

MAINE STATE LEGISLATURE

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L.D. 1523

DATE: *May 21, 1997*

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LABOR

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STATE OF MAINE
SENATE
118TH LEGISLATURE
FIRST SPECIAL SESSION

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

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

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

§151-A. Mission statement

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.

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:

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.

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

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

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

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

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

34 §153-A. Advocate program

36 1. Advocate program established. The board shall establish
37 an advocate program to provide assistance to qualified employees
38 who proceed to mediation and formal hearing.

40 2. Qualified employee. For purposes of this section,
41 "qualified employee" means an employee who, with respect to an
42 injury occurring on or after January 1, 1993, has participated in
43 the troubleshooter program and has not informally resolved the
44 dispute and has demonstrated to the board that legal counsel has
45 not been retained.

46 3. Advocates. The executive director shall hire
47 advocates under the authority of section 152, subsection 3,
48 subject to the Civil Service Law, who must be qualified by
49 experience and training.

- 2 A. The minimum qualifications for employment as an advocate
3 must include at least the following:
- 4 (1) A 6-year combination of appropriate experience,
5 education and training in advocacy or dispute
6 resolution;
- 7 (2) Knowledge of administrative, adjudicatory or
8 workers' compensation laws, rules and procedures;
- 9 (3) Knowledge of legal documents, court procedures and
10 rules of evidence; and
- 11 (4) Knowledge of medical and legal terminology and
12 practices with respect to workers' compensation.
- 13 B. The board shall ensure that advocates receive appropriate
14 and ongoing education and training.
- 15 C. An advocate may not represent before the board any
16 insurer, self-insurer or 3rd-party administrator for a
17 period of 2 years after terminating employment with the
18 board.
- 19 4. Duties of advocates. Advocates have the following duties:
- 20 A. Assisting qualified employees in matters regarding
21 workers' compensation claims, including negotiations;
- 22 B. Acting as an information resource to qualified employees
23 on laws, decisions, rules, policies and procedures of the
24 board;
- 25 C. Assisting and advocating on behalf of qualified
26 employees to obtain appropriate rehabilitation, return to
27 work and employment security services;
- 28 D. Meeting with or otherwise communicating with insurers,
29 employers and health care and other authorized providers in
30 order to assist qualified employees;
- 31 E. Assisting and advocating on behalf of qualified
32 employees in any mediation or hearing proceeding under the
33 jurisdiction of the board; and
- 34 F. Maintaining confidentiality of information and
35 communications with respect to the assistance and
36 representation provided to qualified employees.
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2 5. Legal advice to advocates. The board's general counsel
3 shall assign a staff attorney as necessary to advise advocates on
4 the preparation of qualified employees' cases at the formal
5 hearing stage.

6 Sec. 5. 39-A MRSA §154, sub-§6, as amended by PL 1995, c. 59,
7 §4, is further amended to read:

8 6. Assessment levied. The assessments levied under this
9 section may not be designed to produce more than \$6,000,000 in
10 revenues annually beginning in the 1995-96 fiscal year or more
11 than \$6,600,000 annually beginning in the 1997-98 fiscal year.
12 Assessments collected that exceed \$6,000,000 beginning in the
13 1995-96 fiscal year or \$6,600,000 beginning in the 1997-98 fiscal
14 year by a margin of more than 10% must be refunded to those who
15 paid the assessment. Any amount collected above the board's
16 allocated budget and within the 10% margin must be used to create
17 a reserve of up to 1/4 of the board's annual budget. Any
18 collected amounts or savings above the allowed reserve must be
19 used to reduce the assessment for the following fiscal year. The
20 board shall determine the assessments prior to May 1st and shall
21 assess each insurance company or association and self-insured
22 employer its pro rata share for expenditures during the fiscal
23 year beginning July 1st. Each self-insured employer shall pay
24 the assessment on or before June 1st. Each insurance company or
25 association shall pay the assessment in accordance with
26 subsection 3.

27 Sec. 6. 39-A MRSA §317, as enacted by PL 1991, c. 885, Pt. A,
28 §8 and affected by §§9 to 11, is amended to read:

29 **§317. Appearance by authorized officer, employee or advocate**

30 The appearance before the board of an authorized officer,
31 employee, advocate or representative of a party in any hearing,
32 action or proceeding in which the party is participating or
33 desires to participate is not an unauthorized practice of law and
34 is not subject to any criminal sanction. If the appearance of
35 such an officer, employee, advocate or representative prevents
36 the efficient processing of any proceeding, the board, in its
37 discretion, may remove that person from representation of the
38 party.

39 Sec. 7. 39-A MRSA §358, as corrected by RR 1993, c. 1, §140,
40 is repealed.

41 Sec. 8. 39-A MRSA §358-A is enacted to read:

42 **§358-A. Reports and data collection**

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

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

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

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

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

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

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

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

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

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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. 9. Allocation. The following funds are allocated from
40 Other Special Revenue to carry out the purposes of this Act.

41 1997-98 1998-99

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WORKERS' COMPENSATION BOARD

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Administration - Workers' Compensation Board

6	Positions - Legislative Count	(10,000)	(10,000)
	Personal Services	\$303,002	\$429,275
8	All Other	169,075	170,725

10 Allocates funds for 5
12 additional Advocate
14 positions, one additional
16 Staff Attorney position, 2
18 additional Auditor positions,
20 2 additional Clerk Typist III
22 positions, reclassification
of 5 1/2 Advocate positions
from range 22 to range 24 and
operating costs necessary to
administer new
responsibilities under the
workers' compensation law.

24 **WORKERS' COMPENSATION BOARD**
26 **TOTAL**

<u>\$472,077</u>	<u>\$600,000'</u>
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28 Further amend the bill by inserting at the end before the
summary the following:

30
32 **FISCAL NOTE**

34
36 **APPROPRIATIONS/ALLOCATIONS**

38	Other Funds	\$472,077	\$600,000
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40 **REVENUES**

42	Other Funds	\$600,000	\$600,000
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44
46 The Workers' Compensation Board will require additional
48 Other Special Revenue allocations of \$472,077 and \$600,000 in
50 fiscal years 1997-98 and 1998-99, respectively, for 5 additional
Advocate positions, one additional Staff Attorney position, 2
additional Auditor positions, 2 additional Clerk Typist III
positions, reclassification of 5 1/2 Advocate positions from

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2 range 22 to range 24 and operating costs necessary for
administering new requirements of the workers' compensation law.

4 Increasing the board's annual assessment cap will allow the
board to collect an additional \$600,000 in dedicated annual
6 revenues beginning in fiscal year 1997-98. These additional
revenues will cover the board's increased costs.

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

14 The Department of Labor and the Bureau of Insurance within
16 the Department of Professional and Financial Regulation will
incur some minor additional costs to work with the Workers'
18 Compensation Board to collect certain data and submit required
reports to the Legislature. These costs can be absorbed within
20 the agencies' existing budgeted resources.'

22
24 **SUMMARY**

This amendment is the minority report of the committee and
26 replaces the original bill. The amendment establishes an advocate
program to assist employees with their workers' compensation
28 claims through the formal hearing stage. The amendment includes
a mission statement for the Workers' Compensation Board that
30 stresses the need to serve employers and employees fairly, to
prevent disputes and expedite the payment of claims. The
32 amendment also requires the Workers' Compensation Board to
establish an audit, enforcement and monitoring program, publish
34 quarterly compliance reports and to include certain specified
data in its annual report.

36 The advocate program is established to assist employees who
38 have participated in the troubleshooter program and have not
resolved their dispute. The advocates are available to assist
40 injured employees through the workers' compensation system after
the troubleshooting phase. The qualifications for the advocates
42 and their duties are specified in the amendment. The duties of
the advocates include assisting employees regarding their claims,
44 helping employees obtain appropriate rehabilitation services or
return to work opportunities and advocating on behalf of the
46 employees during mediation or the formal hearings. The Workers'
Compensation Board is required to hire a staff attorney to advise
48 the advocates in the preparation of their cases at the formal
hearing stage. The advocate program does not prohibit or

2 restrict the use of private counsel or union representation
before the Workers' Compensation Board.

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

18 The amendment raises the board's existing assessment cap
20 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
22 also adds a fiscal note and an allocation section to the bill.