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L.D. 1523

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DATE: *May 21, 1997*

(Filing No. S-301)

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LABOR

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Reported by: *Majority*

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**STATE OF MAINE
SENATE
118TH LEGISLATURE
FIRST SPECIAL SESSION**

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COMMITTEE AMENDMENT "A" to S.P. 491, L.D. 1523, Bill, "An Act to Make the Workers' Compensation System More Equitable"

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Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

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Sec. 1. 39-A MRSA §151-A is enacted to read:

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§151-A. Mission statement

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The board's mission is to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation.

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Sec. 2. 39-A MRSA §152, sub-§4, as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

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4. Employment of general counsel. The board shall employ a general counsel, who is the legal adviser to the board and who shall perform such other duties as may be assigned by the board, and assistants as necessary. The general counsel and assistants to the general counsel are unclassified employees, serve at the pleasure of the board and are not subject to the Civil Service Law.

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The board shall appoint a staff attorney to advise the advocates pursuant to section 153-A. The staff attorney is subject to the

Civil Service Law and works under the direction of the general counsel.

Sec. 3. 39-A MRSA §153, sub-§9 is enacted to read:

9. Audit and enforcement. The board shall establish an audit, enforcement and monitoring program by July 1, 1998, to ensure that all obligations under this Act are met, including the requirements of section 359. The functions of the audit and enforcement program include, but are not limited to, auditing timeliness of payments and claims handling practices of insurers, self-insurers and 3rd-party administrators; determining whether insurers, self-insurers and 3rd-party administrators are unreasonably contesting claims; and ensuring that all reporting requirements to the board are met. The program must be coordinated with the abuse investigation unit established by section 153, subsection 5 as appropriate. The program must monitor activity and conduct audits pursuant to a schedule adopted by the board. At the end of each calendar quarter, the executive director shall prepare a compliance report summarizing the results of the audits and reviews conducted pursuant to this subsection. The executive director shall submit the quarterly compliance report to the board, the Bureau of Insurance and the Director of the Bureau of Labor Standards within the Department of Labor. An annual summary must be provided to the Governor and to the joint standing committees of the Legislature having jurisdiction over labor and banking and insurance matters by February 15th of each year. The quarterly compliance reports and the annual summaries must be made available to the public following distribution.

Sec. 4. 39-A MRSA §153-A is enacted to read:

§153-A. Advocate program

1. Advocate program established. The board shall establish an advocate program to provide assistance to certain employees and employers in resolving controversies under this Act. Qualified employees who proceed to mediation or formal hearing are entitled to representation by an advocate in any proceeding before the board and any required meeting with the employer. Qualified employers who proceed to formal hearing are entitled to representation by an advocate at the formal hearing or any required meeting with the employee if the employer has waived the right to counsel at the conclusion of mediation. The board shall ensure that employees and employers who are entitled to an advocate pursuant to this section are provided appropriate advocacy services.

2 2. Definitions. For the purposes of this section, the
3 following terms have the following meanings:

4 A. "Qualified employee" means an employee who, with respect
5 to an injury occurring on or after January 1, 1993, has
6 participated in the troubleshooter program and has not
7 informally resolved the dispute and has demonstrated to the
8 board that legal counsel has not been retained.

10 B. "Qualified employers" means those employers who, with
11 respect to a claim pending against them for an injury
12 occurring on or after January 1, 1993, have waived their
13 right to be represented by legal counsel at the conclusion
14 of mediation.

16 C. "Legal counsel" means any person who has graduated from
17 law school or who is admitted to the bar of any state.

18 3. Advocates. The executive director shall hire advocates
19 under the authority of section 152, subsection 3 subject to the
20 Civil Service Law, who must be qualified by experience and
21 training.

24 A. The minimum qualifications for employment as an advocate
25 must include at least the following:

26 (1) A 6-year combination of appropriate experience,
27 education and training in advocacy or dispute
28 resolution;

30 (2) Knowledge of administrative, adjudicatory or
31 workers' compensation laws, rules and procedures;

34 (3) Knowledge of legal documents, court procedures and
35 rules of evidence; and

36 (4) Knowledge of medical and legal terminology and
37 practices with respect to workers' compensation.

40 B. The board shall ensure that advocates receive
41 appropriate and ongoing education and training.

44 C. An advocate may not represent before the board any
45 insurer, self-insurer or 3rd-party administrator for a
46 period of 2 years after terminating employment with the
47 board.

48 4. Duties of advocates. Advocates have the following
49 duties with respect to a qualified employee or qualified employer
50 to whom the advocate is assigned:

2 A. Assisting in matters regarding workers' compensation
3 claims, including negotiations;

4
5 B. Acting as an information resource on laws, decisions,
6 rules, policies and procedures of the board;

7
8 C. Assisting and advocating to obtain appropriate benefits,
9 rehabilitation, return to work and employment security
10 services;

11
12 D. Assisting by meeting with or otherwise communicating
13 with insurers, employers and health care and other
14 authorized providers;

15
16 E. Assisting and advocating on behalf of qualified
17 employees in mediation and following unsuccessful mediation
18 or assisting and advocating on behalf of qualified employers
19 following unsuccessful mediation; and

20
21 F. Maintaining confidentiality of information and
22 communications with respect to the assistance and
23 representation provided to qualified employees and qualified
24 employers.

25
26 5. Legal advice to advocates. The board's general counsel
27 shall assign a staff attorney as necessary to advise advocates on
28 the preparation of cases at the formal hearing stage.

29
30 6. Implementation. The executive director shall establish
31 policies to govern the management of the advocacy program and to
32 ensure the program is implemented equitably and promptly. With
33 respect to the rights and responsibilities of employers and
34 employees under the advocate program, the executive director is
35 authorized to adopt rules as necessary including rules to
36 maintain the confidentiality of information provided to advocates
37 and to prevent conflicts of interest of advocates. Rules adopted
38 pursuant to this subsection are routine technical rules as
39 defined in Title 5, chapter 375, subchapter II-A.

40
41 Sec. 5. 39-A MRS §154, sub-§6, as amended by PL 1995, c. 59,
42 §4, is further amended to read:

43
44 6. Assessment levied. The assessments levied under this
45 section may not be designed to produce more than \$6,000,000 in
46 revenues annually beginning in the 1995-96 fiscal year or more
47 than \$6,600,000 annually beginning in the 1997-98 fiscal year.
48 Assessments collected that exceed \$6,000,000 beginning in the
49 1995-96 fiscal year or \$6,600,000 beginning in the 1997-98 fiscal
50 year by a margin of more than 10% must be refunded to those who

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2 paid the assessment. Any amount collected above the board's
4 allocated budget and within the 10% margin must be used to create
6 a reserve of up to 1/4 of the board's annual budget. Any
8 collected amounts or savings above the allowed reserve must be
10 used to reduce the assessment for the following fiscal year. The
12 board shall determine the assessments prior to May 1st and shall
14 assess each insurance company or association and self-insured
16 employer its pro rata share for expenditures during the fiscal
18 year beginning July 1st. Each self-insured employer shall pay
20 the assessment on or before June 1st. Each insurance company or
22 association shall pay the assessment in accordance with
24 subsection 3.

24 **Sec. 6. 39-A MRS §205, sub-§9, ¶B**, as enacted by PL 1991, c.
26 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

28 B. In all circumstances other than the return to work or
30 increase in pay of the employee under paragraph A, if the
32 employer, insurer or group self-insurer determines that the
34 employee is not eligible for compensation under this Act,
36 the employer, insurer or group self-insurer may discontinue
38 or reduce benefits only in accordance with this paragraph.

40 (1) If no order or award of compensation or
42 compensation scheme has been entered, the employer,
44 insurer or group self-insurer may discontinue or reduce
46 benefits by sending a certificate by certified mail to
48 the employee and to the board, together with any
50 information on which the employer, insurer or group
self-insurer relied to support the discontinuance or
reduction. The employer may discontinue or reduce
benefits no earlier than 21 days from the date the
certificate was mailed to the employee. The
certificate must advise the employee of the date when
the employee's benefits will be discontinued or
reduced, as well as other information as prescribed by
the board, including the employee's appeal rights.

40 (2) If an order or award of compensation or
42 compensation scheme has been entered, the employer,
44 insurer or group self-insurer shall petition the board
46 for an order to reduce or discontinue benefits and may
48 not reduce or discontinue benefits until ~~the-matter-has~~
50 ~~been--finally--resolved--through--the--dispute--resolution~~
~~procedures--of--this--Act,--any--appeal--proceedings--have~~
~~been---completed---~~ and an order of reduction or
discontinuance has been entered by the board.
Compensation must be reduced or discontinued from the
date of the board's order or decision as provided in
section 324, subsection 1.

2 Sec. 7. 39-A MRSA §313, sub-§3-A is enacted to read:

4 3-A. Legal representation at hearing. If mediation does
6 not successfully resolve all pending issues, at the close of
8 mediation the employer must notify the board and the employee
10 whether the employer will be represented by legal counsel in
12 later meetings. An employer who elects to be represented by
14 legal counsel in later meetings is responsible for payment of
16 attorney's fees for the employee in accordance with section 325-A
18 if the employee retained an attorney and prevails.

20 A. At the close of mediation, the mediator shall provide
22 the employer with a form on which to indicate whether the
24 employer will be represented by legal counsel in later
26 meetings. The mediator shall explain to both parties that
28 if the employer elects to be represented, the employer may
30 be liable for all or part of the employee's attorney's fees
32 in accordance with section 325-A if the employee prevails.
34 The mediator shall also explain that, if the employer waives
36 the right to be represented by an attorney, the employee
38 will be responsible for the employee's attorney's fees even
40 if the employee prevails on all of the issues. The mediator
42 shall explain the employer's election to the employee and
44 explain the employee's options. The mediator shall inform
46 the employee of the availability of an advocate assigned by
48 the board whether or not the employer retains counsel. A
50 written summary of the parties' rights and responsibilities
 regarding representation must be provided to both parties.

 B. If the employer fails to make the election at the close
 of mediation, the board shall proceed as if the employer
 elected to be represented by counsel. An employer who
 waived the right to be represented by legal counsel is
 precluded from being represented by legal counsel at any
 deposition, hearing, proceeding or other required meeting
 with the employee without the consent of the employee and
 the board for good cause shown.

This subsection applies to legal representation at arbitration if
 the parties have agreed to arbitration.

 Sec. 8. 39-A MRSA §317, as enacted by PL 1991, c. 885, Pt. A,
 §8 and affected by §§9 to 11, is amended to read:

 §317. Appearance by authorized officer, employee or advocate

 The appearance before the board of an authorized officer,
 employee, advocate or representative of a party in any hearing,
 action or proceeding in which the party is participating or

2 desires to participate is not an unauthorized practice of law and
is not subject to any criminal sanction. If the appearance of
4 such an officer, employee, advocate or representative prevents
the efficient processing of any proceeding, the board, in its
6 discretion, may remove that person from representation of the
party.

8 **Sec. 9. 39-A MRSA §324, sub-§1**, as enacted by PL 1991, c. 885,
Pt. A, §8 and affected by §§9 to 11, is amended to read:

10
12 **1. Order or decision.** The employer or insurance carrier
shall make compensation payments within 10 days after the receipt
14 of notice of an approved agreement for payment of compensation or
within 10 days after any order or decision of the board awarding
16 compensation. If the board enters a decision awarding
compensation and an appeal is filed with the Law Court pursuant
18 to section 322, payments may not be suspended while the appeal is
pending. If the board, after a review of incapacity pursuant to
20 section 205, subsection 9, paragraph B, subparagraph (2), issues
an order or decision suspending or reducing compensation to an
22 employee, compensation must be suspended or reduced in accordance
with and from the date of the board's order or decision,
24 notwithstanding any motion for findings of fact or conclusions of
law filed pursuant to section 318 or any petition or appeal to
26 the Law Court as provided in section 322. The employer or
insurer may recover from an employee payments made pending appeal
to the Law Court if and to the extent that the Law Court has
28 decided that the employee was not entitled to the compensation
paid. The board has full jurisdiction to determine the amount of
30 overpayment, if any, and the amount and schedule of repayment, if
any. The board, in determining whether or not repayment should be
32 made and the extent and schedule of repayment, shall consider the
financial situation of the employee and the employee's family and
34 may not order repayment that would work hardship or injustice.

36 **Sec. 10. 39-A MRSA §325**, as enacted by PL 1991, c. 885, Pt.
A, §8, and affected by §§9 to 11, is repealed.

38 **Sec. 11. 39-A MRSA §325-A** is enacted to read:

40 **§325-A. Legal expenses and standards for legal representatives**

42
44 **1. Attorney's fees.** When an employee prevails in a
controverted proceeding under this Act, the employee's attorney
may recover from the employer a reasonable fee for those legal
46 services that were necessary to sustain the employee's position
on the issue on which the employee prevailed.

48
50 **2. Limitations.** The employer may only be assessed under
subsection 1 for employee legal services rendered after the date

2 of mediation. The employer may not be assessed under subsection
3 1 for any employee legal services if the employer waived the
4 right to be represented by legal counsel at the conclusion of
5 mediation and the employer, in fact, was not represented by legal
6 counsel at any proceeding or required meeting with the employee.

7 3. Standards. An attorney for any party may not be
8 compensated for services that do not contribute to the prompt,
9 just and expedient resolution of claims under this Act. Upon
10 petition by the employer, the employee, an attorney or any other
11 interested party, a legal charge incurred by any party may be
12 reviewed by the board and confirmed, adjusted or denied. Among
13 the factors that determine the reasonableness of legal charges
14 are the following:

15 A. The efficiency and expediency with which counsel brought
16 the controversy to resolution;

17 B. The time and labor that was necessary for proper
18 management of the dispute;

19 C. The difficulty or complexity of the issues presented;

20 D. The skill required to perform the service properly;

21 E. The experience and ability of the attorney performing
22 the service;

23 F. The level of responsibility assumed;

24 G. The severity of the injury and disability;

25 H. The amount in controversy;

26 I. The significance of the personal, medical and vocational
27 issues at stake for the employee and the employee's
28 dependents;

29 J. The comparative time and effort expended by the opponent;

30 K. The end result achieved; and

31 L. Other factors determined significant by the hearing
32 officer.

33 4. Maximum rates. For legal fees that are based on an
34 hourly charge, the rate per hour may not exceed the rate
35 established by the board by rule.
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2 5. Penalties. If any legal representative has overcharged
3 for services rendered under this Act, the board may order
4 deletion and, as necessary, repayment of the amount overcharged.
5 In addition, the board may order that a penalty be paid to the
6 party overcharged in an amount up to twice the amount of the
7 overcharge.

8 If an attorney or a representative for a party impedes the
9 efficient, expedient or just resolution of a dispute under this
10 Act, the board may assess against that person a civil penalty in
11 an amount not to exceed \$1,000 payable to the board and
12 collectible by civil action. The board may prohibit the person
13 from appearing in proceedings before the board and may take such
14 other action as is authorized by section 309, subsection 4;
15 section 313, subsection 4; and sections 317, 323 and 324.

16 6. Settlement fees payable by employee. If an attorney
17 negotiates the final resolution of a claim in the best interests
18 of the employee, the attorney may collect from the employee's
19 settlement proceeds a fee based on a percentage of the net amount
20 recovered. After first deducting any out-of-pocket costs that
21 are chargeable to the employee, the percentage may not exceed 10%
22 of the net present value of the settlement up to 150 times the
23 State's average weekly wage prevailing at the time of the
24 employee's injury plus 5% of the remaining net value of the
25 settlement.

26 7. Definitions. For purposes of this section:

27 A. A controversy is initiated on the date when a petition,
28 a notice of controversy or a certificate under section 205,
29 subsection 9 is mailed, served or filed; and

30 B. "Prevail" means to obtain or retain more compensation or
31 benefits under this Act than were offered to the employee by
32 the employer in writing at the conclusion of mediation. If
33 no offer was made, "prevail" means to obtain or retain
34 compensation or benefits under this Act.

35 8. Application. This section applies to all cases in which
36 the date of injury falls after December 31, 1992, except that:

37 A. Provisions relating to controversies apply to those
38 controversies for which mediation occurs after the effective
39 date of this section; and

40 B. Provisions relating to settlements apply only to those
41 settlements that are approved after the effective date of
42 this section.

2 Unless otherwise governed by this section, the amount of the
3 attorney's fee is determined by the law in effect at the time the
4 employee's injury occurred.

5 **Sec. 12. 39-A MRSA §352**, as amended by PL 1995, c. 560, Pt.
6 G, §25, is further amended to read:

7 **§352. Settlements**

8
9
10 **1. Agreement.** An insurer, self-insurer or self-insured
11 group and an employer and employee may by agreement discharge any
12 liability for compensation, in whole or in part, by the
13 employer's payment of an amount to the employee if:

14
15 A. The insurer, the employer, the employee or the
16 employee's dependents petition the board for an order
17 commuting all payments for future benefits to a lump sum or
18 a series of structured settlement payments;

19
20 B. Six months' time has elapsed from the date of an injury;
21 and

22
23 C. The provisions of this section have been met and the
24 agreement has been approved by the board.

25
26 **2. Policy.** The board shall by rule adopt policies
27 establishing the circumstances under which ~~lump-sum--payments~~
28 settlements may be approved under this section. The circumstances
29 must be at least as restrictive as those set forth in this
30 section.

31
32 **3. Review.** Before approving any ~~lump-sum~~ settlement, the
33 board shall review the following factors with the employee:

34
35 A. The employee's rights under this Act and the effect a
36 ~~lump-sum~~ settlement would have on those rights, including,
37 if applicable, the effect of the release of an employer's
38 liability for future medical expenses;

39
40 B. The purpose for which the settlement is requested;

41
42 C. The employee's post-injury earnings and prospects,
43 considering all means of support, including the projected
44 income and financial security resulting from proposed
45 employment, self-employment or any business venture or
46 investment and the prudence of consulting with a financial
47 or other expert to review the likelihood of success of these
48 projects; and

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2 D. Any other information, including the age of the employee
and of the employee's dependents, that would bear upon
4 whether the settlement is in the best interest of the
claimant.

6 4. Procedure. The board shall initiate the review within
14 days of receipt of a request for a settlement review. An
8 employer is considered a party for the purposes of this section.

10 5. Approval. The board may not approve any lump-sum
settlement unless there is an agreement pursuant to subsection 1
12 or, in the event the employer refuses to agree to the settlement,
the board has reviewed the proposed agreement and finds it to be
14 in the best interests of the parties, and unless:

16 A. The employee has fully participated in the review
process, except in circumstances amounting to good cause;

18 B. The board finds the settlement to be in the employee's
20 best interest in light of the factors reviewed with the
employee under subsection 3; and

22 C. In the case of a lump-sum settlement that requires the
24 release of an employer's liability for future medical
expenses of the employee, the board finds that the parties
26 would be unlikely to reach agreement on the amount of the
lump-sum payment without the release of liability for future
28 medical expenses; and

30 D. Payments in larger settlements are structured or
32 deferred over time so that proceeds received in any calendar
year will not exceed 50 times the state's average weekly
34 wage unless special circumstances justify receipt of
payments on a more compressed schedule.

36 6. Monitoring of settlement recipients. The board shall
establish and maintain a program to monitor the postsettlement
38 employment experience of employees who settle their claims
pursuant to this section to help develop future policy. The
40 Department of Labor shall cooperate with the board in the
establishment and operation of this monitoring program.

42 Sec. 13. 39-A MRSA §358, as corrected by RR 1993, c. 1, §140,
44 is repealed.

46 Sec. 14. 39-A MRSA §358-A is enacted to read:

48 §358-A. Reports and data collection

1 1. Workers' compensation system annual report. The board,
2 in consultation with the Superintendent of Insurance and the
3 Director of the Bureau of Labor Standards within the Department
4 of Labor, shall submit an annual report to the Governor and the
5 joint standing committees of the Legislature having jurisdiction
6 over labor and banking and insurance matters by February 15th of
7 each year regarding the status of the workers' compensation
8 system. At a minimum, the report must include an assessment of
9 the board's implementation of the following provisions:

10 A. The number of individual cases monitored to ensure the
11 provision of benefits in accordance with law, pursuant to
12 section 152, subsection 10;

13 B. The number of cases monitored to ensure the payments are
14 initiated within the time limits of sections 205 and 324 and
15 the adequacy of compensation provided pursuant to section
16 153, subsection 1;

17 C. The number of investigations performed pursuant to
18 section 153, subsection 7;

19 D. The number of lump-sum settlements cases monitored and a
20 summary of postsettlement employment experience pursuant to
21 section 352, subsection 6;

22 E. The number of audits performed and an assessment of
23 compliance with this Act based on audit results pursuant to
24 section 359, subsection 1;

25 F. The number of penalties assessed and the reasons for the
26 assessments pursuant to section 205, subsection 3; section
27 313, subsection 4; section 324, subsections 2 and 3; section
28 359, subsection 2; and section 360; and

29 G. The results of the monitoring program giving side-by-side
30 information compilations for the past 5 years pursuant
31 section 359, subsection 3.

32 The report must contain specific data regarding compliance,
33 including benchmarks measuring individual insurer's,
34 self-insurer's, or 3rd-party administrator's compliance with the
35 provisions of this Act and any penalties assessed. Benchmarks
36 must be developed by the board with input from insurers,
37 self-insurers and 3rd-party administrators and other parties the
38 board considers appropriate. The board shall also report on the
39 utilization of troubleshooters, advocates and retained legal
40 counsel, with correlating outcomes.

2 2. Data collection and interpretation. The Director of the
3 Bureau of Labor Standards within the Department of Labor, the
4 Superintendent of Insurance and the board's executive director
5 shall meet at least 3 times a year with appropriate staff and
6 other state agencies to review the areas of data collection
7 pertaining to the workers' compensation system, as well as to
8 interpret and coordinate appropriate data collection programs to
9 carry out the purposes of this Act. The Director of the Bureau
10 of Labor Standards shall chair this group.

11 The Director of the Bureau of Labor Standards, the Superintendent
12 of Insurance and the board's executive director shall provide
13 jointly or individually any further occasional reports that they
14 consider necessary to the improved function and administration of
15 this Act and the occupational disease laws.

16 3. Occupational injuries and illnesses. The Director of the
17 Bureau of Labor Standards within the Department of Labor shall
18 provide an annual report concerning the number and character of
19 occupational injuries and illnesses and their effects, as
20 required under Title 26, section 42.

21 The board's executive director shall assist the Director of the
22 Bureau of Labor Standards to ensure that necessary information
23 regarding the administrative processes, costs and other factors
24 related to this Act and the occupational disease laws are
25 included in the report. The Commissioner of Human Services and
26 the Director of the Bureau of Health shall provide the Director
27 of the Bureau of Labor Standards with any information in their
28 possession related to occupational injuries and illnesses.

29 4. Loss costs data. The Superintendent of Insurance shall
30 provide the following information to the Director of the Bureau
31 of Labor Standards within the Department of Labor on an annual
32 basis:

33 A. A tabulation of premium and loss costs paid and incurred
34 on an accident-year basis regarding those insurance
35 companies authorized by the Bureau of Insurance to write
36 workers' compensation in the State; and

37 B. Similar data for self-insurance workers' compensation
38 plans regulated by the Bureau of Insurance.

39 **Sec. 15. 39-A MRSA §359, sub-§2,** as enacted by PL 1991, c.
40 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

41 **2. Penalty.** In addition to any other penalty assessment
42 permitted under this Act, the board may assess civil penalties
43 not to exceed \$10,000 upon finding, after hearing, that an
44

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2 employer, insurer or 3rd-party administrator for an employer has
 3 engaged in a pattern of questionable claims handling techniques
 4 or repeated unreasonably contested improper handling of claims or
 5 has repeatedly contested claims without good cause or without
 6 proper investigation. The board shall certify its findings to
 7 the Superintendent of Insurance, who shall take appropriate
 8 action so as to bring any such practices to a halt. This
 9 certification by the board is exempt from the provisions of the
 10 Maine Administrative Procedure Act. Upon complaint by any
 11 interested party or on its own motion, the Superintendent of
 12 Insurance may directly investigate, make findings and assess
 13 penalties for practices for which the board has not assessed a
 14 penalty. Penalties assessed by the superintendent are payable to
 the Workers' Compensation Board Administrative Fund.

16 Sec. 16. Allocation. The following funds are allocated from
 17 Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Bureau of Insurance		
Positions - Legislative Count	(2,000)	(2,000)
Personal Services	\$65,831	\$92,175
All Other	4,500	6,000
Capital Expenditures	6,000	
Allocates funds for one and 1/2 additional Senior Claims Examiner positions, 1/2 additional Staff Attorney position and operating costs necessary to administer certain responsibilities pertaining to penalties under the workers' compensation law.		
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION		
TOTAL	\$76,331	\$98,175

WORKERS' COMPENSATION BOARD

Administration - Workers'
Compensation Board

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2	Positions - Legislative Count	(10.000)	(10.000)
	Personal Services	\$303,002	\$429,275
	All Other	169,075	170,725
4	Allocates funds for 5		
6	additional Advocate		
	positions, one additional		
8	Staff Attorney position, 2		
	additional Auditor positions,		
10	2 additional Clerk Typist III		
	positions, reclassification		
12	of 5 and 1/2 Advocate		
	positions from range 22 to		
14	range 24 and operating costs		
	necessary to administer new		
16	responsibilities under the		
	workers' compensation law.		
18	WORKERS' COMPENSATION BOARD		
20	TOTAL	<u>\$472,077</u>	<u>\$600,000</u>
22	TOTAL ALLOCATIONS	<u>\$548,408</u>	<u>\$698,175'</u>

24 Further amend the bill by inserting at the end before the
 26 summary the following:

28 **FISCAL NOTE**

		1997-98	1998-99
30			
32	APPROPRIATIONS/ALLOCATIONS		
34	Other Funds	\$548,408	\$698,175
36	REVENUES		
38	Other Funds	\$676,331	\$698,175

40 The Workers' Compensation Board will require additional
 42 Other Special Revenue allocations of \$472,077 and \$600,000 in
 44 fiscal years 1997-98 and 1998-99, respectively, for 5 additional
 46 Advocate positions, one additional Staff Attorney position, 2
 48 additional Auditor positions, 2 additional Clerk Typist III
 positions, reclassification of 5 1/2 Advocate positions from
 range 22 to range 24 and operating costs necessary for
 administering new requirements of the workers' compensation law.

50 Increasing the board's annual assessment cap will allow the
 board to collect an additional \$600,000 in dedicated annual

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revenues beginning in fiscal year 1997-98. These additional revenues will cover the board's increased costs.

The assessment on the State of Maine as a self-insurer could increase by as much as \$26,000 annually. The premium rates established for state departments and agencies may need to be increased in order to pay the additional assessment. The increase will have an insignificant impact on rates.

The expansion of legal representation provisions will increase the State's workers' compensation costs. The impact on the current department and agency premium rates and the General Fund appropriations and Highway Fund allocations that will be required can not be determined at this time.

The Bureau of Insurance within the Department of Professional and Financial Regulation will require additional Other Special Revenue allocations of \$76,331 and \$98,175 in fiscal years 1997-98 and 1998-99, respectively, for 1 1/2 additional Senior Claims Examiner positions, one additional half-time Staff Attorney position and operating costs necessary to administer certain responsibilities pertaining to prohibited practices under the workers' compensation law. These additional costs with corresponding revenue increases will not exceed the revenue available to the bureau under its statutory assessment cap.

The assessment and collection of certain penalties by the Bureau of Insurance will result in insignificant increases of dedicated revenue to the Workers' Compensation Board Administrative Fund.

The Department of Labor will incur some minor additional costs to work with the Workers' Compensation Board and the Bureau of Insurance to collect certain data and to submit a required report to the Legislature. These costs can be absorbed within the department's existing budgeted resources.'

SUMMARY

This amendment is the majority report and replaces the original bill. It creates an advocate program that is available to employees following troubleshooting and is available to employers after unsuccessful mediation. The amendment includes a mission statement for the Workers' Compensation Board that stresses the need to serve employers and employees fairly, to prevent disputes and expedite the payment of claims. The amendment also requires the Workers' Compensation Board to establish an audit, enforcement and monitoring program, publish quarterly compliance reports and to include certain specified

2 data in its annual report. The amendment also provides that, if
4 the board orders the suspension of benefits following a previous
6 order allowing benefits, the employer must discontinue benefits
8 while the employee's appeal to the Law Court is in progress. The
10 amendment also changes the provisions regarding settlements to
12 encourage structured settlements when the settlement amount is
14 large. The amendment changes the penalty provision to allow the
16 superintendent of insurance to investigate and penalize for
18 improper claims-handling practices.

20 The advocate program is established and advocates are
22 available to assist and advocate on behalf of the employee or the
24 employer in any proceeding or required meeting with the other
26 party. Advocates are available to employees following
28 troubleshooting and to employers after unsuccessful mediation.
30 The qualifications for the advocates and their duties and
32 authorities are specified in the amendment. The amendment
34 requires the Workers' Compensation Board to hire a staff attorney
36 to assist the advocates in preparing cases for formal hearing.

38 The amendment requires that at the conclusion of mediation
40 the employer must inform the board and the employee whether the
42 employer will be represented by legal counsel at any subsequent
44 proceeding or meeting with the employee. If the employer elects
46 to be represented, the employee is entitled to have the
48 employee's attorney's fees paid for by the employer if the
50 employee hires an attorney and prevails. The amendment defines
"prevail" as obtaining more compensation or benefits than were
offered by the employer in writing at the conclusion of
mediation. The employee may use an advocate even if the employer
is represented. The mediator is required to inform both parties
of their rights at the conclusion of mediation. If the employee
prevails and is entitled to have the attorney's fees paid for by
the employer, only those services rendered after the date of
mediation are allowable.

The amendment requires the board to implement its audit and
enforcement responsibilities under current laws by July 1, 1998
by establishing an audit, enforcement and monitoring program to
ensure that all obligations under the Workers' Compensation Act
are met. The amendment requires the board to include in its
annual report to the Legislature information on the workers'
compensation system, with specific data regarding compliance of
insurers, self-insurers and 3rd-party administrators with the
current law. The annual report must also include an analysis of
the board's performance in the management of case administration,
payment monitoring, investigations, lump-sum settlements, audits
and penalties. The executive director of the board is required to
produce and distribute quarterly compliance reports.

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2 The amendment raises the board's existing assessment cap
4 from \$6,000,000 to \$6,600,000 for fiscal years 1997-98 and beyond
to permit the hiring of advocates and auditors. The amendment
also adds an allocation section and a fiscal note to the bill.