

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1413

S.P. 433

In Senate, March 5, 2001

**An Act to Transfer Administration of the Workers' Compensation
Employment Rehabilitation Fund to a Voluntary Coalition of Parties in
Interest.**

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2
3 **Sec. 1. 39-A MRSA §355, sub-§1**, as enacted by PL 1991, c. 885,
4 Pt. A, §8 and affected by §§9 to 11, is amended to read:

6 **1. Fund administration and contributions.** There is
7 established a special fund, known as the Employment
8 Rehabilitation Fund, for the sole purpose of making payments in
9 accordance with this Act. The fund is administered by the board
10 in all matters other than obligations of the fund pursuant to
11 section 213, subsections 3 and 4. Administration of the affairs
12 of the fund relating to obligations of the fund pursuant to
13 section 213, subsections 3 and 4 is delegated to a voluntary
14 coalition designated as the Supplemental Benefits Oversight
15 Committee, as established in section 355-A. Service of each
16 member of the Supplemental Benefits Oversight Committee is
17 limited to those matters comprising the written agenda of the
18 committee respecting cases to be reviewed during a specifically
19 enumerated period of time. A member of the committee receives a
20 per diem of \$100 per day and reimbursement of actual and
21 necessary expenses while attending to the business of the fund,
22 the costs to be payable from the fund. The Treasurer of State is
23 the custodian of the fund. All money and securities in the fund
24 must be held in trust by the Treasurer of State for the purpose
25 of making payments under this Act and are not money or property
26 for the general use of the State. The fund does not lapse.

28 The Treasurer of State may disburse money from the fund only upon
29 written order of the board Supplemental Benefits Oversight
30 Committee or the committee's duly appointed service agent
31 respecting reimbursable benefit payments made under section 213,
32 subsection 3 and 4. The Treasurer of State may disburse money
33 from the fund only upon written order of the board respecting
34 costs reimbursable under this section that are incurred by
35 employers relating to employment rehabilitation plans. The
36 Treasurer of State shall invest the money of the fund in
37 accordance with law. Interest, income and dividends from the
38 investments must be credited to the fund.

40 **Sec. 2. 39-A MRSA §355, sub-§3-A** is enacted to read:

42 **3-A. Priority of reimbursement.** When a claim for
43 reimbursement of an insurer qualified for reimbursement under
44 subsection 3 must be deferred due to lack of funds sufficient to
45 discharge the obligation of the Employment Rehabilitation Fund,
46 the right of the insurer to reimbursement is preserved and the
47 insurer's claim must be given priority over all claims of others
48 respecting later asserted similar claims when the fund balance is
49 restored to a level adequate to compensate the claimant insurer.
50

2 **Sec. 3. 39-A MRSA §355, sub-§8**, as enacted by PL 1991, c. 885,
Pt. A, §8 and affected by §§9 to 11, is repealed and the
4 following enacted in its place:

6 **8. Jurisdiction.** The board has jurisdiction over claims
for reimbursement of expenses incurred by an employer that has
8 implemented a rehabilitation plan pursuant to this section,
whether approved or ordered by the board. Payments may be made
10 to rehabilitation providers or others who provide services under
a rehabilitation plan pursuant to this section, whether approved
12 or ordered by the board. Payments may be made to rehabilitation
providers or others who provide services under such a plan. In
14 all claims matters relating to reimbursement of insurers pursuant
to section 213, subsections 3 and 4, the Supplemental Benefits
16 Oversight Committee has jurisdiction both as to assessment
authority and responsibility for ordering expenditures from the
Employment Rehabilitation Fund.

18 A. The Employment Rehabilitation Fund is not bound as to
20 any question of law or fact by reason of any award or any
adjudication to which the fund was not a party or in
22 relation to which the fund was not notified, at least 21
days prior to the award or adjudication, that the fund might
24 be subject to liability for the injury or death of an
employee.

26 B. An employer shall notify the board of any possible claim
28 for subsequent injury reimbursement against the Employment
Rehabilitation Fund as soon as practicable, but in no event
30 later than one year after the injury or death of an
employee. Failure to provide timely notice bars the claim.

32 C. The State, members of the Supplemental Benefits
34 Oversight Committee, service agents or subcontractors of
service agents are not liable for a claim against the
36 Employment Rehabilitation Fund that is in excess of the
fund's current ability to pay.

38 D. Following notice of a hearing as required by the Maine
40 Administrative Procedure Act, the Supplemental Benefits
Oversight Committee may adopt rules necessary to facilitate
42 timely and proper administration of the affairs of the
Employment Rehabilitation Fund relating to obligations of
44 the Employment Rehabilitation Fund pursuant to section 213,
subsection 3 and 4. The rules adopted pursuant to this
46 paragraph are routine technical rules as defined in Title 5,
chapter 375, subchapter II-A.

48 **Sec. 4. 39-A MRSA §355, sub-§8-A** is enacted to read:
50

2 8-A. Contractual powers. The Supplemental Benefits
3 Oversight Committee shall, through written agreement, contract
4 with persons or entities qualified by good business reputation,
5 training, education and experience to act as a service agent to
6 perform the day-to-day duties of administrator of the Employment
7 Rehabilitation Fund's responsibilities relating to section 213,
8 subsections 3 and 4. Such a person or entity must hold all
9 requisite licenses, registrations or permits issued by an
10 appropriate authority to engage in activities and assume
11 responsibilities as delegated pursuant to the terms of the
12 contract. The service agent may subcontract with attorneys
13 acceptable to the committee to advise or defend the fund in legal
14 actions as necessary. Expenses of the service agent, upon
15 approval by the committee, are chargeable to the fund.

16 **Sec. 5. 39-A MRSA §355, sub-§9,** as enacted by PL 1991, c.
17 885, Pt. A, §8 and affected by §§9 to 11, is repealed and the
18 following enacted in its place:

19 9. Legal representation. The Attorney General, when
20 requested, shall provide legal representation for claims brought
21 against the Employment Rehabilitation Fund by employers and
22 rehabilitation service providers that relate to rehabilitation
23 plans ordered or approved pursuant to this section. In
24 administering the fund's reimbursement of claims costs of
25 employers and insurers qualified under section 213, subsections 3
26 and 4, the Supplemental Benefits Oversight Committee may, either
27 directly or through service agents to whom authority to contract
28 has been delegated, seek the advice and counsel of the Attorney
29 General or retain private counsel through service contracts.
30 Reasonable costs of legal representation by attorneys retained by
31 the committee are chargeable to the fund.

32 A. The reasonable expense of prosecution or defense by the
33 Attorney General of claims made against the Employment
34 Rehabilitation Fund are payable out of the fund subject to
35 the approval of the board.

36 **Sec. 6. 39-A MRSA §355-A** is enacted to read:

37 **§355-A. Supplemental Benefits Oversight Committee**

38 There is created the Supplemental Benefits Oversight
39 Committee, referred to in this section as the "committee,"
40 comprising a voluntary coalition of parties in interest. The
41 committee is charged with monitoring, facilitating and providing
42 general oversight in the administration of reimbursement to
43 insurers of workers' compensation benefits funded by the
44 Employment Rehabilitation Fund pursuant to section 213,
45 subsections 3 and 4. The committee consists of 5 members. Two
46 members shall be appointed by the Governor, one by the
47 Attorney General, one by the Department of Labor, one by the
48 Department of Health and Human Services, and one by the
49 Department of Corrections. The committee shall report to the
50 Governor and the Legislature on or before the first day of

2 members must represent employers, 2 members must represent
4 insurers and one member must represent labor interests. A list
6 of qualified persons who are available to serve on the committee
8 must be maintained by the board. Each member, in the event of
10 disputed issues, has one vote, which the member shall exercise.
12 When replacement participation in the committee's membership is
14 necessitated by a potential or actual conflict of interest,
16 alternative members must be drawn from the list of qualified
18 individuals maintained by the board.

20 A member of the committee is not liable in a civil action
22 for an act performed in good faith in the execution of duties as
24 a member of the committee. A member of the committee may not
26 participate in deliberations under consideration by the
28 Employment Rehabilitation Fund if that member is personally
30 interested in the case or is employed by or otherwise a
32 representative of a person who is pecuniarily interested in the
34 case. The committee's responsibilities include, but are not
36 limited to:

38 1. Review; evaluation. Review and evaluation, upon request
40 of parties in interest, of pending workers' compensation claim
42 settlements, including those that may be discharged by lump-sum
44 settlement. In such cases the committee has power to bind the
46 Employment Rehabilitation Fund with respect to the value
48 specified in agreements relating to settlements that is
50 reimbursable from the fund. The review must extend to a
determination of the monetary obligation of the fund to the party
seeking reimbursement.

2. Request of determination. When sitting in review of
requests for determination of the level of reimbursement payable
from the Employment Rehabilitation Fund, the committee shall
schedule the review within 14 days of the receipt of the request
or at a later time that is mutually acceptable to the parties.

3. Day-to-day operations. Delegation of day-to-day
business operations of the Employment Rehabilitation Fund to a
service agent qualified pursuant to section 355, subsection 8-A.
Terms and conditions of the contract must empower the service
agent as specified in section 356, subsection 5-A.

Sec. 7. 39-A MRS §356, sub-§1, as enacted by PL 1991, c. 885,
Pt. A, §8 and affected by §§9 to 11, is repealed and the
following enacted in its place:

1. Assessment. The board may levy an assessment on each
insurer based on the insurer's actual paid losses during the
previous calendar year.

2 A. A service agent to whom the committee has delegated
3 authority pursuant to a written contract may levy periodic
4 assessments on each insurer in the proportion that the net
5 direct written workers' compensation premiums of each
6 insurer for the calendar year preceding the assessment bears
7 to the net direct written workers' compensation premiums of
8 all insurers that provided that coverage in the State in the
9 same calendar year.

10 B. A service agent to whom the committee has delegated
11 authority pursuant to a written contract may levy periodic
12 assessments on each self-insured employer based upon the
13 self-insured employer's actual paid losses during the
14 previous calendar year.

15 C. Assessments must be levied with such frequency as to
16 reasonably meet the cash flow needs of the Employment
17 Rehabilitation Fund to timely discharge its obligations
18 relating to reimbursement costs payable under section 213,
19 subsections 3 and 4.

20 D. Rates and premiums charged for workers' compensation
21 policies are not considered excessive if a reasonably
22 calculated surcharge is made to recoup assessments paid to
23 the Employment Rehabilitation Fund. A surcharge made must
24 be specifically identified in a policy. The surcharge made
25 is not subject to premium taxes.

26 **Sec. 8. 39-A MRSA §356, sub-§5-A is enacted to read:**

27 5-A. Duties of service agent. A service agent retained
28 under section 355 must, pursuant to terms of the contract, be
29 held to account as a fiduciary in the administration of the
30 Employment Rehabilitation Fund's assets and conduct of the
31 business of the fund.

32 A. A service agent shall acknowledge and reimburse claims
33 of insurers consistent with the terms of a settlement
34 effected among parties to the settlement as long as the
35 service agent has been accorded notice and opportunity to
36 participate regarding negotiation of the terms and
37 conditions of the settlement.

38 B. A service agent is contractually empowered to levy
39 assessments in the name of the Employment Rehabilitation
40 Fund, institute assessment collection procedures including
41 legal actions if necessary, process qualified requests for
42 reimbursement from the fund in a timely manner, deposit
43 money in the possession of the fund with the Treasurer of
44 State if the funds are not needed to meet immediate cash
45 requirements.

2 flow demands and commit the fund to agreed levels of insurer
reimbursement based upon review and assessment of prospects
4 of consensual settlement.

6 C. A service agent with whom the committee has contracted
shall make recommendations to the committee regarding
8 rule-making standards determined necessary to properly
administer the affairs of the Employment Rehabilitation Fund.

10
12 **SUMMARY**

14 This bill reassigns responsibility for administration of the
16 Employment Rehabilitation Fund to a voluntary coalition
18 comprising representatives of the employment community, insurance
20 companies and a bona fide labor organization. The bill sets
procedures for funding and processing claims for reimbursement of
benefit expenses incurred by insurers and employers that
self-insure workers' compensation. The transfer of
responsibilities relieves the budget of the Workers' Compensation
Board of expenses of administration of the fund.