

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 2073

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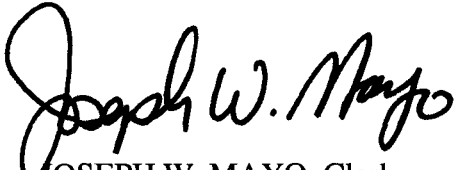
H.P. 1452

House of Representatives, March 30, 1999

**An Act to Amend the Workers' Compensation Laws Pertaining to  
Attorney's Fees.**

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Reference to the Committee on Labor suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative HATCH of Skowhegan.  
Cosponsored by Representative MITCHELL of Vassalboro,  
Senator TREAT of Kennebec and  
Representatives: AHEARNE of Madawaska, BERRY of Livermore, BRYANT of Dixfield,  
CLARK of Millinocket, DUPLESSIE of Westbrook, JABAR of Waterville, RINES of  
Wiscasset, STANLEY of Medway.

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

2  
4           **Sec. 1. 39-A MRSA §313, sub-§6** is enacted to read:

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

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

34           **B.** If the employer fails to make the election at the close  
36 of mediation, the board shall proceed as if the employer  
38 elected to be represented by counsel. An employer who  
40 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.

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

46           **Sec. 2. 39-A MRSA §325**, as enacted by PL 1991, c. 885, Pt. A,  
48 §8 and affected by §§9 to 11, is repealed.

48           **Sec. 3. 39-A MRSA §325-A** is enacted to read:

50           **§325-A. Legal expenses and standards for legal representatives**

2           1. Definition. As used in this section, unless the context  
otherwise indicates, the following term has the following meaning.

4  
6           A. "Prevail" means to obtain or retain more compensation or  
benefits under this Act than were offered to the employee by  
the employer in writing at the conclusion of mediation. If  
no offer was made, "prevail" means to obtain or retain  
compensation or benefits under this Act.

10           2. Controversy initiated. For purposes of this section, a  
12 controversy is initiated on the date that a petition, a notice of  
controversy or certificate under section 205, subsection 9 is  
14 mailed, served or filed.

16           3. Attorney's fees. When an employee prevails in a  
18 controverted proceeding under this Act, the employee's attorney  
may recover from the employer a reasonable fee for those legal  
services that were necessary to sustain the employee's position  
20 on the issue on which the employee prevails.

22           4. Limitations. The employer may only be assessed under  
24 subsection 2 for employee legal services rendered after the close  
of mediation. The employer may not be assessed under subsection  
2 for any employee legal services if the employer waived the  
26 right to be represented by legal counsel at the conclusion of  
mediation and the employer, in fact, was not represented by legal  
28 counsel at any proceeding or required meeting with the employee.

30           5. Standards. An attorney for any party may not be  
32 compensated for services that do not contribute to the prompt,  
just and expedient resolution of claims under this Act. Upon  
petition by the employer, the employee, an attorney or any other  
34 interested party, a legal charge incurred by any party may be  
reviewed by the board and confirmed, adjusted or denied. Among  
36 the factors that determine the reasonableness of legal charges  
are the following:

38           A. The efficiency and expediency with which counsel brought  
40 the controversy to resolution;

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

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

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

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

- 2           F. The level of responsibility assumed;
- 4           G. The severity of the employee's injury and disability;
- 6           H. The amount of claim in controversy;
- 8           I. The significance of the personal, medical and vocational  
10 issues at stake for the employee and the employee's  
dependents;
- 12          J. The comparative time and effort expended by the opponent;
- 14          K. The end result achieved; and
- 16          L. Other factors determined significant by the hearing  
18 officer.

20          6. Maximum rates. For legal fees that are based on an  
22 hourly charge, the rate per hour may not exceed the rate  
24 established by the board by rule. Rules adopted pursuant to this  
subsection are routine technical rules pursuant to Title 5,  
chapter 375, subchapter II-A.

26          7. Penalties. If any legal representative has overcharged  
28 for services rendered under this Act, the board may order  
30 deletion and, as necessary, repayment of the amount overcharged.  
In addition, the board may order that a penalty be paid to the  
party overcharged in an amount up to twice the amount of the  
overcharge.

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

40          8. Settlement fees payable by employee. If an attorney  
42 negotiates the final resolution of a claim in the best interests  
44 of the employee, the attorney may collect from the employee's  
settlement proceeds a fee based on a percentage of the net amount  
46 recovered. After first deducting any out-of-pocket costs that  
are chargeable to the employee, the percentage may not exceed 10%  
48 of the net present value of the settlement up to 150 times the  
State's average weekly wage prevailing at the time of the  
50 employee's injury plus 5% of the remaining net value of the  
settlement.

