

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2076

H.P. 1455

House of Representatives, March 30, 1999

**An Act to Move the Monitoring, Auditing and Enforcement of Workers'
Compensation Payments to the Bureau of Insurance.**

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative STANLEY of Medway.
Cosponsored by Senator MICHAUD of Penobscot and
Representatives: BERRY of Livermore, BRYANT of Dixfield, MARTIN of Eagle Lake,
SAXL of Bangor, SAXL of Portland.

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

4 **Sec. 1. 24-A MRSA §2164-D, sub-§9**, as enacted by PL 1997, c.
634, Pt. A, §1, is amended to read:

6 **9. Applicability.** This section does not apply to claims
involving ~~workers' compensation~~, medical malpractice, fidelity,
8 suretyship or boiler and machinery insurance.

10 **Sec. 2. 24-A MRSA c. 26-A** is enacted to read:

12 **CHAPTER 26-A**

14 **WORKERS' COMPENSATION**
16 **MONITORING, AUDITING AND ENFORCEMENT**

18 **§2398. Development of audit, enforcement and monitoring program**

20 The superintendent shall establish an audit, enforcement and
22 monitoring program to ensure that all obligations under Title
24 39-A are met. The functions of the audit and enforcement program
26 include, but are not limited to, auditing timeliness of payments
28 and claims handling practices of insurers, self-insurers and
30 3rd-party administrators; determining whether insurers,
32 self-insurers and 3rd-party administrators are unreasonably
34 contesting claims; and ensuring that all reporting requirements
36 are met.

30 **§2398-A. Auditing of claims**

32 1. Audits. The superintendent shall audit claims records,
34 including files held by insurers, self-insurers and 3rd-party
36 administrators, on an ongoing basis to determine whether
38 insurers, self-insured employers and 3rd-party administrators
40 have met their obligations under Title 39-A and to identify
42 disputes that arose, the reasons for disputes, the method and
44 manner of their resolution, the costs incurred, the reasons for
46 attorney involvement and the services rendered by the attorneys.

48 2. Notice of assessment. If, any as a result of an
50 examination and after providing an opportunity for a hearing, the
52 superintendent determines that any compensation, interest,
54 penalty or other obligation is due and unpaid to an employee,
56 dependent or service provider, the superintendent shall issue a
58 notice of assessment detailing the amounts due and unpaid in each
60 case and shall order the amounts paid to the unpaid party or
62 parties.

64 3. Penalty. In addition to any other penalty permitted
66 under law, the superintendent may assess civil penalties not to
68 exceed \$10,000 upon finding, after hearing, that an employer,
70 insurer or 3rd-party administrator for an employer has engaged in
72 unlawful practices.

2 a pattern of questionable claims-handling techniques or repeated
3 unreasonably contested claims.

4 **§2398-B. Compliance reports; annual summary**

6 At the end of each calendar quarter, the superintendent
7 shall prepare a compliance report summarizing the results of the
8 audits and reviews conducted pursuant to this chapter and submit
9 the quarterly compliance reports to the Workers' Compensation
10 Board and the Director of the Bureau of Labor Standards within
11 the Department of Labor. An annual summary must be provided to
12 the Governor and to the joint standing committees of the
13 Legislature having jurisdiction over labor and banking and
14 insurance matters by February 15th of each year. The quarterly
15 compliance reports and the annual summaries must be made
16 available to the public following distribution.

18 **§2398-C. Monitoring**

20 1. Cases. The superintendent shall monitor cases to ensure
21 that:

22 A. Payments are initiated within the time limits
23 established in Title 39-A, section 205; and

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

27 The superintendent shall require the employee, employer or
28 insurer to provide any information reasonably necessary to
29 monitor cases, including, but not limited to, pre-injury and
30 post-injury wage statements.

31 2. System. The superintendent shall implement a monitoring
32 program to evaluate and compare the cost, utilization and
33 performance of the workers' compensation system for each calendar
34 year beginning with 1988. The information compiled must include
35 the number of injuries occurring and claims filed as compared to
36 employment levels, the type and cost of the benefits provided,
37 attorney involvement and litigation levels and the long-term,
38 post-injury economic status of injured workers, as well as any
39 other data that is actuarially valid and can be utilized to
40 accomplish the purposes of the Maine Workers' Compensation Act of
41 1992.

42 3. Rulemaking; recommended legislation. The superintendent
43 may adopt rules relating to this chapter. These rules are major
44 substantive rules pursuant to Title 5, chapter 375, subchapter
45 II-A. The superintendent may also recommend legislation needed
46 to improve the workers' compensation system to the Governor and
47 the Legislature.

2 §2398-D. Reports and data collection

4 1. Workers' compensation system annual report. The
5 superintendent, in consultation with the Workers' Compensation
6 Board and the Director of the Bureau of Labor Standards within
7 the Department of Labor, shall submit an annual report to the
8 Governor and the joint standing committees of the Legislature
9 having jurisdiction over labor and banking and insurance matters
10 by February 15th of each year regarding the status of the
11 workers' compensation system. At a minimum, the report must
12 include the following data:

14 A. The number of individual cases monitored to ensure the
15 provision of benefits in accordance with law, pursuant to
16 section 2398-C;

18 B. The number of cases monitored to ensure the payments are
19 initiated within the time limits required and the adequacy
20 of compensation provided;

22 C. The number of investigations performed pursuant to Title
23 39-A, section 153, subsection 7;

24 D. The number of lump-sum settlement cases monitored and a
25 summary of post-settlement employment experience pursuant to
26 Title 39-A, section 352, subsection 6;

28 E. The number of audits performed and an assessment of
29 compliance with the Maine Workers' Compensation Act of 1992
30 based on audit results pursuant to section 2398-A;

32 F. The number of penalties assessed and the reasons for the
33 assessments pursuant to section 2398-A and pursuant to Title
34 39-A, section 205, subsection 3; section 313, subsection 4;
35 section 324, subsections 2 and 3; and section 360; and

38 G. The results of the monitoring program giving comparative
39 information compilations for the past 5 years pursuant to
40 section 2398-C, subsection 2.

42 The report must contain specific data regarding compliance,
43 including benchmarks measuring compliance with the Maine Workers'
44 Compensation Act of 1992 by individual insurers, self-insurers
45 and 3rd-party administrators, and any penalties assessed for
46 noncompliance. Benchmarks must be developed by the
47 superintendent with input from insurers, self-insurers, 3rd-party
48 administrators and other parties the superintendent considers
49 appropriate. The superintendent shall also report on the
50 utilization of troubleshooters, advocates and retained legal
51 counsel, with correlating outcomes.

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§2398-E. Penalties

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1. Reporting violations. The superintendent may assess a civil penalty not to exceed \$100 for each violation against any person:

A. Who fails to file or complete any report or form required by this chapter, by Title 39-A or by rules adopted under either; or

B. Who fails to file or complete such a report or form within the time limits specified in this chapter, in Title 39-A or in rules adopted under either.

2. General authority. The superintendent may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this chapter or Title 39-A, for fraud or for intentional misrepresentation. The superintendent may also require that person to repay any compensation received through such a violation, through fraud or through intentional misrepresentation or to pay any compensation withheld through such a violation, through fraud or through intentional misrepresentation, with interest at the rate of 10% per year.

3. Appeal. Imposition of a penalty under this section is final agency action subject to appeal to the Superior Court, as provided in Title 5, chapter 375, subchapter VII. Notwithstanding Title 5, section 11004, execution of a penalty assessed under this section is stayed during the pendency of any appeal under this subsection. The Attorney General shall represent the superintendent in any appeal under this subsection or the superintendent may retain private counsel for that purpose.

4. Enforcement and collection. Penalties assessed under this section are in addition to any other remedies available under this chapter or Title 39-A and are enforceable by the Superior Court.

A. The Attorney General shall prosecute any action necessary to recover penalties assessed under this section or the superintendent may retain private counsel for that purpose.

B. If any person fails to pay any penalty assessed under this section and enforcement by the Superior Court is necessary, that person shall pay the costs of prosecuting the action in Superior Court, including reasonable attorney's fees. If the failure to pay was without due cause, any penalty assessed on that person under this section must be doubled.

2 C. All penalties assessed under this section are payable to
3 the General Fund.

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5 5. Not an element of loss. An insurance carrier's payment
6 of any penalty assessed under this section may not be considered
7 an element of loss for the purpose of establishing rates for
8 workers' compensation insurance.

10 **Sec. 3. 39-A MRSA §152, sub-§10**, as enacted by PL 1991, c.
11 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

12

13 **10. Case administration.** The board shall assume an active
14 and forceful role in the administration of this Act to ensure
15 that the system operates efficiently and with maximum benefit to
16 both employers and employees. ~~It shall continually monitor~~
17 ~~individual cases to ensure that benefits are provided in~~
18 ~~accordance with this Act.~~

20 **Sec. 4. 39-A MRSA §153, sub-§§1 and 4**, as enacted by PL 1991,
21 c. 885, Pt. A, §8 and affected by §§9 to 11, are repealed.

22

23 **Sec. 5. 39-A MRSA §153, sub-§9**, as enacted by PL 1997, c. 486,
24 §3, is repealed.

26 **Sec. 6. 39-A MRSA §154, sub-§1**, as enacted by PL 1991, c. 885,
27 Pt. A, §8 and affected by §§9 to 11, is amended to read:

28

29 **1. Use of fund.** All money credited to the Workers'
30 Compensation Board Administrative Fund must be used to support
31 the activities of the board and of the Bureau of Insurance
32 pursuant to Title 24-A, chapter 26-A and for no other purpose.
33 Any balance remaining continues from year to year as a fund
34 available for the purposes set out in this section and for no
35 other purpose.

36

37 **Sec. 7. 39-A MRSA §358-A, sub-§1**, as enacted by PL 1997, c.
38 486, §8, is repealed.

40 **Sec. 8. 39-A MRSA §§359 and 360**, as enacted by PL 1991, c.
41 885, Pt. A, §8 and affected by §§9 to 11, are repealed.

42

43 **Sec. 9. Transition.** The duties of the Workers' Compensation
44 Board relating to the auditing, monitoring and enforcement of
45 obligations under the Maine Workers' Compensation Act of 1992 are
46 transferred to the Bureau of Insurance.

48 **1.** All rules and procedures in effect, in operation or
49 adopted on the effective date of this Act remain in effect until
50 rescinded, revised or amended by the proper authority.

