A. That the redemption agreement serves the purpose of this
19 Act, is just and proper under the circumstances and is in
20 the best interests of the injured employee;

21 B. That the redemption agreement is voluntarily agreed to
22 by all parties. If an employer does not object in writing or
23 in person to the proposed redemption agreement, the employer
24 is considered to have agreed to the proposed agreement;

25 C. That if an application has been filed pursuant to
26 section 817, it alleges a compensable cause of action under
27 this Act; and

28 D. That the injured employee is fully aware of the
29 employee's rights under this Act and the consequences of a
30 redemption agreement.

31 2. Factors. In making a determination under subsection 1,
32 factors to be considered by the workers' compensation
33 commissioner or workers' compensation magistrate, as applicable,
34 include, but are not limited to, all of the following:

35 A. Any other benefits the injured employee is receiving or
36 is entitled to receive and the effect a redemption agreement
37 might have on those benefits;

38 B. The nature and extent of the injuries and disabilities
39 of the employee;

40 C. The age and life expectancy of the injured employee;

2 D. Whether the injured employee has any health, disability
3 or related insurance;

4 E. The number of dependents of the injured employee;

6 F. The marital status of the injured employee;

8 G. Whether any other person may have any claim on the
10 redemption proceeds;

12 H. The amount of the injured employee's average monthly
14 expenses; and

16 I. The intended use of the redemption proceeds by the
18 injured employee.

20 3. Record. The factors considered by the workers'
22 compensation commissioner or workers' compensation magistrate, as
24 applicable, in making a determination under this section and the
26 responses of the injured employee thereto must be placed on the
28 record.

30 4. Employer as party. An employer is considered a party
32 for purposes under this section.

34 §813. Approval or rejection of redemption agreements and
36 lump-sum applications; review; order; appeal; finality

38 1. Approval or rejection. All redemption agreements and
40 lump-sum applications filed under the provisions of section 810
42 must be approved or rejected by the workers' compensation
44 commissioners or workers' compensation magistrates, as applicable.

46 2. Executive director's order; appeal. The Executive
48 Director of the Workers' Compensation Board may, or upon the
50 request of any of the parties to the action shall, review the
order of the workers' compensation commissioner or workers'
compensation magistrate entered under subsection 1. In the event
of review by the Executive Director of the Workers' Compensation
Board and in accordance with such rules as the Workers'
Compensation Board may prescribe and after hearing, the Executive
Director of the Workers' Compensation Board shall enter an order
as the Executive Director of the Workers' Compensation Board
determines just and proper. Any order of the Executive Director
of the Workers' Compensation Board under this subsection may be
appealed to the Workers' Compensation Commissioner or the
Workers' Compensation Appellate Commission, as applicable, within
15 days after the order is mailed to the parties.

3. Finality. Unless review is ordered or requested within 15 days of the date the order of the workers' compensation commissioner or workers' compensation magistrate, as applicable, is mailed to the parties, the order is final.

§814. Disputes or controversies concerning compensation or other benefits; submission to Workers' Compensation Board; determination of questions arising under Act; executive director as interested party; referral of claims to small claims division; notice; filing request for removal; hearing; representation; rules of evidence; record; claim exceeding \$2,000; finality of decision; request for hearing

1. Submission to board. Any dispute or controversy concerning compensation or other benefits must be submitted to the Workers' Compensation Board and all questions arising under this Act must be determined by the Workers' Compensation Board or a workers' compensation commissioner or workers' compensation magistrate, as applicable. The Executive Director of the Workers' Compensation Board may be an interested party in all workers' compensation cases in questions of law.

2. Submission to small claims division. Any claim for which an application under section 817 must be referred to a small claims division of the Workers' Compensation Board if the claimant requests in writing that it be referred and the claim is:

A. For \$2,000 or less and concerns a definite period of time and the employee has returned to work;

B. For \$2,000 or less and is for medical benefits only; or

C. For \$2,000 or less, as determined by the Workers' Compensation Board, with regard to any dispute or controversy.

3. Notice; request for removal. Upon a claim being referred to the small claims division, the Workers' Compensation Board shall notify the carrier and any other opposing parties of that referral. A party opposing the claim, within 30 days of the notification being sent, may file with the Workers' Compensation Board a request in writing that the claim be removed from the small claims division and be set for hearing under section 817. Upon receipt of the written request, the claim must be removed from the small claims division and set for hearing.

4. Hearing. A workers' compensation magistrate or workers' compensation commissioner, as applicable, shall hear a matter referred to the small claims division.

2 5. Representation. The parties to a matter heard in the
3 small claims division may represent themselves or be represented
4 by an authorized agent but may not be represented by an attorney.
5 If a party is represented by an attorney, the matter must be
6 removed from the small claims division and set for a hearing
7 under section 817.

8 6. Rules of evidence. The rules of evidence as applied in
9 a nonjury civil case in circuit court must be followed as far as
10 practicable, but a workers' compensation magistrate or workers'
11 compensation commissioner, as applicable, may admit and give
12 probative effect to evidence of a type commonly relied upon by
13 reasonably prudent persons in the conduct of their affairs.
14 Depositions may not be used as evidence. Medical reports may be
15 used as evidence.

16 7. Record. A record of a hearing may not be made in the
17 small claims division.

18 8. Claim exceeding \$2,000. If it is determined by the
19 workers' compensation magistrate or workers' compensation
20 commissioner, as applicable, or the parties before a decision is
21 rendered, that the claim exceeds \$2,000, the matter must be
22 removed from the small claims division and set for a hearing
23 under section 817 unless the parties agree in writing that the
24 matter must be heard in the small claims division.

25 9. Finality. A workers' compensation magistrate's or
26 workers' compensation commissioner's decision as to any dispute
27 or controversy in a matter heard in the small claims division is
28 final and nonappealable in the absence of fraud.

29 10. Request for hearing. The parties to a matter decided
30 under subsections 2 to 9 may request a hearing under section 817
31 with respect to any other dispute or controversy for which there
32 has not been a workers' compensation magistrate's or workers'
33 compensation commissioner's decision in the small claims division.

34 **§815. Out-of-state injuries; jurisdiction, benefits**

35 The Workers' Compensation Board has jurisdiction over all
36 controversies arising out of injuries suffered outside this State
37 when the injured employee is a resident of this State at the time
38 of injury and the contract of hire was made in this State. Such
39 an employee or the employee's dependents are entitled to the
40 compensation and other benefits provided by this Act.

41 **§816. Workers' compensation benefits received under law of**
42 **another state for same personal injury; credit**

2 If an employee or the employee's dependents receive workers'
3 compensation benefits from an employer, a carrier, a principal or
4 a subcontractor under the law of another state for the same
5 personal injury for which benefits are payable under this Act,
6 the amount recovered under the law of the other state, whether
7 paid or to be paid in future installments, must be credited
8 against the benefits payable under this Act.

10 **§817. Setting case for mediation or hearing; hearing; order and**
11 **opinion**

12 1. Mediation or hearing. Except as otherwise provided for
13 under this Act, upon the filing with the Workers' Compensation
14 Board by any party in interest of an application in writing
15 stating the general nature of any claim as to which any dispute
16 or controversy may have arisen, the case must be set for
17 mediation or hearing, as applicable. A workers' compensation
18 commissioner or workers' compensation magistrate, as applicable,
19 shall hear a case that is set for hearing.

20 2. Hearing; opinion. For cases in which an application for
21 a hearing under this section is filed after the effective date of
22 this section, the workers' compensation magistrate, in addition
23 to a written order, shall file a concise written opinion stating
24 the reasoning for the order including any findings of fact and
25 conclusions of law. The order and opinion must be part of the
26 record of the hearing.

28 **§818. Inquiries and investigations; evidence; place of hearing;**
29 **filing order with Workers' Compensation Board;**
30 **stipulations; modification or correction of errors;**
31 **order of Workers' Compensation Board**

32 The workers' compensation commissioner or workers'
33 compensation magistrate, as applicable, at the hearing of the
34 claim shall make such inquiries and investigations as that person
35 determines necessary. A claimant must prove entitlement to
36 compensation and benefits under this Act by a preponderance of
37 the evidence. The hearing must be held at the locality where the
38 injury occurred and the order of the workers' compensation
39 commissioner or workers' compensation magistrate, as applicable,
40 must be filed with the Workers' Compensation Board. If the
41 parties stipulate within 30 days to modify or correct errors in
42 the decision issued, the magistrate or commissioner shall modify
43 or correct errors in the decision in accordance with those
44 stipulations. All such stipulations must comply with the
45 provisions of this Act. Unless a claim for review is filed by a
46 party within 30 days, the order stands as the order of the
47 Workers' Compensation Board.

48 **§819. Granting further time to claim review; repeal**
49

2 1. Additional time. For sufficient cause shown, the appeal
board, for a matter that is to be before the appeal board, may
4 grant further time in which to claim a review under section 818.

6 2. Repeal. This section is repealed pursuant to section
219, subsection 11.

8
10 §820. Liability of carrier or fund; determination; reimbursement
of carrier or fund

12 1. Determination. The liability of a carrier or fund
regarding a claim under this Act must be determined by the
14 workers' compensation commissioner or workers' compensation
magistrate, as applicable, at the time of the award of benefits.

16 2. Reimbursement. If a carrier or fund originally
18 determined to be liable pursuant to subsection 1 is subsequently
determined not to be liable, or not to the same extent as
20 originally determined, that carrier or fund must be reimbursed by
the liable party or parties with interest at 12% per annum.

22 §821. Process and procedure; oaths; subpoenas; examination of
24 books and records; contempt; application to circuit court

26 Process and procedure under this Act must be as summary as
reasonably may be. The Executive Director of the Workers'
28 Compensation Board, workers' compensation commissioners, workers'
compensation magistrates, arbitrators and the Workers'
30 Compensation Board have the power to administer oaths, subpoena
witnesses and to examine such parts of the books and records of
32 the parties to a proceeding as relate to questions in dispute.
Any witness who refuses to obey a subpoena, who refuses to be
34 sworn or testify or who fails to produce any papers, books or
documents touching any matter under investigation or any witness,
36 party or attorney who is guilty of any contempt while in
attendance at any hearing held under this Act may be punished as
38 for contempt of court; for this purpose an application may be
made to any Superior Court within whose jurisdiction the offense
40 is committed and for which purpose the court is given
jurisdiction.

42 §822. Statement of injured employee; copy; admissibility as
44 evidence

46 If the employer, carrier or any agent of either takes a
statement from an injured employee, the statement may not be used
48 as evidence against the employee unless a copy of the statement
is given to the employee at the time it is taken.

50 §823. Cost of hearing; fees of attorneys and physicians;

2 disagreement as to fees; application for hearing; order;
3 review; maximum attorney's fees; rules; special order
4 awarding fees; computation of attorney's fees; limitation
5 on fees; reduction in fees

6 1. Costs and fees allowed; disagreement. The cost of a
7 hearing, including the cost of taking stenographic notes of the
8 testimony presented at the hearing, not exceeding the taxable
9 costs allowed in actions at law in the Superior Courts of this
10 State, must be fixed by the Workers' Compensation Board and paid
11 by the State as other expenses of the State are paid. The fees
12 and payment of fees of all attorneys and physicians for services
13 under this Act are subject to the approval of a workers'
14 compensation commissioner or workers' compensation magistrate, as
15 applicable. In the event of disagreement as to such fees, an
16 interested party may apply to the Workers' Compensation Board for
17 a hearing. After an order by the workers' compensation
18 commissioner or workers' compensation magistrate, as applicable,
19 review may be had by the Workers' Compensation Board if a request
20 is filed within 15 days. Thereafter the Workers' Compensation
21 Board's order may be reviewed by the Workers' Compensation Appeal
22 Board or the Workers' Compensation Appellate Commission, as
23 applicable, on request of an interested party, if a request is
24 filed within 15 days.

25 2. Maximum attorney's fees. The Workers' Compensation
26 Board, by rule, may prescribe maximum attorney's fees and the
27 manner in which the amount may be determined or paid by the
28 employee; but the maximum attorney's fees prescribed by the
29 Workers' Compensation Board may not be based on a weekly benefit
30 amount after coordination that is higher than 2/3 of the state
31 average weekly wage at the time of the injury. For claims in
32 which an application under section 817 is filed, the maximum
33 attorney's fee must be based on the coordinated workers'
34 compensation benefit amount according to a contingency fee
35 schedule, as provided for under rules adopted pursuant to this
36 Act, but if this would result in a fee of less than \$500, the
37 claimant may agree to pay a sum, as specified in a written
38 agreement between the claimant and the attorney prior to the
39 filing of an application for hearing, so that the total fee
40 received by the attorney would be not more than \$500. When fees
41 are requested in excess of that provided by rule, the Executive
42 Director of the Workers' Compensation Board may award the fees by
43 special order. In the computation of attorney's fees for a case
44 in which an application under section 817 is filed and decided by
45 the Workers' Compensation Appellate Commission, the fees must be
46 assessed on not more than 104 weeks of the period the matter was
47 pending before the commission. This limitation on fees applies
48 only to weekly compensation and does not apply to the period of
49 time the matter was pending review before the Superior Court or
50 Supreme Court.

2 **3. Reduction in attorney's fees.** The Workers' Compensation
4 Board is authorized to adopt rules calling for reductions in
6 attorney's fees in cases where applications for hearing have been
8 dismissed, or where, in the discretion of the workers'
10 compensation commissioner or workers' compensation magistrate, as
12 applicable, such action is appropriate.

14 **§824. Review by appeal board; procedure; appeal**

16 If a claim for review of a matter to be reviewed by the
18 Workers' Compensation Appeal Board is filed, the appeal board
20 shall promptly review the order, together with the records of the
22 hearing. The appeal board may hear the parties, together with
24 such additional evidence as it may allow and shall file its order
26 with the records of the proceedings. It is the duty of the appeal
28 board to announce in writing its findings of fact and conclusions
30 of law. The issuance of written opinions giving reasons therefor
32 is at the discretion of the appeal board and individual members
34 of the appeal board. If the employer or carrier files a claim
36 for review with the appeal board, or appeals to the Superior
38 Court or the Supreme Court, a copy of the testimony, depositions
40 and other documents necessary for the appeal must be furnished by
42 the employer or carrier to the employee or the employee's
44 attorney.

46 **§825. Filing claim for review; time; copy of testimony,**
48 **depositions and other documents**

50 **1. Claim requirements.** Except as otherwise provided in
2 this Act, a claim for review of a case for which an application
4 under section 817 is filed after the effective date of this
6 section must be filed with the Workers' Compensation Appellate
8 Commission. A claim for review must be filed with the commission
10 not more than 30 days after the date the order of the workers'
12 compensation magistrate, Workers' Compensation Board or the
14 Executive Director of the Workers' Compensation Board is sent to
16 the parties. For sufficient cause shown, the commission may grant
18 further time in which to claim a review.

20 **2. Documents.** If the employer or carrier files a claim for
22 review to the Workers' Compensation Appellate Commission, or
24 appeals to the Superior Court or the Supreme Court, a copy of the
26 testimony, depositions and other documents necessary for the
28 appeal must be furnished by the employer or carrier to the
30 employee or the employee's attorney.

32 **§826. Filing claim for review of case pending review by Workers'**
34 **Compensation Appeal Board for 3 or more years**

2 For any case that has been pending review by the Workers'
3 Compensation Appeal Board for 3 or more years, the parties may
4 file a claim for review with the Workers' Compensation Appellate
5 Commission. The appellate commission may accept or deny a claim
6 for review filed pursuant to this section. Any review of a claim
7 pursuant to this section must be according to the law applicable
8 to reviews conducted by the appeal board.

10 **§827. Findings of fact conclusive; questions of law**

12 The findings of fact made by the Workers' Compensation
13 Appeal Board acting within its powers, in the absence of fraud,
14 are conclusive. The Superior Court and the Supreme Court have
15 power to review questions of law involved in any final order of
16 the appeal board, if application is made by the aggrieved party
17 within 30 days after such an order by any method permissible
18 under the rules of the courts or the laws of this State.

20 **§828. Hearing and decision; findings of fact; definitions;**
21 **transcript and brief; copies; reply brief; cross appeal**
22 **and brief; specifications; review and decision; adoption**
23 **of order and opinion; scope of review; remand; analyses of**
24 **evidence; findings of fact conclusive; review of questions**
25 **of law**

26 1. Hearing required. Any matter for which a claim for
27 review under section 825 has been filed must be heard and decided
28 by the Workers' Compensation Appellate Commission.

30 2. Findings of fact. Findings of fact made by a workers'
31 compensation magistrate must be considered conclusive by the
32 Workers' Compensation Appellate Commission if supported by
33 competent, material and substantial evidence on the whole record.
34 As used in this subsection, "substantial evidence" means such
35 evidence, considering the whole record, as a reasonable mind will
36 accept as adequate to justify the conclusion, and "whole record"
37 means the entire record of the hearing including all of the
38 evidence in favor and all of the evidence against a certain
39 determination.

40 3. Transcript and brief. A party filing a claim for review
41 under section 825 must file a copy of the transcript of the
42 hearing within 60 days of filing the claim for review and file
43 its brief with the Workers' Compensation Appellate Commission and
44 provide any opposing party with a copy of the transcript and its
45 brief not more than 30 days after filing the transcript. For
46 sufficient cause shown, the appellate commission may grant
47 further time in which to file a transcript.

50 4. Reply brief; cross appeal. Not more than 30 days after
receiving a copy of the transcript and brief of the appealing

2 party, an opposing party must file its reply brief with the
3 appellate commission and provide a copy of the brief to the
4 appealing party. In addition to filing its reply brief within the
5 30 days, the opposing party may file a cross appeal and brief in
6 support thereof specifying the findings of fact and conclusions
7 of law contained in the record that support the position of the
8 party.

9 5. Reply brief in response to cross appeal. A party
10 responding to a cross appeal has 30 days after receiving a copy
11 of the brief in support of the cross appeal to file its reply
12 brief with the appellate commission. The reply brief must specify
13 the findings of facts and conclusions of law in the record that
14 support that party's position.

15 6. Specifications from record. A party filing a claim for
16 review under section 825 shall specify to the appellate
17 commission those portions of the record that support that party's
18 claim and any party opposing such claim shall specify those
19 portions of the record that support that party's position.

20 7. Review by panel or entire commission. Not more than 15
21 days after all briefs have been filed with the appellate
22 commission, the matter must be referred for review and decision
23 to either a panel of the appellate commission or the entire
24 appellate commission as provided for under section 222.

25 8. Adoption of order and opinion. The appellate commission
26 or a panel of the appellate commission may adopt, in whole or in
27 part, the order and opinion of the workers' compensation
28 magistrate as the order and opinion of the appellate commission.

29 9. Scope of review. The entire appellate commission or a
30 panel of the appellate commission shall review only those
31 specific findings of fact or conclusions of law that the parties
32 have requested be reviewed.

33 10. Remand. The appellate commission or a panel of the
34 appellate commission may remand a matter to a workers'
35 compensation magistrate for purposes of supplying a complete
36 record if it is determined that the record is insufficient for
37 purposes of review.

38 11. Analyses of evidence. A review of the evidence
39 pursuant to this section must include both a qualitative and
40 quantitative analysis of that evidence and ensure a full,
41 thorough and fair review thereof.

42 12. Findings of fact. The findings of fact made by the
43 appellate commission acting within its powers, in the absence of
44 fraud, are conclusive. The Superior Court and the Supreme Court

2 have the power to review questions of law involved with any final
4 order of the appellate commission, if application is made by the
6 aggrieved party within 30 days after the order by any method
8 permissible under court rules.

6 **§829. Vexatious claim or proceedings; disciplinary action**

8 The appellate commission, upon its own motion or the motion
10 of any party, may dismiss a claim for review, assess costs or
12 take other disciplinary action when it has been determined that
14 the claim or any of the proceedings with regard to the claim were
16 vexatious by reason of either of the following:

14 1. Hindrance; delay; without merit. That the claim was
16 taken for purposes of hindrance or delay or without any
18 reasonable basis for belief that there was meritorious issue to
20 be determined on appeal; or

20 2. Lack of propriety; disregard of fairness. That any
22 pleading, motion, argument, petition, brief, document or appendix
24 filed in the cause or any testimony presented in the cause was
26 grossly lacking in the requirements of propriety or grossly
28 disregarded the requirements of a fair presentation of the issues.

26 **§830. Claim for review as stay of payment; commencement and**
28 **duration of payment; withholding benefits accruing prior**
30 **to award; reimbursement of carrier; payment by carrier;**
32 **interest; payments as accrued compensation in determining**
34 **attorney's fees; medical benefits**

32 1. Payments pending review or appeal. A claim for review
34 filed pursuant to section 824, 825, 826 or 827 or section 832,
36 subsection 11 does not operate as a stay of payment to the
38 claimant of 70% of the weekly benefit required by the terms of
40 the award of the workers' compensation commissioner, workers'
42 compensation magistrate or arbitrator, as applicable. Payment
44 must commence as of the date of the workers' compensation
46 commissioner's, workers' compensation magistrate's or
48 arbitrator's award, as applicable, and continues until final
50 determination of the appeal or for a shorter period if specified
in the award. Benefits accruing prior to the award must be
withheld until final determination of the appeal. If the weekly
benefit is reduced or rescinded by a final determination, the
carrier is entitled to reimbursement in a sum equal to the
compensation paid pending the appeal in excess of the amount
finally determined. Reimbursement must be paid upon audit and
proper voucher from the Second Injury Fund established in chapter
5. If the award is affirmed by a final determination, the carrier
shall pay all compensation that has become due under the
provisions of the award, less any compensation already paid.
Interest may not be paid on amounts paid pending final

2 determination. Payments made to the claimant during the appeal
3 period are considered as accrued compensation for purposes of
4 determining attorney's fees under the rules of the Workers'
5 Compensation Board.

6 2. Medical payments. A claim for review filed pursuant to
7 section 825 or section 832, subsection 11 of a case for which an
8 application under section 817 is filed does not operate as a stay
9 of providing medical benefits required by the terms of the award.
10 Medical benefits must be provided as of the date of the award and
11 continue until final determination of the appeal or for a shorter
12 period if specified in the award. Benefits accruing prior to the
13 award must be withheld until final determination of the appeal.
14 If the benefit amount is reduced or rescinded by a final
15 determination, the carrier must be reimbursed for the amount of
16 the expenses incurred in providing the medical benefits pending
17 the appeal in excess of the amount finally determined.
18 Reimbursement must be paid upon audit and proper voucher from the
19 General Fund. If the award is affirmed by a final determination,
20 the carrier shall provide all medical benefits that have become
21 due under the provisions of the award, less any benefits already
22 provided for. Interest may not be paid on amounts paid pending
23 final determination.

24 **§831. Presentation of certified copy of order to Superior Court;**
25 **judgment**

26
27 Any party may present a certified copy of an order of a
28 workers' compensation commissioner, workers' compensation
29 magistrate, an arbitrator, the Executive Director of the Workers'
30 Compensation Board, the Workers' Compensation Appeal Board or the
31 Workers' Compensation Appellate Commission in any compensation
32 proceeding to the Superior Court for the county in which the
33 injury occurred or to the Superior Court for the County of
34 Kennebec if the injury was sustained outside this State. The
35 court, after 7 days' notice to the opposite party or parties,
36 shall render judgment in accordance with the order unless proof
37 of payment is made. The judgment has the same effect as though
38 rendered in an action tried and determined in the court and must
39 be entered and docketed with like effect.

40
41 **§832. Hearing by arbitrator; qualifications of arbitrator;**
42 **adherence to civil rules of evidence; testimony; record;**
43 **transcript; costs; place of hearing; briefs; order;**
44 **opinion; findings of fact; review of questions of law;**
45 **voluntary arbitration; fee of arbitrator**

46
47 1. Upon application for hearing. Any case for which an
48 application for a hearing under section 817 has been filed may be
49 heard by one arbitrator mutually agreed upon in writing by the
50 parties.

2 2. Upon dispute or controversy for appeal. If a dispute or
3 controversy is to be reviewed by the Workers' Compensation Appeal
4 Board or the Workers' Compensation Appellate Commission, one
5 arbitrator mutually agreed upon in writing by all parties may
6 hear the matter and render a decision based on that record.

8 3. Qualifications. An arbitrator provided for under this
9 section must be a member in good standing of the Maine state bar
10 or an arbitrator of the American Arbitration Association.

12 4. Rules of evidence. An arbitrator shall adhere to the
13 civil rules of evidence at an arbitration hearing if the failure
14 to do so will result in substantial prejudice to the rights of a
15 party.

16 5. Testimony; record. Testimony must be taken under oath
17 and a record of the hearing must be made. Any party, at that
18 party's expense, may provide for a written transcript of the
19 proceedings. The cost of any transcription ordered by the
20 arbitrator for the arbitrator's own use must be paid for by the
21 General Fund.

22 6. Place. The arbitrator shall conduct the hearing in the
23 county in which the injury occurred or anywhere mutually agreed
24 upon by all of the parties.

25 7. Briefs. The arbitrator may require submission of
26 written briefs within 30 days after the close of the hearing. In
27 the written briefs, each party may summarize the evidence and
28 shall specify those portions of the record that support that
29 party's claim.

30 8. Order. The arbitrator shall render an order within 30
31 days after the close of the hearing or the receipt of briefs, if
32 required. The order must be in writing and signed by the
33 arbitrator.

34 9. Opinion. In addition to the order, the arbitrator shall
35 issue a written opinion that states the reasoning for the order,
36 including any findings of fact and conclusions of law.

37 10. Record. The order and opinion are part of the record
38 of the arbitration proceeding under this chapter.

39 11. Findings of fact. The findings of fact made by the
40 arbitrator acting within the arbitrator's powers, in the absence
41 of fraud, are conclusive. The Superior Court and the Supreme
42 Court have power to review questions of law involved in any final
43 order of the arbitrator, if application is made by the aggrieved
44 party.

2 party within 30 days after the order by any method permissible
3 under court rules.

4 12. Voluntariness. Arbitration under this section is
5 voluntary.

6 13. Fees. The fee of an arbitrator under this section must
7 be paid from the General Fund in amounts as prescribed by rules
8 adopted by the Workers' Compensation Board.

10 §833. Examination by physicians; fee

11 The Workers' Compensation Board may appoint a duly qualified
12 impartial physician to examine the injured employee and to
13 report. The fee for this service is \$5 and traveling expenses,
14 but the Workers' Compensation Board may allow additional
15 reasonable amounts in extraordinary cases.

16 §834. Investigation commission; report, expenses

17 Whenever in the opinion of the Governor the provisions of
18 this Act are unfair to either employees or employers, the
19 Governor may appoint a commission to investigate thoroughly the
20 workings of the Act and report thereon to the Governor. The
21 report must be submitted by the Governor to the Legislature at
22 the next regular or special session held after the receipt of the
23 report. The report, in addition to the recommendations of the
24 report, must contain the text of needed changes or amendments to
25 place this Act upon a perfectly fair basis. The members of the
26 commission may summon witnesses, administer oaths and compel the
27 production of books and papers. The members are each entitled to
28 receive compensation at the rate of \$10 per day, together with
29 actual and necessary expenses incurred in the performance of
30 official duties, such compensation and expenses to be audited and
31 allowed by the Department of Administrative and Financial
32 Services and paid out of the General Fund. Such compensation and
33 expenses may not exceed the sum of \$3,000.

34 §835. Application of prior law

35 This Act may not affect or impair any benefit level or
36 substantive right accruing, accrued or acquired or any liability
37 developing or imposed prior to the time this Act takes effect,
38 and all such rights and liabilities are governed by the
39 provisions of former Title 39.

40 CHAPTER 9

41 VOCATIONALLY HANDICAPPED

42 §901. Definitions

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

6 1. Certificate. "Certificate" means documentation issued
8 by the certifying agency to an individual who is vocationally
10 handicapped.

12 2. Certifying agency. "Certifying agency" means the
14 Department of Education.

16 3. Fund. "Fund" means the Second Injury Fund created in
18 chapter 5. Payments made by the fund under this chapter must be
20 treated in the same manner as all other payments made by the
22 Second Injury Fund.

24 4. Vocationally handicapped. "Vocationally handicapped"
26 means a person who has a medically certifiable impairment of the
28 back or heart, is subject to epilepsy or has diabetes, and whose
30 impairment is a substantial obstacle to employment, considering
32 such factors as the person's age, education, training, experience
34 and employment rejection.

36 §902. Application for certification as vocationally handicapped;
38 investigation; issuance, expiration, renewal and validity
40 of certificate

42 An unemployed person who wishes to be certified as
44 vocationally handicapped for purposes of this chapter shall apply
46 to the certifying agency on forms furnished by the agency. The
48 certifying agency shall conduct an investigation and issue a
50 certificate to a person who meets the requirements for
vocationally handicapped certification. The certificate is valid
for 2 calendar years after the date of issuance. After expiration
of a certificate, an unemployed person may apply for a new
certificate. A certificate is not valid with an employer by whom
the person has been employed within 52 weeks before issuance of
the certificate.

42 §903. Filing by employer of information requested by certifying
44 agency

46 Upon commencement of employment of a certified vocationally
48 handicapped person, the employer shall submit to the certifying
50 agency, on forms furnished by the agency, all pertinent
information requested by the agency. The certifying agency shall
acknowledge receipt of the information. Failure to file the
required information with the certifying agency within 60 days
after the first day of the vocationally handicapped person's
employment precludes the employer from the protection and

benefits of this chapter unless such information is filed before
an injury for which benefits are payable under this Act.

§904. Rules

The director of the certifying agency shall adopt rules of
procedure for certification of vocationally handicapped persons.

**§905. Compensation for personal injury resulting in death or
disability; liability of fund**

A person certified as vocationally handicapped who receives
a personal injury arising out of and in the course of that
person's employment and resulting in death or disability must be
paid compensation in the manner and to the extent provided in
this Act; in case of death resulting from such injury, the
compensation must be paid to the person's dependents. The
liability of the employer for payment of compensation, for
furnishing medical care or for payment of expenses of the
employee's last illness and burial as provided in this Act is
limited to those benefits accruing during the period of 52 weeks
after the date of injury. Thereafter, all compensation and the
cost of all medical care and expenses of the employee's last
sickness and burial is the liability of the fund. The fund is
liable, from the date of injury, for those vocational
rehabilitation benefits provided in section 306.

**§906. Procedure and practice applicable in personal injury
proceedings; notice to fund; payments by carrier on behalf
of fund; reimbursement; direct payments by fund**

1. Notice. When a vocationally handicapped person
receives a personal injury, the procedure and practice provided
in this Act applies to all proceedings under this chapter, except
where specifically otherwise provided herein. Not less than 90
nor more than 150 days before the expiration of 52 weeks after
the date of injury, the carrier shall notify the fund whether it
is likely that compensation may be payable beyond a period of 52
weeks after the date of injury. The fund, thereafter, may review
at reasonable times such information as the carrier has regarding
the accident and the nature and extent of the injury and
disability.

2. Payment by carrier; reimbursement. If the fund does not
notify the carrier of its intent to dispute the payment of
compensation, the carrier shall continue to make payments on
behalf of the fund and must be reimbursed by the fund for all
compensation paid and pertaining to the period beyond 52 weeks
after the date of injury. However, at any time subsequent to 52
weeks after the date of injury, the fund may notify the carrier
of a dispute as to the payment of compensation. The liability of

2 the fund to reimburse the carrier is suspended 30 days thereafter
3 until such controversy is determined.

4 3. Direct payments. The obligation imposed by this section
5 on a carrier to make payments on behalf of the fund does not
6 impose an independent liability on the carrier. After a carrier
7 has established the right to reimbursement, payment must be made
8 promptly on a proper showing every 6 months. If a carrier does
9 not make the payments on behalf of the fund, the fund may make
10 the payments directly to the persons entitled to those payments.

12 §907. Dispute or controversy as to payment of compensation;
13 notice to and claim upon employer; hearing; joinder of
14 fund; notice to fund; objection; evidence; appearances;
15 order

16
17 1. Notice and claim; joinder. If an employee was employed
18 under the provisions of this chapter and a dispute or controversy
19 arises as to payment of compensation or the liability therefor,
20 the employee shall give notice to and make claim upon the
21 employer as provided in chapters 3 and 4 and apply for a hearing.
22 On motion made in writing by the employer, the Workers'
23 Compensation Board, the workers' compensation commissioner or the
24 workers' compensation magistrate, as applicable, to whom the case
25 is assigned, shall join the fund as a party defendant.

26
27 2. Notice to fund. The Workers' Compensation Board, within
28 5 days of the entry of an order joining the fund as a party
29 defendant, shall give the fund written notice thereof by
30 first-class mail. The notice must be mailed not less than 30
31 days before the date of hearing and include the names of the
32 employee and employer and the date of the alleged personal injury
33 or disability.

34
35 3. Objection; evidence. The fund, named as a defendant
36 pursuant to motion, has 10 days after the date of mailing of
37 notice of joinder to file objection to being named a party
38 defendant. On the date of the hearing at which the liability of
39 the parties is determined, the workers' compensation commissioner
40 or the workers' compensation magistrate, as applicable, first
41 shall hear arguments and take evidence concerning the joinder as
42 party defendant. If the fund has filed a timely objection and if
43 the argument and evidence warrant, the workers' compensation
44 commissioner or the workers' compensation magistrate, as
45 applicable, shall grant a motion to dismiss.

46
47 4. Appearances. At the time of the hearing, the employer
48 and the fund may appear, cross-examine witnesses, give evidence
49 and defend both on the issue of liability of the employer to the
50 employee and on the issue of the liability of the fund.

2 5. Order. The workers' compensation commissioner or the
workers' compensation magistrate, as applicable, shall enter an
4 order determining the respective liability of the employer and
the fund.

6 §908. Redemption of liability

8 After an employer has paid an employee those benefits that
have accrued during the period of 52 weeks after the date of
10 injury, the trustees may compromise the liability of the fund by
entering into a redemption of liability directly with the
12 employee if, in the judgment of the trustees, it is in the
employee's best interest to do so. Redemption of liability
14 terminates all liability, including vocational rehabilitation, of
the fund. A redemption of liability by the employer made with the
16 employee before actual payment by the employer of those benefits
that have accrued during the period of 52 weeks after the date of
18 injury eliminates all liability, including vocational
rehabilitation, of the fund.

20 §909. Reports; investigation

22 A copy of all reports required by the Workers' Compensation
24 Board of the carrier under the Workers' Compensation Board's
rules must be sent to the fund. The fund may conduct an
26 investigation of the personal injury.'

28 Further amend the bill in Part A in section 9 by striking
out all of subsection 5 (page 132, lines 30 to 52 and page 133,
30 lines 1 to 13 in L.D.) and renumbering the subsections to read
consecutively.

32 Further amend the bill in Part A by striking out all of
34 section 10 (page 133, lines 33 to 52 and page 134, lines 1 and 2
in L.D.)

36 Further amend the bill in Part A by renumbering the sections
38 to read consecutively.' '

40 Further amend the amendment on pages 8 and 9 by striking out
all of subsections 4 and 5 (page 8, lines 30 to 49 and page 9,
42 lines 1 to 31 in amendment) and inserting in their place the
following:

44 '4. Incorporation. The company must be incorporated
46 pursuant to sections 3306 to 3309. Nine incorporators
representing the 8 industry divisions established pursuant to
48 section 3712, subsection 1, paragraphs A to H, plus one at-large
member must be appointed by the Governor subject to review by the
50 joint standing committee of the Legislature having jurisdiction
over banking and insurance matters and confirmation by the

2 Legislature. The Governor shall make the appointments within 10
3 days after the effective date of this subsection.
4 Notwithstanding Title 3, section 151, the joint standing
5 committee shall complete its review of the appointments of the
6 Governor within 45 days of the Governor's written notice of the
7 appointments and the vote of the Legislature must be taken no
8 later than 15 days after the vote of the committee.

9 An incorporator may not be a lobbyist required to be registered
10 with the Secretary of State.

11 Upon appointment, the incorporators shall execute a certificate
12 of organization as required by this Title and immediately pursue
13 a certificate of authority for a mutual assessment casualty
14 insurance company.

15 The incorporators shall appoint the initial 9 policyholder
16 members of the board of directors. One member of the board of
17 directors shall serve at large. Eight members of the board of
18 directors shall represent the 8 industry or geographic divisions.

19 5. Composition of board. The board consists of up to 13
20 members. Nine members must be policyholders who purchase
21 workers' compensation coverage from the Maine Employers' Mutual
22 Insurance Company, except that the initial appointment may
23 include employers who have purchased coverage through the
24 workers' compensation residual market mechanism. Three members
25 must be persons who represent the public interest of the company
26 and must be appointed by the Governor within 30 days after a new
27 board member is authorized or a vacancy occurs, subject to review
28 by the joint standing committee of the Legislature having
29 jurisdiction over banking and insurance matters and confirmation
30 by the Legislature. Notwithstanding Title 3, section 151, the
31 designated committee shall complete its review of the
32 appointments of the Governor within 45 days of the Governor's
33 written notice of appointment and the vote of the Legislature
34 must be taken no later than 15 days after the vote of the
35 designated committee. Except for the initial selection of board
36 members under subsection 4, each division as established pursuant
37 to section 3712 must have one member on the board. One member
38 must be an at-large policyholder member elected by the board.
39 The remaining board member is the president and chief executive
40 officer who shall serve on the board of directors while employed
41 as president and chief executive officer.'

42 Further amend the amendment on page 11 by inserting after
43 the first paragraph the following:

44 'Further amend the bill by striking out all of Part E and
45 inserting in its place the following:

2 providing partial support and maintenance of the board, pay an
3 assessment on all gross direct premiums written, whether in cash
4 or in notes absolutely payable on contracts written on risks
5 located or resident in the State for workers' compensation
6 insurance, less return premiums and less all dividends paid to
7 policyholders.

8 4. Assessment on self-insured employers. Every
9 self-insured employer approved pursuant to this Title shall, for
10 the purpose of providing partial support and maintenance of the
11 board, pay an assessment on aggregate benefits paid by each
12 member pursuant to rules adopted by the Workers' Compensation
13 Board.

14 5. Amounts of premiums and losses. The Bureau of Insurance
15 shall provide to the Workers' Compensation Board the amounts of
16 gross direct workers' compensation premiums written by each
17 insurance carrier and the amounts of aggregate benefits paid by
18 each self-insurer and group self-insurer on or before August 1st
19 of each year.

20 6. Assessment levied. The assessments levied under this
21 section may not produce more than \$6,000,000 in revenues annually
22 beginning in the 1993-94 fiscal year. The Workers' Compensation
23 Board shall determine the assessments prior to March 1st and
24 shall assess each insurance company or association and
25 self-insured employer its pro rata share for expenditures during
26 the fiscal year beginning July 1st. Each insurance company or
27 association and self-insured employer shall pay the assessment on
28 or before June 1st.

29 7. Insurance company or association collections. Insurance
30 companies or associations shall bill and collect assessments
31 under this section on insured employers. Such assessments must
32 be separately stated amounts on all premium notices and may not
33 be reported as premiums for any tax or regulatory purpose or for
34 the purpose of any other law.

35 8. Violations. Any insurance company, association or
36 self-insured employer subject to this section that willfully
37 fails to pay an assessment in accordance with this section
38 commits a civil violation for which a forfeiture of not more than
39 \$500 may be adjudged for each day following the due date for
40 which payment is not made.

41 9. Deposit of funds; investment. All revenues derived from
42 assessments levied against insurance companies, associations and
43 self-insured employers described in this section must be reported
44 and paid to the Treasurer of State and credited to the Workers'
45 Compensation Board Administrative Fund. The Treasurer of State
46

2 may invest the funds in accordance with state law. All interest
3 must be paid to the fund.'

4 Further amend the bill by relettering the Parts to read
5 consecutively.'

6
7
8 **FISCAL NOTE**

9
10 This amendment may increase the costs of administering the
11 Workers' Compensation System.

12
13 The impact of the benefit changes proposed by this amendment
14 can not be estimated at this time.

15
16 **STATEMENT OF FACT**

17
18 This amendment strikes out changes to the Maine Revised
19 Statutes, Title 39-A in the amendment and also strikes out the
20 new Title 39-A as proposed in the bill and enacts in its place
21 the Michigan law with some changes. Specific deviations from
22 current Michigan law are as follows.

23
24 1. The amendment does not use the structure of the Bureau
25 of Workers' Compensation within the Department of Labor that
26 exists in Michigan. Instead, the amendment retains the board
27 structure as found in the original L.D. under Title 39-A,
28 sections 151 to 153, but includes the legislative review and
29 confirmation mechanism from the floor amendment with the
30 exception that the legislative committee must review within 45
31 days and confirmation must occur within 15 days. Accordingly,
32 the board of magistrates established in this amendment in Title
33 39-A, chapter 2 is under the jurisdiction of the Workers'
34 Compensation Board, rather than the Department of Labor, as it is
35 in Michigan. The appeals board and the appellate commission are
36 independent bodies, as they are under Michigan law.

37
38 2. Under Title 39-A, section 602, as proposed in this
39 amendment, an employer must secure insurance by either becoming a
40 self-insurer as authorized by the Workers' Compensation Board or
41 by insuring against liability with the mutual fund through the
42 Maine Employers' Mutual Insurance Company, governed by Title
43 24-A, chapter 52, rather than the State Accident Fund that exists
44 under Michigan law. The 3rd option of insuring against liability
45 with an insurer authorized to transact the business of workers'
46 compensation insurance, which exists in Michigan law, will be
47 available to Maine employers 5 years after the new workers'
48 compensation law has taken effect.

2 3. The amendment inserts maximum benefit level language
4 originating from the blue ribbon commission report, substantially
the same as proposed in the bill in Title 39-A, section 211. The
language appears in this amendment in Title 39-A, section 316.

6 4. The amendment excludes the silicosis, dust disease and
8 logging industry compensation fund that currently exists in
Michigan law.

10 5. The amendment includes language concerning the
12 discontinuance or reduction of benefits in Title 39-A, section
801, subsection 7 that appears in the floor amendment.

14 This amendment also changes the procedures for appointment
16 of incorporators and board members of the Maine Employers' Mutual
Insurance Company by making changes to Title 39-A, section 3703,
18 subsections 4 and 5 to require legislative review and
confirmation. The review must occur within 45 days and
20 confirmation must be completed within 15 days of the prior step.

22 This amendment also requires the Workers' Compensation Board
to submit legislation by March 1, 1993 to correct or amend
24 internal cross-references and make the necessary technical
changes in the Maine Revised Statutes.

26 This amendment adds a Part G to the bill that includes a
funding mechanism as it exists in the original bill in Title
28 39-A, section 154 to fund the Workers' Compensation Board, the
appeal board and the appellate commission.
30

32

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