

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

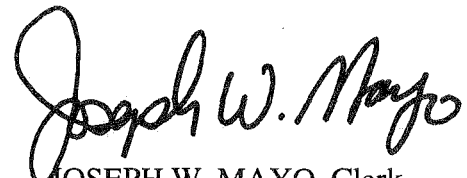
No. 462

H.P. 340

House of Representatives, January 23, 1997

**An Act to Require Employers to Pay the Legal Fees of an Employee
Who Wins a Workers' Compensation Case.**

Reference to the Committee on Labor suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative AHEARNE of Madawaska.
Cosponsored by Representatives: GOODWIN of Pembroke, HATCH of Skowhegan,
TUTTLE of Sanford and
Representatives: CLARK of Millinocket, DRISCOLL of Calais, PERRY of Bangor,
SAMSON of Jay, Senator: PARADIS of Aroostook.

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

2
4 **Sec. 1. 39-A MRSA §325, sub-§1**, as enacted by PL 1991, c. 885,
Pt. A, §8 and affected by §§9 to 11, is repealed and the
following enacted in its place:

6 1. Costs and attorney's fees. If an employee prevails in
8 any proceeding involving a controversy under this Act, the board
10 may assess the employer costs of reasonable attorney's fees and
12 witness fees whenever the witness was necessary for the proper
and expeditious disposition of the case. The employer may not be
assessed costs of attorney's fees attributable to:

14 A. Services rendered prior to the filing of the mediator's
16 written report submitted pursuant to section 313, subsection
3; or

18 B. Representation at mediation, unless the employer or
20 insurer elects to be represented by legal counsel at
mediation.

22 For the purposes of this subsection, "prevail" means to obtain or
24 retain more compensation or benefits under this Act than were
26 offered to the employee by the employer in writing by the
conclusion of mediation. If no such offer were made, "prevail"
means to obtain or retain compensation or benefits under this Act.

28 **Sec. 2. 39-A MRSA §325, sub-§§3 and 4**, as enacted by PL 1991,
c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

30 **3. Rules.** The board shall adopt rules to prescribe maximum
32 attorney's fees and the manner in which the amount is determined
and paid by the employee. The maximum attorney's fees prescribed
34 by the board in a case tried to completion may not exceed 30% of
the benefits accrued, after deducting reasonable expenses
36 incurred on behalf of the employee, or be based on a weekly
benefit amount after coordination that is higher than 2/3 of the
38 state average weekly wage at the time of injury. The board may
by rule allow attorney's fees to be increased above or decreased
40 below the amount specified in the rule when in the discretion of
the board that action is determined to be appropriate.

42 **4. Attorney's fees for lump-sum settlements.** The employer
44 may be assessed an attorney's fee based on a lump-sum settlement
for services on behalf of the employee. Attorney's fees for
46 lump-sum settlements pursuant to section 352 must be determined
as follows:

2 A. Before computing the fee, reasonable expenses incurred
on the employee's behalf must be deducted from the total
settlement, including:

- 4 (1) Medical examination fee and witness fee;
6 (2) Any other medical witness fee, including cost of
8 subpoena;
10 (3) Cost of court reporter service; and
12 (4) Appeal costs; and

14 B. The computation of the fee, based on the amount
resulting after deductions according to paragraph A, may not
16 exceed:

- 18 (1) Ten percent of the first \$50,000 of the
settlement;
20 (2) Nine percent of the first \$10,000 over \$50,000 of
22 the settlement;
24 (3) Eight percent of the next \$10,000 over \$50,000 of
the settlement;
26 (4) Seven percent of the next \$10,000 over \$50,000 of
28 the settlement;
30 (5) Six percent of the next \$10,000 over \$50,000 of
the settlement; and
32 (6) Five percent of any amount over \$90,000 of the
34 settlement.

36
38 **SUMMARY**

40 This bill requires the employer to pay the employee's
attorney's fees in workers' compensation cases in which the
42 employee ultimately receives a benefit greater than that offered
by the employer by the conclusion of mediation. The bill
essentially returns to the "prevail" standards that controlled
44 the payment of attorney's fees prior to the changes in the Maine
Workers' Compensation Act of 1992.