

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to S.P. 741, L.D. 2100, Bill, "An Act to Allow Workers' Compensation Board Advocates to Prioritize and Decline Cases"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Representation of Employees in the Workers' Compensation System'

Further amend the bill by inserting after section 1 the following:

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

6. Legal representation at hearing. If mediation does not successfully resolve all pending issues, at the close of mediation the employer must notify the board and the employee 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.

A. At the close of mediation, the mediator shall provide the employer with a form on which to indicate whether the employer will be represented by legal counsel in future meetings. The mediator shall explain to both parties that, if the employer elects to be represented, the employer may be liable for all or part of the employee's attorney's fees if the employee prevails in accordance with section 325-A.

2 The mediator shall also explain that, if the employer
3 waives the right to be represented by an attorney, the
4 employee is responsible for the employee's attorney's fees
5 even if the employee prevails on all of the issues. The
6 mediator shall explain the employer's election to the
7 employee and explain the employee's options. The mediator
8 shall inform the employee of the availability of an advocate
9 assigned by the board whether or not the employer retains
10 counsel. A written summary of the parties' rights and
11 responsibilities regarding representation must be provided
12 to both parties.

13
14 B. If the employer fails to make the election at the close
15 of mediation, the board shall proceed as if the employer
16 elected to be represented by counsel. An employer who
17 waived the right to be represented by legal counsel is
18 precluded from being represented by legal counsel at any
19 deposition, hearing, proceeding or other required meeting
20 with the employee without the consent of the employee and
21 the board for good cause shown.

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

24
25 Sec. 3. 39-A MRSA §325, as enacted by PL 1991, c. 885, Pt. A,
26 §8 and affected by §§9 to 11, is repealed.

27
28 Sec. 4. 39-A MRSA §325-A is enacted to read:

29
30 §325-A. Legal expenses and standards for legal representatives

31
32 1. Definition. As used in this section, unless the context
33 otherwise indicates, the following term has the following meaning.

34
35 A. "Prevail" means to obtain or retain more compensation or
36 benefits under this Act than were offered to the employee by
37 the employer in writing at the conclusion of mediation. If
38 no offer was made, "prevail" means to obtain or retain
39 compensation or benefits under this Act.

40
41 2. Controversy initiated. For purposes of this section, a
42 controversy is initiated on the date that a petition, a notice of
43 controversy or certificate under section 205, subsection 9 is
44 mailed, served or filed.

45
46 3. Attorney's fees. When an employee prevails in a
47 controverted proceeding under this Act, the employee's attorney
48 may recover from the employer a reasonable fee for those legal
49 services that were necessary to sustain the employee's position
50 on the issue on which the employee prevails.

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

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

18 A. The efficiency and expediency with which counsel brought
19 the controversy to resolution;

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

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

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

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

30 F. The level of responsibility assumed;

32 G. The severity of the employee's injury and disability;

34 H. The amount of claim in controversy;

36 I. The significance of the personal, medical and vocational
37 issues at stake for the employee and the employee's
38 dependents;

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

42 K. The end result achieved; and

44 L. Other factors determined significant by the hearing
45 officer.

47 6. Maximum rates. For legal fees that are based on an
48 hourly charge, the rate per hour may not exceed the rate
49

2 established by the board by rule. Rules adopted pursuant to this
3 subsection are routine technical rules pursuant to Title 5,
4 chapter 375, subchapter II-A.

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

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

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

29 9. Application. This section applies to all cases in which
30 the date of injury falls after December 31, 1992, except that:

31 A. Provisions relating to controversies apply to those
32 controversies for which mediation occurs after the effective
33 date of this section; and

34 B. Provisions relating to settlements apply only to those
35 settlements that are approved after the effective date of
36 this section.

37 Unless otherwise governed by this section, the amount of the
38 attorney's fees is determined by the law in effect at the time
39 the employee's injury occurred.'

SUMMARY

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This amendment requires that at the conclusion of mediation the employer must inform the Workers' Compensation Board and the employee whether the employer will be represented by legal counsel at any future proceeding or meeting with the employee. If the employer elects to be represented, the employee is entitled to have the employee's attorney's fees paid for by the employer if the employee hires an attorney and prevails. The employee may use an advocate even if the employer is not 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.

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